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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon

Appellate Case No. 2022-000580
Circuit Court Case No. 2018-CP-46-03726

The Grapevine of Riverwalk, Inc. ……..……Respondent,

v.

Riverwalk River District Building 6, LLC, Mark Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC,
……..……..……Appellants.

RECORD ON APPEAL
VOLUME I

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ELECTRONICALLY FILED - 2021 Mar 10 9:23 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL DISTRICT
2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, AND ASSURED ADMINISTRATION, LLC,

Defendants.

ORDER

THIS MATTER came on for a virtual hearing before the undersigned on March 3, 2021, with Plaintiff represented at the hearing by its counsel, Christian Staples, and Defendants represented by their counsel, Keith Martens; pending before the Court were the following motions: (1) *Defendants' Motion to Strike the Jury Demand and to Transfer Case to Non-Jury Roster*, (2) *Plaintiff's Motion to Strike Defendants' Affirmative Defense based on S.C. Code § 15-32-530*, (3) *Defendants' Motion for Summary Judgment*, and (4) *Plaintiff's Renewed Motion for Summary Judgment*; and the Court, having reviewed and considered the motions, the briefs and other materials submitted by the parties, including but not limited to the Affidavit of Melanie Sills, and having heard the oral arguments of counsel, hereby finds and concludes as follows:

1) *Defendants' Motion to Strike the Jury Demand and to Transfer Case to Non-Jury Roster* is DENIED;

2) *Plaintiff's Motion to Strike Defendants' Affirmative Defense based on S.C. Code § 15-32-530* is DENIED;

3) *Defendants' Motion for Summary Judgment* is GRANTED IN PART AND DENIED IN PART, as follows:

a. The Motion is GRANTED as to Plaintiff's Third Claim for Relief for Fraudulent Inducement, Plaintiff's Fourth Claim for Relief for Fraud / Fraudulent Misrepresentation, and Plaintiff's Sixth Claim for Relief for Breach of the Duty of Good Faith and Fair Dealing; and

b. The Motion is DENIED as to all of Plaintiff's remaining Claims for Relief.

ROA 1

4) *Plaintiff's Renewed Motion for Summary Judgment* is DENIED.

IT IS SO ORDERED.

_____
The Honorable William A. McKinnon
Circuit Court Judge Presiding

Dated: _____
York, SC

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ROA 2

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 **CP-**46-03726

THE GRAPEVINE OF RIVERWALK, INC.	RIVERWALK RIVER DISTRICT BUILDING 6, LLC, ET AL.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: CHRISTIAN H. STAPLES	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

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

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

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

ROA 4

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****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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York Common Pleas

Case Caption: Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al

Case Number: 2018CP4603726

Type: Order/Form 4

So Ordered

/s William A. McKinnon, Chief Judge for Administrative Purposes, 16th Cir., #2761

ELECTRONICALLY FILED - 2021 Dec 13 11:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

ORDER REGARDING POST-TRIAL MOTIONS

THIS MATTER came before the undersigned on the post-trial motions filed by the parties[1], and the Court, having reviewed and considered the motions, the materials submitted, and the oral arguments of counsel, hereby finds and concludes as follows:

1) Plaintiff's Motion for Directed Verdict / Motion for Specific Performance is GRANTED. The closing on the purchase/sale of the "Demised Premises" as defined in the Lease Agreement between the parties shall occur on or before May 31, 2022 (hereinafter, the "Closing Date"). The "Purchase Price" as defined in Section 33 of the Lease shall include an additional credit in favor of Plaintiff for all amounts of Base Rent paid by Plaintiff under the Lease since February 2, 2018, through the Closing Date. Upon the closing, the Lease shall immediately terminate, but Plaintiff shall retain the right to jointly use the Common Areas (as defined in the Lease) with the remaining tenants and the condominium documents shall

[1] Plaintiff's post-trial motions were filed on September 3, 2021. Defendants' post-trial motions were filed on September 10, 2021.

ROA 8

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expressly so provide. Defendants shall not restrict or limit Plaintiff's right to use the Common Areas in conjunction with the remaining tenants.

The decision to grant specific performance is to be exercised in accordance with rules of equity and with regard to the facts and circumstances of each case. *See Campbell v. Carr*, 603 S.E.2d 625 (S.C. Ct. App. 2004). The Court of Appeals of South Carolina has set forth the elements of specific performance as follows: "(1) The existence of a valid contract; (2) The absence of an adequate remedy at law for breach of contract; (3) The specific performance is equitable between the parties; and (4) The contract is not infected by fraud, accident, or mistake." *King v. Oxford*, 282 S. C. 307, 318 S. E. 2d 125 (Ct. App. 1984). Whether an adequate remedy at law exists is based on whether the "object of the contract is so peculiar in value as to give rise to an equity for the specific performance of the contract without referring to its quality or quantity." *See Kitchen v. Herring*, 36 N. C. (1 Ired. Eq.) 190 (1851); *Hazelton v. Miller*, 25 App. D. C. 337 (1905), aff'd, 202 U. S. 71 (1906).

In addition, order to compel specific performance, a court of equity must find that the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000). To perform an option to purchase, the party must follow to specific language in the option contract. *Ingram v. Kasey's Assocs.,* 340 S.C. 98, 109, 531 S.E.2d 287, 293 (2000). "If the option contract specifically makes the tender of the purchase price a condition precedent to the option's exercise, then the plain language of the contract controls and actual tender is required." *See Catawba Athletics, Inc. v. Newton Car Wash, Inc*., 53 N.C.App. 708, 281 S.E.2d 676 (1981). However, in situations similar to this case, where the option contract only requires payment "at any time during the terms [of the lease]," the Court must consider the

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context in which the contract was made and attempt to further the intent of the contracting parties. *Ingram v. Kasey's Assocs*., 340 S.C. 98, 110–11, 531 S.E.2d 287, 293–94 (2000).

The Court finds that Section 33 of the Lease (the Option to Purchase provision) only requires advance written notice of 120 days; it does not also require payment of the Purchase Price, or tender thereof, in order to bind the parties to the purchase. Therefore, Grapevine exercised its option to purchase and is entitled to specific performance as it was able and willing to perform its part of the contract. Grapevine had every intention to purchase the property and had the funds to do so. Riverwalk refused to set a closing date and without the horizontal property regime, Grapevine could not purchase the property. The Court also finds the existence of a valid contract in the lease agreement, the absence of an adequate remedy at law for the breach of this lease agreement because the leased property is peculiar in value to Grapevine, the specific performance is equitable between the parties; and the lease is not entered into by fraud, accident, or mistake.

2) Plaintiff's Motion for Award of Costs and Attorneys' Fees is GRANTED, but with a thirty percent (30%) reduction from the total amounts sought in the motion to account for the non-contractual claims that are not subject to the fee-shifting provision contained in the Lease. Accordingly, Plaintiff is entitled to recover costs and attorneys' fees in the total amount of $404,934.75.

Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.,* 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). The Court has given careful consideration to each of the six (6) factors set forth in *Blumberg v. Nealco, Inc*., 310 S.C. 492, 427 S.E.2d 659 (1993), and specifically finds as support for its award of costs and attorneys' fees (i) that the legal services rendered by Plaintiff's counsel were substantial and

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complex; (ii) that the time and labor devoted by Plaintiff's counsel was substantial; (iii) that the professional standing of Plaintiff's counsel is high; (iv) that no contingency-based compensation structure applied to the representation provided by Plaintiff's counsel; (v) that the fees charged by Plaintiff's counsel are in-line with the fees customarily charged by firms of similar size with lawyers of similar experience and qualification practicing in this jurisdiction; and (vi) the result obtained by Plaintiff's counsel were beneficial to Plaintiff.

The Court finds the contractual agreement in the lease entitles the Plaintiff to recover costs and attorneys' fees, but only in regards to the defendant, Landlord Riverwalk River District Building 6, LLC for the breach of lease claims. The Plaintiff's billing statements make it difficult to determine and delineate the work completed in furtherance of the breach of lease claims—which is the only claim upon which attorneys' fees and costs may be awarded. Similar to *Maybank v. BB&T*, the claims in this case shared the same common facts and required combined efforts throughout the litigation process. Therefore, the Court reduces the fees and cost by thirty percent to account for a distinction in the claims and the time allotted to assert claims unrelated to the breach of lease claims. *See Maybank v. BB&T Corp*., 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016).

3) Plaintiff's Motion for Award of Pre-Judgment Interest on Jury Verdict is GRANTED IN PART, as follows: Pre-judgment interest at the rate of 8.75% shall accrue only on the Base Rent paid by Plaintiff under the Lease after February 2, 2018.[2] In all other respects the motion is DENIED.

4) Defendants' Motion for Judgment Notwithstanding the Verdict is GRANTED only with respect to Plaintiff's Negligent Misrepresentation claim against Defendant Mark S. Mather, and in all other respects is DENIED. As discussed prior in this order, Section 33 of the

[2] Plaintiff has paid $112,110.00 in Base Rent under the Lease from February 2, 2018 through December 2021.

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Lease (the Option to Purchase provision) only required advance written notice of 120 days; it did not also require payment of the Purchase Price, or tender thereof, in order to bind the parties to the purchase/sale. Therefore, Grapevine exercised the option when it wrote its letter. Also, the Courts concludes the fact that Riverwalk never set up the horizontal property regime is important. Grapevine had every intention to purchase the property and had the funds to do so. Riverwalk refused to set a closing date and without the horizontal property regime, Grapevine could not purchase the property.

The only factual basis for Plaintiff's Negligent Misrepresentation claim permitted to go to the jury was David Williams' statement that the landlord's lender required a two-year lease prior to exercising the Option to Purchase. Over Plaintiff's objection, the jury was not permitted to consider any other alleged misrepresentations. The Court finds that evidence at trial was sufficient for the jury to find that David Williams' misrepresentation regarding the lender's two-year lease requirement before the Option could be exercised specifically induced Plaintiff to enter into the Lease and to trust the Defendants' intentions, and provided the false basis for why Defendants would not sell the space outright, putting Plaintiff in the position it found itself, by needing to seek redress from the Court. Nevertheless, the Defense motion is granted in regards to Mark Mather because there was not testimony that David Williams was acting on behalf of Mark Mather personally.

5) Defendants' Motion to Require Election of Remedy is GRANTED only as between Plaintiff's claim for Specific Performance and Plaintiff's recovery of the Breach of Contract damages awarded in response to Jury Question # 1 on the Jury Verdict Form ($221,700.00 for Breach of the Option to Purchase), and in all other respects is DENIED. For purposes of clarity, Plaintiff may elect the remedy of specific performance and still recover the

Breach of Contract damages awarded in response to Jury Question # 2 ($146,124.00 for Breach of the Common Area provisions of the Lease Agreement) and the Negligent Misrepresentation damages awarded in response to Jury Question # 3 ($96,800.00). The Court notes that Plaintiff has previously elected the remedy of specific performance;[3] however, Plaintiff may change such election at any time prior to entry of final judgment in this action.

6) All other post-trial motions filed by Defendants are DENIED.

IT IS SO ORDERED.

_____
The Honorable William A. McKinnon

_____, 2021
_____, South Carolina

[3] Plaintiff's election of remedies was made in its Motion for Directed Verdict / Motion for Specific Performance filed on September 3, 2021.

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York Common Pleas

Case Caption:	Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al
Case Number:	2018CP4603726
Type:	Order/Other

So Ordered

/s William A. McKinnon, Chief Judge for Administrative Purposes, 16th Cir., #2761

ROA 14

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 17, 2022

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The Grapevine of Riverwalk, Inc. v. Riverwalk River District
Lower Court Case No. 2018CP4603726
Appellate Case No. 2022-000059

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V Claire Allen

CLERK

FILED-RECEIVED
2022 FEB 22 AM 9:59
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Enclosure

cc: Walter Keith Martens, Esquire
Christian Hart Staples, Esquire

ROA 15

Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire

ROA 16

The South Carolina Court of Appeals

The Grapevine of Riverwalk, Inc., Respondent,

v.

Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC, Appellants.

Appellate Case No. 2022-000059

The Honorable William A. McKinnon
York County
Trial Court Case No. 2018CP4603726

FILED-RECEIVED
2022 FEB 22 AM 9:59
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

ORDER

This matter is dismissed without prejudice pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V Claire Allen
CLERK

Columbia, South Carolina

FILED
Jan 26 2022

cc:
Walter Keith Martens, Esquire
Christian Hart Staples, Esquire

Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire

ELECTRONICALLY FILED - 2022 Feb 17 10:14 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Grapevine of Riverwalk Inc., Plaintiffs, vs.	)	Case No. 2018-CP-46-03726
Riverwalk River District Building 6 LLC, et al, defendants.	)	**JURY VERDICT FORM**

We the jury unanimously find.

1. Did Riverwalk River District Building 6, LLC breach its lease agreement with The Grapevine of Riverwalk, Inc. in regards to the lease's option to purchase?

   Yes ✓✓ No_____

   If you answered yes, what amount of damages resulted from this breach?
   $221,700.00

2. Did Riverwalk River District Building 6, LLC breach its lease agreement with The Grapevine of Riverwalk, Inc. in regards to the lease's use of the patio/common space?

   Yes ✓ No_____

   If you answered yes, what amount of damages resulted from this breach?
   $146,124.00

3. Did any Defendant(s) make a negligent misrepresentation to the plaintiff? Yes or No as to each Defendant.

Riverwalk River District Building 6, LLC	Yes ✓ No_____
GRH Development Resources, LLC	Yes ✓ No_____
The Greens of Rock Hill, LLC	Yes ✓ No_____
Assured Administration, LLC	Yes ✓ No_____
Mark S. Mather	Yes ✓ No_____

   If you answered yes as to any defendant, what amount of damages resulted from this negligent misrepresentation?
   $96,800

4. Did the defendants Riverwalk River District Building 6, LLC and GRH Development Resources, LLC conspire to harm the plaintiff?

Yes _____ No X

If you answered yes, what amount of damages resulted from this civil conspiracy? $0.00

August 27, 2021
York, S.C.

Foreperson

ELECTRONICALLY FILED - 2022 Feb 17 10:14 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2022 Apr 19 11:20 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

ORDER ON RULE 59 MOTION AND FINAL JUDGMENT

THIS MATTER was tried to a jury at the August 23, 2021 session of Common Pleas Court for York County, South Carolina, Sixteenth Judicial Circuit, with the Honorable William A. McKinnon, presiding. Christian Staples and Steven Meckler served as trial counsel for Plaintiff, and Keith Martens and Steve Dluzneski served as trial counsel for Defendants.

At the conclusion of the trial, on August 27, 2021, the jury returned a verdict, and the Jury Verdict Form was filed on February 17, 2022. The jury determined that Defendant Riverwalk River District Building 6, LLC breached its lease agreement with Plaintiff in regards to the lease's option to purchase, and that Plaintiff is entitled to recover the sum of $221,700.00 as a result. The jury also determined that Defendant Riverwalk River District Building 6, LLC breached its lease agreement with Plaintiff in regards to Plaintiff's use of the outdoor patio/common space, and that Plaintiff is entitled to recover the sum of $146,124.00 as a result. Finally, the jury determined that all Defendants made a negligent misrepresentation to Plaintiff, and that Plaintiff is entitled to recover the sum of $96,800.00 as a result.

ELECTRONICALLY FILED - 2022 Apr 19 11:20 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

Following the jury verdict, the Court heard the parties' respective post-trial motions and an Order Regarding Post-Trial Motions was filed on December 13, 2021 (hereinafter, the "Order"). The Order granted Plaintiff's Motion for Directed Verdict (Specific Performance) and directed that the closing on the purchase/sale of the "Demised Premises" as defined in the lease agreement between the parties shall occur on or before May 31, 2022 (the "Closing Date"), and that the "Purchase Price" as defined in the lease shall be further reduced by the total amount of Base Rent paid by Plaintiff since February 2, 2018, through the Closing Date. The Order further provides that upon the closing, the lease shall terminate. The Order further provides that Plaintiff shall retain the right to jointly use the Common Areas (as defined in the lease and determined by the jury) with the remaining tenants, that the condominium documents shall expressly so provide, and that Defendants shall not restrict or limit Plaintiff's right to use the Common Areas in conjunction with the remaining tenants in the building. The Order also provides that Plaintiff must elect between the remedy of specific performance or the recovery of the money damages awarded for breach of the lease in regards to the Option to purchase in the amount of $221,700.00. Plaintiff has elected the remedy of specific performance and therefore the money judgment entered against Defendant Riverwalk River District Building 6, LLC shall be reduced by $221,700.00 to account for this election of remedies, but in all other respects the money judgments in Plaintiff's favor, as well as the Purchase Price, shall be unaffected by this election of remedies. The Order also granted Defendants' Motion for Judgment Notwithstanding the Verdict as to Plaintiff's Negligent Misrepresentation claim against Defendant Mark S. Mather only. The Order also granted Plaintiff's Motion for Award of Costs and Attorneys' Fees in the total amount of $404,934.75, which amount shall be taxed against Defendant Riverwalk River District Building 6, LLC only. The Order also granted, in part, Plaintiff's Motion for Award of Pre-Judgment Interest, and

ELECTRONICALLY FILED - 2022 Apr 19 11:20 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

directed that pre-judgment interest at the rate of 8.75% shall accrue on the Base Rent paid by Plaintiff since February 2, 2018, and shall be taxed against Defendant Riverwalk River District Building 6, LLC only. From February 2, 2018, through April 2022, Plaintiff has paid $122,128.53 in Base Rent under the lease. Base Rent for the month of May 2022 is $2,516.97.

The Court also heard the Defendants' Rule 59(e) Motion to reconsider the Order Regarding Post-Trial Motions, and these motions are DENIED.

There being no further matter or issue for resolution by this Court, the Court hereby enters final judgment upon the jury verdict:

1) Judgment in favor of Plaintiff and against Defendant Riverwalk River District Building 6, LLC in the amount of $146,124.00 on the jury verdict (Issue # 2), plus $96,800.00 on the jury verdict (Issue # 3), and $404,934.75 in costs and attorneys' fees, for a total amount of $647,858.75;

2) Judgment in favor of Plaintiff and against Defendants GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC, jointly and severally with Defendant Riverwalk River District Building 6, LLC, in the amount of $96,800.00 on the jury verdict (Issue # 3);

3) Specific performance of the Option to Purchase contained in the Lease Agreement between Plaintiff and Defendant Riverwalk River District Building 6, LLC. The closing on the purchase/sale shall of the property located at 829 Terrace Park, Suite 104, Rock Hill, SC 29730, shall occur by May 31, 2022. Time is of the essence. Prior to closing, Defendant Riverwalk River District Building 6, LLC shall do whatever is required to put itself into a position to convey the property to Plaintiff, in terms of creation of a horizontal property regime for the building, or otherwise. The Master Deed shall be in substantially the same form as that prepared by Todd

ELECTRONICALLY FILED - 2022 Apr 19 11:20 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

Brockmann, Esq. on behalf of Defendant Riverwalk River District Building 6, LLC in January 2018 and subsequently approved by Plaintiff. At the closing, Defendant Riverwalk River District Building 6, LLC shall deliver good, clear, insurable, and marketable fee simple title by a General Warranty Deed running to Plaintiff, free and clear of all liens and encumbrances, subject only to the following: (a) building, zoning, environmental, and land use laws, regulations and ordinances applicable to the property as of the date of conveyance, and (b) easements, covenants, restrictions, reservations and other similar matters of record not objected to by Buyer. At the closing, Plaintiff shall pay the Purchase Price as defined in the Lease Agreement, which price shall be further reduced by the total amount of Base Rent paid by Plaintiff since February 2, 2018, through the Closing Date[1];

4) Pre-judgment interest on the Base Rent paid by Plaintiff since February 2, 2019, though the Closing Date, shall be taxed against Defendant Riverwalk River District Building 6, LLC on a monthly basis[2]; and

5) Post-judgment interest shall be applied to all money judgments herein as provided by law.

IT IS SO ORDERED.

_____
The Honorable William A. McKinnon

_____, 2022
_____, South Carolina

[1] Plaintiff has paid $122,128.53 in Base Rent through April 2022. Base Rent for the month of May 2022 is $2,516.97.
[2] Monthly rent from February 2, 2018 through January 31, 2019 was $2,325.29. Monthly rent from February 1, 2019 through January 31, 2020 was $2,371.8. Monthly rent from February 1, 2020 through January 31, 2021 was $2,419.24. Monthly rent from February 1, 2021 through January 31, 2022 was $2,467.62. Monthly rent from February 1, 2022 through January 31, 2023 is $2,516.97.

ELECTRONICALLY FILED - 2022 Apr 19 11:20 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

York Common Pleas

Case Caption:	Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al
Case Number:	2018CP4603726
Type:	Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

ELECTRONICALLY FILED - 2022 Apr 19 1:19 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

AMENDED ORDER ON RULE 59 MOTION AND FINAL JUDGMENT

THIS MATTER was tried to a jury at the August 23, 2021 session of Common Pleas Court for York County, South Carolina, Sixteenth Judicial Circuit, with the Honorable William A. McKinnon, presiding. Christian Staples and Steven Meckler served as trial counsel for Plaintiff, and Keith Martens and Steve Dluzneski served as trial counsel for Defendants.

At the conclusion of the trial, on August 27, 2021, the jury returned a verdict, and the Jury Verdict Form was filed on February 17, 2022. The jury determined that Defendant Riverwalk River District Building 6, LLC breached its lease agreement with Plaintiff in regards to the lease's option to purchase, and that Plaintiff is entitled to recover the sum of $221,700.00 as a result. The jury also determined that Defendant Riverwalk River District Building 6, LLC breached its lease agreement with Plaintiff in regards to Plaintiff's use of the outdoor patio/common space, and that Plaintiff is entitled to recover the sum of $146,124.00 as a result. Finally, the jury determined that all Defendants made a negligent misrepresentation to Plaintiff, and that Plaintiff is entitled to recover the sum of $96,800.00 as a result.

ELECTRONICALLY FILED - 2022 Apr 19 1:19 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

Following the jury verdict, the Court heard the parties' respective post-trial motions and an Order Regarding Post-Trial Motions was filed on December 13, 2021 (hereinafter, the "Order"). The Order granted Plaintiff's Motion for Directed Verdict (Specific Performance) and directed that the closing on the purchase/sale of the "Demised Premises" as defined in the lease agreement between the parties shall occur on or before May 31, 2022 (the "Closing Date"), and that the "Purchase Price" as defined in the lease shall be further reduced by the total amount of Base Rent paid by Plaintiff since February 2, 2018, through the Closing Date. The Order further provides that upon the closing, the lease shall terminate. The Order further provides that Plaintiff shall retain the right to jointly use the Common Areas (as defined in the lease and determined by the jury) with the remaining tenants, that the condominium documents shall expressly so provide, and that Defendants shall not restrict or limit Plaintiff's right to use the Common Areas in conjunction with the remaining tenants in the building. The Order also provides that Plaintiff must elect between the remedy of specific performance or the recovery of the money damages awarded for breach of the lease in regards to the Option to purchase in the amount of $221,700.00. Plaintiff has elected the remedy of specific performance and therefore the money judgment entered against Defendant Riverwalk River District Building 6, LLC shall be reduced by $221,700.00 to account for this election of remedies, but in all other respects the money judgments in Plaintiff's favor, as well as the Purchase Price, shall be unaffected by this election of remedies. The Order also granted Defendants' Motion for Judgment Notwithstanding the Verdict as to Plaintiff's Negligent Misrepresentation claim against Defendant Mark S. Mather only. The Order also granted Plaintiff's Motion for Award of Costs and Attorneys' Fees in the total amount of $404,934.75, which amount shall be taxed against Defendant Riverwalk River District Building 6, LLC only. The Order also granted, in part, Plaintiff's Motion for Award of Pre-Judgment Interest, and

ELECTRONICALLY FILED - 2022 Apr 19 1:19 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

directed that pre-judgment interest at the rate of 8.75% shall accrue on the Base Rent paid by Plaintiff since February 2, 2018, and shall be taxed against Defendant Riverwalk River District Building 6, LLC only. From February 2, 2018, through April 2022, Plaintiff has paid $122,128.53 in Base Rent under the lease. Base Rent for the month of May 2022 is $2,516.97.

The Court also heard the Defendants' Rule 59(e) Motion to reconsider the Order Regarding Post-Trial Motions, and these motions are DENIED.

There being no further matter or issue for resolution by this Court, the Court hereby enters final judgment upon the jury verdict:

1) Judgment in favor of Plaintiff and against Defendant Riverwalk River District Building 6, LLC in the amount of $146,124.00 on the jury verdict (Issue # 2), plus $96,800.00 on the jury verdict (Issue # 3), and $404,934.75 in costs and attorneys' fees, for a total amount of $647,858.75;

2) Judgment in favor of Plaintiff and against Defendants GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC, jointly and severally with Defendant Riverwalk River District Building 6, LLC, in the amount of $96,800.00 on the jury verdict (Issue # 3);

3) Specific performance of the Option to Purchase contained in the Lease Agreement between Plaintiff and Defendant Riverwalk River District Building 6, LLC. The closing on the purchase/sale shall of the property located at 829 Terrace Park, Suite 104, Rock Hill, SC 29730, shall occur by May 31, 2022. Time is of the essence. Prior to closing, Defendant Riverwalk River District Building 6, LLC shall do whatever is required to put itself into a position to convey the property to Plaintiff, in terms of creation of a horizontal property regime for the building, or otherwise. The Master Deed shall be in substantially the same form as that prepared by Todd

ELECTRONICALLY FILED - 2022 Apr 19 1:19 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

Brockmann, Esq. on behalf of Defendant Riverwalk River District Building 6, LLC in January 2018 and subsequently approved by Plaintiff. At the closing, Defendant Riverwalk River District Building 6, LLC shall deliver good, clear, insurable, and marketable fee simple title by a General Warranty Deed running to Plaintiff, free and clear of all liens and encumbrances, subject only to the following: (a) building, zoning, environmental, and land use laws, regulations and ordinances applicable to the property as of the date of conveyance, and (b) easements, covenants, restrictions, reservations and other similar matters of record not objected to by Buyer. At the closing, Plaintiff shall pay the Purchase Price as defined in the Lease Agreement, which price shall be further reduced by the total amount of Base Rent paid by Plaintiff since February 2, 2018, through the Closing Date[1];

4) Pre-judgment interest on the Base Rent paid by Plaintiff since February 2, 2018, though the Closing Date, shall be taxed against Defendant Riverwalk River District Building 6, LLC on a monthly basis[2]; and

5) Post-judgment interest shall be applied to all money judgments herein as provided by law.

IT IS SO ORDERED.

_____
The Honorable William A. McKinnon

_____, 2022
_____, South Carolina

[1] Plaintiff has paid $122,128.53 in Base Rent through April 2022. Base Rent for the month of May 2022 is $2,516.97.
[2] Monthly rent from February 2, 2018 through January 31, 2019 was $2,325.29. Monthly rent from February 1, 2019 through January 31, 2020 was $2,371.8. Monthly rent from February 1, 2020 through January 31, 2021 was $2,419.24. Monthly rent from February 1, 2021 through January 31, 2022 was $2,467.62. Monthly rent from February 1, 2022 through January 31, 2023 is $2,516.97.

ELECTRONICALLY FILED - 2022 Apr 19 1:19 PM - YORK - COMMON PLEAS - CASE#2018CP4603726



York Common Pleas

Case Caption:	Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al
Case Number:	2018CP4603726
Type:	Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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ELECTRONICALLY FILED - 2022 Aug 15 1:35 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

ORDER ON DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS AND PLAINTIFF'S RULE 70 MOTION TO COMPEL COMPLIANCE WITH FINAL JUDGMENT, FOR CONTEMPT ORDER, AND FOR ORDER REGARDING NON-PAYMENT OF RENT PENDING APPEAL

THIS MATTER was heard on August 1, 2022 in the Court of Common Pleas for York County, South Carolina, Sixteenth Judicial Circuit, the Honorable William A. McKinnon, presiding. Christian Staples and Steven Meckler appeared for Plaintiff and Keith Martens appeared for Defendants. Having reviewed and considered the motions and other materials submitted by the parties, and having heard the oral arguments of counsel for the parties, the Court hereby finds and concludes as follows:

1) Defendants' Motion for Stay of Proceedings pending appeal is granted, effective August 1, 2022, and subject to the terms and conditions of this Order.

2) Plaintiff's Rule 70 Motion to Compel Compliance with Final Judgment, for Contempt Order, and for Order Regarding Non-Payment of Rent Pending Appeal is granted in part, and denied in part, subject to the terms and conditions of this Order.

3) Defendants shall post a cash or surety bond, pursuant to Rule 62, SCRCP, and S.C. Code § 18-9-130, in the amount of $950,000.00, on or before September 30, 2022, in order to

ELECTRONICALLY FILED - 2022 Aug 15 1:35 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

maintain the stay of the money judgment portions of the Final Judgment entered in this action on April 19, 2022. If Defendants fail to post the entirety of such bond on or before the deadline stated herein, then the stay shall automatically dissolve as to such money judgments.

4) The Court finds that the Master Deed recorded by Defendant Riverwalk River District Building 6, LLC on May 31, 2022 contains one or more provisions that may actually or potentially impair the rights of Plaintiff, including those established by this litigation. Therefore, pursuant to Rule 70, SCRCP, and the Court's inherent equitable powers, the Court directs the parties to proceed as follows to record an amended Master Deed:

a. On or before August 15, 2022, each party shall identify to the other in writing the name of an attorney who is licensed to practice law in the State of South Carolina and who regularly practices in the area of commercial real estate whom the party proposes to draft and record an amended Master Deed for the Riverwalk River District Building 6 Horizontal Property Regime;

b. On or before September 1, 2022, the two appointed attorneys shall communicate with one another to determine whether they agree upon the essential terms of an amended Master Deed and, if so, then they shall coordinate with one another to draft and record the amended Master Deed;

c. Each party shall bear the costs and fees of its own nominated attorney;

d. If the two attorneys nominated by the parties are unable to agree as to all terms of an amended Master Deed, then by September 1, 2022, those attorneys shall jointly nominate a third attorney who does not currently represent either party, is licensed to practice law in the State of South Carolina, regularly practices in the area of commercial real estate and who agrees to draft and record an amended Master Deed

ELECTRONICALLY FILED - 2022 Aug 15 1:35 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

for the Riverwalk River District Building 6 Horizontal Property Regime. The costs and fees of any attorney so nominated shall be borne equally by the parties;

e. The amended Master Deed shall be recorded by September 30, 2022 and, upon recording, shall replace the Master Deed that was recorded by Riverwalk River District Building 6, LLC on May 31, 2022. The amended Master Deed shall contain terms that are consistent with the provisions of the South Carolina Horizontal Property Regime Act, commercially reasonable and not unduly restrictive of Plaintiff's rights, including the right of Plaintiff to use Common Areas adjacent to its space, as established by the judgment in this case. Riverwalk River District Building 6, LLC, and not Plaintiff, shall be designated as Declarant. The amended Master Deed may include such provisions as shall contain only those provisions, addenda, attachments and exhibits which are typical and commercially reasonable for master deeds in South Carolina, and which are otherwise equitable to Plaintiff.

5) On or before September 30, 2022, Riverwalk River District Building 6, LLC shall deposit with the York County Clerk of Court a fully-executed deed of conveyance that is sufficient to transfer title of Plaintiff's Leased Premises to Plaintiff without further action (other than recording and delivery). The deed of conveyance shall be a General Warranty Deed, and not an Indenture Deed, and shall make reference to the amended Master Deed. The York County Clerk of Court is directed to accept the deposit of such General Warranty Deed pursuant to S.C. Code § 18-9-160, to retain the deed and not to record it unless directed or authorized by subsequent order. Upon deposit of the General Warranty Deed, the stay of this court's judgment for specific performance shall remain in effect for the duration of the appeal, or until modified or rescinded by subsequent order issued by a court of competent jurisdiction.

ELECTRONICALLY FILED - 2022 Aug 15 1:35 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

6) If the Master Deed and the General Warranty Deed required hereby are not so recorded or deposited, as the case may be, on or before September 30, 2022, then the stay of specific performance that is granted by this Order shall automatically dissolve.

7) Effective August 1, 2022, Plaintiff shall have no further obligation to pay rent or any other charge under the Commercial Lease Agreement ("Lease") between the parties which is at issue in this action. Consistent with the Final Judgment, the "Purchase Price" as defined in the Lease and Option to Purchase shall be further reduced by the sum of $129,679.44, which is the amount of Base Rent paid by Plaintiff under the Lease since February 2, 2018. Plaintiff shall also be entitled to offset against the Purchase Price the $25,000.00 rent credit and the $6,705.00 security deposit as provided by the Option to Purchase. The General Warranty Deed prepared pursuant to this Order should therefore reflect an actual purchase price of $108,615.56 after application of the foregoing credits/offsets. Property taxes for the year in which the transfer, sale, or closing occurs shall be prorated between the parties through the date thereof, but shall be limited to that portion or percentage of said taxes attributable to the unit only (not to Building 6 as a whole).

8) Plaintiff's motion for contempt and for other sanctions is denied.

IT IS SO ORDERED.

_____
The Honorable William A. McKinnon

_____, 2022
_____, South Carolina

ELECTRONICALLY FILED - 2022 Aug 15 1:35 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

York Common Pleas

Case Caption:	Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al
Case Number:	2018CP4603726
Type:	Order/Stay of Execution of Judgment

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

ELECTRONICALLY FILED - 2022 Oct 10 4:16 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA COUNTY OF YORK The Grapevine of Riverwalk, Inc., Plaintiff, v. Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT No. 2018-CP-46-03726 ORDER DENYING DEFENDANTS' MOTION TO ALTER OR AMEND

On April 19, 2022, this Court issued an amended order of final judgment ("Final Judgment Order") granting specific performance to The Grapevine of Riverwalk, Inc. ("Plaintiff") of the option to purchase in Plaintiff's lease agreement. Riverwalk River District Building 6, LLC, and the other defendants ("Defendants") appealed to the South Carolina Court of Appeals. On August 15, 2022, this Court issued an order granting Defendants' Motion for Stay of Proceedings pending appeal ("Stay Order"). The Stay Order was essentially a stay of execution of the final judgment. It required Defendants to convey the property to Plaintiff by general warranty deed, which the York County Clerk of Court was to accept but not record until authorized by a subsequent court order. It also provided that "Plaintiff shall have no further obligation to pay rent or any other charge under the [lease] between the parties which is at issue in this action." Defendants filed a motion to alter or amend the Stay Order, arguing that this order allowed Plaintiff to remain in possession without bearing its obligations to "Additional Rent" under the lease. According to Defendants, this Additional Rent covers expenses for which Plaintiff will be liable regardless of whether Plaintiff remains lessee under the lease or obtains specific performance and becomes the owner of the premises.

Whatever may be Plaintiff's liability for the expenses for which Defendants seek compensation, that liability does not arise under the lease unless and until an appellate court of competent jurisdiction reverses this Court's final judgment and retroactively revives the lease to govern all or part of the interim. Therefore, the Stay Order was correct when it relieved Plaintiff of the obligation to pay "rent or any other charge *under the [lease]*."

THEREFORE, the court DENIES Defendants' motion to alter or amend.

IT IS SO ORDERED.

_____, 2022
York, SC

_____
Hon. William A. McKinnon
Presiding Judge

ELECTRONICALLY FILED - 2022 Oct 10 4:16 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2022 Oct 10 4:16 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

York Common Pleas

Case Caption:	Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al
Case Number:	2018CP4603726
Type:	Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

ELECTRONICALLY FILED - 2018 Dec 10 3:07 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-_____

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,

Defendant.

COMPLAINT

Plaintiff The Grapevine of Riverwalk, Inc., complaining of Defendant Riverwalk River District Building 6, LLC ("Riverwalk"), alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff The Grapevine of Riverwalk, Inc. ("Grapevine") is a corporation organized under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

2. Defendant Riverwalk is a corporation organized under the laws of the State of South Carolina with a principal place of business in York County, South Carolina.

3. The Court has personal jurisdiction over the parties and subject-matter jurisdiction over the claims in this action.

4. Venue is proper in this judicial district pursuant to S.C. Code Ann. § 15-7-30.

5. All conditions precedent to bringing this action have been met or waived.

GENERAL ALLEGATIONS

6. On or around June 20, 2014, Grapevine and Riverwalk entered into a valid Lease to Purchase agreement (the "Lease to Purchase") in which Grapevine would Lease to Purchase from Riverwalk approximately 1,490 square feet on Herron's Ferry Road (the "Property").

ROA 39

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7. The commencement date of the Lease to Purchase was February 2, 2016.

8. Section 33 of the Lease to Purchase contained an option to purchase the Property during anytime of the third year of the Lease to Purchase term (the "Option to Purchase"). Upon 120 days of written notice, the Option to Purchase required Riverwalk to sell the Property to Grapevine for $270,000.00 (the "Purchase Price"), less $25,000.00 in rent collected and the security deposit.

9. The Option to Purchase was a material term of the Lease to Purchase and induced Grapevine to enter into the Lease to Purchase.

10. Grapevine would not have entered into the Lease to Purchase if it did not contain the Option to Purchase.

11. Upon information and belief, Riverwalk never intended to abide by its representations in the Lease to Purchase and sell the Property pursuant to the Option to Purchase. Rather, Riverwalk included the Option to Purchase to induce Grapevine to enter in the Lease to Purchase, which would enable Riverwalk to obtain necessary financing to develop additional property.

12. On July 26, 2017, Grapevine exercised the Option to Purchase to ensure the purchase of the Property during the third year of the Lease to Purchase term. Advanced written notice was provided in accordance with Section 33 of the Lease to Purchase.

13. In September of 2017, the owners of Grapevine properly structured a 1031 Exchange that would allow them to sell a rental property and reinvest such proceeds into the purchase of the Property pursuant to the Lease to Purchase.

14. On or around, September 20, 2017, after receiving no response from Riverwalk regarding the Option to Purchase, Brian Wilson ("Wilson"), prior counsel for Grapevine, requested

a follow up as to the Option to Purchase and whether Riverwalk intended to honor the Lease to Purchase.

15. On or around September 27, 2017, Wilson again followed up with Riverwalk about the purchase of the Property.

16. On or around October 13, 2017, Travis Hege ("Hege"), an agent for Riverwalk, simply responded "I'll let you know."

17. On or around October 26, 2017, Wilson inquired into a closing date for the purchase of the Property. On October 30, 2017, Hege, as an agent for Riverwalk, responded that Riverwalk was working on condominium documents.

18. On November 7, 2017, and November 27, 2017, Wilson again inquired about a closing date for the purchase of the Property.

19. On or around November 28, 2017, Todd Brockmann ("Brockmann"), as counsel and agent for Riverwalk, stated that Riverwalk was working with a bank and engineer, and thus could not commit to a closing date.

20. On or around January 30, 2018, Mark Mather ("Mather"), as an agent for Riverwalk, sent a Master Deed, By-Laws, and Architectural Plans for construction. Shortly thereafter, Grapevine approved such plans.

21. On or around March 27, 2018, Mather, as an agent for Riverwalk, proposed a closing date in April of 2018.

22. However, Riverwalk never acted on this proposed closing date. On May 3, 2018, Brockmann, counsel and agent for Riverwalk, again represented that he needed to get the condominium documents completed.

ELECTRONICALLY FILED - 2018 Dec 10 3:07 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2018 Dec 10 3:07 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

23. On May 18, 2018, Debbi McMillan, as an agent for Riverwalk, represented that surveyors and attorneys were working on plat issues.

24. On August 25, 2018, Grapevine again requested an update on the purchase of the Property.

25. Riverwalk has failed to offer a meaningful response regarding the significant and unwarranted delay for the sale of the Property.

26. Upon information and belief, the above-referenced representations and continuous, unwarranted excuses show that Riverwalk never intended to sell the Property to Grapevine in accordance with the Lease to Purchase.

27. Upon information and belief, Riverwalk, through its agents, made these above-referenced misrepresentations to hinder, avoid, or otherwise delay the sale of the Property.

28. Upon information and belief, Riverwalk has acted in bad faith by hindering, avoiding, or otherwise delaying the sale of the Property.

29. To this date, Riverwalk has failed and refused to sell the Property to Grapevine, as required by the Lease to Purchase.

30. Upon information and belief, Riverwalk has failed to take any appropriate measures to properly have any necessary property subdivided and other actions so that clear title may be transferred.

31. Grapevine has not breached any terms of the Lease to Purchase.

32. Grapevine has been and remains able and willing to perform its obligations under the Lease to Purchase, that is, by purchasing the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

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33. Grapevine has continued to make rent payments that should be applied to the Purchase Price.

34. On October 5, 2018, Grapevine sent its written demand and notice of default requesting that Riverwalk sell the Property to cure such default under the Lease to Purchase. The demand letter is attached hereto and incorporated as **Exhibit A**.

35. Riverwalk has failed to cure such default and continues its refusal to sell the Property as required by the Lease to Purchase.

FIRST CAUSE OF ACTION
(Specific Performance)

36. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint

37. Grapevine and Riverwalk entered into a valid Lease to Purchase and, under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine when Grapevine exercised the Option to Purchase.

38. As described above, Riverwalk has materially breached certain provisions of the Lease to Purchase, including, but not limited to, refusing to sell the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

39. Grapevine has performed as required by the Lease to Purchase by sending advanced written notice to exercise its Option to Purchase. Grapevine has not breached any terms of the Lease to Purchase.

40. Monetary damages cannot accurately measure or redress the harm to Grapevine if Riverwalk continues to refuse to sell the Property. The purchase of this real property is unique to Grapevine.

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41. The damages to Grapevine for Riverwalk's failure to sell the Property in accordance with the Lease to Purchase cannot be estimated or calculated.

42. If Grapevine is unable to purchase the Property pursuant to the Option to Purchase contained in the Lease to Purchase, Grapevine will suffer irreparable harm.

43. On October 5, 2018, Grapevine sent its written demand and notice of default requesting that Riverwalk sell the Property to cure such default under the Lease to Purchase. Riverwalk has failed to cure the default.

44. Grapevine has been and remains able and willing to perform its part of the Lease to Purchase, specifically, the Option to Purchase.

45. Grapevine is entitled to an order of specific performance immediately requiring Riverwalk to sell the Property in accordance with the Option to Purchase contained in the Lease to Purchase, less any rent paid to Riverwalk after Grapevine exercised the Option to Purchase, and that Riverwalk take all measures to properly have any necessary property subdivided and take all other actions so that clear title may be transferred.

SECOND CAUSE OF ACTION
(In the alternative- Breach of Contract- Damages)

46. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

47. As described above, Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

48. Under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine if Grapevine exercised the Option to Purchase.

49. Grapevine exercised the Option to Purchase and sent its advanced written notice in accordance with Section 33 of the Lease to Purchase.

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50. Riverwalk failed to sell the Property in accordance with the Option to Purchase and the Lease to Purchase.

51. On October 5, 2018, Grapevine sent its written demand and notice of default requesting that Riverwalk sell the Property to cure such default under the Lease to Purchase.

52. Riverwalk has breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

53. In the alternative to the remedy for specific performance, Grapevine has been damaged in an amount to be determined at trial. These damages include, but are not limited to, the continuing payments of rent after the Option to Purchase was exercised.

THIRD CAUSE OF ACTION
(Fraudulent Inducement)

54. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

55. Riverwalk, through its agents, made material misrepresentations to Grapevine that Grapevine would be able to purchase from Riverwalk the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

56. Upon information and belief, the representations made by Riverwalk to Grapevine concerning the Option to Purchase were false.

57. Riverwalk had no intentions of selling the Property to Grapevine.

58. The ability to purchase the Property from Riverwalk was material to Grapevine and as such, the representations made by Riverwalk were also material.

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59. Upon information and belief, Riverwalk, at the time it executed the Lease to Purchase with Grapevine, knew that its representations concerning the Option to Purchase were false, or were with reckless disregard of their truth or falsity.

60. Upon information and belief, Riverwalk made representations that Grapevine would be able to purchase the Property to persuade Grapevine to enter into the Lease to Purchase.

61. Grapevine did not know of the representations' falsity and entered into the Lease to Purchase under the impression that it would be able to purchase the Property in accordance with the Option to Purchase contained in the Lease to Purchase.

62. Grapevine had the right to rely on Riverwalk's representations and, in fact, relied on the representations and in good faith entered into the Lease to Purchase.

63. As a consequent and proximate result of Riverwalk's misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Fraud)

64. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

65. As referenced above, Riverwalk, through its agents and/or employees, made continuous representations of fact concerning the Option to Purchase, the status of the closing, and reasons for delay of the closing. Specifically, Riverwalk, made statements, including but not limited to, that condominium documents needed to be completed, it was working with banks and engineers, and that surveyors and attorneys were working on plat issues. Additionally, Riverwalk entered into the Lease to Purchase with no intentions of abiding by the Option to Purchase.

66. Upon information and belief, these representations were false.

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67. The representations made by Riverwalk, through its agents and/or employees, were material.

68. Upon information and belief, Riverwalk knew that its representations were false or made the representations with reckless disregard of their truth or falsity.

69. Upon information and belief, Riverwalk intended that Grapevine believe these representations so Riverwalk could avoid, hinder, or otherwise delay the sale of the Property.

70. Grapevine did not know the representations were false and relied on the representations by patiently paying rent until the closing occurred.

71. Grapevine had the right to rely on Riverwalk's representations and, in fact, relied on Riverwalk's representations to its detriment. To this date, the closing has not occurred.

72. As a consequent and proximate result of Riverwalk's fraudulent misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Acts)

73. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

74. Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

75. Riverwalk has breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

76. As described above, from July 2017 until present, Riverwalk made numerous fraudulent misrepresentations concerning the sale of the property pursuant to the Lease to Purchase and the reasons for the failure to abide by the Lease to purchase.

77. Upon information and belief, Riverwalk intended that Grapevine believe these representations so Riverwalk could avoid, hinder, or otherwise delay the sale of the Property

78. Riverwalk's acts were dishonest in fact and unfair to Grapevine.

79. The continuous fraudulent acts accompanied and were connected with Riverwalk's breach of the Lease to Purchase.

80. Given Riverwalk's breach of contract accompanied by fraudulent acts, Grapevine is entitled to punitive damages.

SIXTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

81. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

82. Grapevine and Riverwalk entered into a valid Lease to Purchase.

83. Implied in the Lease to Purchase exists an implied covenant of good faith and fair dealing.

84. Riverwalk had a duty to act in good faith and fairly deal with Grapevine during the course of the Lease to Purchase and any transactions related thereto.

85. Riverwalk has acted and continues to act contrary to the express Lease to Purchase provisions, including, but not limited to, Section 33 of the Lease to Purchase.

86. Upon information and belief, Riverwalk has breached the implied covenant of good faith and fair dealing with Grapevine through its actions, including, but not limited to, hindering, avoiding, or otherwise delaying the sale of the Property pursuant to the Option to Purchase and/or never intending to abide by the Option to Purchase.

87. As a consequent and proximate result of Riverwalk's breaches, Grapevine has been damaged in an amount to be determined at trial.

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SEVENTH CAUSE OF ACTION
(Violation of Unfair Trade Practices Act)

88. Grapevine realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

89. As detailed above, Riverwalk's actions were unfair and deceptive, offend public policy, or are otherwise immoral, unethical, or oppressive.

90. From July 2017 until present, and as more particularly described above, Riverwalk continuously misrepresented material facts concerning the Option to Purchase, the status of the closing, and reasons for delay of the closing. These misrepresentations are unfair and deceptive and were made to hinder, avoid, or otherwise delay the sale of the Property.

91. Riverwalk's unfair and deceptive actions amount to more than mere breaches of the Lease to Purchase.

92. Upon information and belief, Riverwalk's actions were willful and/or in knowing violation of S.C. Code Ann. § 39-5-20.

93. The above-referenced actions affect trade and/or commerce as it involves, among other things, fraudulent statements pertaining to the sale or offering of sale of real property.

94. Upon information and belief, Riverwalk's fraudulent statements and actions create a potential for repetition for any individual or entity dealing with Riverwalk and thus impact the public interest.

95. Upon information and belief, Riverwalk's unfair and deceptive actions impact public interest because the building in which the Property is located in should have been subdivided therefore affecting the value and/or ability to buy and sell property within the building. Riverwalk's unfair and deceptive acts also impact all visitors and/or residents of the community that the Property is located in.

96. Grapevine has suffered monetary loss as a proximate result of Riverwalk's unfair and deceptive actions.

97. Grapevine is entitled to actual damages as a result of Riverwalk's unfair and deceptive actions, as well as attorneys' fees and three times the actual damages pursuant to S.C. Code Ann. § 39-5-140.

WHEREFORE, Plaintiff The Grapevine of Riverwalk, Inc., prays the Court as follows:

1. That the Court enter a judgment against Riverwalk for damages in an amount to be determined at trial.
2. That the Court enter an order for specific performance requiring Riverwalk to sell the Property to Grapevine in accordance with Section 33 of the Lease to Purchase, less any rent paid to Riverwalk after Grapevine exercised the Option to Purchase, and that Riverwalk take all measures to properly have any necessary property subdivided and take all other actions so that clear title may be transferred.
3. That the Court enter a judgment against Riverwalk for an amount three times the actual damages pursuant to S.C. Code. Ann. § 39-5-140.
4. That the Court enter a judgment against Riverwalk awarding punitive damages.
5. That the costs of this action, including reasonable attorneys' fees, be taxed against Riverwalk.
6. That the Court award Grapevine prejudgment and post-judgment interest at the highest legal rates possible from the earliest date possible until paid in full.
7. A trial by jury for all issues triable.
8. That the Court grant such other and further relief as it deems just and proper.

This the 10th day of December, 2018.

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/s/ Steven A. Meckler
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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	2018-CP-46-03726
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, Defendant.	**NOTICE OF LIS PENDENS**

Plaintiff in the above-captioned action hereby gives this Notice of Lis Pendens pursuant to S.C. Code § 15-11-10, *et seq.*

1. On or about December 10, 2018, Plaintiff instituted the above-captioned civil action in the York County Court of Common Pleas against Defendant Riverwalk River District Building 6, LLC ("Defendant").

2. This is an action for, among other things, specific performance for the sale of a condominium located on the property and in a building owned by Defendant. Plaintiff seeks to purchase the property pursuant to a Lease to Purchase Agreement. Plaintiff exercised its option to purchase pursuant to the Lease to Purchase Agreement and Defendant has refused to sell such property. A true and accurate copy of the Lease to Purchase Agreement is attached hereto as **Exhibit A**.

3. The real property affected by this action is a tract of land (the "Entire Tract") within which a proposed condominium was to be established located at Terrace Park, Rock Hill, York County, South Carolina 29730. The deed for the Entire Tract was recorded on July 30, 2014, in Book 14275, Page 4 of the York County Registry and is more particularly described as follows:

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BEING +/- .39 Acres of property shown on record Survey, Plat Book E253, Page 5, York County Registry; and more particularly described as follows:

Beginning at the South West intersect of Herrons Ferry Road and Terrace Park at #5 Rebar Set being the Point of Beginning; thence running with the right of way of Terrace Park S 22°13'21" W a distance of 59.96' to a #5 Rebar Set; continuing with said right of way S 82°13'41" W for a distance of 22.76' to a #5 Rebar Set; continuing with said right of way S 22°13'41" W for a distance of 75.54' to a #5 Rebar Set; thence turning and running with the property of The Greens of Rock Hill LLC for the following four (4) courses; N 67°46'19" W for a distance of 74.94' to a #5 Rebar Set; thence N 22°13'41" E for a distance of 32.95' to a #5 Rebar Set; thence N 67°46'19" W for a distance of 9.80' to a #5 Rebar Set; thence N 01°00'12" W for a distance of 122.76' to a #5 Rebar Set; thence turning and running with the right of way of Herrons Ferry Road with a curve turning to the right with an arc length of 45.98', with a radius of 127.50', with a chord bearing of S 78°06'09" E, with a chord length of 45.73', to a #5 Rebar Set; continuing with said right of way S 67°46'19" E for a distance of 10.00' to a #5 Rebar Set; which is the point of beginning, having an area of 17 , 138.23 square feet, 0.39 acres.

BEING a portion of the same property conveyed to The Greens of Rock Hill LLC by Deed recorded in Deed Book 7503 at Page 99 in the Office of the Clerk of Court for York County, South Carolina.

TMS: 662-07-01-147

This transfer also includes all development rights and vested units of any type or nature associated with the real property transferred to the Grantee described herein and arising or related to that certain Riverwalk Development Agreement ("Development Agreement") recorded in Book 11006, Page 1 in the Office of the Clerk of Court for York County, South Carolina.

4. This Notice of Lis Pendens does not apply to the Entire Tract. The Notice of Lis Pendens only applies to that portion of the Entire Tract wherein the proposed condominium and all common areas together with appurtenant easements and access rights were to be located within the Entire Tract described in the Lease to Purchase Agreement attached hereto as **Exhibit A**. This condominium unit was required to be conveyed pursuant to the Lease to Purchase Agreement.

5. This Notice of Lis Pendens is filed pursuant to the provision of the S.C. Code § 15-11-10 *et seq.* and all persons will take notice of the same.

This the 21st day of December, 2018.

/s/ Steven A. Meckler
Steven A. Meckler
South Carolina State Bar No. 68402
Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, North Carolina 28280
Telephone: (704) 945-2187
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Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was electronically filed utilizing the ECF/CM System and was deposited in the United States Mail, postage prepaid, and addressed as follows:

Riverwalk River District Building 6, LLC
c/o Mark Mather, Registered Agent
998 Riverwalk Parkway, Suite 202
Rock Hill, SC 29730

This the 21st day of December, 2018.

/s/ Steven A. Meckler
Steven A. Meckler

EXHIBIT
A

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COMMERCIAL LEASE AGREEMENT

THIS **COMMERCIAL LEASE AGREEMENT** (this "Lease") is made and entered into as of the Effective Date by and between Riverwalk River District Building 6, LLC , a South Carolina limited liability company, (hereinafter called "Landlord"), whose address is 2850 Cherry Road, Rock Hill, SC 29730, and telephone number is 803-324-7762, and The Grapevine of Riverwalk, Inc. a South Carolina S Corporation (hereinafter called "Tenant"), whose mailing address is 1750 Hwy 160 W, Suite 101, PMB 290, Fort Mill, SC, and telephone number is _____, for the uses and purposes mentioned below.

BACKGROUND STATEMENT

A. Landlord is the owner of certain real property, bearing current York County, SC, Tax Parcel Number662-07-01-094, within the mixed-use project commonly known as "Riverwalk," in the City of Rock Hill, South Carolina, and anticipates constructing therein a mixed use retail, mercantile and residential building containing approximately 36,000 square feet, more or less (the "Building"). In anticipation of the completion of the Building, Landlord wishes to lease and demise to Tenant, and Tenant wishes to take and let from Landlord, certain space within the Building (such space, as more particularly defined hereinafter, being the "Demised Premises").

B. The parties now wish to enter into this Lease to document their agreement regarding the demise of the Demised Premises to Tenant, as more particularly set fort hereinafter.

NOW, THEREFORE, for and in consideration of the mutual promises and conditions herein contained, the above recitals (incorporated herein by this reference), and other good and valuable consideration, the receipt and sufficiency whereof which are hereby acknowledged, Landlord and Tenant, intending to be bound hereby, covenant and agree as follows:

1. **Demised Premises.** Landlord hereby leases and demises to Tenant and Tenant hereby takes and leases from Landlord that certain space comprised of approximately 1,490 square feet, more or less (being heretofore defined as the "Demised Premises"), having an anticipated street address of __ Herron's Ferry Road , depicted as "Wine Shop" on Exhibit A attached hereto and being located within the Building.

2. **Term.** The term of this Lease shall commence on the date (the "Commencement Date") upon which Landlord delivers the Demised Premises to Tenant with Landlord's Work substantially completed and subject only to punchlist items of the type contemplated by Section 5.3 below, and shall end on the date which is ten (10) years therefrom (the "Initial Term"), unless sooner terminated pursuant to this Lease. Further, and so long as this Lease has not theretofore been terminated and so long as Tenant is not then in default hereunder, Tenant shall have the right to renew the term of this Lease for two (2) successive period(s) of five (5) years (each) by providing written notice of its election to renew the term hereof to Landlord by the date which is one hundred eighty (180) days prior to the expiration of the then existing term of this Lease (as it may have theretofore been renewed). Tenant shall have no right to exercise any option to renew the term of this Lease should any Tenant default then exist hereunder. Should Tenant fail to renew the term of this Lease as and within the time herein provided, its right and option to renew the term of this

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Lease shall terminate. Each such five (5) year period is referred to herein as a Renewal Term, and the Initial Term, as it may be renewed and extended by Tenant in accordance with the foregoing provision, is referred to herein as the "Term."

3. **Purpose.** The Demised Premises shall be used for the purpose of operating a wine and craft beer shop and bar therin doing business as "Grapevine Wine Shop / Wine Bar for such incidental uses thereto as may be approved by Landlord in advance and in writing, and for no other purpose or uses whatsoever, except as expressly outlined within this Lease relating to assignment and subletting of Demised Premises. Tenant covenants and agrees that at all times during the term hereof Tenant will actively conduct such a business in the Demised Premises, and keep the Demised Premises open for business during the customary business hours (not less than eight (8) hours per day, Tuesday through Sunday of the Building established by Landlord.

4. **Definition of "Lease Year".** The words "lease year," as used in this Lease, shall mean the period commencing on the Commencement Date, or, if the Commencement Date is not on the first day of a month, then on the first day of the following calendar month, and ending one (1) year thereafter, together with each subsequent and successive one (1) year period thereafter through the Term of this Lease; provided, however, that the period of the time, if any, beginning after the commencement of the last full lease year of this Lease and extending until the date of the expiration of the Term shall be deemed to be a "lease year" even though it comprises less than a full year.

5. **Completion of Building and Initial Improvement of Demised Premises, etc.**

5.1 Completion of Building and Initial Improvement of Demised Premises. Within thirty (30) days after the Effective Date, Landlord agrees to provide to Tenant (i) complete drawings, plans and specifications ("Development Plans") for the construction of the Building, including all improvements thereon, and all Landlord's Work (as defined herein); (ii) a site plan of the Building showing the location of existing utilities; (iv) a final grading plan for the Building and the parcel on which it is to be constructed (items (ii)–(iv) are collectively referred to herein as "Landlord's Information"). Tenant shall approve or disapprove of the proposed Landlord's Information within fifteen (15) days after receipt. The approved Landlord's Information shall become part of this Lease. If Tenant does not approve of Landlord's Information submitted or provide reasonable objections within fifteen (15) days, Landlord's Information shall be deemed approved. If Tenant has provided reasonable objections, Tenant and Landlord will work cooperatively to resolve them within fifteen (15) days. Landlord shall deliver possession of the Demised Premises to Tenant in the condition described in attached Exhibit B (all Landlord's Work set forth in Exhibit B is collectively referred to herein as "Landlord's Work"). Landlord represents that Landlord's Work shall be constructed in a good and workmanlike manner and in accordance with all applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "Applicable Laws"), including without

Landlord Initials

Tenant Initials

limitation the Americans with Disabilities Act. Landlord agrees to diligently proceed with Landlord's Work and will deliver possession to Tenant no later than the Delivery Deadline. The "Delivery Deadline" is defined as June 1, 2015. If Landlord fails to deliver possession of the Demised Premises by the Delivery Deadline, and provided that Tenant's failure to accept possession is not in violation of this Lease, then, for each day of delay thereafter, Tenant shall be entitled to credit one (1) day of free Base Rent against Base Rent due after the Rent Commencement Date. Notwithstanding any other provisions of this Lease to the contrary, Tenant shall have the right to terminate this Lease without further obligation to Landlord in the event that the construction of Landlord's Work has not been completed and delivery of possession given to Tenant by sixty (60) days following the Delivery Deadline, by giving written notice to Landlord of such termination at any time after such failure. If this Lease is terminated as provided herein, both parties shall automatically be released from any further liability or obligation whatsoever hereunder accruing after the date of termination arising out of or based upon this Lease, except for those liabilities which are, by their terms, to survive the expiration or termination hereof.

Landlord shall give Tenant written notice of its intent to deliver possession of the Demised Premises to Tenant with Landlord's Work completed not less than fourteen (14) days prior to delivery of possession ("Notice of Tender"). During the fourteen (14) day period, Tenant shall inspect the Demised Premises to determine if possession will be accepted with Landlord's Work completed subject only to minor punch list items, if any, identified by Tenant pursuant to Section 5.3 below. If Tenant determines that Landlord's Work is not complete subject only to such minor punch list items as are identified by Tenant pursuant to Section 5.3 below, Tenant will give a notice of non-completion prior to the end of the Notice of Tender period, which notice will describe the reasons for Tenant's determination. In such event, Landlord will then complete Landlord's Work and provide another Notice of Tender to be followed by another fourteen (14) day period for Tenant's inspection and determination if Landlord's Work is complete, subject only to punch list items, if any. Tenant's acceptance shall be in writing and delivered to Landlord with the punch list, if applicable. Tenant's failure to give a notice of non-completion prior to the end of any Notice of Tender period shall be deemed as Tenant's determination and acknowledgement that Landlord's Work has been completed as required by this Lease, subject only to such minor punch list items as may be identified by Tenant pursuant to Section 5.3 below. Upon Tenant accepting, or being deemed to have accepted, Landlord's Work pursuant to the terms hereof, Tenant shall be deemed as having acknowledged and agreed that Landlord's Work was completed in conformity with the terms of this Lease, subject only to the completion of such minor punch list items as may be identified by Tenant under Section 5.3 below.

Within sixty (60) days after receipt of the later of (i) Landlord's Information, or (ii) the Effective Date, Tenant will provide Landlord with a complete set of working drawings, plans and specifications, including signage and trade dress plans ("Tenant Plans") for construction of Tenant's improvements to the Premises ("Initial Tenant Improvements"). Landlord shall approve or disapprove of the proposed Tenant Plans within fifteen (15) days of receipt thereof. The

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approved Tenant Plans shall become part of this Lease. If Landlord does not approve of the Tenant Plans submitted or provide reasonable objections within fifteen (15) days of receipt thereof, Tenant Plans shall be deemed approved. If Landlord has provided reasonable objections, Tenant and Landlord will work cooperatively to resolve them within fifteen (15) days.

If Landlord makes changes to the Development Plans after the Tenant Plans are approved, and such changes more than nominally affect the cost of the Initial Tenant Improvements, Landlord shall have the option to either pay for the additional cost to the Initial Tenant Improvements or give Tenant the option to terminate this Lease or accept the changes. If this Lease is terminated as provided herein, Tenant shall automatically be released from any further liability or obligation whatsoever arising out of or based upon this Lease, save for liabilities which are to expressly survive the termination of this Lease. If Tenant is required, given the nature of the changes to the Development Plans, to redraw the Tenant Plans, Landlord will reimburse Tenant for the reasonable cost thereof.

All of the Initial Tenant Improvements shall be performed at Tenant's cost and expense. Tenant shall fully equip the Demised Premises with all trade fixtures, lighting fixtures, furniture, furnishings, fixtures, floor coverings, any special equipment, and other items of personal property as may be necessary for the completion of the Demised Premises and the proper operation of Tenant's business therein. All improvements made to the Premises by Tenant are hereinafter sometimes called "Tenant's Improvements". Tenant shall construct the Initial Tenant Improvements in accordance with Applicable Laws. In performing and completing the Initial Tenant Improvements, Tenant shall not allow any statutory or equitable claim of lien, including, without limitation, claims for mechanic's or materialsman's liens, to arise against the Demised Premises or Building, and, in the event that any are claimed, Tenant shall provide Landlord with reasonable assurances of Tenant's ability to pay such liens in full if Tenant is unsuccessful in any good faith attempt to contest the same and Tenant shall bond off or discharge any such lien prior to foreclosure of the same by the lien claimant. On or before the Effective Date, Landlord shall sign a notice of non-responsibility in the form attached hereto as Exhibit D (a "Notice of Non-Responsibility"). Upon Landlord's execution of such Notice of Non-Responsibility, and prior to commencing the Initial Tenant Improvements, Tenant shall provide a copy of such notice to the general contractor in connection with the Initial Tenant Improvements and shall post a copy of the Notice of Non-Responsibility in a conspicuous place upon the Demised Premises during the construction of the Initial Tenant Improvements. Further, and prior to commencing the Initial Tenant Improvements, Tenant shall file with the York County Clerk of Court's office a "Notice of Project Commencement" in the form attached hereto as Exhibit E (a "Notice of Project Commencement"). Tenant shall indemnify and hold Landlord harmless from and against any costs, damages, and expenses, including, without limitation, attorneys' fees, arising from liens or claims of liens relating to the Initial Tenant Improvements, any other work upon or improvement to the Demised Premises by Tenant, or Tenant's failure to comply with the terms of this Lease with respect to improvements. The foregoing indemnity shall survive the termination or expiration of

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this Lease, notwithstanding any other provision hereof.

5.2 Option to Begin Tenant's Work Prior to Completion of Landlord's Work. Pursuant to Section 5.1 of this Lease, Landlord is required to deliver possession of the Demised Premises to Tenant with Landlord's Work completed. In the event that Tenant has satisfied or waived any contingencies to its obligations as expressly set forth herein and Landlord's Work is not yet fully complete but is sufficiently completed so that Tenant can begin the Initial Tenant Improvements without materially interfering with the completion of Landlord's Work, Tenant will be permitted early entry to the Demised Premises for the purpose of beginning the Initial Tenant Improvements. Notwithstanding Tenant's right to early entry to the Demised Premises, the actual date of delivery of possession as described in the definition of "Rent Commencement Date" in this Lease shall not occur until Landlord's Work is fully complete and accepted by Tenant in accordance with Section 5.1 hereof.

5.3 Punch List. Within fourteen (14) days after receipt of the Notice of Tender, Landlord and Tenant shall conduct a "walk-through" inspection of the Demised Premises and shall set out on a "punch list" any defects in Landlord's Work, or the Demised Premises noted by either party. Tenant shall be entitled to supplement the punch list for a period of thirty (30) days thereafter. The punch list shall set forth a time by which each punch list item shall be completed. Landlord agrees that any and all work performed by Landlord after delivery of the Demised Premises to Tenant shall not unreasonably interfere with Tenant's performance of the Initial Tenant Improvements, and Landlord shall be responsible for any and all costs resulting from any such unreasonable interference. If any item is not completed within the time set forth on the punchlist, then Landlord shall continue to be obligated to complete that item, but Tenant shall be entitled to complete any such item at any time following ten (10) days notice to Landlord, and Landlord shall reimburse Tenant for the reasonable costs of correcting or completing Landlord's Work within ten (10) days following a written demand by Tenant. In the event that Landlord fails to promptly pay said amount to Tenant, Tenant shall have the right to set off the costs incurred by Tenant in so correcting or completing Landlord's Work against the rent otherwise payable by Tenant.

6. **Payment of Rent; Base Rent.** Each monthly installment of rent and all other sums due Landlord by Tenant hereunder shall be paid to Landlord in advance, and without notice, demand, delay, or offset, on the first day of each month during the Term at 2850 Cherry Road, Rock Hill, SC 29730, or at such other place as may be designated in writing, from time to time, by Landlord. Landlord reserves, and Tenant covenants to pay to Landlord, without prior demand being made therefor, as base rent for the Demised Premises, the minimum annual base rent (the "Base Rent") for each lease year, payable in equal monthly installments, following the Rent Commencement Date, shown by the below schedule of Base Rent. All Base Rent shall be payable to Landlord in equal monthly installments and on the first day of each month during the Term following the Rent Commencement Date. For any partial month during the Term, the amount of Base Rent payable by Tenant shall be prorated based upon a thirty (30) day month, and for any

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month during which prorated Base Rent is payable which commences following the first day of the month, then Tenant shall pay the amount of pro-rated Base Rent payable for that month to Landlord on the date upon which Tenant's obligation to pay Base Rent for that month commences.

Initial Term	Base Rent	Monthly Installment of Base Rent
Lease Year 1	$ 26,820.00	$ 2,235.00
Lease Year 2	$ 27,356.40	$ 2,279.70
Lease Year 3	$ 27,903.53	$ 2,325.29
Lease Year 4	$ 28,461.60	$ 2,371.80
Lease Year 5	$ 29,030.83	$ 2,419.24
Lease Year 6	$ 29,611.45	$ 2,467.62
Lease Year 7	$ 30,203.68	$ 2,516.97
Lease Year 8	$ 30,807.75	$ 2,567.31
Lease Year 9	$ 31,423.90	$ 2,618.66
Lease Year 10	$ 32,052.38	$ 2,671.03
First Renewal period		
Lease Year 11	$ 32,693.43	$ 2,724.45
Lease Year 12	$ 33,347.30	$ 2,778.94
Lease Year 13	$ 34,014.24	$ 2,834.52
Lease Year 14	$ 34,694.53	$ 2,891.21
Lease Year 15	$ 35,388.42	$ 2,949.04
Second Renewal Term		
Lease Year 16	$ 36,096.19	$ 3,008.02
Lease Year 17	$ 36,818.11	$ 3,068.18
Lease Year 18	$ 37,554.47	$ 3,129.54
Lease Year 19	$ 38,305.56	$ 3,192.13
Lease Year 20	$ 39,071.68	$ 3,255.97

7. **Rent Commencement; Commencement Agreement.** Tenant's obligation to pay Base Rent hereunder to Landlord shall commence on the date (such date being the "Rent Commencement Date") on which the earlier of the following occurs: (a) the date upon which Landlord delivers the Demised Premises to Tenant with Landlord's Work substantially completed, subject only to minor punchlist items as set forth in Section 5.3, as herein provided for, or (b) a temporary certificate of occupancy is issued by the City of Rock Hill for the Demised Premises . Following the Rent Commencement Date, Landlord and Tenant agree to cause to be prepared and executed between them a lease commencement agreement, in which (i) the dates of the Commencement Date and Rent Commencement Date are confirmed by the parties, (ii) the parties acknowledge Landlord's Work to have been completed as required by this Lease, and (iii) the

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parties acknowledge Tenant's Proportionate Share (if not set forth herein).

8. **Landlord Reimbursement Obligation for Tenant's Work.** Following the completion of Tenant's Work, as provided by Section 5 above, Landlord shall pay to Tenant upon demand the total sum of FORTY FOUR THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS ($44,700.00), which shall be paid to Tenant incrementally in amounts of $11,175 at the completion of 25% of Tenant's Work, 50% of Tenants Work, 75% of Tenant's Work and 100% of Tenant's Work in reimbursement for a portion of the costs incurred by Tenant in completing Tenant's Work.

9. **Statement of Gross Sales and Payment of Percentage Rent.** (Intentionally Omitted)

10. **Tenant's Records.** (Intentionally Omitted)

11. **Late Payments.** Tenant covenants and agrees to pay a Late Fee monthly, equal to the greater of One Hundred Dollars ($100.00) or two percent (2%) of Base Rent and all other sums due under this Lease from the time said rents or sums accrue if they are not paid within ten (10) business days of when due, Landlord expressly reserving all other rights and remedies provided herein and/or by law in respect thereto. Tenant further agrees to pay (or to reimburse Landlord promptly if Landlord elects to pay) any and all costs and expenses incurred by Landlord in connection with the collection of delinquent rents and/or the enforcement of any of the provisions of this Lease, including reasonable attorneys' fees. Tenant further covenants and agrees to pay Landlord a "bad check" or "returned check" charge in the amount of FIFTY AND NO/100 DOLLARS ($50.00) for each check of Tenant dishonored by Tenant's bank.

12. **Real Estate Taxes and Common Areas.**

(a) Landlord covenants that it will pay, when due, all real estate taxes and assessments imposed against the Building (including the Demised Premises). Tenant agrees that after the date of this Lease and during the term Tenant will pay Landlord, as additional rent ("Additional Rent"), Tenant's Proportionate Share (hereinafter defined) of all such real estate taxes and assessments. Tenant's Proportionate Share shall be 4.02%. The sum due by Tenant pursuant to this paragraph shall be prorated for any fraction of a year during the Term. Tenant further agrees that if any special assessment is imposed against the Building, Tenant will pay to Landlord promptly Tenant's Proportionate Share of such special assessment. For purposes of calculating Tenant's Proportionate Share, the Building shall in all events be deemed to contain at least 36,000 square feet.

(b) Tenant also agrees to pay all taxes and charges on all personal property owned or leased by it and located upon the Demised Premises so that no tax lien of any sort or

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description against Tenant shall become a charge against the Demised Premises. Tenant shall be solely responsible for any and all business licenses required by any governmental authority.

(c) Tenant agrees to pay to Landlord, monthly as Additional Rent, Tenant's Proportionate Share of Landlord's costs and expenses incurred in maintaining and otherwise caring for the common areas ("Common Areas") of the Building (hereinafter collectively called the "Common Area Charge"). The Common Area Charge is equal to the total cost and expense incurred by Landlord in operating and maintaining the Common Areas, including, without limitation, (i) all costs to maintain, repair, replace, supervise, and administer the Building and the Common Areas thereof such as stairwells, common reception areas, common restrooms, common hallways and entranceways, parking areas, landscaping, sidewalks and other Building common areas; (ii) all costs to maintain, repair, replace, and replace any improvements in the Building's equipment and operating systems amortized over their useful lives and other capital improvements (other than those exclusively for the use of a particular tenant and other than those involved in the initial construction of the Building) to the Building, parking lots, landscaping, sprinkler systems, sidewalk, driveways, and the roofs amortized over their useful lives; (iii) any costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority or insurer in connection with the use or occupancy of the Demised Premises or the common areas of the Building (excluding any increases resulting specifically from the particular use of another tenant of a portion of the Building); (iv) any property management fees and administrative costs, including, but not limited to, the cost of compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with the management, operation, maintenance and repair of the Building, its equipment, parking facilities and the common areas; (v) amortization of any energy management system or other capital improvements installed by Landlord other than those installed solely for the benefit of a particular tenant of the Building, (vi) parking lot pavement repairs and maintenance and parking lot striping, sidewalk repairs and maintenance, trash and rubbish and garbage removal in the event Landlord provides dumpsters or common trash depositories, (vii) parking lot lighting, (viii) security, to the extent that Landlord elects, at its sole option and not as its obligation, to provide security for the Building or any of the Common Areas, (ix) Building signage repair and maintenance, (x) parking lot snow removal, and (xi) the costs of any assessments, dues, or other charges which are payable for the Building and the parcel of real property of which it is a part under any restrictive covenants of record. Such charges and expenses shall also expressly include depreciation on machinery and equipment used in any such maintenance, and other general Common Area repairs. In addition, the Common Area Charge shall also include charges for water, electricity, sewerage, and other utilities, if any of the same are not individually metered by Landlord to the individual tenant spaces within the Building, and the lighting of Tenant's signage (if Tenant is to have separate signage hereunder), if the same is connected with the parking lot light meter or is paid by Landlord. As to charges of the type contemplated by the foregoing sentence, Tenant shall pay 100% thereof, and not Tenant's Proportionate Share thereof solely, to the extent that the same can be separately allocated to the Demised Premises. Notwithstanding anything contained herein to

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the contrary, Common Area Charge shall not include any janitorial or cleaning charges, utility charges, or costs to maintain, repair, replace equipment that solely service the residential use on the second, third, and fourth floors of the Building.

(d) Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance, covering loss or damage to the Building, the Common Areas and the building of which the Demised Premises comprise a part, in an amount not less than eighty percent (80%) of the replacement costs thereof, providing protection against all perils included within the classifications of fire, extended coverage, vandalism (exclusive of glass and doors) special extended perils (all risk), together with public liability insurance with established limits of coverage deemed appropriate by Landlord for personal injury or injuries. Tenant shall pay as Additional Rent, each month with its installment of Base Rent, Tenant's Proportionate Share of the costs incurred by Landlord in insuring the Building and/or the Common Areas.

(e) Landlord shall estimate Tenant's Proportionate Share of real estate taxes, insurance, and the Common Area Charges on the basis of periods of twelve (12) months, commencing and ending on such dates as may be designated by Landlord, one-twelfth (1/12th) of which shall be paid monthly by Tenant with Base Rent as Additional Rent. Landlord may revise its estimate of such costs at any time with thirty (30) days written notice to Tenant. Tenant, upon notice, shall adjust its monthly installments during the remainder of the period to reflect such revised estimate. After the end of each designated twelve (12) month period, Landlord shall furnish Tenant a statement of the actual costs for the period, and there shall be an adjustment between Landlord and Tenant, with a payment to Landlord or a credit to Tenant, as the case may be, to the end that Landlord shall receive the entire amount of Tenant's Proportionate Share for such period, provided, however, Tenant shall have the right, at Tenant's expense and upon prior written notice to Landlord, to protest or contest any such taxes, assessments, impositions and charges, and Tenant shall not be in default for failure to pay any such taxes, assessments, impositions or charges during such protest or contest period. Tenant, however, shall not be allowed to protest or contest following any time where any such further contest or protest could result in a forfeiture of the Demised Premises, and after any such time Tenant shall promptly pay Tenant's Proportionate Share thereof to Landlord.

13. **Trade Fixtures.** Tenant agrees, at its own cost and expense and as more particularly provided for by Section 5 above, to fixture the Demised Premises with new trade fixtures. All trade fixtures installed in the Demised Premises by Tenant shall remain Tenant's property; provided, however, that nothing herein shall be deemed to affect Landlord's remedy of distraint. Tenant agrees to repair (or to reimburse Landlord for the cost of repairing) any damage to the Demised Premises occasioned by the installation or removal of said trade fixtures. The trade fixtures to be installed by Tenant are as set forth upon Exhibit C, attached hereto and incorporated herein by this reference. Save for installation of the trade fixtures, installation of the Initial Tenant Improvements contemplated by this Lease, and modification of Tenant's Signage from time to time

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as set forth in this Lease, Tenant shall not otherwise modify or alter the Demised Premises or any part thereof without Landlord's prior written consent, save that Tenant may make during each lease year non-structural modifications to the interior of the Demised Premises having a cost of less than $10,000.00 without Landlord's consent.

14. **Intentionally Omitted**

15. **Common Areas.** Tenant, its customers, employees and invitees shall have the non-exclusive right to use and enjoy, in common with Landlord, other tenants and their customers, employees and invitees, the Common Areas, which Landlord agrees to provide for the reasonable operation of the Building. **Notwithstanding anything contained herein to the contrary, Tenant, its customers, employees and invitees shall not have access, use, or enjoyment of the lobby that services the upper floors and located on the first floor or any of the upper floors of the Building**. The Common Areas shall not include any areas included within any portion of the Building demised to any tenant, and the nature and configuration of the Common Areas is subject to reasonable change and modification by Landlord. It is expressly understood that the Common Areas are intended primarily for the use by customers or clients of the businesses in the Building, and Tenant accordingly agrees that its employees will not use the Common Areas for the parking or storage of any automobile, truck or any other vehicle owned or used by any of its employees. Tenant further agrees that Landlord reserves the right, in its sole discretion, to designate specific parking area(s) for the use by the employees and/or customers of Tenant, and, if so designated, Tenant shall instruct its employees and/or customers, as the case may be, to park in any such designated areas. Landlord agrees that such parking spaces designated for Tenant's customers shall be reasonably close in proximity to the Demised Premises. In order to assist Landlord in the enforcement of the provisions of this paragraph, Tenant agrees that within ten (10) days after being requested so to do, Tenant will furnish Landlord a written statement containing the names of all employees, agents, and representatives employed by Tenant in or about the Demised Premises, and the license numbers of all vehicles owned or used by Tenant or said employees, agents or representatives. Tenant shall not park, or permit to be parked, any delivery vehicles in the Common Areas intended for the use by customers of the stores in the Building, nor permit merchandise delivery from such Common Areas if delivery access and loading and unloading zones are provided by Landlord. Landlord covenants that, at all times during the term hereof, it will, at its own cost and expense, maintain the Common Areas in a good condition of repair and adequately lighted and paved, and that there will be at least the minimum number of parking spaces sufficient to satisfy governmental requirements as of the date of this Lease. Anything in this paragraph to the contrary notwithstanding, Landlord expressly reserves the right, from time to time, (i) to construct other buildings and/or enlarge existing buildings on or over the Common Areas so long as the required minimum number of parking spaces shall be available, (ii) to increase, reduce, modify or alter the dimensions and locations of roadways, parking lots, sidewalks and buildings, provided such changes, additions or reductions do not unreasonably interfere with Tenant's use of the Demised Premises, and (iii) to enact reasonable rules and regulations (so long as the same do not materially

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and adversely interfere with Tenant's permitted use) governing the use of the Common Areas.

16. **Landlord's Repairs and Right of Entry.** Landlord covenants that it will, at its own cost and expense and within five (5) business days after being notified in writing by Tenant of the need therefor, make such repairs to the Common Areas and outside utility lines and to the exterior of the Demised Premises (including the roof, gutters, downspouts and outside walls, but excepting all glass and doors), as may be necessary to keep the same in a good condition of repair; provided, however, that if the need for such repair is occasioned by the casualty resulting from negligence or willful act of Tenant, or any of its agents, employees, or contractors, such repairs shall be made by Landlord, but the cost of such repairs shall be charged to and be promptly paid for by Tenant subject to Tenant being given credit for any money Landlord actually receives in respect to such damage from its insurance. Anything in the foregoing to the contrary notwithstanding, Landlord shall have no liability whatsoever for damage or injury to person or property occasioned by its failure to make any such repair (e.g., injury damage to property resulting from leaks caused by a defect in the roof, outside walls, gutters and/or downspouts) unless, within five (5) business days after being notified in writing by Tenant of the need therefor, Landlord shall have failed to initiate such repair and thereafter diligently pursue it to completion and such failure shall not have been due to any cause beyond Landlord's control, including, without limitation, strikes and/or inability to obtain materials and/or equipment at reasonable prices. Landlord, its agents, employees and contractors, shall have the right, from time to time, to enter and use insofar as may be necessary the Demised Premises for the purpose of making any of the aforesaid repairs, and to enter the Demised Premises in the case of any emergency. In the event of Landlord's failure to initiate any such repair within the time provided, or in the event of an emergency, Tenant may effectuate repairs and, to the extent Landlord is responsible for the cost of such repair under this Lease, may invoice Landlord for same. Landlord shall thereafter reimburse Tenant within thirty (30) days of receipt of an invoice from Tenant and/or offset Tenant's rent equal to amount owed by Landlord, at its election.

17. **Tenant's Repairs.** Tenant covenants that it will, at all times during the term hereof and at its own cost and expense, keep the Demised Premises (including, without limitation, the interior and exterior heating and air conditioning system, toilets, sprinkler system, signage, pipes, plumbing, wires and conduits, electric lines, windows, doors, glass, fixtures and equipment) in a good condition of repair and in good working order (making such repairs and replacements as may be necessary), unless the need therefor is occasioned by fire or other casualty covered by Landlord's fire and extended coverage insurance policy (exclusive of any damage to glass or doors), in which event such repair and replacement shall be an expense of Landlord to the extent of such coverage. Tenant agrees to be responsible and liable for any freezing in pipes and/or within plumbing fixtures and shall pay for the repair of any damage caused thereby. In this regard, Tenant shall keep the Demised Premises at a sufficient temperature to prevent such freezing. Tenant understands and agrees that Tenant (not Landlord) shall be responsible for any condensation in or around the duct work used by heating and/or air conditioning.

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18. **Tenant's Care of Common Areas.** Tenant covenants and agrees that it will, at all times during the term hereof, keep the Demised Premises and all Common Areas immediately adjoining the Demised Premises clean and free from obstruction, rubbish, and dirt. Tenant shall place all trash, rubbish and garbage in a proper closed receptacle and shall pay all costs incident to the removal thereof.

19. **Tenant's Failure to Repair and Remove Debris, etc.** Tenant agrees that if it fails to perform any obligation placed upon it by either Section 17 or Section 18 of this Lease, Landlord, in addition to other remedies provided by law and/or this Lease, may correct (or have corrected) such failure at the cost and expense of Tenant.

20. **Miscellaneous Covenants and Agreements of Tenant.** Tenant covenants and agrees that: (i) it will comply with all applicable laws, ordinances and regulations relating to its business conducted in the Demised Premises, (ii) it will promptly pay for all electricity, gas, water and other utilities consumed on, and all sewage disposal charges assessed against, the Demised Premises and all required meter deposits and connection fees relating to such utilities, (iii) it will promptly pay for lighting associated with Tenant's Demised Premises, (iv) it will not use the name of the Building for any purpose other than as the address of its business to be conducted in the Demised Premises, (v) it will not use, or permit to be used, the Demised Premises for any illegal or immoral purpose, (vi) it will conduct its business in such manner as will be in keeping with the character and reputation of the Building, (vii) it will make every effort to work harmoniously with other tenants in the Building, (viii) it will not, without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, (a) make any alteration to any structural portion of the Demised Premises, (b) use or permit to be used any advertising medium or device such as a phonograph that could be heard outside of the Demised Premises, or (c) hold a fire, bankruptcy, going-out-of-business or auction sale, (ix) it will permit Landlord or its representatives to enter the Demised Premises during the last twelve (12) months of the Term for the purpose of exhibiting the Demised Premises to prospective tenants, and to place a "For Rent" sign in a front show window during such period of time, (x) it will use the Demised Premises in compliance with all declarations of restrictive covenants which are of record, (xi) in the event that any utilities service is interrupted or discontinued to the demises premises, Tenant shall look solely to the provider thereof in damages, and Landlord shall have no responsibility or liability therefor, (xi) that, except for completion of Landlord's Work and the fulfillment of Landlord's repair obligations, Tenant acknowledges that it is accepting the Demised Premises, based upon its own inspections and evaluations of the Demised Premises for Tenant's intended purpose, in its present, existing "AS IS" condition, and "WITH ALL FAULTS", and (xii) Tenant has obtained all approvals, consents, and authorizations necessary to allow it to enter into and be bound hereby, and this Lease, once executed by Tenant, constitutes the legal and binding obligation of Tenant, enforceable in accordance with its terms.

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21. **Insects and Rodents.** Tenant covenants that it will, at its own expense, take such steps as shall be necessary to keep the Demised Premises free of termites, roaches, rodents, insects and other pests and that it will save Landlord and the other tenants of the Building harmless from any damage caused thereby.

22. **Damage by Vandals.** If the doors, window frames, glass or any part of the exterior of the Demised Premises are damaged by persons breaking, or attempting to break, into the Demised Premises, or by vandals, Tenant covenants to repair immediately at its own expense any and all such damage.

23. **Fire Hazard.** Tenant covenants that, without the prior written consent of Landlord, it will not do anything which will increase the rate of fire insurance on the building of which the Demised Premises constitutes a part, and that if such consent is given, Tenant will pay Landlord the amount of the increase in the cost of such insurance, as and when the premiums become due.

24. **Care of Roof.** Except as a part of the Initial Tenant Improvements (if called for thereby), Tenant agrees that it will not (directly or by sufferance) place any debris on the roof of the Building, or cut, drive nails into or otherwise mutilate the roof or cause or consent to any penetration thereof without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Subject to the terms hereof, Landlord covenants to maintain the roof and all structural elements of the Building at all times during the initial lease term and any extensions.

25. **Condition on Termination.** Tenant covenants that it will, upon the expiration or earlier termination of this Lease, (a) deliver to Landlord, peaceably and quietly, the Demised Premises in the same good condition they are now in or shall hereafter be placed in, ordinary wear and tear and damage by casualty within the coverage of a standard fire insurance policy with extended coverage excepted, and (b) remove its trade fixtures and/or signs from the Demised Premises and to repair promptly any damage caused by such removal. Except for Tenant's trade fixtures, which may be removed from the Demised Premises by Tenant upon the expiration or termination hereof (subject to Landlord's rights of distraint), all property within the Demised Premises which constitutes a "fixture" shall, as further provided for below, be and become the sole property of Landlord upon the expiration or termination of this Lease.

26. **Improvements to Become Landlord's.** Tenant agrees that all additions and other improvements installed in the Demised Premises by it, that are not Trade Fixtures, including, without limitation, all electric wiring, electric fixtures, air conditioning systems, show window reflectors, screens, screen doors, awnings, awning frames and floor coverings (including carpeting but excepting rugs) shall immediately become the property of Landlord, and shall not be removed by Tenant at the expiration or earlier termination of this Lease, unless requested to do so by Landlord, in which event Tenant agrees to do so and to repair promptly any damage caused by any such removal.

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27. **Tenant's Insurance.** Tenant agrees that it will hold Landlord and any agent of Landlord harmless from any and all injury or damage to person or property in, on or about the Demised Premises and the portion of Common Areas adjoining the Demised Premises, including, without limitation, all costs, expenses, claims or suits arising in connection therewith; provided, however, that this clause shall not apply to injury or damage caused by Landlord's own willful act or Landlord's failure to make any repair (which Landlord has herein agreed to make) within a reasonable time after Tenant's written notice of the need therefor. Tenant will, at all times during the term hereof, at its own cost and expense, carry with a company or companies, reasonably satisfactory to Landlord, public liability insurance on the Demised Premises and adjoining Common Areas, with limits of not less than One Million Dollars ($1,000,000.00) for injury or death to one person and One Million Dollars ($1,000,000.00) for injury or death to more than one person in any one accident and minimum property damage of Three Hundred Thousand Dollars ($300,000.00), which insurance shall be written or endorsed so as to protect (meaning that such parties shall be additional insureds thereunder) Landlord, any agent of Landlord, and Landlord's lender or mortgagee as to the Building, as their respective interests may appear. Said policy or policies shall contain a provision insuring Tenant against all liability which Tenant might have under this hold harmless provision. Further, and whether as an endorsement to its general liability policy or by way of a separate policy, Tenant shall procure and maintain throughout the Term and with an insurer satisfactory to Landlord (i) workers' compensation insurance in such amounts as are required by law, and (ii) business interruption coverage with limits equal to at least one year's rent payable hereunder (upon which Landlord and its mortgagee as to the Building shall be additional insureds) and with a deductible of no greater than $5,000.00. Tenant covenants that certificates of all such insurance policies shall be delivered to Landlord promptly without demand. If Tenant fails to provide such insurance, Landlord may, but shall not be required to, obtain such insurance and collect the cost thereof as a part of the rent herein reserved.

28. **Possession.** In the event Landlord elects to tender to Tenant possession of the Demised Premises prior to the Commencement Date, Tenant agrees to diligently prosecute, perform, complete, install and make operational all of Tenant's furniture, fixtures and equipment in a diligent manner, and to perform and complete such construction, fixturing or other activity that it may conduct pursuant to the terms hereof in a manner which will not interfere with the construction, development or operation of the Building or Landlord's completion of Landlord's Work. Tenant shall, prior to accepting such possession of the Demised Premises, deposit with Landlord policies or certificates of insurance evidencing compliance with Section 27 hereof.

29. **Mechanic's Liens.** Tenant shall not permit any mechanic's, materialman's or similar lien to be filed against any portion of the Demised Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant, (and not relating to Landlord's failure to perform Landlord's obligations hereunder) to attach to the Demised Premises or the Building or the interest of Landlord or Landlord's lessor, if any,

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

30. **Security Deposit.** Contemporaneously with, or promptly following, the execution hereof by Tenant, Tenant shall deposit with Landlord a security deposit ("Security Deposit") in the amount of $6,705.00 as security for the full and faithful performance by Tenant of all terms and covenants of this Lease required to be performed by Tenant. If at any time Tenant shall be in default in the performance of any of the covenants of this Lease, Landlord shall have the right, at its discretion, to use the Security Deposit, or so much thereof as may be necessary, to cure such default. In the event that Landlord utilizes all or any portion of the Security Deposit as aforesaid, Tenant shall, promptly following the request of Landlord so to do, restore with Landlord the Security Deposit or portion thereof so used by Landlord. No interest shall be paid by Landlord to Tenant with respect to the Security Deposit. The Security Deposit, or the remainder thereof, shall be returned to Tenant following the termination of this Lease, provided that Tenant has fully and faithfully carried out all its terms and covenants and paid all its Base Rent, Additional Rent, Late Charges and any other amounts due hereunder to Landlord. The Security Deposit does not constitute trust funds, and need not be kept separate by Landlord from its other funds.

31. **Damage by Fire or Other Casualty.** In the event the Demised Premises, or any part thereof, shall be damaged by fire or other casualty during the Term, Landlord agrees that it will restore the Demised Premises, with reasonable dispatch and to the extent of available insurance proceeds, to substantially the same condition they were in prior to such damage, and if the Demised Premises are rendered wholly or partially untenantable as a result of such damage, the Base Rent shall be equitably abated (according to the loss of use) during the period intervening between the date of such damage and the date the Demised Premises are restored. If Landlord fails to complete any repair or restoration of the casualty damage within one hundred and eighty (180) days of the

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date of such casualty, Tenant may, at its sole discretion, terminate this Lease by written notice to the Landlord. If this Lease is so terminated, the rental payable hereunder shall be abated as of the date of Tenant's notice, and Tenant shall remove all of its property from the Demised Premises within sixty (60) days after the notice of termination is given. Anything in the foregoing to the contrary notwithstanding, if such damage occurs during the last two (2) years of the Term, and if such damage exceeds fifty percent (50%) of the then insurable value of the Demised Premises, either Landlord or Tenant may terminate this Lease as of the date of such damage, by giving to the other written notice of its intention so to do within thirty (30) days after the date such damage occurs.

Anything in this Lease to the contrary notwithstanding, Landlord shall have the right to terminate this Lease, at its sole and absolute election, as of the time of occurrence of any fire or other casualty, within sixty (60) days of such occurrence, if such fire or other casualty damages one or more adjoining or contiguous store(s) with an aggregate area of at least 4,000square feet.

32. **Condemnation.** In the event any portion of the Demised Premises, or at least twenty percent (20%), in the aggregate, of the customer parking areas of the Building, shall be taken by the exercise of the power of eminent domain (or sold to the holder of such power, pursuant to a threatened taking), this Lease may, at the option of Landlord or Tenant, be terminated by written notice given to the other within sixty (60) days after the date such taking or sale occurs. If this Lease is not so terminated, Landlord covenants that it will, at its own expense, promptly after the lapse of said sixty (60) days, repair such damage and do such work as may be required to repair and rebuild the Demised Premises and/or the Common Areas, with the view to restoring the Demised Premises and/or the Common Areas as nearly as practicable to the condition they were in immediately prior to such taking or sale; provided, however, that whether or not this Lease is so terminated, the Base Rent payable hereunder shall be equitably abated (according to the loss of use) from the date of such taking or sale. Tenant shall have no right in or to the proceeds of any award made in any such condemnation (or proceeds derived from any sale in lieu thereof), except to any portion of the award expressly allocated to the personal property and/or trade fixtures of Tenant.

33. **Option to Purchase.** Tenant shall have the Option to purchase the Premises during the third lease year with not less than 120 days advanced written notice to Landlord for $270,000.00 (the "Purchase Price") in accordance with the Purchase and Sale Agreement as provided in Exhibit G. Landlord shall apply $25,000 of Rent collected and the Security Deposit against the Purchase Price at the time of closing. Upon the purchase of the Leased Premises by Tenant, this Lease shall be terminated.

34. **Assignment and Subletting.** Tenant may not, without Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed, assign any of its rights, interests, or obligations under this Lease or sublease all or any portion of the Demised Premises. No such sublease or assignment as is not consented to in writing by Landlord shall be effective, and shall not in any circumstance relieve Tenant of any of its obligations hereunder.

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35. **Effective Date.** The "Effective Date" of this Lease shall be the later of the dates upon which it is executed by Landlord or Tenant.

36. **Subordination.** This Lease is subject and subordinate to all ground or underlying leases (if any) and to all mortgages which may now or hereafter affect such leases, the Demised Premises, the Building, or the land on which the Demised Premises are situated, and to all renewals, modifications and extensions thereof. The foregoing provisions shall be self-operative and no further instrument of subordination shall be required for this purpose; provided, however, that in confirmation of such subordination, Tenant shall, upon request of Landlord, execute and deliver, in recordable form, any instrument of subordination requested by Landlord, and Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such subordination instrument on behalf of Tenant. Anything in the foregoing to the contrary notwithstanding, in the event of a foreclosure under any such mortgage, the holder of the note secured thereby or the purchaser at such foreclosure sale shall have the option to recognize this Lease, in which event this Lease shall continue in full force and effect and Tenant shall attorn to Landlord. Any such mortgage or deed of trust may at any time, at the request of the holder of the note secured thereby, be subordinated to this Lease.

37. **Waiver of Subrogation.** All fire insurance, extended coverage, and policies relating to other casualties carried by any party to this Lease covering the Demised Premises and/or the contents thereof shall expressly waive any right on the part of the insurer against any other party to this Lease, which right, to the extent not prohibited by or violative of any such policy, is hereby expressly waived. Landlord and Tenant each agree that policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the party or parties in whose favor such waiver clause or endorsement runs pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated so to do.

38. **Default and Remedies.** In the event the business being conducted in the Demised Premises shall at any time be substantially terminated or discontinued, or in the event Tenant shall default in the payment of any installment of rent herein reserved, or in the event Tenant shall default in the performance of any of the terms, covenants, conditions or provisions herein contained binding upon Tenant and such default shall not be remedied within ten (10)days after written notice thereof shall have been given by Landlord to Tenant (which such notice and right to cure, with respect to any monetary default, need be given only once in any calendar year prior to Landlord immediately exercising its remedies with respect to any such a subsequent default during such calendar year), or in the event Tenant shall be adjudicated a bankrupt or shall become insolvent or shall make a general assignment for the benefit of its creditors, or in the event a receiver shall be appointed for Tenant or a substantial part of its property and such receiver is not removed within

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thirty (30) days after appointment (each of the foregoing being an "Event of Default"), then and in each of such cases Tenant shall be deemed in material default of this Lease and Landlord shall have the right (in addition to all other rights and remedies provided by law), to (i) accelerate all rent and other charges and sums due hereunder, (ii) to the extent then allowed by applicable law, reenter and take possession of the Demised Premises, peaceably or by force, (iii) to terminate this Lease and, at Landlord's option, to remove any property therein, without liability for damage to, and without obligation to store, such property. In the event of such termination, Landlord may (but shall be under no obligation to) relet the Demised Premises, or any part thereof, from time to time, in the name of Landlord or Tenant, without further notice, for such term or terms, on such conditions, and for such uses and purposes, as Landlord, in its sole and absolute discretion, may determine, and may collect and receive all rents derived therefrom and apply the same, after deduction of all appropriate expenses (including, without limitation, attorneys' fees and other costs of collection) to the payment of the rent payable hereunder, Tenant remaining liable for any deficiency. Landlord shall not be responsible or liable for any failure to so relet the Demised Premises or any part thereof, or of any failure to collect any rent connected therewith.

In the event of any default by Landlord hereunder, Tenant shall provide Landlord with notice thereof and thirty (30) days to thereafter cure the same, failing which, subject to the other provisions hereof, Tenant may commence an action against Landlord for its actual damages, together with its attorneys' fees and costs, as its sole and exclusive remedy on account thereof.

39. **Estoppel Certificates.** Within twenty (20) days after written request of Landlord, Tenant shall certify by a duly executed and acknowledged written instrument to any mortgagee or purchaser, or proposed purchaser, or any other person, firm or corporation specified by Landlord, as to the validity and force and effect of this Lease, as to the existence of any default on the part of any party thereunder, as to the existence of any offsets, counterclaims, or defenses thereto on the part of Tenant, and as to any other matters as may be reasonably requested by Landlord, all without charge but no more frequently than monthly. Tenant's failure or refusal to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance or obligations hereunder, and (iii) that not more than one month's installment of Base Rent has been paid in advance of the due date. Further, and within twenty (20) days after written request of Tenant, Landlord shall certify by a duly executed and acknowledged written instrument to any lender of Tenant, or any other person, firm or corporation specified by Tenant, as to the validity and force and effect of this Lease, as to the existence of any default on the part of any party thereunder, as to the existence of any offsets, counterclaims, or defenses thereto on the part of Landlord, and as to any other matters as may be reasonably requested by Tenant, all without charge but no more frequently than monthly.

40. **Notices.** Any notice which may required or which may be given hereunder by either party shall be delivered by (i) United States registered or certified mail, postage prepaid, or

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(ii) depositing the same with Federal Express or another nationally recognized overnight delivery carrier. Such notices shall be addressed as follows:

If to Landlord:	Riverwalk River District Building 6, LLC Attn: David Williams 2850 Cherry Road Rock Hill, SC 29730
If to Tenant:	The Grapevine of Riverwalk, Inc. 1750 Hwy 160 W, Suite 101, PMB 290 Fort Mill, SC 29708

Either party may modify from time to time the address to which notice to it is to be provided hereunder by providing written notice of such change to the other party.

41. **Quiet Enjoyment.** Subject to the terms, covenants and conditions set forth in this Lease, Landlord covenants that Tenant shall have and enjoy quiet and peaceable possession of the Demised Premises during the term hereof without hindrance, ejection or molestation by Landlord, subject to the provisions of this Lease.

42. **Short Form Lease.** The parties hereto agree that a short form of lease, of even date herewith, describing the Demised Premises, setting forth the term and referring to this Lease, shall, at the request of either party, be promptly executed and recorded (at the cost of the requesting party). In the event that the parties execute such a short form lease, then the parties shall also execute, and Landlord shall then hold, a termination agreement, to be recorded by Landlord upon the expiration or earlier termination of this Lease.

43. **Entire Agreement.** This Lease contains the entire agreement between the parties hereto, and cannot be altered or modified in any way except in writing signed by the parties hereto. All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.

44. **No Waivers.** Any failure of either party hereto to insist upon strict observance of any covenant, provision or condition of this Lease in any one or more instances shall not constitute or be deemed a waiver, at that time or thereafter, of such or any other covenant, provision or condition of this Lease.

45. **Pronouns.** Every pronoun used in this Lease shall be construed to be of such number and gender as the context shall require.

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46. **Headings.** The headings appearing on the margin of this Lease are intended only for inconvenience of reference, and are not to be considered in construing this instrument.

47. **Successors and Assigns.** This Lease and all the terms, covenants, conditions and provisions herein contained, shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and (if and when assigned in accordance with the provisions hereof) assigns.

48. **Brokerage Commissions.** Tenant represents that it has not been represented in connection with this Lease by a brokers. Landlord represents that it has not been by a broker. Tenant and Landlord hereby agree to indemnify and hold the other party harmless from any commissions or fees due to any broker or agent asserting a claim.

49. **Signage.** Tenant shall have the right to install at its costs one sign on the front façade of the Demised Premises and one sign on the rear façade of the Demised Premises which signs must be approved in writing at Landlords sole discretions and in conformity with the Architectural Design Review Guidelines of Riverwalk and in locations designated by the Landlord. TENANT SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH ITS SIGNAGE ON THE BUILDING AND/OR ON THE BUILDING'S PYLON SIGN (OR MONUMENT SIGN, AS THE CASE MAY BE). Landlord shall use reasonable commercial efforts to cause for Tenant to have monument signage rights at the corner of Dunkins Ferry Road and Cherry Road, when and if such monument signage is installed. Landlord obligations hereunder are limited to Landlord's right to such signage.

50. **Maintenance.** On or before the commencement date of the term, Tenant shall furnish evidence to Landlord that Tenant has contracted for, and is having performed, preventive maintenance on all HVAC equipment in the Demised Premises, on at least a quarterly basis. In the event Tenant shall not have contracted for and/or provided evidence that such HVAC preventive maintenance is being and will be provided, Landlord shall have the right to so contract for said preventive maintenance to the HVAC equipment and charge the actual cost of said maintenance as Additional Rent hereunder. Landlord shall have the right to have any unscheduled remedial HVAC preventive maintenance performed deemed necessary to keep said equipment in operating condition and Tenant agrees to pay all of the charges arising therefrom as Additional Rent hereunder.

51. **Waiver of Homestead Exemption.** To the extent applicable, Tenant waives the benefit of the homestead exemption as to this Lease.

52. **Waste and Nuisance.** Tenant agrees not to suffer, permit or commit any waste, nor to allow, suffer or permit any odors, vapors, steam, water, vibrations, noise, loud music or other undesirable effects to emanate from the Demised Premises into other portions of the building of which the Demised Premises comprise a part or into the Common Areas or other portions of the

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Building, or otherwise to allow, suffer or permit the Demised Premises or any use thereof to constitute a nuisance or unreasonably to interfere with the safety, comfort or enjoyment of the Building by Landlord or any other occupants of the Building or their customers, invitees or any others lawfully in or upon the Building. Upon written notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees forthwith to cease and discontinue the same and within one (1) day thereafter to make such changes in the Demised Premises and/or install or remove such apparatus or equipment therein or therefrom as may be required by Landlord for the purpose of obviating any such condition, and, if any such condition is not so remedied, then Landlord may, at its option, either: (i) enter upon the Demised Premises and cure such condition in any manner Landlord shall deem necessary and add the cost and expense incurred by Landlord therefor, together with all damages, including attorney's fees, sustained by Landlord, to the next installment of the Base Rent due and Tenant agrees to pay such amount, as Additional Rent hereunder, or (ii) treat such failure on the part of Tenant to remedy such condition as an "Event of Default" within the meaning of Section 38 of this Lease. Tenant hereby further agrees to indemnify and save Landlord harmless of and from all fines, claims, demands, actions, proceedings, judgments and damages (including attorneys' fees) of any kind or nature by anyone whomsoever arising or growing out of any breach or non-performance by Tenant of the covenants contained in this paragraph.

53. **Holding Over.** Any holding over by Tenant after the expiration of the Term with the written consent of Landlord shall be construed to create a tenancy from month to month at the same Base Rent reserved during the last lease year of the term, prorated on a monthly basis, and which tenancy shall otherwise be subject to the terms and conditions set forth in this Lease (including payment of Additional Rent). Tenant shall not be considered a tenant-at-will, a tenant-at-sufference, or as any other form of Tenant other than a holdover tenant at the then existing Base Rent and on the other terms set forth in this Lease, notwithstanding any common law or statute to the contrary. Any holding over by Tenant after the expiration of the Term without the written consent of Landlord shall also be construed to create a tenancy from month to month, subject to the terms and conditions set forth in this Lease, except that the Base Rent shall be double the Base Rent reserved during the last lease year of the term, prorated on a monthly basis (notwithstanding any common law or statute to the contrary which might imply the creation of another form of tenancy in such circumstance). Tenant agrees to indemnify and save Landlord harmless from and against any and all costs, losses, damages, liabilities and/or expenses incurred by Landlord as a result of a delay by Tenant in surrendering possession of the Demised Premises at the expiration or earlier termination of the term, including, without limitation, any claims made by any succeeding tenant due to such delay in surrendering possession.

54. **Landlord's Financing.** Landlord's obligations hereunder are expressly conditioned upon Landlord receiving financing (the "Landlord Financing") on terms satisfactory to it in its discretion for the construction of the Building and, at Landlord's election, any other portion of Landlord's Work, by the date which is ninety (90) days from the Effective Date (the "Financing Date"). In the event that Landlord fails to notify Tenant by the Financing Date that it

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has received the Financing, then Tenant shall provide Landlord with notice of the same, and, if Landlord, within ten (10) days from the date of Tenant's notice, fails to notify Tenant that it received the Financing, then this Lease shall automatically expire and terminate, in which event neither party shall have any further rights or obligations hereunder, save for rights and obligations which are to expressly survive the termination of this Lease.

55. **Parking.** Tenant shall comply and cause its employees to comply with Landlord's employee parking regulations for the Building, and Landlord shall provide Tenant with a detailed site plan indicating the location of employee parking for the Building. Landlord agrees to designate zero parking spaces immediately in front the Demised Premises as being reserved spaces for the use of Tenant, and its guests, customers, and invitees only.

56. **Limitation of Landlord's Liability; Transfer of Demised Premises.** Anything in this Lease to the contrary notwithstanding, the covenants, undertakings and agreements herein made on the part of Landlord are made and intended not for the purpose of binding Landlord personally or the assets of Landlord but are made and intended to bind only the Landlord's interest in the demised remises and building of which it is a part and in the rents and revenues derived therefrom, as the same may, from time to time, be encumbered (collectively, the "Landlord Interest"), and no personal liability shall at any time be asserted or enforceable against Landlord or its stockholders, officers or partners or their respective heirs, legal representatives, successors and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease. Further, in no event shall any special, consequential, or punitive damages be awardable against or recoverable against Landlord or the Landlord Interest hereunder. In the event of any transfer(s) of Landlord's interest in the Demised Premises or the Building, other than a transfer for purposes of securing a debt only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer, and Tenant agrees to attorn to the transferee.

57. **Exclusive-Use Granted to Tenant.** Landlord will restrict other businesses in the River District from operating and selling in a stand alone operation wine and or craft beer. This restriction will be memorialized by amendment to the Master Declaration by a restrictive covenant providing that no Parcel within the Development Property (defined as the River District, and excluding the River Pump House). Such covenant shall indicate that it is not intended to prohibit, and shall not act to prohibit, wine and or craft beer sales which are not stand-alone in nature (i.e. which are engaged in as a part of another use which would otherwise be permitted upon the Parcel (by way of example, and without limitation, a restaurant, liquor store, hotel, barber shop which sells beer, or grocery store). The restrictive covenant to be recorded is attached as Exhibit F.

58. **Mortgagee Protection.** Tenant agrees to give any mortgagee(s) of record, by registered mail, a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing (by way of notice of assignment of rents and leases,

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or otherwise) of the addresses of such mortgagee(s). Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the mortgagee(s) shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days any mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

59. **Miscellaneous Provisions.** This Lease is entered into, and shall be construed in accordance with and governed by, the laws of the State of South Carolina, without reference to principles of conflicts of laws. Any claim or cause of action arising hereunder or relating hereto shall be brought in a state court of competent subject matter jurisdiction located within York County, South Carolina, and the parties irrevocably consent to the personal jurisdiction of any such court for the purposes of such an action and waive any defense they may have as to the venue or convenience of any such a court for the purposes of such an action. THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE. This Lease may be executed in counterparts, the aggregate of which shall constitute a complete and fully executed version hereof, and may be executed by facsimile or like method of electronically reproduced signature, which signature hereon shall have the same force and effect as an original signature.

SIGNATURE PAGE TO FOLLOW

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WHEREFORE, the parties now execute this Lease as of the dates below appearing.

WITNESSES:

LANDLORD:
RIVERWALK RIVER DISTRICT BUILDING 6, LLC
A South Carolina limited liability company

By: The Greens of Rock Hill, LLC
Its Manager

By: Assured Administration, LLC
Its Manager

By: Mark S. Mather
Its: Manager
Date: 6/23/2014

As to Landlord

TENANT:
THE GRAPEVINE OF RIVERWALK, INC
A South Carolina S-Corporation

By:
Its: President
Date: June 20, 2014

As to Tenant

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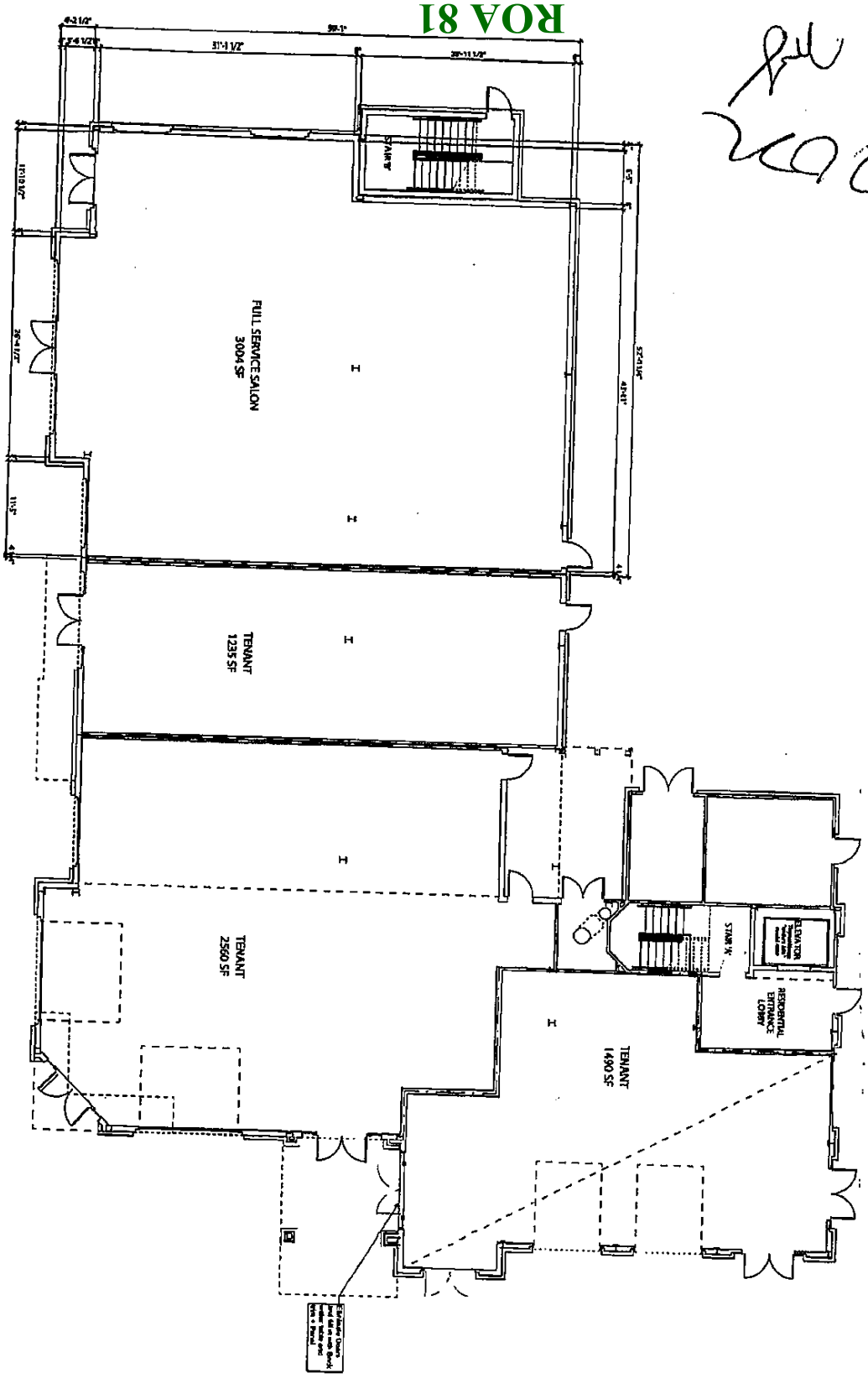
EXHIBIT A
Depiction of Building and Demised Premises

[SEE ATTACHED]

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ROA 81



A4.0

FIRST FLOOR
BUILDING PLAN

07 JULY 2014

RIVERWALK

RIVER DISTRICT MIXED USE BUILDING

ROCK HILL, SOUTH CAROLINA

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ELECTRONICALLY FILED - 2019 Mar 25 3:39 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA) COUNTY OF YORK))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-46-03726
THE GRAPEVINE OF RIVERWALK, INC.,)) Plaintiff,)) v.)) RIVERWALK RIVER DISTRICT BUILDING) 6, LLC,)) Defendant.))	**ANSWER** **(JURY TRIAL DEMANDED)**

The Defendant Riverwalk River District Building 6, LLC ("Riverwalk") hereby responds to the Complaint of The Grapevine of Riverwalk, Inc. ("Plaintiff") as follows:

FOR A FIRST DEFENSE

The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and should therefore be dismissed pursuant to S.C.R. Civ. P. 12(b)(6).

FOR A SECOND DEFENSE

Each and every allegation contained within the Complaint not hereinafter specifically admitted, qualified or explained is denied.

1. Riverwalk admits the allegations of paragraph 1 of the Complaint, on information and belief.

2. Riverwalk denies paragraph 2 of the Complaint. Riverwalk is a limited liability company organized under the laws of the state of South Carolina.

3. Paragraph 3 of the Complaint is admitted.

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4. Paragraph 4 of the Complaint is admitted.

5. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 5 of the Complaint and therefore denies it.

6. Riverwalk admits that it entered into a certain Commercial Lease Agreement on or about June 23, 2014 (the "Lease") and craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

7. Responding to paragraph 7 of the Complaint, Riverwalk craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

8. Responding to paragraph 8 of the Complaint, Riverwalk craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

9. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 9 of the Complaint and therefore denies it.

10. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 10 of the Complaint and therefore denies it.

11. Paragraph 11 of the Complaint is denied.

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12. Riverwalk admits that Grapevine sent a letter on or about July 26, 2017. The remainder of paragraph 12 of the Complaint constitutes legal assertions, which are denied.

13. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 13 of the Complaint and therefore denies it.

14. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 14 of the Complaint and therefore denies it.

15. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 15 of the Complaint and therefore denies it.

16. Responding to paragraph 16, Riverwalk admits that certain discussions between Hege and Wilson occurred relating to condominium documents but does not have sufficient information upon which to either admit or deny the remaining allegations of paragraph 16 and therefore denies them.

17. Responding to paragraph 17, Riverwalk admits that certain discussions between Hege and Wilson occurred relating to condominium documents but does not have sufficient information upon which to either admit or deny the remaining allegations of paragraph 17 and therefore denies them.

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18. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 18 of the Complaint and therefore denies it.

19. Responding to paragraph 19, Riverwalk admits that certain discussions between Brockmann and Wilson occurred relating to condominium documents but does not have sufficient information upon which to either admit or deny the remaining allegations of paragraph 19 and therefore denies them.

20. Paragraph 20 of the Complaint is admitted.

21. Paragraph 21 of the Complaint is denied.

22. Responding to paragraph 22 of the Complaint, Riverwalk admits that its counsel communicated with the Plaintiff regarding completion of condominium documents in approximately May of 2018. Riverwalk denies the remaining allegations of paragraph 22.

23. Paragraph 23 of the Complaint is admitted.

24. Paragraph 24 of the Complaint is denied.

25. Paragraph 25 of the Complaint is denied.

26. Paragraph 26 of the Complaint is denied.

27. Paragraph 27 of the Complaint is denied.

28. Paragraph 28 of the Complaint is denied.

29. Paragraph 29 of the Complaint is denied.

30. Paragraph 30 of the Complaint is denied.

31. Paragraph 31 of the Complaint is denied.

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32. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 32 of the Complaint and therefore denies it.

33. Paragraph 33 of the Complaint is denied.

34. Responding to paragraph 34 of the Complaint, Riverwalk denies any default under the Lease. Further responding, Riverwalk admits that it received the letter attached to the Complaint as Exhibit A.

35. Paragraph 35 of the Complaint is denied.

36. To the extent paragraph 36 of the Complaint requires a response, it is denied.

37. Responding to paragraph 37 of the Complaint, Riverwalk craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

38. Paragraph 38 of the Complaint is denied.

39. Paragraph 39 of the Complaint is denied.

40. Paragraph 40 of the Complaint is denied.

41. Paragraph 41 of the Complaint is denied.

42. Paragraph 42 of the Complaint is denied.

43. Paragraph 43 of the Complaint is denied.

44. Riverwalk does not have sufficient information upon which to either admit or deny the allegations of paragraph 44 of the Complaint and therefore denies it.

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45. Paragraph 45 of the Complaint is denied.

46. To the extent paragraph 46 of the Complaint requires a response, it is denied.

47. Responding to paragraph 47, Riverwalk admits that the Lease constitutes a valid contract.

48. Responding to paragraph 48 of the Complaint, Riverwalk craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

49. Responding to paragraph 48 of the Complaint, Riverwalk craves reference to the specific language contained in the Lease for the terms thereof and denies any allegation inconsistent therewith.

50. Paragraph 50 of the Complaint is denied.

51. Paragraph 51 of the Complaint is denied.

52. Paragraph 52 of the Complaint is denied.

53. Paragraph 53 of the Complaint is denied.

54. To the extent paragraph 54 of the Complaint requires a response, it is denied.

55. Paragraph 55 of the Complaint is denied. Further responding, the language contained in Section 33 of the Lease speaks for itself and sets forth the respective rights of the Parties.

56. Paragraph 56 of the Complaint is denied.

57. Paragraph 57 of the Complaint is denied.

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58. Paragraph 58 of the Complaint is denied.

59. Paragraph 59 of the Complaint is denied.

60. Paragraph 60 of the Complaint is denied.

61. Paragraph 61 of the Complaint is denied.

62. Paragraph 62 of the Complaint is denied.

63. Paragraph 63 of the Complaint is denied.

64. To the extent paragraph 64 of the Complaint requires a response, it is denied.

65. Paragraph 65 of the Complaint is denied. Further responding, the language of the Lease speaks for itself and sets forth the rights of the Parties

66. Paragraph 66 of the Complaint is denied.

67. Paragraph 67 of the Complaint is denied.

68. Paragraph 68 of the Complaint is denied.

69. Paragraph 69 of the Complaint is denied.

70. Paragraph 70 of the Complaint is denied.

71. Paragraph 71 of the Complaint is denied.

72. Paragraph 72 of the Complaint is denied.

73. To the extent paragraph 73 of the Complaint requires a response, it is denied.

74. Responding to paragraph 74, Riverwalk admits that the Lease constitutes a valid contract.

75. Paragraph 75 of the Complaint is denied.

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76. Paragraph 76 of the Complaint is denied.

77. Paragraph 77 of the Complaint is denied.

78. Paragraph 78 of the Complaint is denied.

79. Paragraph 79 of the Complaint is denied.

80. Paragraph 80 of the Complaint is denied.

81. To the extent paragraph 81 of the Complaint requires a response, it is denied.

82. Responding to paragraph 82, Riverwalk admits that the Lease constitutes a valid contract.

83. Paragraph 83 is an allegation of law which Riverwalk is not required to admit or deny. To the extent a response is required, it is denied.

84. Paragraph 84 is an allegation of law which Riverwalk is not required to admit or deny. To the extent a response is required, it is denied.

85. Paragraph 85 of the Complaint is denied.

86. Paragraph 86 of the Complaint is denied.

87. Paragraph 87 of the Complaint is denied.

88. To the extent paragraph 88 of the Complaint requires a response, it is denied.

89. Paragraph 89 of the Complaint is denied.

90. Paragraph 90 of the Complaint is denied.

91. Paragraph 91 of the Complaint is denied.

92. Paragraph 92 of the Complaint is denied.

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93. Paragraph 93 of the Complaint is denied.

94. Paragraph 94 of the Complaint is denied.

95. Paragraph 95 of the Complaint is denied.

96. Paragraph 96 of the Complaint is denied.

97. Paragraph 97 of the Complaint is denied.

FOR A THIRD DEFENSE

98. The Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, laches and unclean hands.

FOR A FOURTH DEFENSE

99. The Plaintiff's claims are barred by the statute of frauds.

FOR A FIFTH DEFENSE

100. The alleged representations upon which the Third, Fourth and Fifth Causes of Action are based relate to alleged unfulfilled promises and future events and therefore such causes of action fail as a matter of law.

FOR A SIXTH DEFENSE

101. The Plaintiff did not justifiably rely upon any alleged representation not specifically contained in the Lease.

FOR A SEVENTH DEFENSE

102. The alleged representations upon which the Third, Fourth and Fifth Causes of Action are based were truthful when made.

FOR AN EIGHTH DEFENSE

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103. The Plaintiff has failed to allege the circumstances of alleged fraud with particularity.

FOR A NINTH DEFENSE

104. The Plaintiff's claims do not affect the public interest, but only affect the parties to this case and are therefore not actionable under the South Carolina Unfair Trade Practices Act.

RESERVATION AND NON-WAIVER

Riverwalk reserves its rights to assert and does not waive any additional defenses not included herein, of which it may become aware throughout discovery and the litigation of this matter.

WHEREFORE, having fully responded to the Complaint, Riverwalk prays for the following relief:

1. Dismissal of the Complaint with prejudice;
2. Trial by jury on all issues so triable;
3. Costs of this action, including attorneys' fees; and

4. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

s/ *Daniel J. Ballou*
Daniel J. Ballou, SC Bar No. 5953
J. Nathanial Pierce, SC Bar No. 102803
Morton & Gettys, LLC
Attorneys for Riverwalk
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March 25, 2019
Rock Hill, South Carolina

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CERTIFICATE OF SERVICE
2018-CP-46-03726

The undersigned certifies that the foregoing answer was served upon counsel of record for Plaintiff on the 25th day of March 2019 via York County's E-Filing and E-Service System as follows:

Shumaker, Loop & Kendrick, LLP
Attention: Steven A. Meckler, Esquire
101 South Tryon Street, Suite 2200
Charlotte, North Carolina 28280

s/ Daniel J. Ballou
Daniel J. Ballou
Attorney for Riverwalk River District Building 6, LLC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	
	)	SUMMONS
THE GRAPEVINE OF RIVERWALK, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO. 2018-CP-46-03726
	)	
RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within fifteen (15) days for Defendant Riverwalk River District Building 6, LLC, and within thirty (30) days for all other Defendants, after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

York County, South Carolina

Dated: March 25, 2020

/s/ *Christian H. Staples*
Attorney for Plaintiff

Address: Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280
704-375-0057
cstaples@shumaker.com

SCCA 401 (5/02)

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)

Plaintiff The Grapevine of Riverwalk, Inc., complaining of Defendants Riverwalk River District Building 6, LLC ("Riverwalk"), Mark S. Mather ("Mather"), GRH Development Resources, LLC ("GRH"), The Greens of Rock Hill, LLC ("Greens"), and Assured Administration, LLC ("Assured") (collectively referred to as "Defendants"), alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff The Grapevine of Riverwalk, Inc. ("Grapevine") is a corporation organized under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

2. Defendant Riverwalk is a limited liability company organized under the laws of the State of South Carolina with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730.

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3. Upon information and belief, Defendant Mather is a citizen and resident of York County, South Carolina. Upon further information and belief, Defendant Mather resides at 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730.

4. Defendant GRH is a foreign limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Upon further information and belief, Defendant Mather is a Member of Defendant GRH and also serves as its President.

5. Defendant Greens is a South Carolina limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Defendant Mather is the Registered Agent for Defendant Greens. Upon information and belief, Defendant Assured owns 100% of the membership interest of Defendant Greens. Upon further information and belief, Greens owns over 99.9% of the membership interest of Defendant Riverwalk.

6. Defendant Assured is a South Carolina limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Defendant Mather is the Registered Agent for Defendant Assured. Upon information and belief, Defendant Mather is a Member of Defendant Assured.

7. Defendants Riverwalk, GRH, Greens, and Assured are sometimes hereinafter referred to as "the corporate Defendants."

8. This Court has personal jurisdiction over the parties and subject-matter jurisdiction over the claims asserted in this action.

9. Venue is proper in this Court.

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10. All conditions precedent to bringing this action have been met or waived. With respect to all claims and allegations of fraud, Grapevine pleads the "discovery rule" and alleges that it did not discover, and could not have discovered upon the exercise of reasonable diligence, the facts and circumstances forming the basis for the alleged fraud, at any time more than three (3) years prior to the filing of the claims.

GENERAL ALLEGATIONS

11. On or around June 23, 2014, Grapevine and Riverwalk entered into a valid Lease to Purchase agreement (the "Lease to Purchase") pursuant to which Grapevine would Lease to Purchase from Riverwalk approximately 1,490 square feet within Building 6 of the Riverwalk development located on Herron's Ferry Road in Rock Hill, South Carolina (the "Property").

12. The commencement date of the Lease to Purchase was February 2, 2016.

13. Section 33 of the Lease to Purchase contains an option to purchase the Property during the third year of the Lease to Purchase term (the "Option to Purchase"). Upon 120 days written notice, the Option to Purchase requires Riverwalk to sell the Property to Grapevine for $270,000.00 (the "Purchase Price"), and to apply $25,000.00 in rent collected and the security deposit in the amount of $6,705.00 against the Purchase Price.

14. The Option to Purchase was a material term of the Lease to Purchase and induced Grapevine to enter into the Lease to Purchase.

15. Grapevine would not have entered into the Lease to Purchase if it did not contain the Option to Purchase.

16. Upon information and belief, Riverwalk and the other Defendants never intended to honor or abide by the representations in the Lease to Purchase or to sell the Property to Grapevine pursuant to the Option to Purchase.

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17. Rather, the Option to Purchase was included by Riverwalk to induce Grapevine to enter into the Lease to Purchase, which would in turn enable Riverwalk to obtain the necessary financing to develop and construct Building 6 and additional property within the Riverwalk project, and would help attract additional tenants to the Riverwalk development.

18. On July 26, 2017, Grapevine, through its prior counsel, Brian Wilson, Esq. ("Wilson") exercised the Option to Purchase to ensure the purchase of the Property during the third year of the Lease to Purchase term. Advanced written notice was provided in accordance with Section 33 of the Lease to Purchase.

19. In September 2017, the owners of Grapevine, Dave and Melanie Sills, properly structured a § 1031 Like-Kind Exchange as a tax savings mechanism that would allow them to sell a rental property and reinvest the proceeds into the purchase of the Property pursuant to the Lease to Purchase.

20. On or around September 20, 2017, after receiving no response from Riverwalk regarding the Option to Purchase, Wilson requested a follow up as to the status of the Option to Purchase and inquired whether Riverwalk intended to honor the Option to Purchase.

21. On or around September 27, 2017, Wilson again followed up with Riverwalk about the purchase of the Property.

22. On or around October 13, 2017, Travis Hege ("Hege"), an agent for Riverwalk and/or other Defendants, simply responded "I'll let you know."

23. On or around October 26, 2017, Wilson again inquired into the closing date for the purchase of the Property.

24. On October 30, 2017, Hege responded that Riverwalk was working on the condominium documents that would be required for Riverwalk to sell the Property to Grapevine.

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25. On November 7, 2017, and also on November 27, 2017, Wilson again inquired about the closing date for the purchase of the Property.

26. On or around November 28, 2017, Todd Brockmann, Esq. ("Brockmann"), as outside counsel and as an agent for Riverwalk and/or other Defendants, stated that Riverwalk was working with a bank and engineer, and thus could not commit to a closing date. This was over 4 months after Grapevine exercised the Option to Purchase, and more than 2 months prior to the closing date set forth in Wilson's letter of July 26, 2017.

27. On or around January 30, 2018, Defendant Mather, as an agent for Riverwalk and/or the other Defendants, sent Grapevine a proposed Master Deed, By-Laws, and Architectural Plans for consideration in connection with the closing. Shortly thereafter, Grapevine approved the documents.

28. On or around March 27, 2018, Mather proposed a closing date in April 2018.

29. However, Mather and Riverwalk never acted on this proposed closing date.

30. On May 3, 2018, Brockmann again represented to Grapevine that he needed to get the condominium documents completed.

31. On May 18, 2018, Debbie McMillan, as an agent for Riverwalk and/or other Defendants, represented to Grapevine that surveyors and attorneys were working on plat issues in connection with the closing.

32. On August 25, 2018, Grapevine again requested that Riverwalk provide an update on the purchase of the Property.

33. To date, Riverwalk has failed to offer a meaningful explanation or response regarding the significant and unwarranted delay for the sale of the Property following Grapevine's timely and proper exercise of the Option to Purchase.

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34. Upon information and belief, the above-referenced representations and the continuous, unwarranted delays show that Riverwalk and the other Defendants never intended to sell the Property to Grapevine.

35. Upon information and belief, Riverwalk, through its agents, made the above-referenced misrepresentations to hinder, avoid, or otherwise delay the sale of the Property.

36. Upon information and belief, Riverwalk has acted in bad faith by hindering, avoiding, or otherwise delaying the sale of the Property.

37. To date, Riverwalk has failed and refused to sell the Property to Grapevine, as required by the Lease to Purchase and the Option to Purchase.

38. Upon information and belief, Riverwalk has failed to take appropriate actions to have Building 6 (the building within which the Property is located) subdivided and has failed to take other necessary actions so that good, clear, and marketable title may be transferred to Grapevine.

39. Grapevine has fully performed its obligations under the Lease to Purchase and the Option to Purchase.

40. Grapevine has been, and remains, ready, willing, and able to perform its obligations under the Lease to Purchase, including, but not limited to, purchasing the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

41. Grapevine has continued to make rent payments from and after its exercise of the Option to Purchase.

42. Equity demands that these additional rent payments be applied against the Purchase Price as defined in the Option to Purchase as an additional credit to Grapevine.

43. On October 5, 2018, Grapevine sent a written demand and notice of default to Riverwalk demanding that Riverwalk sell the Property to Grapevine and otherwise cure its default

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under the Lease to Purchase and the Option to Purchase. This demand letter is attached hereto as **Exhibit A** and is fully incorporated herein by reference.

44. Despite the giving of the aforementioned notice, Riverwalk has failed to cure its default and continues its refusal to sell the Property to Grapevine as required by the Lease to Purchase and the Option to Purchase.

45. Grapevine is entitled to recover its attorneys' fees incurred in this action from Riverwalk pursuant to the Lease to Purchase.

ALLEGATIONS OF AMALGAMATION, SINGLE BUSINESS ENTERPRISE LIABILITY, AND CORPORATE VEIL PIERCING

46. Upon information and belief, Defendants operated during the relevant time period as a single business enterprise for the improper purposes of misleading and deceiving Grapevine and the general public, shielding their members, managers, and other stakeholders from personal liability, and committing and perpetuating fraud, abuse, wrongdoing, bad faith, and other injustice, such that it would be fundamentally unfair and inequitable to assign liability to any one or more of the Defendants to the exclusion of the others.

47. Upon information and belief, each of the Defendants' operations, management, and control are unified, amalgamated, and intertwined, and Defendants' legal distinctions and separateness have been blurred.

48. Upon further information and belief, each of the Defendants were engaged during the relevant time period in a common business purpose or pursuit (including, but not limited to, the development of the Riverwalk project, specifically including Building 6 within the Riverwalk project where the Property is located).

49. Upon further information and belief, each Defendant has become a mere agent and/or instrumentality for one or more of the other Defendants.

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50. Upon information and belief, Defendant Riverwalk in particular, and possibly other Defendants as well, are undercapitalized, have failed to observe corporate formalities, lack appropriate corporate records and minutes, have had funds siphoned off by the Members and Managers, and are used as a mere façade for the operations of the Members and Managers.

51. Upon information and belief, certain employees and agents of the various Defendants acted during the relevant time period as dual agents for one or more of the other Defendants, possessed multiple email addresses indicating an association and/or affiliation with various Defendants, and otherwise held themselves out to Grapevine and to the general public as being associated and/or affiliated with various Defendants, without clear distinction as to which entity or entities they actually represented and had authority to speak or otherwise act for.

52. Upon information and belief, Defendant Mather has the ultimate decision-making authority for all of the corporate Defendants, with respect to all negotiations and dealings with Grapevine under the Lease to Purchase, the Option to Purchase, and otherwise.

53. Each of the corporate Defendants utilizes the same business address, which is the same address as Defendant Mather's alleged residential address.

54. Upon information and belief, Defendants, individually and/or collectively, have from time to time, including during the relevant time period, utilized the moniker "Riverwalk" and/or "Riverwalk Carolinas" as a trade name or "d/b/a" for an undisclosed entity, and have otherwise held themselves out to Grapevine and to the general public as "Riverwalk" and/or "Riverwalk Carolinas," although no certificate of assumed name appears to have been filed with the South Carolina Secretary of State or the York County Register of Deeds, and no trademark application or registration appears to have been filed or registered with the U.S. Patent & Trademark Office or the South Carolina Secretary of State.

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55. Defendant Mather describes himself as "the visionary of the Riverwalk project."

56. Based on all of the foregoing, and for other reasons to be proven at trial, the entry of a final judgment in Grapevine's favor on any of the causes of action asserted herein against any Defendant should be imputed to every other Defendant, under the amalgamation or single enterprise theory, in the interests of fundamental fairness and equity, and to otherwise avoid injustice.

57. Furthermore, the entry of a final judgment in Grapevine's favor on any of the causes of action asserted herein against any of the corporate Defendants should be imputed to every individual Member of each such corporate Defendant, as well as to every individual Member of every other corporate Defendant, under a corporate veil piercing theory, in the interests of fundamental fairness and equity, and to otherwise avoid injustice.

FIRST CAUSE OF ACTION
(Specific Performance – Defendant Riverwalk)

58. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

59. Grapevine and Riverwalk entered into a valid Lease to Purchase and, under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine upon Grapevine's exercise of the Option to Purchase.

60. As described above, Riverwalk has materially breached certain provisions of the Lease to Purchase, including, but not limited to, the Option to Purchase, by refusing to sell the Property to Grapevine.

61. Grapevine has fully performed as required by the Lease to Purchase by sending advanced written notice to exercise its Option to Purchase.

62. Monetary damages cannot accurately measure or redress the harm to Grapevine incurred as a result of Riverwalk's continued refusal to sell the Property to Grapevine. The

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purchase of the Property is unique to Grapevine and cannot be replaced by the purchase of substitute property within the Riverwalk development or elsewhere.

63. The damages to Grapevine from Riverwalk's failure to sell the Property in accordance with the Lease to Purchase cannot be estimated or calculated.

64. If Grapevine is unable to purchase the Property pursuant to the Option to Purchase contained in the Lease to Purchase, Grapevine will suffer irreparable harm.

65. Grapevine has been and remains ready, willing, and able to perform its part of the Lease to Purchase, specifically, the Option to Purchase.

66. Grapevine is entitled to an order of specific performance immediately requiring Riverwalk to sell the Property to Grapevine in accordance with the Option to Purchase contained in the Lease to Purchase, less all rent paid by Grapevine after Grapevine exercised the Option to Purchase. The order for specific performance should require Riverwalk to take all actions necessary to have Building 6 subdivided and to take all other necessary actions so that good, clear, and marketable title to the Property may be transferred to Grapevine.

SECOND CAUSE OF ACTION
(Breach of Contract – Defendant Riverwalk)

67. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

68. As described above, Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

69. Under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine if Grapevine exercised the Option to Purchase.

70. Grapevine exercised the Option to Purchase and sent advanced written notice in accordance with Section 33 of the Lease to Purchase.

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71. Riverwalk failed to sell the Property in accordance with the Option to Purchase and the Lease to Purchase.

72. Riverwalk materially breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

73. As a consequent and proximate result of Riverwalk's breach of contract, Grapevine has been damaged in an amount to be determined at trial. These damages include, but are not limited to, the continuing payments of rent after the Option to Purchase was exercised.

THIRD CAUSE OF ACTION
(Fraudulent Inducement – All Defendants)

74. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

75. Defendants, through their agents, made material misrepresentations to Grapevine that Grapevine would be able to purchase the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

76. Defendants, through their agents, also made material misrepresentations to Grapevine that Grapevine would have access to and use of the outdoor areas adjacent to the Property, for the purposes of installing outdoor furniture and selling alcohol in such outdoor areas, when in fact Defendants knew that such use would not be permitted under the Lease to Purchase and/or that such permitted use would be subsequently revoked.

77. Nonetheless, Defendants allowed Grapevine for a period of years during the term of the Lease to Purchase, until approximately 2019, to provide outside seating for its customers and to serve alcohol in the outdoor areas adjacent to the Property, with no apparent protest or objection by

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Defendants, and without otherwise informing Grapevine that such use was considered to be a violation of the Lease to Purchase.

78. Defendants, acting through their agent, Dave Williams ("Williams"), or others, represented to Grapevine that the Riverwalk development, and specifically the land where Building 6 and the Property would be constructed and located, which is all located on the site of the former Celanese Celriver chemical plant subsequently designated by the Environmental Protection Agency ("EPA") as a Brownfield (i.e., a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant), had been cleaned up and otherwise remediated from an environmental standpoint by one or more of the Defendants, that Defendants had special expertise with environmental clean-up and remediation efforts for environmentally damaged properties such as the Riverwalk site, and that certain environmental conditions such as the presence of asbestos and other contaminants would not pose an issue to the parties' performance of the Lease to Purchase or the Option to Purchase.

79. Upon information and belief, one or more of the Defendants were responsible for directing, performing and/or overseeing the environmental clean-up and remediation efforts at the site where the Property is located.

80. However, on or about October 17, 2019, following an investigation by the South Carolina Department of Health and Environmental Control and/or the EPA, the Grand Jurors of York County, South Carolina, issued a series of Indictments to Williams, alleging certain violations of the South Carolina Solid Waste Policy and Management Act, S.C. Code § 44-96-450(B), and the South Carolina Pollution Control Act, S.C. Code § 16-17-410, arising from his actions towards the Riverwalk site and the redevelopment thereof.

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81. Specifically, the Indictments allege that on or about May 25, 2016, Williams, while acting as the as Vice President for the Riverwalk Development, "did willfully and unlawfully instruct individuals under his direction to excavate a closed asbestos landfill and disturb the integrity of the final cover" and, furthermore, that he "did willfully and unlawfully disturb asbestos and release it into the environment when individuals under his direction excavated a closed asbestos landfill" in order to redevelop certain property located within the Riverwalk development where the Property is located.

82. Similar Indictments were issued to Williams and also to Michael Knott, another agent for one or more of the Defendants, for conspiracy to violate the South Carolina Solid Waste Policy and Management Act and the South Carolina Pollution Control Act.

83. As a result of the aforementioned Indictments and the ongoing governmental and/or criminal investigations and proceedings, the purchase and sale of the Property has been placed in jeopardy, the true status of the environmental clean-up and remediation efforts undertaken by Defendants and others at the site on which the Property is located is unknown to Grapevine, and the scope and extent of alleged criminal activity by Defendants and their agents has yet to be fully determined.

84. Upon information and belief, the representations made by Defendants to Grapevine concerning the Lease to Purchase and Option to Purchase, and other matters, including, but not limited to, Grapevine's use of the outdoor areas and certain environmental conditions affecting the Property, including, but not limited to, the remediation of asbestos, were false.

85. Defendants had no intentions of selling the Property to Grapevine.

86. Defendants and their agents only recently informed Grapevine that the sale of alcohol in the outdoor areas adjacent to the Property would no longer be permitted, and Defendants

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forced Grapevine to remove all of its furniture from the outdoor areas. This all occurred several months after Grapevine exercised the Option to Purchase.

87. Upon information and belief, Defendants' revocation of Grapevine's ability to use the outdoor areas is a mere pretext, and was intended to harass, oppress, and interfere with Grapevine's business and customer goodwill in an apparent attempt to persuade Grapevine to decline to proceed with the Option to Purchase, to otherwise decline to purchase the Property, to drive Grapevine's customers away and to reduce Grapevine's sales, and to otherwise force Grapevine to close its business and leave the Riverwalk development.

88. The ability to purchase the Property from Riverwalk, and the ability to use of outdoor areas, was material to Grapevine, and as such, the representations made by Defendants were also material.

89. Upon information and belief, Defendants, at the time the Lease to Purchase was executed by Defendant Riverwalk, knew that their representations concerning the Option to Purchase and other matters, including Grapevine's use of the outdoor areas and certain environmental conditions affecting the Riverwalk site and the Property, were false or were made with reckless disregard of their truth or falsity.

90. Upon information and belief, Defendants made representations that Grapevine would be able to purchase the Property, would have use of the outdoor areas, and would not be affected by environmental contaminants and hazards, including, but not limited to, asbestos, to persuade Grapevine to enter into the Lease to Purchase.

91. Grapevine did not know of the falsity of Defendants' representations and entered into the Lease to Purchase with the understanding that it would be able to purchase the Property in accordance with the Option to Purchase contained in the Lease to Purchase, that it would have use

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of the outdoor areas for the purposes of selling alcohol, as had been specifically represented in the marketing materials and other documents presented by Defendants to Grapevine in connection with the negotiations for the Lease to Purchase, that the site on which the Property is located had been cleaned up and otherwise remediated from an environmental standpoint, and that subsequent governmental and/or criminal investigations and proceedings would not detrimentally impact the purchase and sale of the Property, Grapevine's use of the Property and/or other rights therein.

92. Grapevine had the right to rely on Defendants' representations and, in fact, relied on the representations in good faith when it entered into the Lease to Purchase.

93. As a consequent and proximate result of Defendants' fraudulent inducement and other misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Fraud / Fraudulent Misrepresentation – All Defendants)

94. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

95. As alleged above, Defendants, through their agents, made continuous misrepresentations of fact concerning the Option to Purchase, the status of the closing, the reasons for delay of the closing, and other matters, including Grapevine's ability to use the outdoor areas adjacent to the Property and other environmental conditions affecting the site on which the Property is located, including, but not limited to, the presence of asbestos.

96. However, Defendants had no intentions of abiding by the Option to Purchase or any of the other representations made to Grapevine, and otherwise knew or should have known that the representations were false or were made without regard to their truth or falsity.

97. Although the Lease to Purchase was signed by Grapevine on June 20, 2014, and by Defendant Riverwalk on June 23, 2014, the diagram attached as Exhibit A to the Lease to Purchase

(Depiction of Building and Demised Premises) is dated July 7, 2014. Upon information and belief, the diagram attached as Exhibit A to the Lease to Purchase was never presented to or agreed to by Grapevine prior to its execution of the Lease to Purchase, and was inserted by Defendant Riverwalk or one of the other Defendants after the Lease to Purchase was executed by the parties. Defendants knew or should have known that the diagram attached as Exhibit A to the Lease to Purchase was never presented or agreed to by Grapevine prior to the execution of the Lease to Purchase, and did not accurately reflect the parties' understanding and intent with respect to Grapevine's use of the outdoor areas.

98. Upon information and belief, Defendants' representations were false.

99. Defendants' representations were material.

100. Upon information and belief, Defendants knew that their representations were false or made the representations with reckless disregard of their truth or falsity.

101. Upon information and belief, Defendants intended that Grapevine believe these representations and rely upon them.

102. Grapevine did not know the representations were false.

103. Grapevine had the right to rely on Defendants' representations and, in fact, relied on Defendants' representations to its substantial detriment.

104. As a consequent and proximate result of Defendants' fraud and fraudulent misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

105. Given that the fraud and fraudulent misrepresentations were committed in such a manner and under such circumstances that a person of ordinary prudence would have been conscious of it as an invasion of Grapevine's rights, Grapevine is entitled to recover punitive damages from Defendants.

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FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Acts – Defendant Riverwalk)

106. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

107. Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

108. Riverwalk materially breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

109. As described above, Riverwalk made numerous misrepresentations concerning the sale of the Property pursuant to the Lease to Purchase and otherwise relating to the Option to Purchase, as well as misrepresentations regarding Grapevine's use of the outdoor areas adjacent to the Property and other environmental conditions affecting the site on which the Property is located, including, but not limited to, the presence of asbestos.

110. Upon information and belief, Riverwalk intended that Grapevine believe and rely upon these representations.

111. Riverwalk's actions and misrepresentations were dishonest in fact and were unfair to Grapevine.

112. Riverwalk's fraudulent acts and misrepresentations accompanied and were connected with Riverwalk's breach of the Lease to Purchase and the Option to Purchase.

113. Given Riverwalk's breach of contract accompanied by fraudulent acts, Grapevine is entitled to recover punitive damages from Riverwalk.

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SIXTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing – Defendant Riverwalk)

114. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

115. Grapevine and Riverwalk entered into a valid Lease to Purchase.

116. The Lease to Purchase contains an implied covenant of good faith and fair dealing between the parties.

117. Riverwalk had a duty to act in good faith and deal fairly with Grapevine during the course of the Lease to Purchase and all transactions related thereto.

118. Riverwalk has acted and continues to act contrary to the express provisions of the Lease to Purchase, including, but not limited to, the Option to Purchase.

119. Riverwalk materially breached the implied covenant of good faith and fair dealing through its actions and misrepresentations alleged herein.

120. As a consequent and proximate result of Riverwalk's breaches, Grapevine has been damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Violation of the S.C. Unfair Trade Practices Act – All Defendants)

121. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

122. As alleged herein, Defendants continuously misrepresented material facts concerning the Lease to Purchase and the Option to Purchase, including, but not limited to, the status of the closing, reasons for delay of the closing, Grapevine's use of the outdoor areas adjacent to the Property, and other environmental conditions affecting the site on which the Property is located, including, but not limited to, the presence of asbestos.

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123. Defendants' actions were unfair and deceptive, offend public policy, and are otherwise immoral, unethical, and/or oppressive.

124. Defendants' unfair and deceptive actions as alleged herein amount to more than a mere breach of the Lease to Purchase or the Option to Purchase.

125. Upon information and belief, Defendants' actions were willful and/or in knowing violation of South Carolina law, including S.C. Code § 39-5-20.

126. Defendants' actions and misrepresentations affect trade and/or commerce because they involve, among other things, fraudulent statements pertaining to the sale or offering for sale of real property, and other fraudulent statements regarding the remediation and environmental contamination of real property.

127. Defendants' unfair and deceptive acts and practices have the potential for repetition, affect other owners, tenants, and residents within the Riverwalk development, as well as Grapevine's owners, employees and customers, and thus impact the public interest.

128. Grapevine has suffered monetary loss as a proximate result of Defendants' unfair and deceptive actions.

129. Grapevine is entitled to recover its actual damages as a result of Defendants' unfair and deceptive actions, as well as its attorneys' fees and three times the actual damages awarded pursuant to S.C. Code § 39-5-140 or other applicable law.

EIGHTH CAUSE OF ACTION
(Tortious Interference with Contractual Relations – Defendants Mather, GRH, Greens, and Assured)

130. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

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131. A valid contractual relationship existed between Grapevine and Riverwalk through the Lease to Purchase.

132. Defendants Mather, GRH, Greens, and Assured had knowledge of the Lease to Purchase.

133. Defendants Mather, GRH, Greens, and Assured, through their actions and conduct alleged herein, and as otherwise to be established at trial, intentionally procured a breach of the Lease to Purchase and the Option to Purchase by Defendant Riverwalk.

134. The actions and conduct of Defendants Mather, GRH, Greens, and Assured were made in bad faith, based upon improper motives, and were not in furtherance of any valid legal rights.

135. The actions and conduct of Defendants Mather, GRH, Greens, and Assured were unlawful, unethical, without any legitimate justification, and were otherwise improper and tortious under the circumstances.

136. As a consequent and proximate result of the tortious interference with the Lease to Purchase, Grapevine has been damaged in an amount to be determined at trial.

NINTH CAUSE OF ACTION
(Civil Conspiracy – all Defendants)

137. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

138. Upon information and belief, two or more of the Defendants have combined and joined together, and otherwise acted in concert, for the purpose of injuring Grapevine and otherwise interfering with the Lease to Purchase and the Option to Purchase, and Grapevine's rights thereunder.

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139. Proof of such civil conspiracy includes, but is not necessarily limited to, the overt acts and omissions alleged herein that detrimentally affect Grapevine's rights to purchase the Property, to use the outdoor areas adjacent to the Property, and to operate its business at a place that is not contaminated with asbestos and other contaminants, and which conduct caused special damage to Grapevine.

140. Further proof of the civil conspiracy is contained in the criminal Indictments which were issued to Dave Williams and Michael Knott in their capacity as Defendants' agents, alleging a conspiracy by those individuals to violate South Carolina law.

141. As a consequent and proximate result of such civil conspiracy, Grapevine has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff The Grapevine of Riverwalk, Inc. prays the Court as follows:

1. For an order of specific performance directing Defendant Riverwalk to sell the Property to Grapevine in accordance with the Lease to Purchase and the Option to Purchase, with an additional credit against the Purchase Price for all rent paid by Grapevine after Grapevine exercised the Option to Purchase, and further directing Defendant Riverwalk to take all necessary actions to have Building 6 within which the Property is located subdivided and to take all other actions so that good, clear, and marketable title to the Property may be transferred to Grapevine.

2. For entry of judgment against Defendants, and also against Defendants' individual Members under the corporate veil piercing theory, jointly and severally, for damages in an amount to be determined at trial.

3. That the Court treble the actual damages awarded on the unfair and deceptive trade practices claim, pursuant to S.C. Code. § 39-5-140 or other applicable law.

4. For an award of punitive damages on each of Grapevine's fraud-based claims.

5. That the costs of this action, including reasonable attorneys' fees, be taxed against Defendants.

6. That the Court award Grapevine pre-judgment interest and post-judgment interest on all monetary damage awards in its favor at the highest legal rate from the earliest date possible until paid and satisfied in full.

7. For a trial by jury on all issues so triable.

8. For such other and further relief as just and proper.

This the 25th day of March, 2020.

/s/ *Christian H. Staples*
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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing **FIRST AMENDED COMPLAINT** was electronically filed using the court's e-filing system which will send notice of filing to the following:

Daniel J. Ballou
Morton & Gettys, LLC
331 E. Main St. Suite 300 (29730)
P.O. Box 707
Rock Hill, SC 29731
dan.ballou@mortongettys.com
Attorneys for Defendant
Riverwalk River District Building 6, LLC

This the 25th day of March, 2020.

/s/ *Christian H. Staples*
Shumaker, Loop & Kendrick, LLP
Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA COUNTY OF YORK THE GRAPEVINE OF RIVERWALK, INC, Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC AND ASSURED ADMINISTRATION, LLC Defendants.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT CASE NUMBER 2018-CP-46-03726 **ANSWER TO FIRST AMENDED COMPLAINT**

The Defendants Riverwalk River District Building 6, LLC ("Riverwalk") Mark S. Mather ("Mather"), GHR Development Resources, LLC ("GRH") The Greens of Rock Hill, LLC ("Greens") and Assured Administration, LLC ("Assured") (collectively referred to herein as "Defendants") hereby respond to the First Amended Complaint ("Amended Complaint") of The Grapevine of Riverwalk, Inc. ("Plaintiff") as follows:

FOR A FIRST DEFENSE

The Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action and should therefore be dismissed pursuant to S.C.R. Civ. P. 12(b)(6).

FOR A SECOND DEFENSE

Each and every allegation contained within the Amended Complaint not hereinafter specifically admitted, qualified or explained is denied.

1. Riverwalk admits the allegations of paragraph 1 of the Amended Complaint, on information and belief.

2. Paragraph 2 of the Amended Complaint is admitted.

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3. Paragraph 3 of the Amended Complaint is admitted.

4. Paragraph 4 of the Amended Complaint is admitted.

5. Paragraph 5 of the Amended Complaint is admitted.

6. Paragraph 6 of the Amended Complaint is admitted.

7. No response is required to paragraph 7 of the Amended Complaint.

8. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 8 of the Amended Complaint and therefore deny it.

9. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 9 of the Amended Complaint and therefore deny it.

10. Paragraph 10 is denied.

11. Defendants admit that Riverwalk entered into a certain Commercial Lease Agreement on or about June 23, 2014 (the "Lease") and crave reference to the specific language contained in the Lease for the terms thereof and deny any allegation inconsistent therewith.

12. Responding to paragraph 12 of the Amended Complaint, Defendants crave reference to the specific language contained in the Lease for the terms thereof and deny any allegation inconsistent therewith.

13. Responding to paragraph 13 of the Amended Complaint, Defendants crave reference to the specific language contained in the Lease for the terms thereof and deny any allegation inconsistent therewith.

14. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 14 of the Amended Complaint and therefore deny it.

15. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 15 of the Amended Complaint and therefore deny it.

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16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Defendants admit that Grapevine sent a letter on or about July 26, 2017. The remainder of paragraph 18 of the Amended Complaint constitutes legal assertions, which are denied.

19. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 19 of the Amended Complaint and therefore deny it.

20. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 20 of the Amended Complaint and therefore deny it.

21. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 21 of the Amended Complaint and therefore deny it.

22. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 22 of the Amended Complaint and therefore deny it.

23. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 23 of the Amended Complaint and therefore deny it.

24. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 24 of the Amended Complaint and therefore deny it. Further responding, Defendants admit that Riverwalk was working on the preparation of condominium documents required to sell the Property to the Plaintiff in the fall and winter of 2017-2018.

25. Defendants do not have sufficient information upon which to either admit or deny the allegations of paragraph 25 of the Amended Complaint and therefore deny it.

26. Defendants admit so much of paragraph 26 as allege that Todd Brockmann, as counsel for Riverwalk, stated that Riverwalk was working towards a closing on the sale of the

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Property but could not commit to a closing date in November of 2017. The remainder of paragraph 26 is denied.

27. Defendants admit that Mather, on behalf of Riverwalk, sent Grapevine a proposed Master Deed, By-Laws and Architectural Plans for consideration in connection with the closing on or about January 30, 2018. The remainder of paragraph 27 is denied.

28. Defendants admit that Mather proposed a closing date in April of 2018. Further responding, the parties never agreed to a closing date at that time.

29. Paragraph 29 is denied.

30. Defendants admit so much of paragraph 30 as allege that Todd Brockmann, as counsel for Riverwalk, represented in May of 2018 that Riverwalk was working towards a closing on the sale of the Property. The remainder of paragraph 30 is denied.

31. Defendants admit so much of paragraph 31 as allege that Debbie McMillan represented in May of 2018 that Riverwalk was working towards a closing on the sale of the Property. The remainder of paragraph 30 is denied.

32. Defendants admit that Plaintiff requested information as to the status of a closing in August of 2018.

33. Defendants deny paragraph 33. Further responding, Riverwalk has stated that it is ready, willing and able to close on the sale of the Property pursuant to the terms of the Lease and has never repudiated the Plaintiff's right to purchase the Property pursuant to the terms of the Lease. On the contrary, Plaintiffs have demanded to purchase the Property on terms other than as set forth under the Lease.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

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36. Paragraph 36 is denied.

37. Paragraph 37 is denied.

38. Paragraph 38 is denied.

39. Regarding paragraph 39, Defendants are not aware of any existing breach of the Lease. The remainder of paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Paragraph 41 is admitted.

42. Paragraph 42 is denied.

43. Responding to paragraph 43 of the Amended Complaint, Defendants deny any default under the Lease. Further responding, Defendants admit that Riverwalk received the letter attached to the Amended Complaint as Exhibit A.

44. Paragraph 44 of the Amended Complaint is denied.

45. Paragraph 45 of the Amended Complaint is denied.

46. Paragraph 46 of the Amended Complaint is denied.

47. Paragraph 47 of the Amended Complaint is denied.

48. Paragraph 48 of the Amended Complaint is denied.

49. Paragraph 49 of the Amended Complaint is denied.

50. Paragraph 50 of the Amended Complaint is denied.

51. Paragraph 51 of the Amended Complaint is denied.

52. Paragraph 52 of the Amended Complaint is denied.

53.

54. Paragraph 54 of the Amended Complaint is denied.

55. Paragraph 55 of the Amended Complaint is denied.

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56. Paragraph 56 of the Amended Complaint is denied.

57. Paragraph 57 of the Amended Complaint is denied.

58. To the extent paragraph 58 of the Amended Complaint requires a response, it is denied.

59. Responding to paragraph 59 of the Amended Complaint, Defendants crave reference to the specific language contained in the Lease for the terms thereof and deny any allegation inconsistent therewith.

60. Paragraph 60 of the Amended Complaint is denied.

61. Paragraph 61 of the Amended Complaint is denied.

62. Paragraph 62 of the Amended Complaint is denied.

63. Paragraph 63 of the Amended Complaint is denied. Further responding, Defendants deny that Plaintiff has suffered any damage.

64. Paragraph 64 of the Amended Complaint is denied.

65. Paragraph 65 of the Amended Complaint is denied.

66. Paragraph 66 of the Amended Complaint is denied.

67. To the extent paragraph 67 of the Amended Complaint requires a response, it is denied.

68. Defendants admit that Riverwalk entered into the Lease with Plaintiff. The remainder of paragraph 68 is denied.

69. Responding to paragraph 69 of the Amended Complaint, Defendants crave reference to the specific language contained in the Lease for the terms thereof and deny any allegation inconsistent therewith.

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70. Defendants admit that Plaintiff sent advance written notice of its intent to exercise the option under the Lease. The remainder of paragraph 70 is denied.

71. Paragraph 71 is denied.

72. Paragraph 72 is denied.

73. Paragraph 73 is denied.

74. To the extent paragraph 74 of the Amended Complaint requires a response, it is denied.

75. Paragraph 75 is denied to the extent that it alleges any representations regarding the lease or purchase of the Property outside the four corners of the Lease.

76. Paragraph 76 is denied.

77. Paragraph 77 is denied.

78. Paragraph 78 is denied.

79. Paragraph 79 is denied.

80. Defendants admit paragraph 80 upon information and belief.

81. Responding to paragraph 81, the indictments speak for themselves and any allegations inconsistent with them or additional to them are denied.

82. Responding to paragraph 82, the indictments speak for themselves and any allegations inconsistent with them or additional to them are denied.

83. Paragraph 83 is denied.

84. Paragraph 84 is denied.

85. Paragraph 85 is denied.

86. Paragraph 86 is denied.

87. Paragraph 87 is denied.

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88. Paragraph 88 is denied.

89. Paragraph 89 is denied.

90. Paragraph 90 is denied.

91. Paragraph 91 is denied.

92. Paragraph 92 is denied.

93. Paragraph 93 is denied.

94. To the extent paragraph 94 of the Amended Complaint requires a response, it is denied.

95. Paragraph 95 is denied.

96. Paragraph 96 is denied.

97. Paragraph 97 is denied.

98. Paragraph 98 is denied.

99. Paragraph 99 is denied.

100. Paragraph 100 is denied.

101. Paragraph 101 is denied.

102. Paragraph 102 is denied.

103. Paragraph 103 is denied.

104. Paragraph 104 is denied.

105. To the extent paragraph 105 of the Amended Complaint requires a response, it is denied.

106. Responding to paragraph 106, Defendants admit that Riverwalk and Plaintiff entered into the Lease.

107. Paragraph 107 is denied.

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108. Paragraph 108 is denied.

109. Paragraph 109 is denied.

110. Paragraph 110 is denied.

111. Paragraph 111 is denied.

112. Paragraph 112 is denied.

113. To the extent paragraph 113 of the Amended Complaint requires a response, it is denied.

114. Responding to paragraph 114, Defendants admit that Riverwalk and Plaintiff entered into the Lease.

115. Paragraph 115 is a purported statement of law to which no response is required.

116. Paragraph 116 is a purported statement of law to which no response is required.

117. Paragraph 117 is denied.

118. Paragraph 118 is denied.

119. Paragraph 119 is denied.

120. To the extent paragraph 120 of the Amended Complaint requires a response, it is denied.

121. Paragraph 121 is denied.

122. Paragraph 122 is denied.

123. Paragraph 123 is denied.

124. Paragraph 124 is denied.

125. Paragraph 125 is denied.

126. Paragraph 126 is denied.

127. Paragraph 127 is denied.

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128. Paragraph 128 is denied.

129. To the extent paragraph 129 of the Amended Complaint requires a response, it is denied.

130. Responding to paragraph 130, Defendants admit that Riverwalk and Plaintiff entered into the Lease.

131. Responding to paragraph 131, Defendants admit that they had knowledge of the Lease.

132. Paragraph 132 is denied.

133. Paragraph 133 is denied.

134. Paragraph 134 is denied.

135. Paragraph 135 is denied.

136. To the extent paragraph 136 of the Amended Complaint requires a response, it is denied.

137. Paragraph 137 is denied.

138. Paragraph 138 is denied.

139. Paragraph 139 is denied.

140. Paragraph 140 is denied.

FOR A THIRD DEFENSE

141. The Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, laches and unclean hands.

FOR A FOURTH DEFENSE

142. The Plaintiff's claims are barred by the applicable statute of limitations.

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FOR A FIFTH DEFENSE

143. The Plaintiff's claims are barred by the statute of frauds and the parol evidence rule.

FOR A SIXTH DEFENSE

144. Riverwalk did not breach the Lease and stands ready to sell the Property subject to the Lease to the Plaintiff pursuant to the terms of the Lease.

FOR A SEVENTH DEFENSE

145. The Plaintiff's claims for misrepresentation are based upon alleged and unactionable unfulfilled promises and future events and therefore such causes of action fail as a matter of law.

FOR AN EIGHTH DEFENSE

146. The Plaintiff did not justifiably rely upon any alleged representation not specifically contained in the Lease.

FOR A NINTH DEFENSE

147. Any alleged representations upon which the Plaintiff's claims are based were truthful when made.

FOR A TENTH DEFENSE

148. The Plaintiff has failed to allege the circumstances of alleged fraud with particularity as required by Rule 9(b) S.C. R. Civ. P.

FOR AN ELEVENTH DEFENSE

149. The Plaintiff has failed to allege special damages as required by Rule 9(g) S.C. R. Civ. P.

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FOR A TWELFTH DEFENSE

150. The Plaintiff's Sixth Cause of Action fails as a matter of law because no cause of action exists for breach of the implied duty of good faith and fair dealing independent of a separate claim for breach of contract.

FOR A THIRTEENTH DEFENSE

151. The Plaintiff's Seventh Cause of Action fails as a matter of law because the Plaintiff's claims do not affect the public interest, but only affect the parties to this case and are therefore not actionable under the South Carolina Unfair Trade Practices Act. The UTPA does not apply to allegedly unfair or deceptive acts or practices that affect only the parties to a commercial transaction.

FOR A FOURTEENTH DEFENSE

152. The Plaintiff's Eighth Cause of Action fails as a matter of law because the alleged tortfeasors are not strangers to the business relationship at issue and cannot tortiously interfere with the Lease.

FOR A FIFTEENTH DEFENSE

153. The Plaintiff's Ninth Cause of Action fails as a matter of law because it does no more than incorporate the prior allegations of the Amended Complaint and then repackage them to allege the existence of a civil conspiracy.

FOR A SIXTEENTH DEFENSE

154. The Court cannot rewrite a contract and impose unwanted obligations and terms under the guise of specific performance. To the extent that the Plaintiff is entitled to an order of specific performance, it is not entitled to terms and conditions that were not included in or are in excess of the rights under the Lease.

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RESERVATION AND NON-WAIVER

Riverwalk reserves its rights to assert and does not waive any additional defenses not included herein, of which it may become aware throughout discovery and the litigation of this matter.

WHEREFORE, having fully responded to the Amended Complaint, Riverwalk prays for the following relief:

1. Dismissal of the Amended Complaint with prejudice;
2. Trial by jury on all issues so triable;
3. Costs of this action, including attorneys' fees; and
4. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

s/ Daniel J. Ballou

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J. Nathanial Pierce, SC Bar No. 102803
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April 9, 2020
Rock Hill, South Carolina

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CERTIFICATE OF SERVICE
2018-CP-46-03726

The undersigned certifies that the foregoing answer was served upon counsel of record for Plaintiff on the 9th day of April 2020 via York County's E-Filing and E-Service System as follows:

Shumaker, Loop & Kendrick, LLP
Attention: Christian Staples, Esquire and Steven A. Meckler, Esquire
101 South Tryon Street, Suite 2200
Charlotte, North Carolina 28280

s/ Daniel J. Ballou
Daniel J. Ballou
Attorney Defendants

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
	)	
	)	SUMMONS
THE GRAPEVINE OF RIVERWALK, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO. 2018-CP-46-03726
	)	
RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within fifteen (15) days, after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

York County, South Carolina

Dated: January 15, 2021

/s/ *Christian H. Staples*
Attorney for Plaintiff

Address: Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280
704-375-0057
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SCCA 401 (5/02)

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

Plaintiff The Grapevine of Riverwalk, Inc., complaining of Defendants Riverwalk River District Building 6, LLC ("Riverwalk"), Mark S. Mather ("Mather"), GRH Development Resources, LLC ("GRH"), The Greens of Rock Hill, LLC ("Greens"), and Assured Administration, LLC ("Assured") (collectively referred to as "Defendants"), alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff The Grapevine of Riverwalk, Inc. ("Grapevine") is a corporation organized under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

2. Defendant Riverwalk is a limited liability company organized under the laws of the State of South Carolina with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730.

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3. Upon information and belief, Defendant Mather is a citizen and resident of York County, South Carolina. Upon further information and belief, Defendant Mather resides at 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730.

4. Defendant GRH is a foreign limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Upon further information and belief, Defendant Mather is a Member of Defendant GRH and also serves as its President.

5. Defendant Greens is a South Carolina limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Defendant Mather is the Registered Agent for Defendant Greens. Upon information and belief, Defendant Assured owns 100% of the membership interest of Defendant Greens. Upon further information and belief, Greens owns over 99.9% of the membership interest of Defendant Riverwalk.

6. Defendant Assured is a South Carolina limited liability company with a principal place of business in York County, South Carolina; to wit, 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. Defendant Mather is the Registered Agent for Defendant Assured. Upon information and belief, Defendant Mather is a Member of Defendant Assured.

7. Defendants Riverwalk, GRH, Greens, and Assured are sometimes hereinafter referred to as "the corporate Defendants."

8. This Court has personal jurisdiction over the parties and subject-matter jurisdiction over the claims asserted in this action.

9. Venue is proper in this Court.

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10. All conditions precedent to bringing this action have been met or waived. With respect to all claims and allegations of fraud, Grapevine pleads the "discovery rule" and alleges that it did not discover, and could not have discovered upon the exercise of reasonable diligence, the facts and circumstances forming the basis for the alleged fraud, at any time more than three (3) years prior to the filing of the claims.

GENERAL ALLEGATIONS

11. On or around June 23, 2014, Grapevine and Riverwalk entered into a valid Lease to Purchase agreement (the "Lease to Purchase") pursuant to which Grapevine would Lease to Purchase from Riverwalk approximately 1,490 square feet within Building 6 of the Riverwalk development located on Herron's Ferry Road in Rock Hill, South Carolina (the "Property").

12. The commencement date of the Lease to Purchase was February 2, 2016.

13. Section 33 of the Lease to Purchase contains an option to purchase the Property during the third year of the Lease to Purchase term (the "Option to Purchase"). Upon 120 days written notice, the Option to Purchase requires Riverwalk to sell the Property to Grapevine for $270,000.00 (the "Purchase Price"), and to apply $25,000.00 in rent collected and the security deposit in the amount of $6,705.00 against the Purchase Price.

14. The Option to Purchase was a material term of the Lease to Purchase and induced Grapevine to enter into the Lease to Purchase.

15. Grapevine would not have entered into the Lease to Purchase if it did not contain the Option to Purchase.

16. Upon information and belief, Riverwalk and the other Defendants never intended to honor or abide by the representations in the Lease to Purchase or to sell the Property to Grapevine pursuant to the Option to Purchase.

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17. Rather, the Option to Purchase was included by Riverwalk to induce Grapevine to enter into the Lease to Purchase, which would in turn enable Riverwalk to obtain the necessary financing to develop and construct Building 6 and additional property within the Riverwalk project, and would help attract additional tenants to the Riverwalk development.

18. On July 26, 2017, Grapevine, through its prior counsel, Brian Wilson, Esq. ("Wilson") exercised the Option to Purchase to ensure the purchase of the Property during the third year of the Lease to Purchase term. Advanced written notice was provided in accordance with Section 33 of the Lease to Purchase.

19. In September 2017, the owners of Grapevine, Dave and Melanie Sills, properly structured a § 1031 Like-Kind Exchange as a tax savings mechanism that would allow them to sell a rental property and reinvest the proceeds into the purchase of the Property pursuant to the Lease to Purchase.

20. On or around September 20, 2017, after receiving no response from Riverwalk regarding the Option to Purchase, Wilson requested a follow up as to the status of the Option to Purchase and inquired whether Riverwalk intended to honor the Option to Purchase.

21. On or around September 27, 2017, Wilson again followed up with Riverwalk about the purchase of the Property.

22. On or around October 13, 2017, Travis Hege ("Hege"), an agent for Riverwalk and/or other Defendants, simply responded "I'll let you know."

23. On or around October 26, 2017, Wilson again inquired into the closing date for the purchase of the Property.

24. On October 30, 2017, Hege responded that Riverwalk was working on the condominium documents that would be required for Riverwalk to sell the Property to Grapevine.

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25. On November 7, 2017, and also on November 27, 2017, Wilson again inquired about the closing date for the purchase of the Property.

26. On or around November 28, 2017, Todd Brockmann, Esq. ("Brockmann"), as outside counsel and as an agent for Riverwalk and/or other Defendants, stated that Riverwalk was working with a bank and engineer, and thus could not commit to a closing date. This was over 4 months after Grapevine exercised the Option to Purchase, and more than 2 months prior to the closing date set forth in Wilson's letter of July 26, 2017.

27. On or around January 30, 2018, Defendant Mather, as an agent for Riverwalk and/or the other Defendants, sent Grapevine a proposed Master Deed, By-Laws, and Architectural Plans for consideration in connection with the closing. Shortly thereafter, Grapevine approved the documents.

28. On or around March 27, 2018, Mather proposed a closing date in April 2018.

29. However, Mather and Riverwalk never acted on this proposed closing date.

30. On May 3, 2018, Brockmann again represented to Grapevine that he needed to get the condominium documents completed.

31. On May 18, 2018, Debbie McMillan, as an agent for Riverwalk and/or other Defendants, represented to Grapevine that surveyors and attorneys were working on plat issues in connection with the closing.

32. On August 25, 2018, Grapevine again requested that Riverwalk provide an update on the purchase of the Property.

33. To date, Riverwalk has failed to offer a meaningful explanation or response regarding the significant and unwarranted delay for the sale of the Property following Grapevine's timely and proper exercise of the Option to Purchase.

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34. Upon information and belief, the above-referenced representations and the continuous, unwarranted delays show that Riverwalk and the other Defendants never intended to sell the Property to Grapevine.

35. Upon information and belief, Riverwalk, through its agents, made the above-referenced misrepresentations to hinder, avoid, or otherwise delay the sale of the Property.

36. Upon information and belief, Riverwalk has acted in bad faith by hindering, avoiding, or otherwise delaying the sale of the Property.

37. To date, Riverwalk has failed and refused to sell the Property to Grapevine, as required by the Lease to Purchase and the Option to Purchase.

38. Upon information and belief, Riverwalk has failed to take appropriate actions to have Building 6 (the building within which the Property is located) subdivided and has failed to take other necessary actions so that good, clear, and marketable title may be transferred to Grapevine.

39. Grapevine has fully performed its obligations under the Lease to Purchase and the Option to Purchase.

40. Grapevine has been, and remains, ready, willing, and able to perform its obligations under the Lease to Purchase, including but not limited to, purchasing the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

41. Grapevine has continued to make rent payments from and after its exercise of the Option to Purchase.

42. Equity demands that these additional rent payments be applied against the Purchase Price as defined in the Option to Purchase as an additional credit to Grapevine.

43. On October 5, 2018, Grapevine sent a written demand and notice of default to Riverwalk demanding that Riverwalk sell the Property to Grapevine and otherwise cure its default

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under the Lease to Purchase and the Option to Purchase. This demand letter is attached hereto as **Exhibit A** and is fully incorporated herein by reference.

44. Despite the giving of the aforementioned notice, Riverwalk has failed to cure its default and continues its refusal to sell the Property to Grapevine as required by the Lease to Purchase and the Option to Purchase.

45. Grapevine is entitled to recover its attorneys' fees incurred in this action from Riverwalk pursuant to the Lease to Purchase.

ALLEGATIONS OF AMALGAMATION, SINGLE BUSINESS ENTERPRISE LIABILITY, AND CORPORATE VEIL PIERCING

46. Upon information and belief, Defendants operated during the relevant time period as a single business enterprise for the improper purposes of misleading and deceiving Grapevine and the general public, shielding their members, managers, and other stakeholders from personal liability, and committing and perpetuating fraud, abuse, wrongdoing, bad faith, and other injustice, such that it would be fundamentally unfair and inequitable to assign liability to any one or more of the Defendants to the exclusion of the others.

47. Upon information and belief, each of the Defendants' operations, management, and control are unified, amalgamated, and intertwined, and Defendants' legal distinctions and separateness have been blurred.

48. Upon further information and belief, each of the Defendants were engaged during the relevant time period in a common business purpose or pursuit (including but not limited to, the development of the Riverwalk project, specifically including Building 6 within the Riverwalk project where the Property is located).

49. Upon further information and belief, each Defendant has become a mere agent and/or instrumentality for one or more of the other Defendants.

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50. Upon information and belief, Defendant Riverwalk in particular, and possibly other Defendants as well, are undercapitalized, have failed to observe corporate formalities, lack appropriate corporate records and minutes, have had funds siphoned off by the Members and Managers, and are used as a mere façade for the operations of the Members and Managers.

51. Upon information and belief, certain employees and agents of the various Defendants acted during the relevant time period as dual agents for one or more of the other Defendants, possessed multiple email addresses indicating an association and/or affiliation with various Defendants, and otherwise held themselves out to Grapevine and to the general public as being associated and/or affiliated with various Defendants, without clear distinction as to which entity or entities they actually represented and had authority to speak or otherwise act for.

52. Upon information and belief, Defendant Mather has the ultimate decision-making authority for all of the corporate Defendants, with respect to all negotiations and dealings with Grapevine under the Lease to Purchase, the Option to Purchase, and otherwise.

53. Each of the corporate Defendants utilizes the same business address, which is the same address as Defendant Mather's alleged residential address.

54. Upon information and belief, Defendants, individually and/or collectively, have from time to time, including during the relevant time period, utilized the moniker "Riverwalk" and/or "Riverwalk Carolinas" as a trade name or "d/b/a" for an undisclosed entity, and have otherwise held themselves out to Grapevine and to the general public as "Riverwalk" and/or "Riverwalk Carolinas," although no certificate of assumed name appears to have been filed with the South Carolina Secretary of State or the York County Register of Deeds, and no trademark application or registration appears to have been filed or registered with the U.S. Patent & Trademark Office or the South Carolina Secretary of State.

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55. Defendant Mather describes himself as "the visionary of the Riverwalk project."

56. Based on all of the foregoing, and for other reasons to be proven at trial, the entry of a final judgment in Grapevine's favor on any of the causes of action asserted herein against any Defendant should be imputed to every other Defendant, under the amalgamation or single enterprise theory, in the interests of fundamental fairness and equity, and to otherwise avoid injustice.

57. Furthermore, the entry of a final judgment in Grapevine's favor on any of the causes of action asserted herein against any of the corporate Defendants should be imputed to every individual Member of each such corporate Defendant, as well as to every individual Member of every other corporate Defendant, under a corporate veil piercing theory, in the interests of fundamental fairness and equity, and to otherwise avoid injustice.

FIRST CAUSE OF ACTION
(Specific Performance – Defendant Riverwalk)

58. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

59. Grapevine and Riverwalk entered into a valid Lease to Purchase and, under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine upon Grapevine's exercise of the Option to Purchase.

60. As described above, Riverwalk has materially breached certain provisions of the Lease to Purchase, including, but not limited to, the Option to Purchase, by refusing to sell the Property to Grapevine.

61. Grapevine has fully performed as required by the Lease to Purchase by sending advanced written notice to exercise its Option to Purchase.

62. Monetary damages cannot accurately measure or redress the harm to Grapevine incurred as a result of Riverwalk's continued refusal to sell the Property to Grapevine. The

purchase of the Property is unique to Grapevine and cannot be replaced by the purchase of substitute property within the Riverwalk development or elsewhere.

63. The damages to Grapevine from Riverwalk's failure to sell the Property in accordance with the Lease to Purchase cannot be estimated or calculated.

64. If Grapevine is unable to purchase the Property pursuant to the Option to Purchase contained in the Lease to Purchase, Grapevine will suffer irreparable harm.

65. Grapevine has been and remains ready, willing, and able to perform its part of the Lease to Purchase, specifically, the Option to Purchase.

66. Grapevine is entitled to an order of specific performance immediately requiring Riverwalk to sell the Property to Grapevine in accordance with the Option to Purchase contained in the Lease to Purchase, less all rent paid by Grapevine after Grapevine exercised the Option to Purchase. The order for specific performance should require Riverwalk to take all actions necessary to have Building 6 subdivided and to take all other necessary actions so that good, clear, and marketable title to the Property may be transferred to Grapevine.

SECOND CAUSE OF ACTION
(Breach of Contract – Defendant Riverwalk)

67. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

68. As described above, Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

69. Under the Lease to Purchase, Riverwalk was obligated to sell the Property to Grapevine if Grapevine exercised the Option to Purchase.

70. Grapevine exercised the Option to Purchase and sent advanced written notice in accordance with Section 33 of the Lease to Purchase.

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71. Riverwalk failed to sell the Property in accordance with the Option to Purchase and the Lease to Purchase.

72. Riverwalk materially breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

73. As a consequent and proximate result of Riverwalk's breach of contract, Grapevine has been damaged in an amount to be determined at trial. These damages include, but are not limited to, the continuing payments of rent after the Option to Purchase was exercised.

THIRD CAUSE OF ACTION
(Fraudulent Inducement – All Defendants)

74. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

75. Defendants, through their agents, made material misrepresentations to Grapevine that Grapevine would be able to purchase the Property pursuant to the Option to Purchase contained in Section 33 of the Lease to Purchase.

76. Defendants, through their agents, also made material misrepresentations to Grapevine that Grapevine would have access to and use of the outdoor areas adjacent to the Property, for the purposes of installing outdoor furniture and selling alcohol in such outdoor areas, when in fact Defendants knew that such use would not be permitted under the Lease to Purchase and/or that such permitted use would be subsequently revoked.

77. Nonetheless, Defendants allowed Grapevine for a period of years during the term of the Lease to Purchase, until approximately 2019, to provide outside seating for its customers and to serve alcohol in the outdoor areas adjacent to the Property, with no apparent protest or objection by

Defendants, and without otherwise informing Grapevine that such use was considered to be a violation of the Lease to Purchase.

78. Upon information and belief, the representations made by Defendants to Grapevine concerning the Lease to Purchase and Option to Purchase, and other matters, including but not limited to Grapevine's use of the outdoor areas, were false.

79. Defendants had no intentions of selling the Property to Grapevine.

80. Defendants and their agents only recently informed Grapevine that the sale of alcohol in the outdoor areas adjacent to the Property would no longer be permitted, and Defendants forced Grapevine to remove all of its furniture from the outdoor areas. This all occurred several months after Grapevine exercised the Option to Purchase.

81. Upon information and belief, Defendants' revocation of Grapevine's ability to use the outdoor areas is a mere pretext, and was intended to harass, oppress, and interfere with Grapevine's business and customer goodwill in an apparent attempt to persuade Grapevine to decline to proceed with the Option to Purchase, to otherwise decline to purchase the Property, to drive Grapevine's customers away and to reduce Grapevine's sales, and to otherwise force Grapevine to close its business and leave the Riverwalk development.

82. The ability to purchase the Property from Riverwalk, and the ability to use of outdoor areas, was material to Grapevine, and as such, the representations made by Defendants were also material.

83. Upon information and belief, Defendants, at the time the Lease to Purchase was executed by Defendant Riverwalk, knew that their representations concerning the Option to Purchase and other matters, including Grapevine's use of the outdoor areas, were false or were made with reckless disregard of their truth or falsity.

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84. Upon information and belief, Defendants made representations that Grapevine would be able to purchase the Property and would have use of the outdoor areas to persuade Grapevine to enter into the Lease to Purchase.

85. Grapevine did not know of the falsity of Defendants' representations and entered into the Lease to Purchase with the understanding that it would be able to purchase the Property in accordance with the Option to Purchase contained in the Lease to Purchase, and that it would have use of the outdoor areas for the purposes of selling alcohol, as had been specifically represented in the marketing materials and other documents presented by Defendants to Grapevine in connection with the negotiations for the Lease to Purchase.

86. Grapevine had the right to rely on Defendants' representations and, in fact, relied on the representations in good faith when it entered into the Lease to Purchase.

87. As a consequent and proximate result of Defendants' fraudulent inducement and other misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Fraud / Fraudulent Misrepresentation – All Defendants)

88. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

89. As alleged above, Defendants, through their agents, made continuous misrepresentations of fact concerning the Option to Purchase, the status of the closing, the reasons for delay of the closing, and other matters, including Grapevine's ability to use the outdoor areas adjacent to the Property.

90. However, Defendants had no intentions of abiding by the Option to Purchase or any of the other representations made to Grapevine, and otherwise knew or should have known that the representations were false or were made without regard to their truth or falsity.

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91. Although the Lease to Purchase was signed by Grapevine on June 20, 2014, and by Defendant Riverwalk on June 23, 2014, the diagram attached as Exhibit A to the Lease to Purchase (Depiction of Building and Demised Premises) is dated July 7, 2014. Upon information and belief, the diagram attached as Exhibit A to the Lease to Purchase was never presented to or agreed to by Grapevine prior to its execution of the Lease to Purchase, and was inserted by Defendant Riverwalk or one of the other Defendants after the Lease to Purchase was executed by the parties. Defendants knew or should have known that the diagram attached as Exhibit A to the Lease to Purchase was never presented or agreed to by Grapevine prior to the execution of the Lease to Purchase, and did not accurately reflect the parties' understanding and intent with respect to Grapevine's use of the outdoor areas.

92. Upon information and belief, Defendants' representations were false.

93. Defendants' representations were material.

94. Upon information and belief, Defendants knew that their representations were false or made the representations with reckless disregard of their truth or falsity.

95. Upon information and belief, Defendants intended that Grapevine believe these representations and rely upon them.

96. Grapevine did not know the representations were false.

97. Grapevine had the right to rely on Defendants' representations and, in fact, relied on Defendants' representations to its substantial detriment.

98. As a consequent and proximate result of Defendants' fraud and fraudulent misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

99. Given that the fraud and fraudulent misrepresentations were committed in such a manner and under such circumstances that a person of ordinary prudence would have been

conscious of it as an invasion of Grapevine's rights, Grapevine is entitled to recover punitive damages from Defendants.

FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Acts – Defendant Riverwalk)

100. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

101. Grapevine and Riverwalk executed the Lease to Purchase, which is a valid contract.

102. Riverwalk materially breached the Lease to Purchase by failing and refusing to comply with the Option to Purchase in the Lease to Purchase and its obligation to sell the Property to Grapevine.

103. As described above, Riverwalk made numerous misrepresentations concerning the sale of the Property pursuant to the Lease to Purchase and otherwise relating to the Option to Purchase, as well as misrepresentations regarding Grapevine's use of the outdoor areas adjacent to the Property.

104. Upon information and belief, Riverwalk intended that Grapevine believe and rely upon these representations.

105. Riverwalk's actions and misrepresentations were dishonest in fact and were unfair to Grapevine.

106. Riverwalk's fraudulent acts and misrepresentations accompanied and were connected with Riverwalk's breach of the Lease to Purchase and the Option to Purchase.

107. Given Riverwalk's breach of contract accompanied by fraudulent acts, Grapevine is entitled to recover punitive damages from Riverwalk.

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SIXTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing – Defendant Riverwalk)

108. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

109. Grapevine and Riverwalk entered into a valid Lease to Purchase.

110. The Lease to Purchase contains an implied covenant of good faith and fair dealing between the parties.

111. Riverwalk had a duty to act in good faith and deal fairly with Grapevine during the course of the Lease to Purchase and all transactions related thereto.

112. Riverwalk has acted and continues to act contrary to the express provisions of the Lease to Purchase, including but not limited to, the Option to Purchase.

113. Riverwalk materially breached the implied covenant of good faith and fair dealing through its actions and misrepresentations alleged herein.

114. As a consequent and proximate result of Riverwalk's breaches, Grapevine has been damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Violation of the S.C. Unfair Trade Practices Act – All Defendants)

115. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

116. As alleged herein, Defendants continuously misrepresented material facts concerning the Lease to Purchase and the Option to Purchase, including but not limited to, the status of the closing, reasons for delay of the closing, Grapevine's use of the outdoor areas adjacent to the Property.

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117. Defendants' actions were unfair and deceptive, offend public policy, and are otherwise immoral, unethical, and/or oppressive.

118. Defendants' unfair and deceptive actions as alleged herein amount to more than a mere breach of the Lease to Purchase or the Option to Purchase.

119. Upon information and belief, Defendants' actions were willful and/or in knowing violation of South Carolina law, including S.C. Code § 39-5-20.

120. Defendants' actions and misrepresentations affect trade and/or commerce because they involve, among other things, fraudulent statements pertaining to the sale or offering for sale of real property.

121. Defendants' unfair and deceptive acts and practices have the potential for repetition, affect other owners, tenants, and residents within the Riverwalk development, as well as Grapevine's owners, employees and customers, and thus impact the public interest.

122. Grapevine has suffered monetary loss as a proximate result of Defendants' unfair and deceptive actions.

123. Grapevine is entitled to recover its actual damages as a result of Defendants' unfair and deceptive actions, as well as its attorneys' fees and three times the actual damages awarded pursuant to S.C. Code § 39-5-140 or other applicable law.

EIGHTH CAUSE OF ACTION
(Tortious Interference with Contractual Relations – Defendants Mather, GRH, Greens, and Assured)

124. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

125. A valid contractual relationship existed between Grapevine and Riverwalk through the Lease to Purchase.

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126. Defendants Mather, GRH, Greens, and Assured had knowledge of the Lease to Purchase.

127. Defendants Mather, GRH, Greens, and Assured, through their actions and conduct alleged herein, and as otherwise to be established at trial, intentionally procured a breach of the Lease to Purchase and the Option to Purchase by Defendant Riverwalk.

128. The actions and conduct of Defendants Mather, GRH, Greens, and Assured were made in bad faith, based upon improper motives, and were not in furtherance of any valid legal rights.

129. The actions and conduct of Defendants Mather, GRH, Greens, and Assured were unlawful, unethical, without any legitimate justification, and were otherwise improper and tortious under the circumstances.

130. As a consequent and proximate result of the tortious interference with the Lease to Purchase, Grapevine has been damaged in an amount to be determined at trial.

NINTH CAUSE OF ACTION
(Civil Conspiracy – all Defendants)

131. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

132. Upon information and belief, two or more of the Defendants have combined and joined together, and otherwise acted in concert, for the purpose of injuring Grapevine and otherwise interfering with the Lease to Purchase and the Option to Purchase, and Grapevine's rights thereunder.

133. Proof of such civil conspiracy includes, but is not necessarily limited to, the overt acts and omissions alleged herein that detrimentally affect Grapevine's rights to purchase the

Property and to use the outdoor areas adjacent to the Property, which conduct caused special damage to Grapevine.

134. As a consequent and proximate result of such civil conspiracy, Grapevine has been damaged in an amount to be proven at trial.

TENTH CAUSE OF ACTION
(Negligent Misrepresentation – all Defendants)

135. Grapevine realleges and incorporates by reference the allegations contained throughout this Complaint.

136. Defendants made one or more false or misleading representations to Grapevine concerning the Lease, the Option to Purchase, and Grapevine's use of the outdoor areas adjacent to the Property.

137. Defendants had a pecuniary interest in making the representations, including but not limited to, the receipt of rent payments and other amounts from Grapevine pursuant to the Lease, and also in securing the Lease with Grapevine so that Defendants could obtain a loan or other project funding and could more easily market the Riverwalk development (and Building 6 specifically) to other potential tenants.

138. Defendants owed Grapevine a duty of care to communicate truthful information regarding the Lease, the Option to Purchase, and Grapevine's use of the outdoor areas adjacent to the Property.

139. Defendants materially breached their duty of care in one or more ways, including, but not limited to, the following:

a) Representing to Grapevine that the Option to Purchase was a "lender requirement" when, upon information and belief, there was no such requirement;

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b) Representing to Grapevine that it could purchase the Property pursuant to the Option to Purchase when, upon information and belief, Defendants had no intention to sell and/or did not otherwise intend to take the necessary actions to properly convey the Property to Grapevine;

c) Representing to Grapevine through oral and written statements, drawings, diagrams, marketing materials, and in other ways to be established that Grapevine could utilize the outdoor areas adjacent to the Property for the purposes of installing outdoor furniture and selling alcohol and other beverages in such outdoor areas, when, upon information and belief, Defendants knew that such use would not be permitted under the Lease, that such use would be subsequently and wrongfully revoked and/or that Defendants had the right to revoke such use at its discretion; and

d) In other ways to be established during the course of discovery or at trial.

140. Grapevine actually and justifiably relied on each of Defendants' representations by signing the Lease (which includes the Option to Purchase) and utilizing the outdoor areas adjacent to the Property in connection with its business for a substantial period of time prior to the time that such use was wrongfully revoked by Defendants, and in other ways to be established.

141. Grapevine suffered a significant pecuniary loss as a direct and proximate result of Defendants' negligent misrepresentations, including, but not limited to, the following:

a) The payment of rent from and after February 2018 which rental payments would not otherwise have been required had Defendants sold the Property to Grapevine in compliance with the Option to Purchase;

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b) The loss of equity, appreciation, and other benefits of property ownership from and after February 2018, which losses were incurred as a result of Defendants' failure and refusal to sell the Property to Grapevine;

c) The loss of revenue and profits resulting from Grapevine's inability to use the outdoor areas adjacent to the Property following Defendants' wrongful revocation of such rights that previously existed and were enjoyed by Grapevine;

d) The loss of customer goodwill and other intangible loss resulting from Grapevine's inability to utilize the outdoor areas adjacent to the Property following Defendants' wrongful revocation of such rights that previously existed and were enjoyed by Grapevine; and

e) In other ways to be established during the course of discovery or at trial.

142. As a consequent and proximate result of Defendants' negligent misrepresentations, Grapevine has been damaged in an amount to be determined at trial.

143. Given that the negligent misrepresentations alleged herein were committed in such a manner and under such circumstances that a person of ordinary prudence would have been conscious of them as an invasion of Grapevine's rights, Grapevine is entitled to recover punitive damages from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff The Grapevine of Riverwalk, Inc. prays the Court as follows:

1. For an order of specific performance directing Defendant Riverwalk to sell the Property to Grapevine in accordance with the Lease to Purchase and the Option to Purchase, with an additional credit against the Purchase Price for all rent paid by Grapevine after Grapevine exercised the Option to Purchase, and further directing Defendant Riverwalk to take all necessary actions to

have Building 6 within which the Property is located subdivided and to take all other actions so that good, clear, and marketable title to the Property may be transferred to Grapevine.

2. For entry of judgment against Defendants, and also against Defendants' individual Members under the corporate veil piercing theory, jointly and severally, for damages in an amount to be determined at trial.

3. That the Court treble the actual damages awarded on the unfair and deceptive trade practices claim, pursuant to S.C. Code. § 39-5-140 or other applicable law.

4. For an award of punitive damages on each of Grapevine's fraud-based claims, as well as the negligent misrepresentation claim.

5. That the costs of this action, including reasonable attorneys' fees, be taxed against Defendants.

6. That the Court award Grapevine pre-judgment interest and post-judgment interest on all monetary damage awards in its favor at the highest legal rate from the earliest date possible until paid and satisfied in full.

7. For a trial by jury on all issues so triable.

8. For such other and further relief as just and proper.

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This the 15th day of January, 2021.

/s/ *Christian H. Staples*
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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **SECOND AMENDED COMPLAINT** was electronically filed using the court's e-filing system which will send notice of filing to the following:

W. Keith Martens
Steven D. Dluzneski
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Attorneys for Defendants

This the 15th day of January, 2021.

/s/ *Christian H. Staples*
Shumaker, Loop & Kendrick, LLP
Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA)) COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc., Plaintiff, v. Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC, Defendants.	C/A No. 2018-CP-46-03726 MOTION TO STRIKE AND ANSWER TO SECOND AMENDED COMPLAINT

MOTION TO STRIKE PLAINTIFF'S JURY DEMAND AND TRANSFER CASE TO NON-JURY ROSTER

Defendants Riverwalk River District Building 6, LLC ("Building 6"),[1] Mark S. Mather ("Mather"), GRH Development Resources, LLC ("GRH"), The Greens of Rock Hill, LLC ("Greens") and Assured Administration, LLC ("Assured")(collectively "Defendants") move, before answering Plaintiff's Second Amended Complaint, to strike Plaintiff's demand for a jury trial pursuant to Rule 12 S.C. R. Civ. P. and to transfer this case to the non-jury roster for trial pursuant to Rule 40(h) S.C. R. Civ. P. This motion is based upon the following:

1. Plaintiff's second amended complaint, and each of the causes of action set forth therein, arise from and relate to a written lease agreement between Plaintiff and Defendant Building 6 (the "Lease"). Sec. Am. Compl. ¶ 11. Plaintiff's claims against the other Defendants are based, primarily, upon an alleged "amalgamation of interest" theory of liability, based upon the theory that all defendants are engaged in a common business enterprise. Id. ¶ 56.

[1] Plaintiff's Seconded Amended Complaint refers to this defendant as "Riverwalk."

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2. By the express terms of the Lease, Plaintiff agreed "THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE." The contractual waiver of a right to jury trial is conspicuously set forth in the Lease in all capital letters, and the page containing that waiver was initialed by Plaintiff's principals.

3. It is the well-settled law of this state that a party may waive its right to a jury trial by contract. Wachovia Bank, N.A. v. Blackburn, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014)(citing Beach Co. v. Twillman, Ltd., 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2003) and N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)). A contractual waiver of jury trial, like other contract language, "must be construed using [its] plain, ordinary and popular language." Twillman, 351 S.C. at 63, 566 S.E.2d at 866. Furthermore, a party "who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Id. "[W]hen a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. The law does not impose a duty on the [other party] to explain to an individual what he could learn from simply reading the document." Id. (internal citations omitted).

4. By executing the Lease, Plaintiff voluntarily waived its right to demand a jury as to "any claim arising" under the Lease or "relating to" the Lease.

5. Each of Plaintiff's claims set forth in its Second Amended Complaint "arise from" or "relate to" the Lease.

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6. Defendants are entitled to an order striking Plaintiff's jury demand and transferring this case to the non-jury roster because Plaintiff voluntarily waived its right to trial by jury when it executed the Lease.

Defendants' motion to strike shall be based upon the pleadings, affidavits, deposition testimony and discovery responses of record, the applicable statutory and case law and the South Carolina Rules of Civil Procedure. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he consulted with Plaintiff's Counsel prior to filing this motion, but Plaintiff did not consent.

ANSWER

Subject to Defendants' motion to strike, Defendants answer Plaintiff's Second Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Second Amended Complaint that is not expressly admitted, modified or explained.

2. Defendants admit the allegations of paragraph 1 on information and belief.

3. Responding to paragraph 2, Building 6 admits that it is a South Carolina limited liability company but denies that its business address 998 Riverwalk Parkway, Suite 202. The other Defendants do not respond to paragraph 2, and they are not required to do so.

4. Mather admits the allegations of paragraph 3, except he denies that he resides at the address stated in Plaintiff's pleadings. The other Defendants do not respond, and they are not required to do so.

5. Responding to paragraph 4, GRH denies that it is a foreign limited liability company, but admits that its principal place of business is located in York County. GRH denies that Mather is a member of GRH and also denies that Mather is president of GRH. The other Defendants do not respond, and they are not required to do so.

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6. Greens admits the allegations of paragraph 5, except it denies that it owns over 99.9% of the membership interest of Defendant Building 6. The other Defendants do not respond, and they are not required to do so.

7. Assured admits the allegations of paragraph 6. The other Defendants do not respond and, on information and belief, they are not required to respond.

8. Defendants admit the allegations of paragraphs 7 - 9.

9. Paragraph 10 constitutes a legal conclusion and does not require a response.

10. Responding to paragraph 11, Defendants admit only that Grapevine and Building 6 entered a written lease agreement (the "Lease") for approximately 1490 square feet of commercial space within Building # 6 of the Riverwalk River District Development (the "Property"). Defendants deny that the Lease was a "Lease to Purchase" and object to Plaintiff's characterization of the Lease as a "Lease to Purchase" throughout Plaintiff's Second Amended Complaint. Defendants crave reference to the Lease for its terms and conditions and deny any allegations paragraph 11 that are inconsistent with the terms of the Lease.

11. Responding to paragraph 12, Defendants admit that the commencement date of Lease was February 2, 2016. Defendants deny that the Lease was a "Lease to Purchase" and object to Plaintiff's characterization of the Lease as a "Lease to Purchase."

12. Responding to paragraph 13, Defendants admit that Paragraph 33 of the Lease was captioned "Option to Purchase." Defendants deny that the Lease was a "Lease to Purchase" and object to Plaintiff's characterization of the Lease as a "Lease to Purchase." Defendants crave reference to the Lease for the precise terms and conditions thereof, and deny any allegations of paragraph 13 that are inconsistent with the terms of the Lease.

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13. Responding to paragraph 14, Defendants admit only that the Option to Purchase was a term of the Lease. Defendants lack sufficient information to form an opinion or belief as to the remaining allegations of paragraph 14, and therefore deny the same.

14. Defendants lack sufficient information to form an opinion or belief as to the allegations of paragraph 15, and therefore deny the same.

15. Building 6 denies the allegations of paragraph 16. The remaining Defendants are not parties to the Lease and were not privy to the negotiations that preceded execution of the Lease. Therefore, the remaining Defendants deny that any of them formed or held any particular intent concerning the Lease.

16. Building 6 denies the allegations of paragraph 17. On information and belief, paragraph 17 does not allege facts against any of the other Defendants and does not require a response from any defendant other than Building 6.

17. Responding to paragraph 18, Defendants admit only that Plaintiff's prior counsel sent a letter on or about July 26, 2017 which expressed Plaintiff's desire and intent to purchase the Property pursuant to the terms of the Option to Purchase. Defendants deny paragraph 18 as drafted.

18. Defendants deny paragraph 19 on information and belief.

19. Responding to paragraph 20, Defendants admit only that Plaintiff's prior counsel sent a letter in or about September 2017, in follow up to his prior letter. Defendants deny paragraph 20 as drafted.

20. Defendants admit the allegations of paragraph 21 on information and belief.

21. Responding to paragraph 22, Defendants admit only that Travis Hege responded to Wilson's September 27, 2017 communication and that Travis Hege's response appears to be accurately quoted or paraphrased in Plaintiff's pleadings.

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22. Defendants admit the allegations of paragraph 23 on information and belief.

23. Responding to paragraph 24, Defendants admit only that Travis Hege responded to Wilson's October 26, 2017 inquiry on or about October 30, 2017. It appears that Travis Hege's October 30, 2017 response is accurately quoted or paraphrased in Plaintiff's pleadings.

24. Defendants admit the allegations of paragraph 25 on information and belief.

25. Responding to paragraph 26, Defendants admit only that Todd Brockman, Esq. communicated with Plaintiff's counsel on or about November 28, 2017 regarding Plaintiff's proposed purchase of the Property. Defendants admit, on information and belief, that Brockman told Plaintiff's Counsel that Building 6 could not commit to a particular closing date but, otherwise deny the remainder of paragraph 26. Defendants also deny that an actual closing date for Plaintiff's proposed purchase was ever set and deny that Plaintiff had any right to unilaterally set a closing date.

26. Responding to paragraph 27, Defendants admit that Mather sent a proposed master deed, by-laws and architectural plans to Plaintiff for review, on or about January 30, 2018.

27. Defendants admit paragraph 28.

28. Responding to paragraph 29, Defendants admit only that closing on Plaintiff's purchase of the Property did not occur in April 2018. Defendants deny paragraph 29 as drafted, and also deny that Plaintiff ever accepted Mather's proposed closing date.

29. Defendants admit paragraph 30 on information and belief.

30. Responding to paragraph 31, Defendants admit only that Debbie McMillan provided information concerning the status of Building 6's efforts to prepare for closing. Except as admitted, paragraph 31 is denied.

31. Defendants admit the allegations of paragraph 32 on information and belief.

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32. Defendants deny the allegations of paragraphs 33-37.

33. Responding to paragraph 38, Building 6 admits only that Building 6 has not been converted to condominiums and that the Property is currently an indivisible portion of Building 6. Except as admitted, Building 6 denies paragraph 38. On information and belief, paragraph 38 does not require a response from the other Defendants.

34. Building 6 denies paragraph 40. The other Defendants are not parties to the Lease and, therefore, neither admit nor deny paragraph 40.

35. Building 6 admits paragraph 41. The other Defendants are not parties to the Lease and, therefore, neither admit nor deny paragraph 41.

36. Building 6 denies paragraph 42. The other Defendants are not parties to the Lease and, therefore, neither admit nor deny paragraph 42.

37. Responding to paragraph 43, Building 6 admits that Plaintiff sent a letter captioned "Breach and Demand" on or about October 5, 2018. The letter is an exhibit to Plaintiff's Second Amended Complaint, and speaks for itself. Defendants deny any allegation of paragraph 43 that attempts to alter or amend the terms of the letter.

38. Building 6 denies paragraph 44. On information and belief, paragraph 44 does not require a response from any of the other Defendants.

39. Building 6 denies paragraph 45. On information and belief, paragraph 45 does not require a response from any of the other Defendants.

40. Defendants deny paragraphs 46 and 47.

41. Responding to paragraph 48, Defendants admit only that each of the named corporate Defendants has been involved in some aspect of the development of a mixed-use

development known as Building 6 in York County, South Carolina. Defendants otherwise deny paragraph 48.

42. Defendants deny paragraphs 49-51.

43. Defendants deny paragraph 52.

44. Responding to paragraph 53, Defendants admit that each of the corporate defendants uses a common business address. Defendants also admit that Defendant Mather provides that address for his personal mail. Otherwise, Defendants deny paragraph 53.

45. Responding to paragraph 54, Defendants admit only that "Riverwalk" and "Riverwalk Carolinas" have been utilized as names to describe a mixed-use development in York County, South Carolina. Except as admitted, Defendants deny paragraph 54.

46. Defendants deny paragraph 55.

47. Defendants deny paragraph 56 and 57.

48. Plaintiff's First Cause of Action (specific performance) and Second Cause of Action (breach of contract) are only asserted against Defendant Building 6. Therefore, only Defendant Building 6 responds to the allegations of paragraphs 58-73 of Plaintiff's Second Amended Complaint.

49. Paragraph 58 does not require a response.

50. Responding to paragraph 59, Building 6 admits only that Plaintiff and Building 6 entered the Lease. Building 6 denies the remainder of paragraph 59 and craves reference to the Lease for the terms and conditions thereof. Building 6 further denies that the Lease was a "Lease to Purchase" and objects to Plaintiff's description of the Lease as a "Lease to Purchase."

51. Building 6 denies paragraph 60-64.

52. Building 6 denies paragraph 65 on information and belief.

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53. Building 6 denies paragraph 66.

54. Paragraph 67 does not require a response.

55. Responding to paragraph 68, Building 6 admits only that Plaintiff and Building 6 entered the Lease.

56. Building 6 denies paragraph 69.

57. Responding to paragraph 70, Building 6 admits only that Plaintiff sent correspondence indicating its desire and intent to purchase the Property. Except as expressly admitted, Building 6 denies paragraph 70.

58. Building 6 denies paragraphs 71-73.

59. Paragraph 74 does not require a response.

60. Defendants deny paragraphs 75 and 76.

61. Responding to paragraph 77, Defendants admit only that Building 6 gratuitously allowed Plaintiff to use certain common areas of Building 6 for a period of time. Defendants deny that Plaintiff held any rights to the common areas, other than those specified in the Lease and deny that Plaintiff acquired any vested rights in the common areas through its permitted use of those areas for a period of time.

62. Defendants deny paragraph 78.

63. Building 6 denies paragraph 79. The remaining Defendants held no title to Building 6 and, therefore, held no transferrable interest in the Property.

64. Responding to paragraph 80, Defendants admit only that Building 6 revoked its permission for Plaintiff's continued use of common after Plaintiff filed this lawsuit. Defendants deny that any of them "forced" Plaintiff to remove furniture, but Defendants admit that Plaintiff

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removed its furniture from the common areas of Building 6 after Building 6 revoked its permission for Plaintiff's continued use of those areas.

65. Defendants deny paragraph 81.

66. Defendants deny paragraphs 82-87.

67. Paragraph 88 does not require a response.

68. Defendants deny paragraphs 89 and 90.

69. Responding to paragraph 91, Defendants admit only that Exhibit A appears to bear a date of July 7, 2014 and was initialed by Plaintiff and Building 6 to acknowledge the inclusion of that document as an exhibit to the Lease. Defendants deny the remaining allegations of paragraph 91.

70. Defendants deny paragraphs 92-99.

71. Plaintiff's Fifth Cause of action (Breach of Contract Accompanied by Fraudulent Act) and Sixth Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing) are only asserted against Defendant Building 6. Therefore, only Defendant Building 6 responds to the allegations of paragraphs 100-114 of Plaintiff's Second Amended Complaint.

72. Paragraph 100 does not require a response.

73. Responding to paragraph 101, Building 6 admits only that Plaintiff and Building 6 entered the Lease. Building 6 denies that the Lease was a "Lease to Purchase" and objects to Plaintiff's description of the Lease as a "Lease to Purchase."

74. Building 6 denies the allegations of paragraphs 102-107.

75. Paragraph 108 does not require a response.

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76. Responding to paragraph 109, Building 6 admits only that Plaintiff and Building 6 entered the Lease. Building 6 denies that the Lease was a "Lease to Purchase" and objects to Plaintiff's description of the Lease as a "Lease to Purchase."

77. Paragraphs 110 and 111 are legal conclusions that do not require a response. Building 6 objects to Plaintiff's description of the Lease as a "Lease to Purchase."

78. Building 6 denies paragraphs 112-114. Building 6 also objects to Plaintiff's description of the Lease as a "Lease to Purchase" in those paragraphs.

79. Paragraph 115 does not require a response.

80. Defendants deny paragraphs 116-123.

81. Paragraph 124 does not require a response.

82. Responding to paragraph 125, Defendants admit only that Plaintiff and Building 6 entered the Lease.

83. Defendants admit paragraph 126.

84. Defendants deny paragraphs 127-130.

85. Paragraph 131 does not require a response.

86. Defendants deny paragraphs 132-134.

87. Paragraph 135 does not require a response.

88. Defendants deny paragraph 136.

89. Responding to paragraph 137, Defendants admit only that each of them has some pecuniary interest in the Riverwalk Development. Otherwise, Defendants deny paragraph 137.

90. Paragraph 138 states a legal conclusion and does not require a response.

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91. Responding to paragraphs 139 and 140, Building 6 denies that it misrepresented any facts to Plaintiff. The remaining Defendants deny that any of them communicated with Plaintiff regarding the Lease or its terms.

92. Defendants deny paragraphs 141-143.

FOR A SECOND DEFENSE

93. Defendants reiterate the allegations of paragraphs 1-92 and incorporate them by reference.

94. Plaintiff's negotiations with Building 6 were reduced to a written lease agreement (i.e. - the Lease) which the parties executed on or about June 23, 2014.

95. The Lease was the written embodiment of the parties' agreement, and the result of the parties' negotiations.

96. Plaintiff and its principals were business sophisticates who were fully involved in negotiating the terms of the Lease and in drafting the Lease.

97. By its express terms, the Lease "contain[ed] the entire agreement between the parties." By the express terms of the Lease, the parties also agreed that "[a]ll prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby."

98. Plaintiff's claims are based primarily, if not entirely, upon alleged verbal statements or representations that were not reduced to a written agreement and were not included as terms of the Lease. On information and belief, each of the alleged statements that form the basis of Plaintiff's claims allegedly were made before the Lease was executed.

99. By reason of the foregoing, Plaintiff's claims are barred, in whole or in part, by the parole evidence rule and the statute of frauds.

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FOR A THIRD DEFENSE

100. Defendants reiterate the allegations of paragraphs 1-99 and incorporate them by reference.

101. By the express terms of the Lease, Plaintiff contracted and agreed:

> Anything in this Lease to the contrary notwithstanding, the covenants, undertakings and agreements herein made on the part of Landlord are made and intended not for the purpose of binding Landlord personally or the assets of Landlord but are made and intended to bind only Landlord's interest in the demised premises and building of which it is a part and in the rents and revenues derived therefrom . . . (collectively, the "Landlord Interest"), and no personal liability shall at any time be asserted or enforceable against Landlord or its stockholders, officers, or partners or their respective heirs, legal representatives, successors and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Landlord in this Lease. Further, in no event shall any special, consequential, or punitive damages be awardable against or recoverable against Landlord or the Landlord Interest hereunder.

102. Plaintiff's claims, including its claims for alleged special, consequential and punitive damages are barred by the express terms of the Lease, and Plaintiff is estopped from asserting those alleged damages in this action.

103. Plaintiff's claims against Defendants other than Building 6 are barred and estopped by the express terms of the Lease.

FOR A FOURTH DEFENSE
(By All Defendants Other Than Building 6)

104. Defendants reiterate the allegations of Paragraphs 1-103 and incorporate them by reference.

105. Plaintiff did not negotiate with any Defendant other than Building 6 with regard to the terms of Plaintiff's Lease.

106. Plaintiff did not contract with any Defendant other than Building 6 and did not negotiate with any Defendant other than Building 6 concerning the terms of the Lease.

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107. By reason of the foregoing, none of Defendants other than Building 6 owed any particular duty to Plaintiff.

108. Because no Defendant other than Building 6 owed any alleged contractual, statutory or common law duty to Plaintiff, Plaintiff's claims as to all Defendants other than Building 6 are barred and estopped as a matter of law.

FOR A FIFTH AND AFFIRMATIVE DEFENSE

109. Defendants reiterate the allegations of paragraphs 1-108 and incorporate them by reference.

110. Plaintiff's claim for punitive damages, to the extent such claim is not expressly barred by the terms of the Lease, is limited by the provisions of S.C. Code § 15-32-530.

FOR A SIXTH DEFENSE

111. Defendants reiterate the allegations of paragraphs 1-110 and incorporate them by reference.

112. Plaintiff's "Demised Premises," as defined by the Lease and as described in Plaintiff's lis pendens, is an indivisible portion of the real estate that comprises Building 6.

113. As an indivisible portion of the real estate the comprises Building 6, the Demised Premises is not transferrable, except as a portion of the entire tract of real estate that comprises Building 6.

114. Plaintiff has no contractual right and, presumably, no present desire or ability to purchase the entirety of Building 6.

115. Plaintiff's cause of action for specific performance would require the conversion of Building 6 to a horizontal property regime, so that the Demised Premises and other "apartments" within Building 6 could be transferred or conveyed as condominiums.

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116. No provision of the Lease requires Defendants, or any of them, to convert Building 6 to a horizontal property regime or to otherwise convert the Demised Premises to a condominium unit.

117. Plaintiff is not a party to any other contract or agreement that requires Defendants, or any of them, to convert Building 6 to a horizontal property regime or to convert the Demised Premises to a condominium unit.

118. By reason of the foregoing, Plaintiff does not possess any vested contractual right to purchase the Demised Premises which can be enforced through specific performance.

119. Plaintiff's claim for specific performance fails as a matter of law.

FOR A SEVENTH DEFENSE

120. Defendants reiterate the allegations of paragraphs 1-119 and incorporate them by reference.

121. Plaintiff's "Demised Premises," as defined by the Lease does not include any patios or outdoor areas.

122. At no time during Plaintiff's occupancy of the Demised Premises has Plaintiff paid or offered to pay any rent for the use of patios or outdoor areas of Building 6. At no time during Plaintiff's occupancy of the Demised Premises has Plaintiff entered a lease or other contract that entitles it to use of patios or outdoor areas of Building 6 for Plaintiff's business.

123. Plaintiff's use of patios and outdoor areas has always been pursuant to a permissive license granted by Building 6, and not pursuant to any vested right held by Plaintiff.

124. As the grantor of Plaintiff's permissive license for the use of patios and outdoor areas, Building 6 had the power and right to unilaterally revoke that license at any time, for any reason.

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125. Building 6 properly revoked its permissive license for Plaintiff's use of patios and outdoor areas in or about March 2019.

126. By reason of Building 6's revocation of Plaintiff's license, Plaintiff has no continuing right to use patios or outdoor areas of Building 6 for its business.

127. To the extent Plaintiff's claim for specific performance includes some claim to enforce Plaintiff's alleged right to use or purchase patios or other outdoor areas of Building 6, Plaintiff's claim fails as a matter of law.

128. To the extent Plaintiff's claim for damages includes some alleged loss of business revenues as a result of Building 6's revocation of its permissive license for Plaintiff's use of patios or other outdoor areas of Building 6, Plaintiff's claim fails as a matter of law.

FOR AN EIGHTH DEFENSE

129. Plaintiff's equitable claims are barred by one or more of the following defenses: (1) unclean hands; (2) laches; (3) waiver; (4) estoppel.

FOR A NINTH DEFENSE

130. One or more of Plaintiff's legal claims is barred by the applicable statute of limitations.

FOR A TENTH DEFENSE

131. Building 6 did not breach the Lease and is ready, willing and able to convey the Demised Premises to Plaintiff subject to the terms of the Lease and the exhibits to the Lease.

132. Plaintiff has refused to accept the Demised Premises subject to the terms of the Lease and the Lease exhibits. Plaintiff has never been ready, willing and able to purchase the Property.

133. By reason of the foregoing, Plaintiffs' claims for specific performance and breach of contract fail as a matter of law.

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FOR AN ELEVENTH DEFENSE

134. Plaintiff's claims for misrepresentation are based entirely alleged unfulfilled promises and future events. Plaintiff's misrepresentation claims fail as a matter of law.

FOR A TWELFTH DEFENSE

135. Plaintiff has failed to allege the circumstances of alleged fraud with the particularity required under Rule 9(b) S.C. R. Civ. P.

FOR A THIRTEENTH DEFENSE

136. Plaintiff has failed to allege damages that constitute special damages as required by Rule 9(g) S.C. R. Civ. P. Plaintiff's alleged special damages are duplicative of damages that Plaintiff seeks to recover under other causes of action. In addition, Plaintiff's conspiracy claim simply realleges facts set forth in its other causes of action.

137. By reason of the foregoing, Plaintiff's Ninth Cause of Action (conspiracy) fails as a matter of law.

FOR A FOURTEENTH DEFENSE

138. Plaintiff's Sixth Cause of Action (breach of implied covenant of good faith and fair dealing) fails as a matter of law because South Carolina does not recognize an independent cause of action for the alleged breach of that implied covenant.

FOR A FIFTEENTH DEFENSE
(As to Plaintiff's Conspiracy Cause of Action)

139. Plaintiff's Ninth Cause of Action (conspiracy) fails as a matter of law for each of the following reasons:

a. Plaintiff has failed to properly allege damages that constitute special damages;

b. Plaintiff's alleged damages are duplicative of the damages Plaintiff asserts under other causes of action;

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c. The alleged acts giving rise to Plaintiff's conspiracy cause of action are duplicative of the alleged acts giving rise to Plaintiff's other claims, and Plaintiff has not alleged any specific acts in alleged furtherance of any conspiracy.

FOR A SIXTEENTH DEFENSE
(As to Plaintiff's Conspiracy Cause of Action)

140. Based upon Plaintiff's theory that all defendants are jointly and severally liable to Plaintiff based upon their alleged "amalgamation of interest," Defendants are entitled to immunity from Plaintiff's Conspiracy Cause of Action pursuant to the intracorporate immunity doctrine.

FOR A SEVENTEENTH DEFENSE

141. The court cannot rewrite a contract and impose additional obligations under the guise of specific performance. To the extent that Plaintiff is entitled to specific performance, which is denied, it is not entitled to an order imposing additional terms or conditions upon Defendants that are not included within the Lease.

FOR AN EIGHTEENTH DEFENSE

142. To the extent Exhibit A to the Lease did not identify the Property in terms that were consistent with Plaintiff's subjective understanding or belief, which is expressly denied, Defendants would allege and show that Plaintiff accepted the any modification of the Property's description by initialing Exhibit A and approving its inclusion in the Lease.

143. At no time prior to the commencement of Plaintiff's Lease did Plaintiff object to the description of the Property, as shown on Exhibit A, or request that the Property's description be modified to include any patios or outdoor areas.

144. By taking possession of the Property and commencing its lease term, Plaintiff waived any alleged objection that it might otherwise have had to the description of the Property, as set forth in the Lease and Exhibit A to the Lease. Alternatively, Plaintiff is equitably estopped

from objecting to the description of the Property as set forth in the Lease and Exhibit A to the Lease.

FOR A NINETEENTH DEFENSE

145. By the express terms of the Lease, Plaintiff waived its right to a jury trial "in any claim or cause of action arising hereunder or relating to this lease." By reason of Plaintiff's express waiver, Plaintiff is barred and estopped from demanding a jury trial.

FOR A TWENTIETH DEFENSE
(Setoff)

146. To the extent Plaintiff is awarded any damages, reimbursement of rent or other form of remuneration in this action, Defendants are entitled to a setoff and reduction of that award in an amount equal to the rental value of the Property for the period of time that Plaintiff has continued to occupy and enjoy the Property for its business operations. Plaintiff is not entitled to free use and occupancy of the Property.

WHEREFORE, having first moved to strike Plaintiff's demand for a jury trial from Plaintiff's Second Amended Complaint, and then having answered, Defendants pray for the following relief:

a. For an order striking Plaintiff's demand for a jury trial pursuant to the waiver of jury trial contained within the Lease;

b. For an order transferring this case to the non-jury roster;

c. For dismissal of Plaintiff's claims;

d. For a setoff or reduction against any amounts awarded to Plaintiff as damages or equitable reimbursement;

e. For an award of attorney's fees and costs pursuant to the terms of the Lease;

f. For the costs of this action; and

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g. For such other and further relief as the court deems just and proper.

Defendants request a non-jury trial of all claims.

January 29, 2021

s/W. Keith Martens
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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC AND ASSURED ADMINISTRATION, LLC, Defendants.	))))))))))))	C/A No. 2018-CP-46-03726 MOTION FOR SUMMARY JUDGMENT OR FOR PARTIAL SUMMARY JUDGMENT

Defendants move for summary judgment as to each of Plaintiff's causes of action pursuant to Rule 56 S.C. R. Civ. P. In support of this motion, Defendants will show that there are no material issues of fact in dispute and Defendants are entitled to judgment in their favor as a matter of law for the following reasons:

I. All defendants are entitled to summary judgment as to Plaintiff's 's claims for fraud (4th cause of action), fraudulent inducement (3rd cause of action) and negligent misrepresentation (10th cause of action) because, as a matter of law, Plaintiff cannot establish one or more essential elements of those claims.

II. Defendant Riverwalk River District Building 6, LLC is entitled to summary judgment as to Plaintiff's claim for specific performance (1st cause of action) because there is no presently enforceable contract for the sale of an identifiable parcel of real estate from Building 6 to Plaintiff.

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III. Defendant Riverwalk River District Building 6, LLC is entitled to summary judgment as to Plaintiff's claims for breach of contract (2nd cause of action) and breach of contract accompanied by fraudulent act (5th cause of action) because Plaintiff cannot establish any alleged breach of it lease and because the evidence, construed in a light that is most favorable to Plaintiff, establishes that there was never a "meeting of the minds" concerning the sale of an identifiable parcel of real estate from Building 6 to Plaintiff.

IV. All other defendants are entitled to summary judgment as to Plaintiff's claim for tortious interference with contract (8th cause of action) because Plaintiff cannot establish that any contract to which Plaintiff was a party was actually breached.

V. All defendants are entitled to summary judgment as to Plaintiff's cause of action for conspiracy (9th cause of action).

a. Plaintiff has not alleged, and cannot establish one or more of the essential elements of a conspiracy claim.

b. Based upon Plaintiff's theory that all defendants operated as a single enterprise, Plaintiff's conspiracy claim is barred by the "intra-corporate immunity" doctrine.

VI. All defendants are entitled to summary judgment as to Plaintiff's UTPA claim (7th cause of action) because Plaintiff cannot establish one or more essential elements of that claim.

VII. All defendants are entitled to summary judgment as to Plaintiff's claim for breach of the implied covenant of good faith and fair dealing (6th cause of action) because South Carolina does not recognize that claim as a "stand alone" cause of action.

This motion will be based upon the pleadings, affidavits, deposition testimony and discovery of record, the arguments and authority set forth in Defendants' supporting memorandum

and the South Carolina Rules of Civil Procedure. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he had no obligation to consult with opposing counsel prior to filing this motion.

February 8, 2021

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC AND ASSURED ADMINISTRATION, LLC, Defendants.	))))))))))))	C/A No. 2018-CP-46-03726 MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT

Defendants submit the following memorandum in support of their motion for summary judgment or partial summary judgment.

Statement of the Case

This entire action arises from a dispute between Plaintiff, Grapevine of Riverwalk, Inc. ("Grapevine") and its landlord, Riverwalk River District Building 6, LLC ("Building 6"), over certain terms of Grapevine's lease ("Lease") for commercial space in the "River District" section of the Riverwalk Development in York County, South Carolina. In particular, Grapevine alleges that Building 6 has failed to honor an Option to Purchase provision of the Lease (the "Option"). Grapevine also alleges that Building 6 and the other defendants never intended to honor the Option, but "fraudulently" offered it to induce Grapevine to enter the Lease.

Grapevine filed this lawsuit in December 2018, naming Building 6 as the only defendant and asserting claims for specific performance of the Option, breach of contract, breach of contract accompanied by fraudulent act and several tort claims. *See* Complaint, filed Dec. 10, 2018.

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Grapevine moved for summary judgment on its claims for breach of contract and specific performance in June 2019, but its motion was denied because this court concluded there were genuine factual disputes concerning the parties' "failure to agree to a closing date . . . due to the inability to come to an agreement as to [Grapevine's] use of [the sidewalk area outside of the leased premises]." Order Denying Summary Judgment, filed Sept. 9, 2019.

In March 2020, Grapevine amended its complaint to name four additional defendants[1] and to assert additional claims for conspiracy and tortious interference with contract. In January 2021, Grapevine filed a second amended complaint, adding a claim for negligent misrepresentation. Grapevine's claims now include: (1) specific performance – against Building 6; (2) breach of contract – against Building 6; (3) Fraudulent Inducement – against all defendants; (4) fraud – against all defendants (5) breach of contract accompanied by fraudulent act – against Building 6; (6) breach of implied covenant of good faith and fair dealing – against Building 6; (7) violation of UTPA – against all defendants; (8) tortious interference with contractual relations – against Mather, GRH, Greens and Assured); (9) conspiracy – against all defendants; and (10) negligent misrepresentation – against all defendants.

The parties have completed discovery. This case is ready for trial.

Statement of Relevant Facts

Grapevine is a wine and craft beer shop and bar. The principals of Grapevine, David and Melanie Sills, are also the owners of another "Grapevine" location which they have operated successfully in Fort Mill, South Carolina for several years. In approximately 2010, the Sills began

[1] The additional corporate defendants are affiliated entities of Building 6 - GRH Development Services, LLC ("GRH"); The Greens of Rock Hill, LLC ("Greens"); and Assured Administration, LLC ("Assured"). In addition, Grapevine added Mark Mather, alleging that Mr. Mather "has the ultimate decision-making authority for all the corporate Defendants." Sec. Am. Compl. ¶ 52.

exploring the possibility of opening a second location in Rock Hill's Riverwalk Development. Deposition of Grapevine 30(b)(6) Designee at 14 (hereafter "Grapevine dep.").

David Williams, who was then an employee of Riverwalk's lead developer, GRH Development Resources, LLC ("GRH"), served as the Sills' primary point of contact. Grapevine dep. at 21; Deposition of David Williams at 33 (hereafter "Williams dep."). As the Sills met and spoke with Mr. Williams, they provided him with a list of their desired criteria, including approximate square footage, kitchen requirements and access to "patio space." Ex. 7 to Grapevine dep. The Sills also explained to Mr. Williams that they "would be most interested" in owning, as opposed to renting, space. Id. Between 2010 and 2014, the Sills explored at least two potential opportunities in Riverwalk, but neither of those came to fruition. Grapevine dep. at 14, 27.

In early 2014, Mr. Williams contacted the Sills to inform them of a new opportunity. Riverwalk's Developer was planning to build a mixed-use building (Building 6) in the Riverwalk's "River District." After learning that the Developer intended to develop Building 6 as "leasable space," and not for sale, the Sills declined. Grapevine dep. at 45. A few weeks later, Mr. Williams called David Sills with a proposal. Mr. Williams proposed that Grapevine consider entering a lease, with an option for Grapevine to purchase its space after leasing for two years. Id. at 52. The Sills agreed. Grapevine dep. at 53, 58.

On February 24, 2014, Mr. Williams sent the Sills a Letter of Intent. Ex. 11 to Grapevine dep. From March – June 2014, the parties negotiated the specific terms of Grapevine's Lease, including the terms of the Option. Grapevine dep. at 63-67. Mr. Williams was Building 6's lead negotiator, and Melanie Sills was the lead negotiator for Grapevine. Id. at 83, 87. Grapevine did not seek out legal advice concerning the terms of the Lease, though no one "would or could" have stopped it from doing so. Id. at 74-75. The evidence shows that Ms. Sills conducted a detailed

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review of the draft Lease, proposing various revisions including, of particular relevance, revisions to the terms of the Option. Grapevine dep. at 88-107 and Ex. 13; Deposition of Melanie Sills at 100 (hereafter, "M. Sills dep."). There also is evidence that Ms. Sills reviewed one or more schematic diagrams depicting the location of a proposed "Wine Shop" and adjoining outdoor space. Grapevine dep. at 91-92. The Sills suggested and/or requested modifications to the drawings, and many of the Sills' suggestions were incorporated by the Developer's architect. Id.

On June 20, 2014, Melanie Sills, as Grapevine's president, signed the Lease. Ex. 19 to Grapevine dep. (hereafter "Lease"). In addition, both David Sills and Melanie Sills initialed each page of the Lease. Grapevine dep. at 114. Mark Mather signed the Lease on June 23, 2014, on behalf of Building 6's managing member, The Greens of Rock Hill, LLC. Id. Paragraph 1 of the Lease described Grapevine's "Demised Premises" as "that certain space comprised of approximately 1,490 square feet, more or less . . . depicted as 'Wine Shop' on Exhibit A attached hereto and being located within the Building." Lease ¶1. According to Melanie Sills, Exhibit A was not actually attached to the Lease at the time she signed. Ms. Sills dep. at 104. Instead, David Williams either brought or sent a copy of Exhibit A to the Sills on July 7, 2014 "or soon thereafter," and the Sills both initialed it. Melanie Sills dep. at 60. That exhibit was then added to the Lease. Exhibit A does not show any "outdoor space" as part of Grapevine's "Demised Premises." Grapevine dep. at 121.

The Lease included several provisions, which Ms. Sills acknowledges she read, but which she considered "legalese" or "mumbo jumbo." Ms. Sills dep. at 105. Among those was a paragraph which read "This Lease contains the entire agreement between the parties hereto, and cannot be altered or modified in any way except in writing signed by the parties hereto. All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised

Premises or the subject matter hereof are merged herein and superseded hereby." Lease ¶ 43. Melanie Sills, who executed the Lease on behalf of Grapevine, understood that provision to mean "that this [Lease] should contain everything." M. Sills at 106. To David Sills, "it was just another page that was being initialed." Grapevine dep. at 130. The Lease also included a provision that expressly limited "Landlord's Liability," and provided that "in no event shall any special, consequential, or punitive damages be awardable against or recoverable against Landlord or the Landlord Interest hereunder." Lease ¶ 56. Both David Sills and Melanie Sills initialed the pages that contained those provisions.

Building 6 completed construction of its mixed-use building by early 2016, and Grapevine took possession of its Demised Premises on February 2, 2016. Grapevine dep. at 147-148 and Ex. 18. Throughout the first two years of Grapevine's Lease, the parties' relationship was relatively harmonious. Grapevine dep. at 149-153. Throughout the first two years of Grapevine's Lease, Grapevine was permitted to use Building 6's outdoor seating areas for its business.

On July 26, 2017, an attorney representing Grapevine sent a letter to Building 6, "Attn: David Williams," titled "Exercise of Option to Purchase." Grapevine dep. at 139 and Ex. 3. That letter purported to "constitute notice" of Grapevine's intent to exercise its purchase option and specified a closing date of February 2, 2018. Ex. 3 to Grapevine dep. The letter also pointed out that the attorney's "review of records filed with the South Carolina Secretary of State and with the York County Clerk of Court does not reveal the existence of [a] condominium project, yet." Id. The lawyer requested that Building 6 "take the necessary steps to create [a] horizontal property regime and provide me with a copy of such documentation." Around the time Grapevine's attorney sent that letter, David Williams left his position with GRH. Williams dep. at 31.

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Building 6 did not immediately respond to the attorney, and the attorney sent two or three follow-up emails before Travis Hege, an employee of GRH, responded on October 13, 2017:

> Good morning, sorry for the delay. I have been in and out of the office lately. Slight correction, I am the Development Director; non-the-less I look forward to working with you to get this completed. I will let you know once I determine what we need to do on our end and will touch base to get this completed.

On October 26, 2017, Grapevine's attorney responded to Mr. Hege, "Please confirm we will be able to close on this condo unit on February 2nd. Please advise if I can assist you in any fashion, I have experience in setting up horizontal property regimes." Mr. Hege replied: "We are working on the condo documents. I will give you an update once I hear back from the lender and our attorney. Sorry for the delay." In November 2017, Todd Brockman, Esq., contacted Grapevine's attorney, presenting himself as Building 6's attorney and requesting that Grapevine's attorney "please direct any future emails to my attention." PL 0030.

Over the next several months, the parties and their attorneys communicated with one another concerning various aspects of the proposed conversion of the Demised Premises to a condominium and the sale of that condominium to Grapevine. On April 12, 2018, Mark Mather sent a text message proposing a closing date of April 17 but, for reasons that are not clear, that proposed date was never accepted and no other closing date was set.

As time went on, the parties' relationship became increasingly acrimonious. On November 1, 2018, the property manager for Building 6 sent Grapevine a letter, informing Grapevine that its Lease gave it no right to use the outdoor areas adjacent to its Demised Premises, and declaring that Grapevine's continued use of those areas was a default of its Lease. Ex. 51 to Grapevine dep. Even after receiving that letter, Grapevine continued to use the patio until March 2019, when Defendants' prior counsel demanded that Grapevine cease using the patio "until and unless a formal agreement can be reached" for Grapevine's use of that area. Grapevine dep. at 163-64.

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Standard for Summary Judgment

"Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 354-55, 650 S.E.2d 68, 70 (2007)(quoting Rule 56(c), SCRCP). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof,[2] the non-moving party must submit more than a mere scintilla of evidence to withstand the motion. Id.

A lease is a contract. Questions of contract interpretation are a matter of law, for the court to decide. McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009). Where a contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

ARGUMENT

I. All defendants are entitled to summary judgment as to Grapevine's claims for fraud, fraudulent inducement and negligent misrepresentation because, as a matter of law, Grapevine cannot establish one or more essential elements of those claims.

Grapevine's claims for fraud, fraudulent inducement and negative misrepresentation (the "Misrepresentation Claims") are all premised upon the assertion that one or more of the defendants misrepresented Landlord's willingness to sell Grapevine space to induce Grapevine to enter its Lease. Sec. Am. Compl. ¶¶ 16-17, 34. These claims are based primarily upon two representations

[2] Plaintiff's claim for fraud, constructive fraud and breach of contract accompanied by fraudulent act must be proven by clear and convincing evidence.

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that Defendants' agent allegedly made during the parties' lease negotiations. First, Grapevine alleges that Defendants falsely represented that Grapevine would have the right to purchase the "Demised Premises" if Grapevine would, first, lease the Premises for two years. Id. Next, Grapevine alleges that Defendants falsely represented that Grapevine's "Demised Premises" included an outdoor patio area which could be used for additional seating. Id. ¶ 76. According to Grapevine, those two representations were material inducements for Grapevine to enter its Lease. Id. ¶ 82. Grapevine alleges that it has since discovered that each of those representations was false. However, as a matter of law, neither of Defendants' allegedly "false" representations gives rise to an actionable Misrepresentation Claim.

A. To the extent Grapevine's claims are based upon representations that Grapevine would be entitled to purchase its leased premises at some future date, the claims fail because South Carolina does not recognize a claim for fraud or fraudulent inducement arising from some alleged unfulfilled promise of future performance.

It is undisputed that, throughout Grapevine's "pre-lease" negotiations, Grapevine and its principals dealt exclusively with David Williams, who was employed by GRH Development Resources, LLC. Grapevine dep. at 36. During the course of those negotiations, Mr. Williams told Grapevine's principals that Building 6 could not sell space to Grapevine because of a "requirement" imposed by Building 6's lender. However, Mr. Williams proposed that, if Grapevine agreed to lease space for two years, Building 6 would grant Grapevine an option to purchase its space after that time. Id. at 52. Grapevine's Lease includes an Option, the terms of which are consistent with Mr. Williams' proposal. It is undisputed that Grapevine's principals negotiated the terms of that Option. Grapevine dep. at 63-67.

Grapevine took possession of its Demised Premises on February 2, 2016. Grapevine operated in the Demised Premises without any controversy throughout 2016 and 2017. On July

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26, 2017, Brian Wilson, an attorney representing Grapevine, wrote Building 6 to provide notice of Grapevine's intent to exercise its purchase option on the first day of Grapevine's third lease year, February 2, 2018. According to Grapevine, Defendants never committed to a "firm" closing date for Grapevine's purchase of its space and never offered a reasonable explanation as to why the closing could not, or would not, occur.

Even accepting those facts as true, Defendants failure and/or refusal to close on Grapevine's planned purchase of its space during the year of Grapevine's Lease does not give rise to an actionable Misrepresentation Claim. South Carolina's courts have plainly held that, "as a general rule, fraud cannot be predicated on a statement that constitutes an expression of intention." Winburn v. Insurance Co. of North Am., 287 S.C. 435, 440, 339 S.E.2d 142, 145 (Ct. App. 1985). "Further, an actionable representation cannot consist of a mere broken promise, even if a party acts in reliance upon the promise." Id. An "unfulfilled promise to perform in the future" gives rise to an actionable misrepresentation claim only when "made with a present undisclosed intention not to perform and for the purpose of inducing one to sign a paper or do some other act." Id.

Here, there is no evidence that David Williams offered the Option with an "undisclosed intention" that Building 6 would not perform when asked to do so. Mr. Williams testified that he understood Grapevine's option was a "condition of [Grapevine] signing the lease." Dep. of D. Williams at 11-12. David Sills, Grapevine's designated 30(b)(6) representative, testified that Grapevine "can't make a conjecture" and "do[es] not" know whether Mr. Williams offered the Option with an "undisclosed intention" that Building 6 would never honor it. Grapevine 30(b)(6) dep. at 60-61. Grapevine's Misrepresentation Claims rely entirely upon conjecture and speculation.

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Apparently, Grapevine relies upon the fact that Building 6 ultimately did not close as evidence that Mr. Williams *knew* Building 6's commitment was illusory when he offered it during the parties' negotiations of the Lease. But the fact that Building 6 did not close on its sale of Grapevine's space in 2018 does not give rise to a reasonable inference that Building 6 had no intention to honor the Option when Mr. Williams offered it as Lease term in 2014. "The truth or falsity of a representation must be determined as of the time it was made or acted upon and not at some later date. Inferences of fact, like fullbacks on football teams, do not ordinarily run backward." Winburn, 287 S.C. at 146, 339 S.E.2d at 440. To the extent Grapevine's Misrepresentation Claims are based upon the assertion that David Williams offered an Option that he knew Building 6 ultimately would not honor, the claims fail for lack of proof.

B. To the extent Grapevine's claims are based upon alleged representations that Grapevine would have the right to use patios and outdoor areas of Building 6 as part of its business space, the claims fail because the Lease does not grant Grapevine those rights and, consequently, Grapevine cannot establish that it justifiably relied upon those alleged representations.

Grapevine also cannot base an actionable Misrepresentation Claim upon the assertion that Defendants allegedly "lied" when they represented that "Grapevine would have access to and use of the outdoor areas adjacent to the Property." Sec. Am. Compl. ¶76. Claims based on this assertion fail for at least two reasons.

First, the claims fail because Grapevine's Lease plainly does not grant it any right to use "outdoor areas" as part of its "Demised Premises." Grapevine's principals initialed each page of the Lease, including the Lease exhibit that Grapevine now alleges "did not accurately reflect the parties' understanding and intent with respect to Grapevine's use of the outdoor areas." Sec. Am. Compl. ¶91. South Carolina has long "adhere[d] to the rule that one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by her, when the truth could

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have been ascertained by reading the instrument, and one entering into a written contact should read it and avail herself of every opportunity to understand its content and meaning." Outlaw v. Calhoun Life Ins. Co., 236 S.C. 272, 276, 113 S.E.2d 817, 819 (1960). By simply reading the Lease and its exhibits, Grapevine could see that patios and other outdoor areas were not a part of its Demised Premises. As a matter of law, Grapevine cannot now complain that it was "defrauded" when it could have discovered the "truth" by simply reading its Lease.

Second, even if the Lease and its exhibits "did not accurately reflect the parties' understanding and intent," as Grapevine now alleges, Grapevine had the opportunity to discover that alleged discrepancy (and alleged misrepresentation) by July 7, 2014 "or soon thereafter," when Grapevine's principals initialed the Lease exhibit for inclusion in the Lease. Melanie Sills dep. at 60. Grapevine did not commence this action until December 2018 - well past the expiration of the applicable limitations period. If Grapevine ever had a claim for misrepresentation, that claim expired several months before Grapevine filed this lawsuit.

II. Defendant Building 6 is entitled to summary judgment as to Grapevine's claim for specific performance, because there is no presently enforceable contract for the sale of an identifiable parcel of real estate from Building 6 to Grapevine.

Grapevine's specific performance claim fails as a matter of law because Grapevine and Building 6 never entered an enforceable contract for the sale of the Demised Premises. By the express terms of the Option (paragraph 33 of the Lease), Grapevine and Building 6 agreed that "Tenant shall have the Option to purchase the Premises during the third lease year with not less than 120 days advance written notice to Landlord for $270,000 (the 'Purchase Price') **in accordance with the Purchase and Sale Agreement as provided in Exhibit G**." Lease ¶ 33 (emphasis added). But Exhibit G to the Lease was merely a draft of a purchase contract, which the parties inserted in their Lease as a "placeholder."

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Under no reasonable interpretation of Exhibit G to the Lease, is that document a purchase contract that can be specifically enforced. "In order to compel specific performance, a court of equity must [first] find there is clear evidence of a valid agreement . . . ." Ingram v. Kasey's Assoc., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). Exhibit G does not come close to meeting this threshold – it identifies the realty to be conveyed only as "Unit No. ____," together with "_____ Proportionate Interest of Unit Common Elements, and ____ Proportionate Interest of Unit in Retail Common Elements" (blanks in original); it refers to a condominium regime that did not (and does not) exist, and to bylaws and a master deed that had not (and have not) been recorded; Exhibit G does not even specify a date (or even a year) for closing – "The closing shall take place on or before 12:00 p.m. on ____, 201__" (blanks in original).

At most, the Option represents an "agreement to agree." The parties agreed that Grapevine would have the right to purchase a non-existent condominium unit in a non-existent horizontal property regime on an unspecified closing date. There was never a meeting of the minds as to all essential terms of that proposed transaction and, therefore, the parties never entered an enforceable contract for the purchase and sale of Grapevine's Demised Premises.

Even when Grapevine filed this lawsuit, it could not identify the object of its' specific performance claim with the specificity required to form (or enforce) a "valid and enforceable" contract. The lis pendens that Grapevine filed upon commencement of this action vaguely describes the real estate that is the subject of its specific performance claim as "a portion" of a "tract of land within which a proposed condominium *was to be established*." *See* Lis Pendens,

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filed 12/21/2018. It is telling, and fatal to Grapevine's claim for specific performance, that not even Grapevine's *attorneys* can specifically identify the realty that Grapevine claims it is entitled to purchase.

There is no readily conveyable parcel of real property that Building 6 agreed to sell and Grapevine agreed to purchase on an agreed date for an agreed price. This is evidenced by the fact that Grapevine's Prayer for Relief asks this court to compel Building 6 to "take all necessary actions to have [the Building] within which the Property is located subdivided and take all other actions so that good, clear, and marketable title to the Property may be transferred to Grapevine." Sec. Am. Compl. Prayer for Relief. In other words, Grapevine asks this court to compel Building 6 to *create* something (a condominium) that does not presently exist, so that Grapevine can then purchase it. Grapevine's own pleadings highlight the fact that there is no presently-enforceable purchase contract in existence. Grapevine's claim for specific performance fails as a matter of law.

III. Building 6 is entitled to summary judgment as to Grapevine's claims for breach of contract and breach of contract accompanied by fraudulent act because Grapevine cannot establish any alleged breach of the parties' lease and because the evidence, construed in a light that is most favorable to Grapevine, establishes that there was no "meeting of the minds" concerning one or more of the essential terms of an of an alleged contract for the sale of the Demised Premises.

Grapevine's claims for breach of contract and breach of contract accompanied by fraudulent act[3] are also legally defective. Grapevine alleges that Building 6 breached the Lease by "failing and refusing to comply with the Option to Purchase . . . and its obligation to sell the

[3] *See* Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374, 378 (Ct. App. 1986)(cause of action for breach of contract accompanied by fraudulent act is a contract action, and breach of contract is an essential element of that claim); Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 654, 780 S.E.2d 263, 274 (Ct. App. 2015)(holding that failure to demonstrate a breach of contract is fatal to plaintiff's claim for breach of contract accompanied by fraudulent act).

Property to Grapevine." But, as previously discussed, neither the Option nor Exhibit G to the Lease is sufficiently specific to evidence a "meeting of the minds between the parties with regard to all essential and material terms" of an alleged purchase option. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). Therefore, Grapevine cannot establish an essential element of its claims for breach of contract and breach of contract accompanied by fraudulent act – the existence of a valid and enforceable option that entitled Grapevine to purchase a specific parcel of real property.

South Carolina's courts have long held that "where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it." South Carolina Dept. of Transp. V. M&T Enter., 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008). Courts are "without authority to alter an unambiguous contract by construction or to make new contracts for the parties" and they must enforce a contract "according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." Id. Grapevine is "not entitled to judicial relief from the terms of a 'slipshod agreement' of [its] own making. . . ." Conner v. Alvarez, 285 S.C. 97, 104, 328 S.E.2d 334, 338 (1985).

Clearly, in negotiating and drafting the Lease, the parties anticipated that, at some future date, Building 6 would be converted to condominiums and, once that occurred, Grapevine would be entitled to purchase the condominium unit that occupied the space Grapevine had leased. But they did not enter a contract that *required* Building 6 to convert its building to condominiums, and this court does not have the authority to "make a new contract" to impose that obligation upon Building 6. Grapevine's claims for breach of contract and breach of contract accompanied by fraud fail as a matter of law.

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IV. The other defendants are entitled to summary judgment as to Grapevine's claim for tortious interference with contract because Grapevine cannot establish that Building 6 breached Grapevine's Lease and because Grapevine never entered an enforceable Contract with Building 6 for the purchase of Demised Premises.

Because Grapevine's breach of contract claim fails as a matter of law, so does its claim for tortious interference. The essential elements of a claim for tortious interference with contract are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) **intentional procurement by the tortfeasor of the contract's breach**; (4) absence of justification; and (5) damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981). Even if Grapevine could present sufficient evidence to create an issue of material fact as to the other elements of its claim, it cannot establish a breach of its Lease. Nor can it demonstrate the existence of an enforceable purchase contract. Consequently, as a matter of law, its claim for tortious interference also fails.

V. All defendants are entitled to summary judgment as to Grapevine's conspiracy cause of action.

a. Grapevine has not alleged, and cannot establish, an actionable conspiracy claim.

In South Carolina, the tort of conspiracy has three essential elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; which (3) causes the plaintiff suffer special damages. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). "A claim for conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." Id. (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981), *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985)). "Moreover, because the quiddity of a civil conspiracy claim is the special damage result to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." Id. (citing Vaught v. Waites, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989)).

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Grapevine's conspiracy cause of action, as it is pled, is facially defective. First, Grapevine does not allege any "additional acts" were carried out in furtherance of Defendants' alleged conspiracy. Instead, Grapevine merely "realleges and incorporates by reference" the allegations set forth elsewhere in its second amended complaint. Sec. Am. Compl. ¶¶ 131, 133 ("Proof of such civil conspiracy includes . . . the acts and omissions alleged herein. . . ."). For that reason alone, Grapevine's conspiracy claim fails as a matter of law. Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000)("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy cause of action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); *see also* Doe v. Erskine College, 2006 WL 1473853, *17 (D.S.C. 2006)("Because Plaintiff has not asserted any additional acts in furtherance of the alleged conspiracy, the claim for civil conspiracy is dismissed").

The claim is also facially defective because Grapevine has not pled, cannot establish, and has contractually waived, any right to seek recovery of special damages. "Special damages are damages that are the natural, but not the necessary or usual, consequences of a defendant's conduct." Charleston Aluminum, LLC v. Samuel, Son & Co., Inc., 2006 WL 2370292, *3 (D.S.C. 2006)(citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1310 (3d ed. 2005)). Put another way, special damages "must go beyond the damages alleged in other causes of action." Hackworth, 385 S.C. at 116, 682 S.E.2d at 874. While Grapevine's conspiracy claim includes the 'buzz' words "special damages," it has made no attempt to actually identify those alleged damages. Instead, Grapevine merely alleges that it "has been damaged in an amount to be proven at trial." As a matter of law, Grapevine's conspiracy cause of action is defectively pled. Hackworth at 117, 682 S.E.2d at 875 (citing Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91

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(Ct. App. 1989))("If a plaintiff merely repeats the damages from another claim **instead of specifically listing** special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."). Furthermore, by the express terms of its Lease, Grapevine agreed that "in no event shall any special . . . damages be awardable against or recoverable against the Landlord or the Landlord Interest hereunder." In the absence of special damages, Grapevine's conspiracy claim fails as a matter of law.

b. Based upon Grapevine's own assertion that all Defendants are operating a a "single business entity," Grapevine's conspiracy cause of action is barred by the "intra-corporate immunity" doctrine.

Nearly a century ago, South Carolina's supreme court held that agents of a corporation, acting in the scope of their duties, cannot conspire with the corporation "absent the guilty knowledge of a third party." Goble v. Am. Ry. Express Co., 124 S.C. 19, 26-27, 115 S.E. 900, 903 (1923). More recently, our supreme court declared the law of this state "well settled that a corporation cannot conspire with itself." McMillan v. Oconee Mem. Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006). Therefore, the very nature of Grapevine's claims, and its attempt to impose joint and several liability under an "amalgamation or single enterprise theory" (*see* Sec. Am. Compl. ¶ 56) is fatal to its conspiracy cause of action. It is legally impossible for all defendants to "conspire" with one another while, simultaneously acting as a "single enterprise." Based upon the allegations of Grapevine's complaint, and its "amalgamation" theory of liability, its conspiracy cause of action is fatally flawed.

VI. Defendants are entitled to summary judgment as to Grapevine's claim under the South Carolina Unfair Trade Practices Act because Grapevine cannot establish one or more essential elements of that claim.

Grapevine's UTPA cause of action fails as a matter of law because Grapevine cannot meet the threshold showing of proof as to one or more essential elements of its claim. "'To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or

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deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant(s) unfair or deceptive acts.'" RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 337, 732 S.E.2d 166, 174 (2012)(quoting Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). Even with all evidence construed in a light that is most favorable to Grapevine, Grapevine could not prove its claim.

First, there is not even an allegation that any Defendant *other* than Building 6 engaged in any of the acts that Grapevine now alleges were unfair and deceptive – alleged "misrepresent[ations] concerning . . . the status of the closing, reasons for delay of the closing [and] Grapevine's use of the outdoor areas adjacent to the Property." Sec. Am. Compl. ¶116. In paragraphs 22-32 of its Second Amended Complaint, Grapevine alleges that its attempts to schedule a closing were met with a number of non-committal responses, such as "I'll let you know" (Id. ¶ 22), that Building 6 "could not commit to a closing date" (Id. ¶26) and that "surveyors and attorneys were working on plat issues in connection with the closing." Id. ¶31. Grapevine then alleges that "**Riverwalk [Building 6]**, through its agents, made the above-referenced misrepresentations to hinder, avoid or otherwise delay the sale of the Property." Id. ¶ 35. Thus, even by Grapevine's own assertion, the alleged "misrepresentations" concerning the delays in closing were made by persons acting as "agents" of Building 6, and not by any of the other defendants. For this reason, alone, Defendants Mather, GRH, The Greens of Rock Hill and Assured are entitled to summary judgment as to Grapevine's UTPA claim.

In addition, *all* Defendants (including Building 6) are entitled to summary judgment because there is no evidence that the alleged "unfair or deceptive acts" that are the basis of Grapevine's UTPA claim impact the public interest. Grapevine first alleges that the alleged

misrepresentations "impact trade and/or commerce because they involve, among other things, fraudulent statements pertaining to the sale or offering for sale of real property." But even if statements like "I'll let you know" or "we cannot commit to closing date" could be construed as deceptive (which they cannot), those alleged statements impacted only Grapevine, and not the public at large. "The [UTPA] is not available to redress a private wrong where the public interest is unaffected." Columbia East Assoc. v. Bi-Lo, Inc., 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989)(Grocer's abandonment of leased space in shopping center not actionable under UTPA because grocer's actions did not impact the public); *see also* Noack Enter., Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 481, 351 S.E.2d 347, 351 (Ct. App. 1986)(alleged misrepresentations in connection with sale of business assets did not give rise to UTPA claim).

In an attempt to bolster its UTPA claim, Grapevine also asserts that Defendants' alleged acts impact the public because those acts are "capable of repetition." But, the evidence in the record reveals just the opposite – Grapevine was the *only* Riverwalk tenant whose lease included an option to purchase. In fact, either Mark Mather David Williams sent a text message on August 17, 2016 requesting that Grapevine "please keep [its] purchase option confidential as we did no [sic] extend that option to other tenants." Ex. 63 to D. Williams dep. Grapevine's purchase option was a "one-off" opportunity, extended *only* to Grapevine. D. Williams dep. at 30. Grapevine cannot demonstrate that Defendants' alleged acts, which allegedly occurred when Grapevine attempted to exercise its purchase option, are acts that are "capable of repetition."

Grapevine cannot establish an essential element of its UTPA claim - impact on the public. Consequently, its UTPA claim fails as a matter of law.

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VII. Defendants are entitled to summary judgment as to Grapevine's claim for breach of the implied covenant of good faith and fair dealing because South Carolina does not recognize that claim as a "stand alone" cause of action.

Grapevine's sixth cause of action (Breach of Implied Covenant of Good Faith and Fair Dealing) fails as a matter of law. While South Carolina recognizes that there is an implied covenant of good faith and fair dealing in every contract, our courts do not recognize an alleged breach of that covenant as an independent cause of action. RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 471, 597 S.E.2d 881, 883 (Ct. App. 2004)("[W]e conclude that the implied covenant of good faith and fair dealing is not an independent cause of action separate from [a] claim for breach of contract.").

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CONCLUSION

Defendants are entitled to judgment in their favor as a matter of law as to each cause of action. Grapevine and Building 6 negotiated, and then executed a written lease agreement that included an option to purchase a condominium unit that did not exist. As they began to negotiate the terms of that proposed purchase several years later, it became clear that the parties never reached a "meeting of the minds" as to all essential terms of their proposed purchase agreement. As a matter of law, this court can only enforce the parties' contract as it was written and it cannot provide Grapevine a deal that is more favorable than the one it negotiated for itself. Even construing all disputed facts in a light that is most favorable to Grapevine, its claims fail as a matter of law.

February 8, 2021

s/W. Keith Martens
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ATTORNEYS FOR DEFENDANTS

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

PLAINTIFF'S *RENEWED* MOTION FOR SUMMARY JUDGMENT ON ITS CLAIMS FOR SPECIFIC PERFORMANCE AND BREACH OF CONTRACT

NOW COMES Plaintiff The Grapevine of Riverwalk, Inc., through counsel, and hereby moves, pursuant to Rule 56, for summary judgment on its claims for specific performance and breach of contract (*i.e.*, the First and Second Causes of Action contained in Plaintiff's Second Amended Complaint). In support thereof, Plaintiff states the following:

1) On June 28, 2019, Plaintiff moved for summary judgment on its claims for specific performance and breach of contract. That motion was heard on July 30, 2019, by the Honorable William A. McKinnon. On September 9, 2019, Judge McKinnon entered an Order denying the motion. *See* **Exhibit A**.

2) As stated in Judge McKinnon's prior Order, Defendant Riverwalk River District Building 6, LLC (at that time being the only defendant) argued in opposition to Plaintiff's motion that "the parties could not come to an agreement concerning the closing date due to the Plaintiff's unauthorized use of the sidewalk area outside of its leased premises, making [Defendant's] failure to turn over the premises reasonable." Id. Defendant also argued that "the contract requires no

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particular closing date, further refuting the Plaintiff's claims for specific performance and damages due to the failure to comply with the offered closing dates." Id.

3) When the prior motion was heard, the parties had only conducted limited discovery. No depositions had been taken at that time. Since that time, extensive discovery and depositions have been completed, and the case is essentially ready for trial.

4) Based on the additional discovery completed since Plaintiff's prior motion was heard, it has become clear that there is no genuine issue of material fact on Plaintiff's claims for specific performance and breach of contract and that Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff hereby renews its prior motion for summary judgment.

5) Specifically, the evidence establishes that the Option to Purchase required that the closing occur during the Third Lease Year under the Lease. Furthermore, the evidence establishes that Plaintiff's use of the outdoor patio/sidewalk areas was not in dispute prior to or during the Third Lease Year, which was the only period of time relevant to Plaintiff's exercise of the Option to Purchase and the parties' contractually required performance thereof, and therefore any alleged unauthorized use of the outdoor patio/sidewalk areas does not excuse Defendants' failure to perform under the Option to Purchase.

6) In further support of its motion, Plaintiff relies upon the Affidavit of Melanie Sills submitted contemporaneously herewith. Plaintiff also reserves the right to submit a memorandum of law prior to the hearing on its motion, and to rely on all pleadings, affidavits, deposition testimony and discovery of record, as well as any oral argument that may be presented.

7) The undersigned certifies that pursuant to Rule 11 he had no obligation to consult with opposing counsel prior to filing this motion.

WHEREFORE, based on the foregoing, and for good cause shown, Plaintiff respectfully requests the entry of an Order granting summary judgment in its favor on the claims for specific performance and breach of contract asserted in its Second Amended Complaint, and for such other relief as justice may require.

This the 18th day of February, 2021.

/s/ *Christian H. Staples*
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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT ON ITS CLAIMS FOR SPECIFIC PERFORMANCE AND BREACH OF CONTRACT** was electronically filed using the court's e-filing system which will send notice of filing to the following:

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This the 18th day of February, 2021.

/s/ *Christian H. Staples*
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Attorneys for Plaintiff

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ELECTRONICALLY FILED - 2021 Feb 18 9:48 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk Inc.,	)	Case No.: 2018-CP-46-03726
Plaintiff, v.	)	**Order Denying Summary Judgment**
Riverwalk River District Building 6 LLC.	)	
Defendant.	)	

This matter came before the court on July 30, 2019 by way of Plaintiff's Rule 56(a) motion for summary judgment. Plaintiff was represented by Steven A. Meckler, Esquire and Christian Staples, Esquire. Defendant was represented by James Pierce, Esquire and Daniel Ballou, Esquire. After considering the motion, oral arguments, court exhibits and memorandum of law; the Court DENIES the motion for the reasons set forth below.

PROCEDURAL HISTORY

The Plaintiff entered into a commercial lease in June of 2014 for a premises owned by the Defendant. A clause within that lease provided the Plaintiff with an option to purchase the property within the third year of the lease. That clause required the Plaintiff to provide the Defendant with at least 120 days of written notice of their intent to exercise the option, but did not specify a time period within which the purchase must be completed. The Plaintiff exercised their option to purchase the premises on July 26, 2017 by providing written notice to the Defendant, which was acknowledged by the Defendant. The Plaintiff proposed a closing date of February 2, 2018, which the Defendant did not accept. The Defendant then proposed a date of April 17, 2018, which was not confirmed. The Plaintiff filed suit in December 2018, and filed this Motion for Summary Judgement in June of 2019, alleging the Defendant wrongfully failed to commit to a closing date

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and did not provide any valid reason for this failure, thereby entitling the Plaintiff both to specific performance of the option and damages for the rent paid after the exercise of the option. The Defendant alleges the parties could not come to an agreement concerning the closing date due to the Plaintiff's unauthorized use of the sidewalk area outside of its leased premises, making their failure to turn over the premises reasonable. Additionally, the Defendant argues that the contract requires no particular closing date, further refuting the Plaintiff's claims for specific performance and damages due to the failure to comply with the offered closing dates.

STANDARD OF REVIEW

Rule 56 of the SCRCP provides that a trial judge may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 436 (Ct. App. 1995). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party. *Cafe Assoc., Ltd. v. Gerngross,* 305 S.C. 6, 406 S.E.2d 162 (1991). The non-moving party must only provide a scintilla of evidence in order to survive a motion for summary judgment. *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 163 (2012) (*Citing Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)).

DISCUSSION

The standard for summary judgment requires only that the nonmoving party provide a scintilla of evidence to support a material factual dispute in order to withstand a motion for summary judgment, and the Defendant has met this standard. The Plaintiff argued that they exercised the option as required by the lease, and the Defendant wrongfully and unreasonably refused to set a closing date even after dates were offered by the Plaintiff. The Defendant offered

evidence that though the option contained in the lease was properly exercised by the Plaintiff, no closing date was agreed upon or set by the lease itself. Additionally, the Defendant offered evidence to show that the failure to agree to a closing date upon which to fulfil that option was reasonable, due to the Plaintiff's unauthorized use of the sidewalk area outside of the leased premises and their inability to come to an agreement as to the use of this area. This evidence meets the standard required to survive a summary judgment and the motion is denied.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for Summary Judgement is hereby DENIED.

IT IS SO ORDERED.

_____

The Honorable William A. McKinnon,

Circuit Court Judge

____ day of _____, 2019

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York Common Pleas

Case Caption: The Grapevine Of Riverwalk Inc. VS Riverwalk River District Building 6 Llc

Case Number: 2018CP4603726

Type: Order/Summary Judgment

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff The Grapevine of Riverwalk, Inc., through counsel, submits this Memorandum of Law in Opposition to Defendants' *Motion to Strike Plaintiff's Jury Trial Demand and Transfer Case to Non-Jury Roster*:

FACTUAL AND PROCEDURAL BACKGROUND

This case was listed as "Date Certain # 1" on the Common Pleas Jury Trial Roster for February 16, 2021, before Judge McKinnon. *See* **Exhibit A**. Counsel for the parties discussed and consented to this peremptory jury trial date during prior hearings with Judge Hall on August 24, 2020, and September 22, 2020, and upon subsequent consultation with court administrator, Lynn Strait. At no time during those discussions did Defendants ever raise any issue or concern with the fact that this case would be tried by a jury, as opposed to a judge in a non-jury bench trial.

Unfortunately, due to the coronavirus pandemic, the February 16, 2021 trial session was suspended pursuant to the statewide order of the Supreme Court of South Carolina, and as of this date, jury trials remain suspended in York County. Notwithstanding the foregoing, it is Plaintiff's

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desire that this case be rescheduled for a jury trial at the earliest available setting, once the suspension is lifted and jury trials are allowed to resume.

Plaintiff has consistently demanded a jury trial in all pleadings, including its original Complaint filed on December 10, 2018, its First Amended Complaint filed on March 25, 2020, and its Second Amended Complaint filed on January 15, 2021.

Plaintiff's Second Amended Complaint was filed upon the consent of Defendants. At no time prior to the filing of Plaintiff's Second Amended Complaint, including in any of the communications between counsel, did counsel for Defendants ever inform counsel for Plaintiff that Defendants intended to change their position regarding the jury trial, withdraw their previously asserted demands for a jury trial, or otherwise oppose Plaintiff's demand for a jury trial.

The purpose of the most recent amendment contained in the Second Amended Complaint was to add a new cause of action for Negligent Misrepresentation against all Defendants, and also to remove certain factual allegations relating to the issuance of criminal indictments against two of Defendants' employees, which allegations Defendants specifically requested be removed, and which Plaintiff agreed to remove. There were no other amendments made to any of Plaintiff's previously asserted causes of action (nine in total), or to the factual allegations contained in Plaintiff's First Amended Complaint. But for the newly asserted claim for Negligent Misrepresentation, Defendants' liability was not increased by the filing of the Second Amended Complaint. No new parties were added by the Second Amended Complaint.

Notably, in Defendants' Answer to the original Complaint, and also in Defendants' Answer to the First Amended Complaint, Defendants likewise demanded a jury trial. See Answer filed March 25, 2019 (containing the phrase "Jury Trial Demanded" in the case caption and requesting "Trial by jury on all issues so triable" in the Prayer for Relief); see also Answer to First Amended

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Complaint filed April 9, 2019 (requesting "Trial by jury on all issues so triable" in the Prayer for Relief).

Defendants never sought leave to amend either of these prior pleadings in order to revoke their demand for a jury trial, nor did Defendants file any prior motions seeking to strike Plaintiff's jury trial demand or to transfer this case to the non-jury roster. Until January 29, 2021, when Defendant' Answer to Plaintiff's Second Amended Complaint was filed, the parties were in apparent agreement that this case would be tried to a jury, and Plaintiff had no notice whatsoever that Defendants opposed a jury trial for any reason.

For all of the reasons stated herein, Defendants' motion should be denied.

ARGUMENT

A. Defendants should not be permitted to change their position regarding a jury trial at this late stage of the litigation, after the case was set for a "Date Certain # 1" jury trial upon Defendants' consent and agreement; to hold otherwise would substantially and unfairly prejudice Plaintiff.

In King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (Ct. App. 1987), it was held that the trial court did not abuse its discretion in allowing an amended answer to assert a new claim but denying a motion to transfer the case to the jury trial roster where three previous sets of pleadings had been filed without any request for a jury trial. The King opinion discusses how a critical factor for evaluation is whether the amendment creates any "new issues of fact" that might entitle a litigant to change his position with respect to trial by judge or jury. As previously discussed, the only amendment contained in the Second Amended Complaint is the addition of a Tenth Cause of Action for Negligent Misrepresentation asserted against all Defendants. There are no new factual allegations asserted in the Second Amended Complaint that were not also asserted in the First Amended Complaint. Therefore, under King, Defendants' motion should be denied. See also Pye v. Holmes, 2008 WL 9841512 (unpublished opinion) (Ct. App., May 7, 2008, *Per Curiam*)

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(reversed on other grounds) (expressing concern about the reason for the delay in demanding a jury trial and the resulting prejudice to the other side, and observing that the amended pleading involved the same facts; on these bases, the motion to transfer the case to the jury docket was denied).

Additionally, from an equitable perspective, transferring this action to the non-jury roster at this late stage of the litigation, when the parties are otherwise making final preparations for trial, would work a substantial injustice and result in undue prejudice to Plaintiff.

Plaintiff and its counsel have conducted extensive discovery, taken numerous depositions, completed mediation, evaluated the potential for settlement, and otherwise participated in over two years' of litigation under the rightful belief that this action would be tried to a jury. Defendants have likewise participated in discovery and taken depositions, and counsel for Defendants has represented to the Court that this case is "ready for trial." *See* Defendants' Motion for Summary Judgment, electronically filed on February 8, 2021. To suddenly pull the rug out from Plaintiff by transferring this case to the non-jury roster would be inequitable, unjust, and unfairly prejudicial. In addition, concepts of waiver and estoppel should prevent Defendant from changing course at this late stage, in light of Defendants' prior demands for a jury trial.

The right to trial by jury is a substantial right. Rule 38(a), SCRCP ("The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate."); Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014). Under the circumstances, Plaintiff should not be deprived of that right.

Defendants rely on Rule 40, SCRCP, to support their motion, but unfortunately this rule does not provide any authority for this Court to strike the jury demand or to transfer this case to the non-jury roster. Rule 40(g) contemplates "[striking] a case from the Jury Trial Roster if upon timely motion that party establishes that it did not consent to the transfer as represented to the clerk, or that

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at the time the case was automatically transferred under (f) above, there was in effect a scheduling order setting another date for the transfer, or a pending motion for such order." Rule 40(h) only contemplates transfer of "matters designated as nonjury matters from the General Docket to the Nonjury Docket." None of these circumstances are present here. Similarly, Rule 12(f), SCRCP, speaks only of "redundant, immaterial, impertinent or scandalous matter", an a properly filed jury demand does not fall within any of these categories.

As discussed above, Defendants previously consented to setting this case for trial as "Date Certain # 1" on the February 16, 2021 Jury Trial Roster, and no motion to strike the jury demand or to transfer this case to the non-jury roster was made until less than three weeks prior to the date assigned for trial. Because this case has already been designated for a jury trial, Rules 12 and 40 are inapposite, and because the equities and notions of fair play otherwise prevent Defendant from changing position at this late juncture, Defendants' motion should be denied.

B. The jury trial waiver contained in the Lease is not enforceable against Plaintiff.

The simple fact of the matter is that Defendants have used the recent filing of Plaintiff's Second Amended Complaint (which Defendants consented to) as a basis to argue, *for the very first time*, that the Lease agreement between Plaintiff and Defendant Riverwalk River District Building 6, LLC ("Riverwalk") which is at issue in this action contains a waiver of jury trial provision that should be enforced against Plaintiff. Notwithstanding the "lateness" of this argument, Defendants' argument is otherwise unavailing.

Defendant Riverwalk is only one of five named Defendants. There is no lease or other contractual agreement between Plaintiff and any of the other Defendants. Accordingly, even assuming that any alleged contractual jury trial waiver contained in the Lease between Plaintiff and Defendant Riverwalk is valid and enforceable (which is denied), such waiver cannot be imputed to

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Plaintiff's claims against any Defendant other than Defendant Riverwalk. See N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992) (holding that guarantors were not bound by waiver of jury trial clause contained in the lease because guarantors were not parties to the lease nor were they named in the waiver clause); see also McBride v. Floyd, 18 S.C.L. 209 (S.C. App. L. & Eq. 1831) ("One who is neither a party nor privy to a contract, who is a stranger to the consideration, and is not bound by the contract itself, is not intitled [sic] to claim any benefit under it.").

The Lease was drafted by the Landlord (Defendant Riverwalk) and therefore any doubts or ambiguities inherent in the jury trial waiver should be construed against Defendants. See Deposition of David Williams, Page 13, Lines 20-22, and Ex. 11, attached as **Exhibit B**; Rule 30(b)(6) Deposition of Riverwalk, Page 33, Lines 6-9, attached hereto as **Exhibit C**; Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 309, 698 S.E.2d 773, 778 (2010) ("a court will construe any doubts and ambiguities in an agreement against the drafter of the agreement").

Plaintiff was not represented by an attorney in connection with the negotiation or the execution of the Lease. See Rule 30(b)(6) Deposition of Grapevine, Page 64, Line 25 – Page 65, Line 10, attached hereto as **Exhibit D**. The foregoing demonstrates that there was at least some disparity in bargaining power between the parties and the opportunity for Defendants to take advantage of Plaintiff's principals, Melanie and Dave Sills, as laypersons without counsel.

Under South Carolina law, jury trial waivers must be strictly construed, and the party seeking enforcement of the waiver must demonstrate that the waiver was conspicuous, unambiguous, knowing, and intentional. Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 332-33, 755 S.E.2d 437, 443 (2014).

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In support of their motion, Defendants rely upon Wachovia as a case where the jury trial waiver was deemed enforceable, but the case is readily distinguishable on its facts. The jury trial waiver at issue in Wachovia was contained within its own section and had "a bold heading called 'WAIVER OF JURY TRIAL.'" Id. at fn. 8. In addition, the jury trial waiver was "located at the very end of the six-page document, *directly above the signature line*, thus making the conspicuous font even more noticeable, even at a quick glance." Id. (emphasis added).

By contrast here, the waiver is embedded in the middle of a section captioned "Miscellaneous Provisions" and is on a separate page from the signature page. The Lease contains a total of 59 separate paragraphs spanning 23 pages, excluding signature pages and exhibits. The jury trial waiver is neither written in **bold** nor underlined. These distinguishing factors render Wachovia a neutral precedent, at best.

Other cases support the conclusion that the jury trial waiver is unenforceable. See Dreiling v. Peugeot Motors of Am., Inc., 539 F. Supp. 402, 403 (D. Colo. 1982) (the right to jury trial cannot be waived unknowingly by mere insertion of a waiver provision on the twentieth page of a twenty-two page contract, especially where defendants presented no evidence that the waiver provision was a bargained for term of the contract, was mentioned during negotiations, or was brought to the plaintiff's attention); Nat'l Equip. Rental, Ltd. v. Hendrix, 565 F.2d 255 (2d Cir. 1977) (jury trial waiver in an equipment lease was not a knowing and intentional waiver where it was buried in the eleventh paragraph of a sixteen paragraph agreement).

Defendants' contention that Plaintiff was responsible for reading the Lease prior to signing and is bound by its terms "is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused." Regions Bank v. Schmauch, 354 S.C. 648, 664, 582 S.E.2d 432, 440 (Ct. App. 2003). Here, there is ample evidence that neither Melanie Sills, nor Dave

Sills, as the two co-owners of Grapevine who were negotiating for the Lease, truly understood all of the legal provisions. According to Dave Sills, when he initialed the various pages of the Lease, he didn't necessarily understand the legal provisions and "it was just another page that was being initialed." Rule 30(b)(6) Deposition of Grapevine (Dave Sills testifying), Pages 129-30, attached hereto as Exhibit D.

Melanie Sills testified that she considered many of the provisions to be "legalese" or "mumbo jumbo," and that once she got towards the end of the Lease, potentially after Section 42, her understanding began to suffer and it "just – looked like legal stuff that they put in the lease." Deposition of Melanie Sills, Pages 105 and 107, attached hereto as **Exhibit E**. Mrs. Sills testified that Defendants "were pressing us pretty hard to sign" the Lease and that she cannot recall if she had adequate time to review the Lease prior to execution. Id. at Page 107. According to Mrs. Sills, "overall it was a lease that I knew was going to be null and void in two years after we had purchased our place. So we didn't give it a whole lot of examination, I guess." Id. at Page 95. This highlights the fact that, but for Defendants' breach of contract, fraud, misrepresentations, and other wrongdoing that has been alleged in this case, the jury trial waiver would be a non-issue. Defendants should not be permitted to avoid performance of some Lease provisions, such as the Option to Purchase, yet simultaneously enforce other provisions of the Lease against Plaintiff that benefit their own interest and that would be totally irrelevant had Defendants honored their obligations in the first place.

Under these facts, Defendants simply cannot meet their burden of establishing that the jury trial waiver was *conspicuous, unambiguous, knowing, and intentional*. Wachovia, supra.

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CONCLUSION

For all of the foregoing reasons, and upon all of the foregoing authorities, Defendants' Motion to Strike Plaintiff's Jury Demand and Transfer this case to the Non-Jury Roster should be DENIED.

This the 26th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL** was electronically filed using the court's e-filing system which will send notice of filing to the following:

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This the 26th day of February, 2021.

/s/ *Christian H. Staples*
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York County Sixteenth Judicial Circuit - Roster Details
CP Jury Term - Wk Tues. Feb 16, 2021 w/ Judge Wm. McKinnon - NO TRIALS

Court Agency	**York County Common Pleas**	**Judge**	**McKinnon**	**Roster Id**	**183**
Roster Type	**Jury Roster**	**Roster Begin Date**	**02/16/2021**	**Roster End Date**	**02/19/2021**

Number of cases = 3

#	Case	Plaintiff Attorney	Defendant Attorney	Filed Date	Sub Type	Status	Notes
1	2018CP4603726 Grapevine Of Riverwalk Inc The VS Riverwalk River District Building 6 Llc , defendant, et al	Steven A. Meckler (704) 375-0057 Christian Hart Staples (704) 945-2183	Stephen David Dluzneski (803) 329-7672 Walter Keith Martens (803) 329-7662	12/10/2018	Breach of Cont 140	Pending	Date Certain #1 Trial on 2/16/21 Jury Roster
2	2019CP4600347 Jon Hannan , plaintiff, et al VS Zachery Holz , defendant, et al	William P. Walker Jr. (803) 359-6194	Jeffrey Ammons (919) 920-2096 Charles A. Kinney Jr. (803) 255-0484 Claude Townsend Prevost III (803) 256-2660 James P. Walsh (864) 232-4400	01/30/2019	Premises Liab 330	Pending	
3	2019CP4603263 Eason Johnson Jr VS Timothy N Estes , defendant, et al	Robert J Reeves (704) 351-7979	Riley Anne Bearden (803) 509-8074 Deidre Webb Smallwood (803) 509-8075	09/25/2019	Personal Injury 350	Pending	Scheduling Order Moves Trial to on/after 4/5/21

ROA 220

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc., Plaintiff, v. Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC, Defendants.	))))))))))))	C/A No. 2018-CP-46-03726 DEFENDANTS' PRE-TRIAL BRIEF

Defendants submit the following pre-trial brief, pursuant to the provisions of Rule 16(c) S.C. R. Civ. P.

(1) A concise, non-argumentative statement of the facts of the case.

This action arises from a dispute between Plaintiff, Grapevine of Riverwalk, Inc. ("Grapevine") and its landlord, Riverwalk River District Building 6, LLC ("Building 6"), over certain terms of Grapevine's lease ("Lease") for commercial space in the "River District" section of the Riverwalk Development in York County, South Carolina. In particular, Grapevine alleges that Building 6 has failed to honor an Option to Purchase provision of the Lease (the "Option"). Grapevine also alleges that Building 6 and the other defendants never intended to honor the Option, but offered the Option to induce Grapevine to enter the Lease. Finally, Grapevine alleges that one or more of the defendants misrepresented to Grapevine that it would have access to outdoor seating areas as part of its Lease when defendants knew that the Lease did not provide any dedicated outdoor space.

(2) An objective statement of the facts in controversy.

a. Whether one or more of the defendants knowingly or negligently misrepresented material facts during negotiation of the Lease in order to induce Grapevine to enter the Lease.

b. Whether Grapevine's principals were sophisticated business people, such that they were obligated to safeguard their own interests during their negotiations, review and execution of the Lease.

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c. Whether Grapevine and its principals had an opportunity to participate in the drafting and/or review of the Lease terms prior to the parties' execution of the Lease.

d. Whether Grapevine was in compliance with the material terms of the Lease at the time it gave notice of its intent to exercise its option to purchase.

e. Whether Grapevine and its landlord entered into an enforceable contract for the sale and purchase of Grapevine's leased space. If so, what were the terms of that alleged contract?

f. If Grapevine and its landlord entered into an enforceable contract for sale and purchase of the leased premises, was Grapevine ready, willing and able to perform?

g. Whether Grapevine prematurely declared its Landlord in default, when the time for Grapevine's purchase option had not expired.

h. Whether Grapevine prohibited its Landlord from performing by filing a lis pendens and commencing this action prior to expiration of the third lease year.

i. Whether Grapevine had any enforceable right to use the outdoor space to conduct its business.

j. What damages, if any, did Grapevine suffer as a direct and proximate result of the defendants' alleged conduct?

k. Whether Defendants engaged in acts that would entitle Plaintiff to disregard the corporate structure(s) of the various entities.

(3) The legal issues involved.

a. Parol evidence rule – Much of Plaintiff's case for damages is premised upon alleged misrepresentations of one or more of the defendants during negotiation of Grapevine's Lease. A critical issue in this case is whether Plaintiff is bound by the contract it executed or whether it is permitted to support its claims through parol evidence that conflicts with the express provisions of its Lease. Defendants have filed a motion in limine to preclude Plaintiff from attempting to introduce parol evidence to vary the terms of the parties' written lease agreement.

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument." Rodarte v. University of South Carolina, 419 S.C. 592, 603, 799 S.E.2d 912, 917 (2017). In particular, where parties have entered into a written contract, the

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alleged verbal "promises and assurances" of the parties' agents that vary from the terms of that contract are "the very type of evidence that the parol evidence rule excludes." Id. (citing Sanders v. Allis Chalmers Mfg. Co., 237 S.C. 133, 138, 115 S.E.2d 793, 795 (1960)).

b. Duty of a party to read and understand contract – Plaintiff's principals are college-educated business people. They have owned and operated several other businesses, and they negotiated the terms of Grapevine's written lease. Grapevine's lease does not give Grapevine any right to conduct its business activities outside of its "demised premises," yet Grapevine seeks significant damages for its alleged "loss of use" of the outdoor space adjacent to its premises. The lease also contains limitations on damages and other provisions that Grapevine's president described as "legal mumbo jumbo" at her deposition.

A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977). A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); Sanders v. Allis Chalmers Mfg. Co., 237 S.C. 133, 139–40, 115 S.E.2d 793, 796 (1960); Stanley Smith & Sons v. D.M.R. Inc., 307 S.C. 413, 417, 415 S.E.2d 428, 430 (Ct.App.1992). One who signs a written instrument has the duty to exercise reasonable care to protect himself. Maw v. McAlister, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969); Evans, 269 S.C. at 587, 239 S.E.2d at 77; DeHart v. Dodge City of Spartanburg, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct.App.1993).

c. Court's obligation to enforce contract as executed by the parties –

"The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language of the contract." Watson v. Underwood, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014)(quoting Sphere Drake Ins. Co. v. Litchfield, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993)). Although the construction of an ambiguous contract is a question of fact, the interpretation of an unambiguous contract is a question of law. Bennett & Bennett Constr., Inc. v. Auto Owners Ins. Co., 405 S.C. 1, 4, 747 S.E.2d 426, 427 (2013). This court is "without authority to alter an unambiguous contract by construction or to make new contracts for the parties." S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

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Moreover, "[i]f a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." Bates v. Lewis, 311 S.C. 158, 161 n.1, 427 S.E.2d 907, 909 n.1 (Ct. App. 1993). "Whe[n] the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." Whitlock v. Stewart Title Guar. Co., 399 S.C. 610, 615, 732 S.E.2d 626, 628 (2012) (quoting McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." McGill, 381 S.C. at 185, 672 S.E.2d at 574. This court's duty is to enforce the contract made by the parties regardless of the parties' failure to carefully guard their rights. Watson, 407 S.C. at 455, 756 S.E.2d at 162. First South Bank v. Rosenberg, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016).

d. Specific performance of alleged purchase option – Plaintiff's claim for specific performance of its alleged purchase option is an equitable claim, to be decided by the court. Ingram v. Kasey's Assoc., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). "In order to compel specific performance, a court of equity must [first] find there is clear evidence of a valid agreement . . . ." Ingram v. Kasey's Assoc., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989).

e. Statute of frauds – Plaintiff's claim for specific performance, as well as any claim based upon an alleged "breach" of its lease for "loss of use" of patio space is barred by the statute of frauds. Any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. South Carolina Code Ann. § 32–3–10(4). Failure to put such a contract in writing renders it void. South Carolina Code Ann. § 27–35–20 (1976). Moreover, a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983) (court held evidence of oral modification of the real estate contract as violative of the Statute of Frauds). Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989).

f. Enforcement of contractual limitations on damages – Plaintiff seeks to recover lost profits and other alleged damages that are not recoverable by the terms of its written lease. Grapevine cannot recover consequential damages or punitive damages because it contractually agreed that it was precluded from doing so. Defendants have filed a motion in limine regarding this issue.

g. Treatment of related corporate entities as distinct entities – Plaintiff seeks to have the various corporate entities treated as a single enterprise under an "amalgamation" theory of liability. Amalgamation is an equitable issue, to be decided by the court. Drury

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Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008). Amalgamation liability "is not to be applied without substantial reflection." Id. (quoting Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)). "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." Sturkie at 457, 313 S.E.2d at 318. "The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied." Id.

Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 655, 817 S.E.2d 273, 281 (2018).

(4) Defendants' Proposed Exhibits

1. Commercial Lease Agreement, dated 6/23/2014 (Ex. A to Aff. of M. Sills);
2. Letter from Brian Wilson, Esq., dated 7/26/2017 (GRH 00317);
3. Email Exchange – T. Hege/B. Wilson, dated 10/30/2017 (GRH 019-021);
4. Email Exchange – B. Wilson/T. Brockmann, dated 1/18/18 (PL 068-78);
5. Tenant Acceptance Letter (PL 0350-351);
6. Email Exchange – J. Santaniello/T. Brockmann, dated 8/31/18 (PL 013-015);
7. Email Exchange – J. Santaniello/T. Brockann, dated 11/12/18 (PL 093-095);
8. Todd Brockman Email to J. Pittman, dated 1/19/18;
9. Email – Silvia Balan to D. Sills, dated 10/2/18 (PL 0196);
10. Grapevine of Riverwalk Monthly Gross Revenues Summary (PL 0527);
11. New South Properties (Balan) Letter, 11/1/19 (PL 0100);
12. Draft Purchase and Sale Agreement (Ex. G to Lease)(GRH 0301-0316);
13. Notice of Lis Pendens (2018-CP-46-03726);
14. Complaint (2018-CP-46-03726);
15. Grapevine P&L Statements (PL 0563-0620);
16. Email Exchange – B. Wilson/D. McMillan (PL 0025-PL 0026);
17. Grapevine Facebook Post – 4/5/19 (PL 0107);
18. Email – M. Mather to D. Sills (GRH 00379-GRH 00381);
19. Grapevine Facebook Post "Breaking News" (GRH 341);
20. Photo – Grapevine Front Door with "We Are Open" Placard;
21. Letter – D. Ballou to S. Meckler (GRH 338-339);
22. Brass Tap Lease Excerpt – Patio (GRH 0116 – 0117);
23. Email – D. Sills to M. Mather – 4/16/18 (PL 0003);
24. Email Exchange – M. Sills/D. Williams – 9/17/14 (PL 198);
25. Email Exchange – M. Sills/D. Williams – 4/18/14 (PL 265-269);
26. Email – M. Sills to D. Williams & M. Mather, dated 7/9/17 (PL 354 - 355);
27. M. Sills – Letter to SCDOR re: Libbie's Bistro– 9/29/2020 (SCDOR 105);
28. Ms. Sills-Email dated 4/28/16 (PL 0347);
29. Email Exchange – M. Sills/D. Williams (PL 0232-0233);
30. Grapevine Facebook Posts (Ex. 53 to M. Sills deposition);

31. Email Exchange – M. Sills/D. Williams – 8/4/12 (PL 0200 – PL 0204);
32. Email Exchange – M. Sills/D. Williams – 5/15/14 (PL 0302-0307);
33. Email Exchange – M. Sills/M. Blackham – 6/11/14 (PL 0324-0326).

(5) Any unusual problems relating to evidence to be introduced –

a. Defendants anticipate that the parties will stipulate to limited facts;

b. Defendants seek to exclude some of Plaintiff's anticipated evidence, and are filing a motion in limine that more specifically sets forth their arguments on those issues.

(6) Any unusual question or matter which should be brought to the attention of the court –

By the terms of the lease agreement that is the subject of this lawsuit, the parties agreed that any dispute would be decided in a non-jury proceeding. Defendants have previously moved to strike Plaintiff's jury demand. That motion was denied. Defendants renew their motion for non-jury trial.

(7) Settlement negotiations were attempted. To date the parties have been unable to resolve their dispute.

August 20, 2021

s/W. Keith Martens
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

STIPULATIONS REGARDING FACTS AND EVIDENCE FOR PURPOSES OF TRIAL

NOW COME the parties, by and through their respective undersigned counsel, pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, and hereby agree to the following stipulations for the purposes of trial:

STIPULATIONS REGARDING FACTS NOT IN DISPUTE

The parties hereby agree that the following facts are not in dispute or controversy:

1. There is a written Commercial Lease Agreement ("Lease") between The Grapevine of Riverwalk, Inc., as Tenant, and Riverwalk River District Building 6, LLC, as Landlord.

2. That on July 26, 2017, an attorney representing The Grapevine of Riverwalk, Inc. gave written notice to the Landlord of Grapevine's intent to exercise its Option to Purchase under the Lease.

3. That the written notice of Grapevine's intent to exercise its Option to Purchase under the Lease requested a closing date of February 2, 2018.

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4. That the address for the Demised Premises, as defined in the Lease, is 829 Terrace Park, Suite 104, Rock Hill, South Carolina.

5. That Riverwalk River District Building 6, LLC is the owner of Building 6 within which the Demised Premises under the Lease are located.

6. That The Grapevine of Riverwalk, Inc. paid $6,705.00 to Riverwalk River District Building 6, LLC as a Security Deposit under the Lease.

7. That The Grapevine of Riverwalk, Inc. has paid rent to Riverwalk River District Building 6, LLC in accordance with the Lease.

8. That the Commencement Date and the Rent Commencement Date, as those terms are defined in the Lease, was February 2, 2016.

9. That on October 5, 2018, an attorney representing The Grapevine of Riverwalk, Inc. gave written notice to Riverwalk River District Building 6, LLC of its alleged breach of the Lease and the Option to Purchase.

10. That David Williams was employed by GRH Development Resources, LLC, as the Managing Director of Development, and in that capacity he was generally responsible for overseeing the construction of Building 6 within which the Demised Premises are located and the negotiation of the Lease with The Grapevine of Riverwalk, Inc.

11. That Debbie McMillan has been employed as Office Manager for GRH Development Resources, LLC from approximately October 2017 to the present.

12. That Todd Brockmann, Esq. is an attorney who was engaged by or on behalf of Riverwalk River District Building 6, LLC, to assist with the creation of a horizontal property regime for Building 6 within which the Demised Premises are located.

13. That Mark S. Mather is an employee of GRH Development Resources, LLC.

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14. That Mark S. Mather is the managing member of GRH Development Resources, LLC.

15. That The Greens of Rock Hill, LLC is the majority owner (99.8%) and manager of Riverwalk River District Building 6, LLC.

16. That The Greens of Rock Hill, LLC is owned and managed by Assured Administration, LLC.

17. That Mark S. Mather is the managing member of Assured Administration, LLC.

18. That Silvia Balan of New South Properties was the property manager for Building 6 at Riverwalk in 2018.

STIPULATIONS REGARDING AUTHENTICITY OF DOCUMENTS

The parties hereby stipulate that the following exhibits are genuine and authentic:

1. The Commercial Lease Agreement (including all exhibits attached thereto), attached hereto as Exhibit #1;

2. The letter from attorney Brian Wilson, attached hereto as Exhibit #2;

3. The letter from attorney Steve Meckler, attached hereto as Exhibit #3;

4. The Tenant Acceptance Letter, attached hereto as Exhibit #4;

5. The email chain attached hereto as Exhibit #5;

6. The email from Mark Mather to Debbie McMillan attached hereto as Exhibit #6.

7. The email chain attached hereto as Exhibit #7.

[END]

This the 23rd day of August, 2021.

/s/ Christian H. Staples
Steven A. Meckler
SC Bar No. 68402
Christian H. Staples
SC Bar No. 101470
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Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing **STIPULATIONS REGARDING FACTS AND EVIDENCE FOR PURPOSES OF TRIAL** was filed with the Court's electronic filing system, which will send notice of filing to the following:

W. Keith Martens
Steven D. Dluzneski
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keith.martens@hamiltonmartens.com
steve.dluzneski@hamiltonmartens.com
Attorneys for Defendants

This the 23rd day of August, 2021.

/s/ Christian H. Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

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STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2018-CP-46-03726
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC, Defendants.	**PLAINTIFF'S MOTION FOR DIRECTED VERDICT / MOTION FOR SPECIFIC PERFORMANCE**

NOW COMES the Plaintiff The Grapevine of Riverwalk, Inc. ("Plaintiff"), through counsel, pursuant to Rule 50 of the South Carolina Rules of Civil Procedure and the laws of the State of South Carolina, and hereby moves for entry of a directed verdict in its favor on its specific performance claim against Defendant Riverwalk River District Building 6, LLC ("Defendant Riverwalk"), and otherwise seeks an order granting Plaintiff a remedy of specific performance based upon the jury's finding that Defendant Riverwalk breached the Lease Agreement by failing to sell the Premises to Plaintiff as required by the Option to Purchase. Plaintiff, in addition to the damages allowed in accordance with the laws governing specific performance, is hereby electing the remedy of specific performance, should the Court so allow.[1]

[1] Damages awarded to Plaintiff for breach of contract related to the use of the outdoor patio and for negligent misrepresentation are damages awarded for separate causes of action from the breach of contract related to the Option to Purchase and failure to sell the Premises, and therefore those damages should still be allowed.

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1) A directed verdict is appropriate because the evidence at trial established (1) the existence of a valid and enforceable Lease Agreement and Option to Purchase between Plaintiff and Defendant Riverwalk (as stipulated by the parties at trial); (2) that Plaintiff performed under the Lease and the Option (as testified by Melanie Sills and Brian Wilson); (3) that Plaintiff gave proper notice to Defendant Riverwalk of its intent to exercise the Option in accordance with the Lease (as testified by Brian Wilson and also pursuant to prior admissions from Defendants); (4) that Plaintiff was ready, willing, and able to complete the purchase during the relevant time period (i.e., on February 2, 2018, and throughout the Third Lease Year) (as testified by Melanie Sills and Brian Wilson, and also pursuant to various email communications admitted into evidence); and (4) specific performance is equitable between the parties. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) (citations omitted) (reciting the elements of specific performance).

2) "[W]hen land is the subject-matter of an agreement, the jurisdiction of equity to enforce specific performance is undisputed, and does not depend on the inadequacy of the legal remedy in the particular case." *Adams v. Willis*, 225 S.C. 518, 526, 83 S.E.2d 171, 175 (1954) (citations omitted). "A mere change in value of land will not justify a refusal to grant specific performance of contract to purchase land." *Id.* at 526-27, 83 S.E.2d at 175.

3) "The discretion to grant or refuse specific performance is not an arbitrary or capricious one, but a judicial discretion, to be exercise in accordance with the special rules and practices of equity, and with regard to the facts and circumstances of the particular case." *Id.* at 527, 83 S.E.2d at 175. "[T]he Court must be governed by the rules of law and equity, and will enforce a contract which is fair and was entered into openly and aboveboard." *Id.* at 528, 83 S.E.2d at 176; *Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985).

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4) This case clearly presents a situation where the remedy at law (i.e., money damages for breach of contract and a continuing relationship between the parties as landlord and tenant[2]) is clearly inadequate and untenable. As proof of this fact, the Court need look no further than the letter from counsel for Defendants dated September 2, 2021, a copy of which is attached hereto as **Exhibit A**. Therein, counsel for Defendants complains of "lingering issues" that he is concerned "will be continuing points of disagreement and controversy" under the Lease and as a result of the parties' continued relationship as landlord and tenant. Should the Court grant specific performance, the Lease will automatically terminate and the parties will be in the position they should have been in had Defendant Riverwalk not committed the breach. In light of Defendants' concerns as expressed in this letter, it is clear that only an award of specific performance will provide Plaintiff an adequate and equitable remedy for Defendants' breach of contract and other wrongdoing.

5) The fact that the property is subject to a bank lien/mortgage and security interest should not prevent the Court from awarding specific performance because "in the absence of a contractual provision indicating the character of the title, the vendor impliedly undertakes to give good and marketable title." *Ingram v. Kasey's Assocs.*, 328 S.C. 399, 409, 493 S.E.2d 856, 862 (1997), *rev'd on other grounds*, 340 S.C. 98, 531 S.E.2d 287 (2000). The *Ingram* court also stated that "it is not relevant whether the vendor's title was free and clear at the end of the lease [i.e., the time for exercising the option], but whether it was marketable at the time for closing." *Id*.

6) "Generally, if a party to a contract charges himself with an obligation possible to be performed, he must make it good unless its performance is rendered impossible by an act of

[2] The Lease Term expires in February 2026. Pursuant to the Lease, Plaintiff/Tenant has two renewal options for five years each, for a total of ten years.

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God, the law, or other party. Subjective impossibility, possibility which is personal to the promisor and does not inhere in the nature of the act to be performed, does not excuse nonperformance of a contractual obligation." *Moon v. Jordan*, 301 S.C. 161, 390 S.E.2d 488 (1990)

7) Applying the foregoing to the facts of this case, the Construction Loan Agreement between Defendant Riverwalk, as Borrower, and Bank of the Ozarks, as Lender, dated July 30, 2014, which was admitted into evidence during the trial testimony of Anthony Swainey, provides for an original loan amount of $2,050,000. The Lease was fully executed prior to the effective date of the loan. Furthermore, Mr. Swainey testified that the Bank approved the Lease, which included the Option to Purchase. According to the Construction Loan Agreement, the minimum appraised value of the property was $4,260,000 – more than twice the amount of the loan. The net worth of the Guarantor (Assured Administration, LLC) is stated in the loan agreement to be at least $20,000,000 – roughly ten times the amount of the loan. According to the York County Tax Assessor, the current appraised Market Value of the property is $5,973,635.00[3] – nearly three times the amount of the loan.

8) Notably, based on the undersigned's communication with outside counsel for Bank of the Ozark on September 3, 2021[4], it was discovered that the loan matures in mid-November 2021, and therefore it is expected that the Building will be unencumbered at that time, because presumably the loan will have been fully repaid. Furthermore, the Borrower (Defendant Riverwalk) is currently in good standing under the loan and there is no indication that it will not be able to complete its payment obligations under the loan by the maturity date. Thus, it is

[3] The Court can take judicial notice of the assessed value of the Property under Evidence Rule 201(b) ("A court may take judicial notice, whether requested or not.").
[4] Will Esser, Esq. of the Parker Poe law firm represents Bank of the Ozark.

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believed that if the closing occurred after the loan maturity date then there would not be anything required from the Bank in order for the sale to proceed.

9) Regardless, Defendant Riverwalk had and still has a duty to put itself in a position to perform, as this Court instructed the jury, and as set forth in *Commercial Credit Corp. v. Nelson Motors Inc.*, 247 S.C. 360 (1966) and *Columbia East Assocs. v Bi-Lo Inc.*, 299 S.C. 515 (Ct. App. 1989) (holding that the law will imply an agreement to do those things that according to reason and justice should be done to carry out the purpose for which the contract was made). Moreover, a party cannot assert its inability to perform due to its financial condition as a defense to specific performance. *Moon v. Jordan*, 301 S.C. 161, 390 S.E.2d 488 (Ct. App. 1990).

10) In this case, Defendant Riverwalk's duty is to be in a position to sell the Premises at the time of the closing. How it puts itself in that position, whether by obtaining the Bank's approval for a partial release of collateral, or by paying off the loan entirely, is Defendant Riverwalk's decision, but it is its duty nonetheless.

11) Furthermore, if specific performance is granted, then Defendant Riverwalk can pay the relevant portion of the damage award that it would otherwise pay to Plaintiff to the Bank, either as additional collateral for the loan or in satisfaction of its payment obligations under the loan. If Defendant Riverwalk contends that it is unable to pay money damages, then that is additional evidence that specific performance is equitable and necessary to protect Plaintiff in this case.

12) In any event, the contractual relationship between Defendant Riverwalk and Bank of the Ozarks is a matter exclusively between those parties and should not prevent Plaintiff from obtaining a remedy of specific performance where equity otherwise demands. It is Defendant

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Riverwalk's duty to either obtain a partial release of collateral from the Bank or to pay off the loan in full, so that it is in a position to sell the Premises to Plaintiff at the time of closing.

13) To the extent the Court has lingering concerns regarding the means by which Defendant Riverwalk obtains a partial release of collateral or pays off the loan, or regarding the Court's power to compel such action, Rule 70, SCRCP, gives broad powers to the Court to take appropriate action to ensure that its order of specific performance is carried out:

> **Rule 70: Judgment for Specific Acts: Vesting Title.**
>
> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk. (emphasis added).

14) Thus, if the Court's order of specific performance is not performed by Defendant Riverwalk due to any alleged issue with the Bank, then the Court can then take appropriate additional action to ensure that its order is carried out, which may include divesting Defendant Riverwalk of title to the Building, conducting a judicial sale of the Building and using the proceeds of the sale to obtain a partial release of collateral or to pay off the Bank's loan, and appointing Brian Wilson, Esq. (or some other qualified individual) to oversee the enactment of a horizontal property regime for the Building, the creation of other condominium documents, the closing, and the preparation and recording of a Deed for the Premises to Plaintiff.

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15) Under any scenario, the order of specific performance should specify that Plaintiff's future use of the Premises must be unrestricted and in conformity with Plaintiff's prior right of use (including rights to use the Outdoor Patio/Common Areas) in accordance with the parties' intention at the time of the Lease's execution and the jury's verdict regarding Defendant Riverwalk's breach of the Patio/Common Area provisions under the Lease. The Court should include this in its order and direct that the condominium documents make this point clear.

16) The order of specific performance should also include an award of money damages attributable to Defendant Riverwalk's delay in closing. South Carolina law is clear that a party may obtain specific performance and also recover money damages incurred as a result of the breaching party's delay in performance. *See Conner v. Alvarez*, 285 S.C. 97, 328 S.E.2d 334 (1985) (Holding that purchaser was entitled to a credit against the purchase price for all rent paid until execution of a warranty deed by seller); *Perry v. Green*, 313 S.C. 250, 437 S.E.2d 150 (1993) (Holding that a horse buyer could be awarded specific performance of seller's obligation to deliver registration papers and also recover damages for delay in performance where specific performance did not adequately remedy the buyer's damages incurred from a six-year delay during which time the horse's foal remained ineligible for registration and was useless as a stud).

17) In the instant case, the delay damages are all of the monthly rent that Plaintiff has paid since February 2, 2018, and will continue to pay through the eventual closing date and receipt of a recorded Deed to the Premises. The Court can also order that no further rent be due or payable by Plaintiff, or that future rent be paid into an escrow account to be applied to the Purchase Price at the time of closing, either of which option seems especially appropriate in this case, given the length of the delay.

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18) Specific performance is the only remedy that will put the Plaintiff in the position it should have been had Defendant Riverwalk performed as it was required under the Lease/Option. If specific performance is not granted, then Plaintiff will continue to be relegated to the position of a tenant of Defendant Riverwalk, as landlord, and as the attached post-trial letter received from Defendant Riverwalk's counsel suggests, Defendants continue to attempt to impose conditions upon Plaintiff and Plaintiff's use of the Premises and Patio/Common Areas that the jury has already determined do not exist and are otherwise inappropriate. If specific performance is granted, the Lease terminates according to its terms, and Plaintiff becomes the owner of the Premises, free to do as it sees fit with its own property, limited only by the horizontal property regime and related documents that will necessarily have to be drafted and enforced subject to the principles of good faith and fair dealing, and with appropriate recognition of minority owners' rights.

WHEREFORE, for all of the foregoing reasons, Plaintiff The Grapevine of Riverwalk, Inc. respectfully requests the entry of a directed verdict or other order in its favor on its specific performance claim against Defendant Riverwalk River District Building 6, LLC, and for such other and further relief as justice may require.

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
South Carolina State Bar No. 101470
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR DIRECTED VERDICT / MOTION FOR SPECIFIC PERFORMANCE** was electronically filed using the Court's CM/ECF system, which will send notice of filing to the following:

W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
Attorneys for Defendants

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

Exhibit A

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HAMILTON MARTENS
ATTORNEYS AT LAW

W. Keith Martens
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September 2, 2021

Christian H. Staples
Shumaker Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280

RE: *The Grapevine of Riverwalk, Inc. v.*
Riverwalk River District Building 6, LLC, et al.
C/A No. 2018-CP-46-03726
Our File 11929.003

Dear Christian:

I understand that Grapevine began offering outdoor seating and service over the weekend, to include the sale and service of wine and beer within the Common Areas of Building 6. I believe that Grapevine's actions are premature, at the very least. As you know, the parties have until next Friday, September 10, to file post-trial motions. There has been no final judgment entered in this case and none will be entered until the court has ruled upon our respective post-trial motions.

I am also writing to draw your attention to some lingering issues that I do not believe were resolved by last week's trial. Unless these issues are satisfactorily addressed and resolved, I am concerned that they will be continuing points of disagreement and controversy as our clients attempt to move forward.

First, as you know, your client has previously been placed on notice that its sales of food plates, pastries, confectionaries and cigars are not permitted under the terms of its lease. While I recognize that your client disagrees with that position, it is clear that Grapevine has made no attempt to obtain its landlord's "prior written consent" for those activities. I do not believe that anything from last week's trial resolved our clients' disagreement over that issue. If Grapevine continues to flout the use provision of its lease, without even attempting to obtain its landlord's written consent, that is likely to lead to additional disputes and, potentially, additional litigation.

I also want to bring to your attention the fact that Grapevine's recently-renewed sales of beer and wine within the Common Areas may well be in violation of South Carolina's liquor licensing laws and, hence, a breach of Grapevine's lease. It is my understanding that Grapevine holds a license that allows it to sell wine and beer for "on premises" consumption. South Carolina Regulation 7-202.1 defines "premises" as "all of the buildings and grounds that are both (1) subject to the **direct control** of the license holder and (2) used by the license holder to conduct its business."

While there is no doubt that Grapevine is licensed to sell wine and beer for consumption within its Demised Premises, I do not believe that it is licensed to sell alcoholic beverages within the Common Areas of Building 6. In fact, I have been informed that the South Carolina Department of Revenue would require a tenant to have exclusive possession and control of an outdoor area in order to consider that area as part of the licensed "premises." As I understood Ms. Sills' testimony at trial, Grapevine does not claim exclusive possession or control of any of the Common Areas. Therefore, those areas would not be within Grapevine's direct control and, likely, would not be part of Grapevine's "premises" under ABL laws and regulations.

As I stated at the outset of this letter, Grapevine's decision to re-instate outdoor service in the Common Areas appears to be premature, at the least. I believe that it is incumbent upon us, the attorneys, to attempt to reach some resolution of these issues before they become future flashpoints of controversy for our clients.

Please let me hear from you regarding these matters.

Sincerely,

W. Keith Martens

WKM/
cc: client

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STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2018-CP-46-03726
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC, Defendants.	**PLAINTIFF'S MOTION FOR AWARD OF PRE-JUDGMENT INTEREST ON JURY VERDICT**

NOW COMES the Plaintiff The Grapevine of Riverwalk, Inc. ("Plaintiff"), through counsel, pursuant to S.C. Code § 34-31-20, and hereby moves for an order awarding pre-judgment interest upon the jury verdict entered in its favor and against the Defendants in this action. In further support thereof, Plaintiff states the following:

1) This action was tried to a jury verdict during the August 23, 2021, session of Common Pleas court for York County, SC, with The Honorable William McKinnon presiding.

2) The jury returned a verdict in Plaintiff's favor and awarded damages to Plaintiff in the total amount of $464,624.00, broken down as follows:

A. $221,700.00 against Defendant Riverwalk River District Building 6, LLC for breach of contract (Option to Purchase provision under the Lease Agreement between the parties);

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B. $146,124.00 against Defendant Riverwalk River District Building 6, LLC for breach of contract (Patio/Common Area provisions under the Lease Agreement between the Parties); and

C. $96,800.00 against all Defendants for negligent misrepresentation.

3) A request for pre-judgment interest must be pled in the complaint or the prayer for relief in order to be recoverable. *Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 367, 656 S.E.2d 765, 768 (Ct. App. 2007) (citing Town of Bennettsville v. Bledsoe, 226 S.C. 214, 219, 84 S.E.2d 554, 556 (1954)); *Calhoun v. Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000).

4) Here, Plaintiff's Second Amended Complaint, filed on January 15, 2021, (the operative complaint in this action), prays for the following relief: "That the Court award Grapevine pre-judgment interest and post-judgment interest on all monetary damage awards in its favor at the highest legal rate from the earliest date possible until paid and satisfied in full." (Prayer for Relief, ¶ 6) (emphasis added). The original Complaint filed on December 10, 2018, contains a nearly identical request for prejudgment interest and post-judgment interest. (Prayer for Relief, ¶ 6).

5) S.C. Code § 34-31-20(A) provides statutory authority for pre-judgment interest: "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."

6) Case law in South Carolina holds that pre-judgment interest is recoverable on liquidated damages, or damages that are a sum certain or a sum capable of being reduced to certainty. *See Dixie Bell*, 376 S.C. at 369-71, 656 S.E.2d at 769-70, and cases cited therein.

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7) Liquidated damages are defined as "damages the amount of which has been ascertained by judgment or by the specific agreement of the parties or which are susceptible of being made certain by mathematical calculation from known factors." *Id*. at 371, 656 S.E.2d at 770. The mere fact that the amount of the claim is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest. *Id*. at 372, 656 S.E.2d at 770-71.

8) "The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.* at 372, 656 S.E.2d at 771 (quoting *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993)).

9) Here, Plaintiff's claim for breach of contract arose on two readily defined dates, and upon fixed conditions, as discussed below.

10) Specifically, Plaintiff's claim for breach of contract relating to the Option to Purchase provision arose on February 2, 2018, the closing date fixed in the letter from Brian Wilson, Esq., which letter provided at least 120 days' advance written notice to Defendant Riverwalk, as Landlord, of Plaintiff's intent to exercise the Option to Purchase, in accordance with the Lease/Option. Defendants admitted that this notice was given, that the proposed closing date of February 2, 2018, fell within the Third Lease Year, and that had the closing occurred on that date, it would have complied with the Lease/Option.

11) Plaintiff's damages incurred as a result of Defendant Riverwalk's breach of the Lease/Option can be reduced to a sum certain by reference to the Lease Agreement, which provides the amount of monthly rent paid and payable by Plaintiff, and Plaintiff argued at trial that its measure of recovery should be calculated by reference to the amount of rent it actually paid, as well as to the appraisal report prepared by John Scott. Defendants did not contest the

amount of rent paid by Plaintiff and even stipulated that Plaintiff had paid its rent in compliance with the Lease. Similarly, Defendants did not present any evidence to contradict the property valuation contained in the appraisal report prepared by John Scott.

12) Thus, based on the foregoing, pre-judgment interest should commence on February 2, 2018, on the $221,700.00 awarded to Plaintiff against Defendant Riverwalk River District Building 6, LLC for breach of contract (Option to Purchase provision under the Lease Agreement), at the rate of eight and three-fourths (8.75%) percent per annum.

13) Plaintiff's claim for breach of contract relating to the Patio/Common Area provisions of the Lease arose on March 19, 2019, the date that formal notice of default was given by Defendant Riverwalk to Plaintiff and upon receipt of which notice Plaintiff immediately removed its outdoor furniture and ceased using the outdoor common areas for the seating and service of its customers. Plaintiff's damages incurred as a result of Defendant's breach can be reduced to a sum certain by reference to the expert report of Jason Ligon, who calculated the lost profits incurred by Plaintiff as a result of its non-use of the outdoor common areas after March 2019. Mr. Ligon's testimony went unchallenged by any other expert witness at trial, and Defendants did not put up any other evidence to contradict the amount of Plaintiff's lost profits.

14) Thus, pre-judgment interest should commence on March 19, 2019, on the $146,124.00 awarded to Plaintiff against Defendant Riverwalk River District Building 6, LLC for breach of contract (Patio/Common Area provisions under the Lease Agreement), at the rate of eight and three-fourths (8.75%) percent per annum.

15) With respect to Plaintiff's negligent misrepresentation claim, it is uncontroverted that the misrepresentation was made on February 24, 2014, and the evidence at trial established

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that Plaintiff would not have entered into the Lease but for that misrepresentation. The Lease was fully executed on June 23, 2014.

16) Thus, Plaintiff's damages for negligent misrepresentation were fixed upon the execution of the Lease and, accordingly, pre-judgment interest should commence on June 23, 2014, on the $96,800.00 awarded to Plaintiff against all Defendants, at the rate of eight and three-fourths (8.75%) percent per annum.

WHEREFORE, for all of the foregoing reasons, and upon all of the foregoing authorities, Plaintiff respectfully requests the entry of an order awarding pre-judgment interest upon the jury verdict entered in its favor and against the Defendants in this action, and for such further relief as justice requires.

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
South Carolina State Bar No. 101470
Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
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cstaples@shumaker.com
Attorneys for Plaintiff

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ELECTRONICALLY FILED - 2021 Sep 03 9:57 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR AWARD OF PRE-JUDGMENT INTEREST ON JURY VERDICT** was electronically filed using the Court's CM/ECF system, which will send notice of filing to the following:

W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
Attorneys for Defendants

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

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STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2018-CP-46-03726
THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC, Defendants.	**PLAINTIFF'S MOTION FOR AWARD OF COSTS AND ATTORNEYS' FEES**

NOW COMES the Plaintiff The Grapevine of Riverwalk, Inc. ("Plaintiff"), through counsel, pursuant to the Lease Agreement between the parties and Rule 54 of the South Carolina Rules of Civil Procedure, and hereby moves for an order awarding its costs and reasonable attorneys' fees incurred in this action. In further support thereof, Plaintiff states the following:

1) This action was tried to a jury verdict during the August 23, 2021, session of Common Pleas court for York County, SC, with The Honorable William McKinnon presiding.

2) The jury returned a sizeable verdict in Plaintiff's favor and awarded damages to Plaintiff in the total amount of $464,624.00.[1]

[1] The jury verdict included $221,700.00 awarded against Defendant Riverwalk River District Building 6, LLC ("Defendant Riverwalk") for breach of contract (Option to Purchase provision under the Lease Agreement between the parties); $146,124.00 awarded against Defendant Riverwalk for breach of contract (Patio / Common Area provision under the Lease Agreement between the Parties); and $96,800.00 awarded against all Defendants for negligent misrepresentation.

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3) Plaintiff's Second Amended Complaint filed on January 15, 2021 (the operative complaint in this action), prays for the following relief: "That the costs of this action, including reasonable attorneys' fees, be taxed against Defendants." (Prayer for Relief, ¶ 5). Plaintiff's original Complaint, filed December 10, 2018, contained a nearly identical request for costs and attorneys' fees. (Prayer for Relief, ¶ 5).

4) As more fully set forth in the Affidavit of Steven A. Meckler, filed contemporaneously with this Motion, Plaintiff has incurred substantial attorneys' fees (**$523,124.94**), as well as substantial costs (**$55,353.28**), in connection with this action. Plaintiff hereby incorporates and relies upon that Affidavit in further support of this Motion.

5) An award of costs is governed by statute in South Carolina. Rule 54(d), SCRCP, provides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs". Rule 54(e) provides an enumerated list of taxable costs, including: (1) Costs Authorized by Statute and Sanctions Imposed in Favor of Prevailing Party; (2) Fees of the Clerk; (3) Fees of the Sheriff; (4) Fees Incurred in Service of Process; (5) Witnesses' Fees; and (6) Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial.

6) There is also a contractual authorization for an award of costs and attorneys' fees in this case. Paragraph 38 of the Lease Agreement between the Plaintiff and Defendant Riverwalk River District Building 6, LLC (introduced as Exhibit # 1 at Trial), provides, in pertinent part, as follows:

> In the event of any default by Landlord hereunder, Tenant shall provide Landlord with notice thereof and thirty (30) days to thereafter cure the same, failing which, subject to the other provisions hereof, Tenant may commence an action against Landlord for its actual damages, together with its attorneys' fees and costs, as its sole and exclusive remedy on account thereof.

7) On October 5, 2018, Plaintiff, through counsel, sent a letter to Defendant Riverwalk giving notice of alleged default under the Lease. This action was filed on December

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10, 2018, more than thirty (30) days later, upon Defendant Riverwalk's failure to cure the default. That Plaintiff gave Defendant Riverwalk written notice of default under the Lease was stipulated by the parties for purposes of trial, and Defendants did not present any evidence to challenge the fact that proper notice of default was given in compliance with the Lease.

8) Thus, there is an express contractual basis for Plaintiff to recover its costs and attorneys' fees in this action which the Court should uphold and enforce.

9) The general rule is that attorney's fees are recoverable when authorized by contract or statute. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 297, 377 S.E.2d 296, 384 (1989). "Where there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Id*.

10) When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each of the following factors: 1) the nature, extent, and difficulty of the legal services rendered; 2) the time and labor devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the fee customarily charged in the locality for similar services; and 6) the beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660-61 (1993); *Baron*, 297 S.C. at 297, 377 S.E.2d at 384-85. "Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling." *Baron*, 297 S.C. at 384, 377 S.E.2d at 297.

11) Below is an explanation of how each factor is satisfied in this case:

A. <u>The nature, extent, and difficulty of the legal services rendered</u>.

The legal services rendered on Plaintiff's behalf were substantial, complex, and difficult, given the number of claims asserted and the number of Defendants. The litigation lasted nearly

three years, involved substantial discovery and depositions (12 in total), required two amendments to the complaint, and involved three separate motions for summary judgment.

What was initially thought to be a relatively simple breach of contract case was transformed into far more complex litigation during the course of discovery, through Defendants' asserted defenses and subsequent breaches of the Lease Agreement, and required amended pleadings, the assertion of multiple additional claims, and the addition of multiple party Defendants.

Defendants asserted a number of defenses to Plaintiff's claims, changed counsel in Summer 2020, had a number of witnesses and former employees located outside of the State of South Carolina, and failed to resolve this matter at an early stage, including at the mediation on September 30, 2019. All of these facts necessarily increased the costs and attorneys' fees incurred because Plaintiff had to be prepared to address each of the asserted defenses and other issues at trial. Plaintiff also encountered issues effecting service of routine legal documents (subpoenas and notices of depositions) upon Defendants, and in many instances had to attempt service via multiple means, thereby increasing the amount of time, and costs, spent. In addition, the trial date was continued on one occasion due to COVID, and the scheduling of hearings and depositions was generally made more difficult due to the pandemic.

The case was also made more difficult, complex, and time consuming through Defendants' subsequent and ongoing breaches of the Lease. For example, Defendants revoked Plaintiff's right to use the outdoor Patios/Common Areas approximately three months after this action was filed, even though Plaintiff had continuously used those areas for the seating and service of its customers for over three years, without prior issue or complaint. Defendants also sent Plaintiff a notice of alleged default under the Lease related to the sale of food, coffee, and

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cigars, even though Plaintiff had continuously sold those things from the very first day it opened its doors for business. These "new issues" which were created solely by Defendants in the middle of the litigation substantially contributed to Plaintiff's costs and attorneys' fees incurred.

Moreover, despite the fact that these issues and defenses were tried by the jury and conclusively resolved in Plaintiff's favor, Defendants recently asserted through their counsel that "[u]nless these issues are satisfactorily addressed and resolved … they will be continuing points of disagreement and controversy … ." *See* Letter from Keith Martens dated 9/2/2021, attached hereto as **Exhibit A** (referring to Grapevine's reinstatement of outdoor seating and continued sales of food and cigars). Thus, it is reasonably expected that Plaintiff and Plaintiff's counsel will continue to incur costs and attorneys' fees in this matter, notwithstanding the jury's verdict.

Finally, as the Court is aware, this action was tried by a jury trial that lasted nearly five full days. It was no easy task to prepare for the direct and cross examination of eight live witnesses at trial. Plaintiff ultimately recovered upon three of the four claims submitted to the jury, and substantial monetary verdicts were rendered against each of the five named Defendants.

B. The time and labor devoted to the case.

Shumaker professionals devoted at least 1,463.90 hours to this case over the course of nearly three years of litigation. That time was spent by attorneys, paralegals, and support staff and was necessary to achieve the favorable results obtained. The time expended by Plaintiff's counsel was necessary and appropriate given the complexity of the issues, the number of amendments to pleadings, the defenses and other issues raised and asserted by Defendants, the number of parties, the location of multiple witnesses outside of the State of South Carolina, and various other factors, including the extent of written discovery, the number of discovery disputes

and motions hearings (including three separate summary judgment motions), the completion of twelve depositions, and the necessary preparations for a weeklong jury trial.

C. <u>The professional standing of counsel</u>.

The professional standing of Plaintiff's counsel is high. Plaintiff's counsel are highly respected and work at a large, regional law firm. Mr. Meckler is well-known throughout the legal community in South Carolina, is recognized annually in his field, is currently the Managing Partner for Shumaker's Charlotte, NC and Greenville, SC offices, is a Member of the Firm-Wide Management Committee, and is also the Management Committee liaison to the firm's Charleston, SC office. He is "AV®" peer-review rated by Martindale-Hubbell and regularly appears on lists compiled by *Best Lawyers* and *Super Lawyers*, and is an invited Member of the International Association of Defense Counsel (IADC). He has been practicing in the area of commercial litigation in South Carolina for over two decades.

Mr. Staples is also a well-regarded attorney with over twelve years' experience as a commercial litigator. He regularly appears on lists compiled by *Super Lawyers* and *Legal Elite*, and was named a "Leader in the Law" by *North Carolina Lawyer's Weekly* in 2017. He had primary responsibility for the day-to-day litigation and case management in this action.

Copies of the biographies for Mr. Meckler and Mr. Staples are attached as Exhibits A and B to the Affidavit of Steven A. Meckler, filed contemporaneously with this Motion.

D. <u>The contingency of compensation</u>.

Shumaker did not represent Plaintiff on a contingency basis in this action, and therefore this factor does not apply. Plaintiff was billed on an hourly basis, as is customary in the legal industry, along with all other costs and expenses incurred in connection with the litigation. Plaintiff is current on the invoices submitted by Shumaker.

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E. The fee customarily charged in the locality for similar services.

The fees charged by Shumaker in this case are customary, in line with, and are actually a little lower than those rates customarily charged by firms of similar size with lawyers of similar experience and qualifications. Shumaker's fees charged in this case are based upon standard rates and there was no increase above those standard rates or success fee added.

F. The beneficial results obtained.

The amount of recovery upon the jury verdict is but one factor to be considered, and it is not unprecedented for courts to award attorneys' fees which exceed the amount of the verdict obtained. *See Baron*, 297 S.C. at 385, 377 S.E.2d at 297-98 and cases cited therein (Awarding fees in excess of the jury verdict and noting that courts in other jurisdictions have also awarded attorneys' fees which exceed the verdict obtained).

Shumaker unquestionably obtained a beneficial result for its client in this case. The jury awarded money damages on three separate causes of action, and against each of the five named Defendants. The total jury verdict award on all claims was $464,624.00. The majority of the award ($367,824.00) was based upon Defendant Riverwalk's breach of the Lease Agreement that expressly authorizes, without limitation, Plaintiff's recovery of its costs and attorneys' fees incurred as a result of Defendant Riverwalk's breach. Plaintiff also recovered a sizeable award ($96,800.00) on its negligent misrepresentation claim against all Defendants.

WHEREFORE, for all of the foregoing reasons, and upon all of the foregoing authorities, Plaintiff respectfully requests the entry of an order awarding all of its costs and attorneys' fees incurred in connection with this action, and for such further relief as justice requires.

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
South Carolina State Bar No. 101470
Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR AWARD OF COSTS AND ATTORNEYS' FEES** was electronically filed using the Court's CM/ECF system, which will send notice of filing to the following:

W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
Attorneys for Defendants

This the 3rd day of September, 2021.

/s/ Christian H. Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

Exhibit A

HAMILTON MARTENS
ATTORNEYS AT LAW

W. Keith Martens
keith.martens@hamiltonmartens.com
803.984.9515

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September 2, 2021

Christian H. Staples
Shumaker Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280

RE: *The Grapevine of Riverwalk, Inc. v.*
Riverwalk River District Building 6, LLC, et al.
C/A No. 2018-CP-46-03726
Our File 11929.003

Dear Christian:

I understand that Grapevine began offering outdoor seating and service over the weekend, to include the sale and service of wine and beer within the Common Areas of Building 6. I believe that Grapevine's actions are premature, at the very least. As you know, the parties have until next Friday, September 10, to file post-trial motions. There has been no final judgment entered in this case and none will be entered until the court has ruled upon our respective post-trial motions.

I am also writing to draw your attention to some lingering issues that I do not believe were resolved by last week's trial. Unless these issues are satisfactorily addressed and resolved, I am concerned that they will be continuing points of disagreement and controversy as our clients attempt to move forward.

First, as you know, your client has previously been placed on notice that its sales of food plates, pastries, confectionaries and cigars are not permitted under the terms of its lease. While I recognize that your client disagrees with that position, it is clear that Grapevine has made no attempt to obtain its landlord's "prior written consent" for those activities. I do not believe that anything from last week's trial resolved our clients' disagreement over that issue. If Grapevine continues to flout the use provision of its lease, without even attempting to obtain its landlord's written consent, that is likely to lead to additional disputes and, potentially, additional litigation.

I also want to bring to your attention the fact that Grapevine's recently-renewed sales of beer and wine within the Common Areas may well be in violation of South Carolina's liquor licensing laws and, hence, a breach of Grapevine's lease. It is my understanding that Grapevine holds a license that allows it to sell wine and beer for "on premises" consumption. South Carolina Regulation 7-202.1 defines "premises" as "all of the buildings and grounds that are both (1) subject to the **direct control** of the license holder and (2) used by the license holder to conduct its business."

While there is no doubt that Grapevine is licensed to sell wine and beer for consumption within its Demised Premises, I do not believe that it is licensed to sell alcoholic beverages within the Common Areas of Building 6. In fact, I have been informed that the South Carolina Department of Revenue would require a tenant to have exclusive possession and control of an outdoor area in order to consider that area as part of the licensed "premises." As I understood Ms. Sills' testimony at trial, Grapevine does not claim exclusive possession or control of any of the Common Areas. Therefore, those areas would not be within Grapevine's direct control and, likely, would not be part of Grapevine's "premises" under ABL laws and regulations.

As I stated at the outset of this letter, Grapevine's decision to re-instate outdoor service in the Common Areas appears to be premature, at the least. I believe that it is incumbent upon us, the attorneys, to attempt to reach some resolution of these issues before they become future flashpoints of controversy for our clients.

Please let me hear from you regarding these matters.

Sincerely,

W. Keith Martens

WKM/
cc: client

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

AFFIDAVIT OF STEVEN A. MECKLER IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF COSTS AND ATTORNEYS' FEES

I, Steven A. Meckler, being first duly sworn, hereby depose and say the following:

1. I am over the age of eighteen (18) years old, suffer from no legal disability, and am competent to make this affidavit in all respects. The facts alleged herein are based upon my own personal knowledge.

2. I am the Managing Partner of the Charlotte, NC and Greenville, SC offices of Shumaker, Loop & Kendrick, LLP ("Shumaker"). I am also a Member of the Firm-Wide Management Committee, and am the Management Committee liaison for the firm's Charleston, SC office. Shumaker is an AmLaw 200 firm with eight offices in Ohio, Michigan, Florida, North Carolina, and South Carolina. Shumaker is counsel of record for the Plaintiff in this action.

3. I personally served as Co-Counsel in this action, along with my law partner, Christian Staples. I have been a practicing attorney in South Carolina since 2000 and in North Carolina since 1999. I devote all of my practice to litigation. Throughout the course of this

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litigation, I utilized the services of my partners, associates, paralegals, and other support staff for assistance and to help evaluate, analyze, work on, and develop this case.

4. In connection with the making of this Affidavit, I reviewed Shumaker's time and accounting records for this matter, including the monthly invoices that Shumaker has submitted to our client, and our client's payment status. Shumaker billed Plaintiff on an hourly basis and for all costs incurred; this was not a contingency case. Those costs and expenditures were reasonable, non-duplicative, and in accordance with the tasks completed. Our client is obligated to pay the full amount of fees and expenses incurred, and is current on its invoices.

5. This was a complex matter involving significant discovery and motions practice, as well as multiple claims against multiple parties. We were also required to locate, subpoena, and depose numerous individuals who were not parties to this action, many of whom reside outside the State of South Carolina. Shumaker was especially thorough in its preparation for this case because Defendants are sophisticated businesses and business people, and opposing counsel is a skilled litigator. Shumaker had to be prepared to meet its burden of proof and to effectively address Defendants' defenses, and had to complete the background work necessary to enable Plaintiff to introduce the evidence it needed to prove its case at trial. This matter ended up taking five days to try due to its complexity.

6. The trial resulted in a sizeable recovery for the Plaintiff. The work completed by Shumaker and its attorneys, paralegals, and support staff was necessary to achieve this result. If Shumaker had not put in the time and effort into the case that it did, the outcome certainly could have been less favorable for Plaintiff.

7. The recovery of Plaintiff's costs and attorneys' fees is expressly authorized by Section 38 of the Lease Agreement between the parties, and Rule 54 of the South Carolina Rules

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of Civil Procedure.

8. Plaintiff has incurred the following costs and attorneys' fees in connection with this action, and seeks to have those amounts taxed to the Defendants in this action:

a. Attorneys' Fees: **$523,124.94**. Our firm's invoices contain both attorney/client privileged information and confidential business information. A copy of the redacted bills are attached hereto as **Exhibit A**. The unredacted bills are available for an *in camera* review by the Court.

b. Document Reproduction and Color Copying: **$30.80**. In many instances Shumaker "wrote off" these charges as a courtesy to its client, but this amount was in fact billed and paid.

c. Fees of the Clerk: **$1,448.70**. This includes filing fees and motion/hearing fees paid to the Clerk of Court for York County, SC, as well as fees paid to the Clerks of Court for North Carolina and Massachusetts in connection with the foreign Subpoenas Duces Tecum issued to Matthew Blackham and Todd Brockmann.

d. Fees of the Sheriff: **$40.00**. This includes service of process fees for the Subpoenas issued to Mark Mather, GRH Development Resources, LLC, and The Greens of Rock Hill, LLC, before they were named Defendants in this action.

e. Service of Process Fees (Other than Sheriff Fees): **$295.00**. Costs paid to AJS Investigations (Andrew Staffileno) for personal service of Trial Subpoenas on Mark Mather, Debbie McMillan, and Brian Wilson.

f. Postage Fees and Federal Express. **$1,240.70**. For service of various

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documents upon the parties and witnesses in this case, and also upon the court/judges prior to hearings, etc.

g. Witness Fees: **$35,028.71**. This includes the following costs for the following witnesses, and includes the statutory witness appearance fees and mileage reimbursements:

- Alan Aschenbrenner – Trial – $87.64
- Brian Wilson – Trial – $91.00
- Anthony Swainey – Trial – $286.68
- David Williams – Deposition – $33.34
- David Williams – Trial – $150.80
- John Scott (Expert; appraisal, deposition, trial) – $6,212.50[1]
- Jason Ligon (Expert; report, deposition, trial) – $28,166.75[2]

h. Mediator Fee. **$2,123.37**. Plaintiff's portion of the fee paid to Jason James of the Bell, David & Pitt law firm for his service as mediator.

i. Court Reporter Fees and Costs of Transcripts. **$9,266.77**. This includes the following costs for the following transcripts:

- Motions hearing on 3/19/20 – $165.00
- Motions hearing on 12/16/20 – $468.25
- Motions hearing on 3/3/21 – $320.00
- Riverwalk 30(b)(6) – $1,750.00
- Mark Mather (Pt. 1) – $1,530.00
- Mark Mather (Pt. 2) and David Williams (combined invoice) – $1,249.00
- Anthony Swainey – $877.35
- Debbie McMillan – $1,081.24
- Todd Brockmann – $708.80
- Melanie and David Sills (combined invoice) – $437.00
- Grapevine 30(b)(6) – $163.45
- Jason Ligon – $215.68
- John Scott – $301.00

j. Westlaw / Lexis-Nexis (Legal Research). **$1,512.97**. Charges for specific

[1] Copies of the Invoices from John Scott are attached hereto as **Exhibit B**.
[2] Copies of the Invoices from Jason Ligon are attached hereto as **Exhibit C**.

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legal research and document retrieval billed to, and paid by, Plaintiffs. In many instances Shumaker "wrote off" these charges as a courtesy to its client, but this amount was in fact billed and paid.

k. Third-Party Litigation Support Vendors. **$2,420.20**. Charges from NOVA Office Strategies for poster boards, binders, etc., used at hearings and trial.

l. Cost of Certified Documents (S.C. Secretary of State). **$103.50**. Costs to obtain certified copies of the corporate documents of the named Defendants for purposes of trial.

m. Courier Service. **$143.70**. Charges incurred in connection with efforts to obtain a response to the Subpoena Duces Tecum from Todd Brockmann and in filing a motion to compel in Union County, North Carolina.

n. Travel Expenses / Mileage Reimbursement: **$1,496.70**. Charges incurred for attendance of SLK attorneys and other personnel at hearings, trial, etc., which were billed to, and paid by, Plaintiff.

o. Meals for SLK attorneys and other personnel during Trial. **$202.16**.

9. The attorneys' fees charged by Shumaker in this matter are comparable to other firms with attorneys and paralegals of similar education, training, and experience practicing in this jurisdiction (York County, SC), as well as in other cities throughout South Carolina and in the greater Charlotte area, and are reasonable for the level of services provided. Rock Hill is approximately 27 miles from downtown Charlotte, and York is approximately 35 miles from downtown Charlotte. Comparable law firms with offices in Rock Hill include Robinson Bradshaw and Offit Kurman, both of which are large, regional firms that, upon information and belief, also handle litigation matters at similar rates and fees as those charged by Shumaker in this action.

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10. Below is a chart of Shumaker's professionals who have worked on this matter, along with their corresponding hourly rates and time spent on this case[3]:

Timekeeper Name	Title	Rate	Total Hours
Steve Meckler	Partner	$465-$510	195
Christian Staples	Partner	$375-$400	813.5
Jack Santaniello	Partner	$425-$470	49
Trey Baker	Partner	$360.00	18.2
Moses Luski	Partner	$490.00	0.8
Laura Dukes Beck	Partner	$350.00	0.2
Lucas Garber	Associate	$315-$340	115.4
Megan Stacy	Associate	$335.00	98.4
Danielle Wise	Associate	$210.00	1.4
Charles Wood	Associate	$275.00	9.6
Mary Ramsay	Associate	$295.00	0.3
Lauren Griffin	Paralegal	$245-$270	138.8
Laura Aguilar	Paralegal	$240.00	5.9
Melanie Degennaro	Paralegal	$180.00	1
Rock Di Paolo	Paralegal	$235.00	13.5
Rebecca Petitgout	Paralegal	$260.00	1.3
Alex Russell	Legal Assistant	$255.00	1.6
TOTAL TIME SPENT ON CASE			**1,463.90**

11. Shumaker's fees were incurred in connection with the following non-exclusive list of activities:

a. Preparation, filing and service of pleadings, motions, discovery, and other documents;

b. Legal research and investigation;

c. Communication and conferences with the client/Plaintiff, opposing counsel, fact and expert witnesses, and other third-parties, including litigation support services, Sheriffs and process servers, and other vendors;

d. Attendance at court hearings and depositions;

e. Attention to settlement negotiations, including preparation, review, and

[3] Shumaker's billable hourly rates increase on an annual basis, which is the reason for the range of rates for some professionals. This litigation spanned from 2018 through 2021. The first rate is the starting rate and the second rate is the current rate.

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negotiation of proposed settlement agreements;

f. Trial preparation, including for direct and cross examinations, opening and closing statements, organization of exhibits, and witness preparation; and

g. Trial attendance.

12. The following factors support an award of Plaintiff's attorneys' fees in this action:

a. <u>The nature, extent, and difficulty of the legal services rendered</u>.

The legal services rendered on Plaintiff's behalf were substantial, complex, and difficult, given the number of claims asserted and the number of Defendants. The litigation lasted nearly three years, involved substantial discovery and depositions (12 in total), required two amendments to the complaint, and involved three separate motions for summary judgment. What was initially thought to be a relatively simple breach of contract case was transformed into far more complex litigation during the course of discovery, through Defendants' asserted defenses and subsequent breaches of the Lease Agreement, and required amended pleadings, the assertion of multiple additional claims, and the addition of multiple party Defendants. Defendants changed counsel in Summer 2020, had a number of witnesses and former employees located outside of the State of South Carolina, and failed to resolve this matter at an early stage, including at the mediation on September 30, 2019. All of these facts necessarily increased the costs and attorneys' fees incurred because Plaintiff had to be prepared to address each of the asserted defenses and other issues at trial. Plaintiff also encountered issues effecting service of routine legal documents (subpoenas and notices of depositions) upon Defendants, and in many instances had to attempt service via multiple means, thereby increasing the amount of time, and costs, spent. In addition, the trial date was continued on one occasion due to COVID, and the scheduling of hearings and depositions was generally made more difficult due to the pandemic.

The case was also made more difficult, complex, and time consuming through Defendants'

subsequent and ongoing breaches of the Lease. For example, Defendants revoked Plaintiff's right to use the outdoor Patios/Common Areas approximately three months after this action was filed. Defendants also sent Plaintiff a notice of alleged default under the Lease related to the sale of food, coffee, and cigars. These "new issues" which were created solely by Defendants in the middle of the litigation substantially contributed to Plaintiff's costs and attorneys' fees incurred.

Finally, as the Court is aware, this action was tried by a jury trial that lasted nearly five full days. It was no easy task to prepare for the direct and cross examination of eight live witnesses at trial. Plaintiff ultimately recovered upon three of the four claims submitted to the jury, and substantial monetary verdicts were rendered against each of the five named Defendants.

b. The time and labor devoted to the case.

As noted above, Shumaker professionals have devoted at least 1,463.90 hours to this case. That time was necessary to achieve the favorable results obtained.

c. The professional standing of counsel.

The professional standing of Plaintiff's counsel is high. I am the Managing Partner for two of Shumaker's eight offices, am the Management Committee liaison to another office, and also serve on the Firm-Wide Management Committee. I am "AV®" peer-review rated by Martindale-Hubbell, regularly appear on lists compiled by *Best Lawyers* and *Super Lawyers*, and am an invited Member of the International Association of Defense Counsel (IADC). I am an experienced litigator with over twenty years of practice. A copy of my bio is attached as **Exhibit D**.

My law partner and co-counsel, Christian Staples, is also an accomplished attorney. He had primary responsibility for the day-to-day litigation and case management. He has over twelve years' experience as a litigator. He regularly appears on lists compiled by *Super Lawyers* and *Legal Elite*. He was also named a "Leader in the Law" by *North Carolina Lawyer's Weekly* in

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2017. Mr. Staples' bio is attached as **Exhibit E**.

d. The contingency of compensation.

Shumaker did not represent Plaintiff in this action on a contingency basis. Plaintiff was billed on an hourly basis, as is customary in the legal industry for this type of case.

e. The fee customarily charged in the locality for similar services.

In my capacity as Managing Partner for two of the Firm's eight offices (Charlotte, NC and Greenville, SC) and as Management Committee liaison to the Firm's Charleston, SC office, I am actively involved in the Firm's recruitment and hiring decisions, especially for lateral attorneys looking to join Shumaker from other firms, and therefore I am generally familiar with the hourly rates customarily charged by attorneys, paralegals, and support staff practicing at comparable firms throughout the Carolinas. The fees charged by Shumaker in this case are customary, in line with, and are actually a little lower than those rates customarily charged by firms of similar size with lawyers of similar experience and qualifications. Shumaker's fees charged in this case are based upon the standard rates and there was no increase above those standard rates or success fee.

f. The beneficial results obtained.

Shumaker unquestionably obtained a beneficial result for its client in this case. The jury awarded money damages on three separate causes of action, and against each of the five named Defendants. The total jury verdict award was $464,624.00. The majority of the award was based upon Defendant Riverwalk's breach of contract, which contract expressly authorizes, without limitation, Plaintiff's recovery of its costs and attorneys' fees incurred as a result of that breach.

13. Based on all of the foregoing, I believe that Plaintiff is entitled to an order awarding the full amount of costs (**$55,353.28**) and attorneys' fees (**$523,124.94**) it incurred in this case.

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Further affiant sayeth not.

Steven A. Meckler, Esq.

State of North Carolina
County of Mecklenburg

Sworn to and subscribed before me

This the 2nd day of September, 2021.

Lauren E. Griffin
Notary Public

My Commission Expires: 01/10/2026

[SEAL]

LAUREN E. GRIFFIN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc., Plaintiff, v. Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC, Defendants.	))))))))))))	C/A No. 2018-CP-46-03726 DEFENDANTS' POST-TRIAL MOTIONS

Defendants make the following post-trial motions:[1]

Motions for JNOV

"A trial court should grant JNOV when the evidence is insufficient to support the jury's verdict." Helms Realty, Inc. v. Gibson-Wall Co., 383 S.C. 334, 338, 611 S.E.2d 485, 487 (2005)(citing Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003)). For the reasons set forth below, Defendants are entitled to JNOV as to each of the claims on which the jury returned a verdict in Grapevine's favor.

I. Building 6 is entitled to JNOV on Plaintiff's claim for breach of contract (Jury Question 1) because the evidence presented at trial establishes that Grapevine did not properly exercise its purchase option and, therefore, Building 6 did not breach the parties' contract as a matter of law.

Grapevine's purchase option provides "Tenant shall have the Option to purchase the Premises during the third lease year with not less than 120 days advanced written notice to

[1] At the close of trial, the trial judge extended the deadline for the filing of post-trial motions until September 10, 2021.

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Landlord. . . ." Pl. Ex. 1 ¶ 33. While Grapevine presented evidence at trial that it gave notice of its *intent* to exercise its purchase option, it presented no evidence that it effectively exercised that option. Consequently, the court should enter judgment in favor of Building 6, notwithstanding the jury's verdict.

It is settled law in this state that "if [an] option requires performance in a certain manner, time is of the essence and *exact compliance* with the terms of the option are required." Ingram v. Kasey's Assoc., 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000)(citing Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976))(emphasis added). "Where an option by its express terms requires that the payment of the purchase money or a part thereof accompany the optionee's election to exercise the option, the making or tender of the payment specified, unless waived by the optionor, is a condition precedent to the formation of a contract to sell." Id. (quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 53 (1997)).

Construing the evidence from trial in a light that is most favorable to Grapevine, Grapevine's attempt to exercise its option was ineffective as a matter of law. Grapevine's attorney sent a letter to Building 6 on July 26, 2017 providing notice "of [Grapevine's] *intent* to exercise its purchase option for a closing date of February 2, 2018." Pl. Ex. 2 (emphasis added). It is undisputed that Grapevine never deposited nor tendered any earnest money. It is also undisputed that Grapevine never tendered the parties' agreed purchase price for the Premises or a proposed purchase contract in the form of Exhibit G. In short, Grapevine gave notice of its *intent* to exercise its purchase option, but it never took the necessary steps to exercise the option.

The facts presented at trial are remarkably similar to those presented in Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (2000). In that case, a commercial tenant (Ingram) executed a ten-year lease for restaurant space. Ingram's lease contained an option that granted

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him "the right to purchase the premises at any time during the term" of his lease. A few days before the expiration of the lease, Ingram wrote his landlord:

> This [letter] will serve to advise you that I am hereby exercising my option and right to purchase the above-referenced premises pursuant to the option contained in the above-described lease Agreement . . . .

When Ingram's landlord failed to sell the premises, Ingram filed a lis pendens and brought suit. The trial court denied Ingram's claim, and Ingram appealed. The Court of Appeals reversed. Ingram v. Kasey's Assoc., 328 S.C. 399, 493 S.E.2d 856 (Ct. App. 1997). The Supreme Court then granted certiorari to review the Court of Appeals' decision.

On certiorari, the Supreme Court considered whether "the Court of Appeals err[ed] in holding Ingram properly exercised the option by sending written notice of his acceptance, without tendering the actual purchase price [during the option period]?" Ingram, 340 S.C. 98, 104-05, 531 S.E.2d 287, 290. The Supreme Court found that Ingram had *failed* to properly exercise his purchase option and, for that reason, reversed the Court of Appeals.

The Supreme Court's analysis in Ingram is directly on point, and it dictates that this court must grant JNOV in favor of Building 6, LLC as to Grapevine's claim for breach of contract (Jury Question # 1). The Court first recognized that "an option provision embedded in a lease is very different than a freestanding real estate option contract" and also noted that "courts [in other jurisdictions] have held that a lease provision providing a lessee an option to purchase *requires payment at the time of the exercise of the option*." Id. at 109-110, 531 S.E.2d at 293 (citing Burns v. Reves, 217 Ga. App. 316, 457 S.E.2d 178 (1995); Hofmann v. Sullivan, 599 P.2d 505 (Utah 1979) and also quoting 77 Am. Jur. 2d *Vendor and Purchaser* § 53 (1997))[2](emphasis added).

[2] In the absence of a provision in the option agreement specifying the time or method of payment, the question of whether the purchase price or a part thereof must be paid or tendered in order to exercise the option has generally been found

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Because Ingram did not actually tender the parties' agreed purchase price, his attempt to exercise the option by merely giving notice was ineffective. "The fact that the tenant gave notice . . . was irrelevant. The lessor was entitled to 'exact compliance with the terms of the option and there is simply no way to equate a requirement to pay money with the giving of notice.'" Id. at 111, 531 S.E.2d 294 (quoting Cotter v. James L. Tapp. Co., 267 S.C. 647, 230 S.E.2d 715 (1976)).

The similarities between this case and Ingram are striking. In order to effectively exercise its purchase option, Grapevine was required to do more than give "notice of its intent." It was also required to tender the purchase price, or at least the parties' agreed deposit and a purchase contract, during the option period (i.e. – during the third lease year). It is undisputed that Grapevine never tendered its purchase money, never tendered the earnest money deposit specified in Exhibit G to the Lease, and never tendered an executable purchase contract. Its failure to take those acts rendered its attempt to exercise its option legally ineffective. "The fact that [Grapevine] gave notice . . . was irrelevant." Ingram, at 110, 531 S.E.2d 287, 294. Building 6 could not have breached the purchase option because Grapevine never triggered a duty for Building 6 to perform. Pursuant to the controlling precedent of our Supreme Court, as set forth in Ingram, Building 6 is entitled to JNOV on Plaintiff's claim for breach of contract (Jury Question # 1).

> to depend on whether the terms of the option require the payment of a fixed sum at the expiration of a certain period, *such as the term of a lease, in which case payment is required in order to exercise the option.*

77 Am. Jur. 2d Vendor and Purchaser § 53 (1997)(emphasis is the South Carolina Supreme Court's).

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II. Defendants are entitled to JNOV as to Plaintiff's claim for negligent misrepresentation because Grapevine failed to establish one or more of the essential elements of its claim.

Even construed in a light that is most favorable to Grapevine, the evidence presented at trial cannot support the jury's verdict for negligent misrepresentation. Consequently, Defendants are entitled to JNOV as to that claim.

As an initial matter, Grapevine cannot avoid the unequivocal language of its Lease:

> **43. Entire Agreement**. This Lease contains the entire agreement between the parties hereto, and cannot be altered or modified in any way except in writing signed by the parties hereto. All prior representations, discussions, covenants or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.

Courts of this state have long recognized that experienced business people dealing at arms' length should be free to contract as they see fit. Bowaters Carolina Corp. v. Carolina Pipeline Co., 259 S.C. 500, 193 S.E.2d 129 (1972). In the absence of intentional fraud, our courts have consistently enforced the contract made by the parties and refused to re-write parties' contracts, or to give a party a better deal than the one it negotiated. Gilstrap v. Culpepper, 283 S.C. 83, 320 S.E.2d 445 (1984).

The entire premise of Grapevine's negligent misrepresentation claim is anathema to these fundamental principles. In essence, Grapevine asks this court to ignore *its* misrepresentation[3] that the Lease represents the parties' "entire agreement" that supersedes "all prior representations, discussions, covenants or warranties" in order to find Defendants liable for misrepresentation. This court should not countenance such behavior, and should hold Grapevine to the terms of its

[3] At least one court has referred to claims like Grapevine's as creating a "double liar" scenario – a scenario in which the court must excuse "a lie made by [the purchaser] in writing – the lie that it was relying only on contractual representations and that no other representations had been made – to enable it to prove that the [seller] had lied orally or in writing outside the contract's four corners." *See* Abry Partners V, L.P. v. F&W Acquisition, LLC, 891 A.2d 1032, 1058 (Del. Ch. 2006).

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Lease. Grapevine is bound by its admission, as expressed in the Lease, that the Lease contains the parties' "entire agreement." Consequently, this court should grant JNOV as to Grapevine's negligent misrepresentation claims.

A. Plaintiff's Verdict for Breach of Contract Forecloses its Negligent Misrepresentation Claim as a Matter Of Law.

Aside from the fact that Grapevine's negligent misrepresentation claim is precluded by its own lease, the claim is also foreclosed by the jury's verdict for breach of contract. There can be no doubt that Grapevine's breach of contract cause of action and its negligent misrepresentation cause of action were based upon the same allegations of fact. Plaintiff asserted that Building 6 breached its contract with Plaintiff by (1) failing to honor Grapevine's purchase option; and (2) by depriving Grapevine of "use of the patio" beginning March 19, 2019. In fact, Plaintiff's counsel argued that Grapevine's alleged "lost profits" were actual damages (as opposed to consequential damages) for breach of Grapevine's lease. Each of those claims was submitted to the jury, and the jury returned a verdict in Grapevine's favor on each of those claims.[4]

The very fact that the jury found Grapevine had an enforceable contract that allowed it (1) to exercise an option to purchase its Demised Premises; and (2) use the Common Areas as a "patio" to serve its clientele necessarily forecloses the possibility that there were negligent misrepresentations as to either of those alleged contractual rights. Yet, these are the *same* grounds upon which Grapevine asserted its cause of action for negligent misrepresentation. *See* Second Am. Compl. ¶139 (a) – (c)("Defendants breached their duty by . . . (a) Representing to Grapevine that the Option to Purchase was a lender requirement . . . (b) Representing that Grapevine could

[4] Building 6's motion for JNOV as to Plaintiff's breach of contract claim does not estop it from joining in this argument. Building 6 is entitled to JNOV on Plaintiff's breach of contract claim because Plaintiff never effectively executed its purchase option. Building 6 has admitted that the option was valid and enforceable.

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purchase the Property pursuant to the option . . . (c) Representing to Grapevine . . . that Grapevine could utilize the outdoor areas . . . when, upon information and belief, Defendants knew that such use would not be permitted under the Lease. . . ."). By proving the enforceability of its contract, and damages arising from a breach of that contract, Grapevine necessarily *disproved* that it was misled concerning any of the alleged terms of its lease. For this reason, alone, Defendants are entitled to JNOV as to Grapevine's negligent misrepresentation cause of action.

B. Grapevine failed to establish one or more of the essential elements of a cause of action for negligent misrepresentation.

To prove the tort of negligent misrepresentation, a plaintiff must establish each of the following elements: "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." Jefferies v. Phillips, 116 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1984)). Grapevine failed to establish at least two essential elements of its claim for negligent misrepresentation.

1. There is no evidence of a false representation of fact by any defendant.

"The general rule is that [a claim for negligent misrepresentation] must relate to present or pre-existing fact, and cannot ordinarily be predicated on promises or statements as to future events." Woodward v. Todd, 270 S.C. 82, 86, 240 S.E.2d 641, 643 (1978)(citing Davis v. Upton, 250 S.C. 288, 157 S.E.2d 567 (1967)). Only "where one promises to do a certain thing, having at the time no intention of keeping his agreement" is a statement of future intent actionable. Id.

For Defendants Mather, Assured, and Greens of Rock Hill, the analysis is easy. There was no evidence that Plaintiff or Plaintiff's principals had *any* communication with those defendants prior

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to executing Grapevine's lease. With no communication, there can be no representation by those defendants (element one of Plaintiff's claim). Each of those defendants, therefore, is entitled to JNOV.

Building 6 and GRH Development Resources, LLC are also entitled to JNOV, but for different reasons. Each of the statements that Grapevine has cited as an alleged "misrepresentation" of either Building 6 or GRH is actually a statement concerning future events, rather than a representation of a then-present or a pre-existing fact. At trial, Grapevine asserted that it was induced to enter its lease by the following statements or representations: (1) that Grapevine's lender "*will* require a 2-year lease"[5] as a condition of the landlord's construction loan; (2) that Grapevine "*will* be entitled" to purchase its Demised Premises after leasing for two years; (3) that Grapevine "*will* have access" to outdoor seating areas as part of its Demised Premises; and (4) that Grapevine "*will* be leasing a 'condominium'" upon completion of construction of Building 6. Critically, each of those alleged misrepresentations was made before Grapevine executed its lease,[6] before Building 6 entered a loan agreement with its lender[7] and before any construction of the building had commenced.[8] Therefore, each of those alleged statements was, necessarily, a "promise or statement of future events" rather than a representation of any then-present or pre-existing fact.

There is no evidence that either Building 6 or GRH made any of the statements with "no intention of keeping" some alleged promise of future performance. In fact, the evidence presented

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[5] Pl. Ex. 14. The statement "*will* require" is a prediction of future events.

[6] Grapevine executed its lease on June 23, 2014. *See* Pl. Ex. 1.

[7] Building 6 entered a construction loan agreement with Bank of the Ozarks on July 30, 2014. *See* Pl. Ex. 43.

[8] Direct Examination of Melanie Sills; Direct Examination of David Williams; Cross Examination of Alan Aschenbrenner.

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at trial shows just the opposite: Grapevine was granted a lease, which included an option to purchase two years after the "Commencement Date" of the lease – just as it was promised; Grapevine was granted access to Common Areas and allowed to serve its customers in those areas, at least until this dispute arose – just as it was promised. Furthermore, there is uncontroverted evidence that Defendants did, in fact, draft documents,[9] communicate with Building 6's lender[10] and take other steps necessary for the conversion of Grapevine's space to a condominium and the sale of that space to Grapevine. The mere fact that the conversion and sale did not occur (years later) does not give rise to any inference that Defendants "never intended to honor" that promise. "The truth or falsity of a representation must be determined as of the time it was made or acted on and not at some later date. Inferences of fact, like fullbacks on football teams do not ordinarily run backward." Winburn v. Insurance Co. of N. Am., 287 S.C. 435, 441, 339 S.E.2d 142, 146 (Ct. App. 1985).

Grapevine failed to establish an essential element of its claim at trial – a misrepresentation concerning a then-existing fact. For that reason, each defendant is entitled to JNOV as to Grapevine's negligent misrepresentation cause of action.

2. There is no evidence that Grapevine justifiably relied upon any of Defendants' alleged misrepresentations.

At trial, much of Grapevine's case for negligent misrepresentation focused on two contentions: (1) that Grapevine allegedly was "misled" to believe it would be leasing a condominium unit; and (2) that Grapevine allegedly was "misled" to believe that Building 6's

[9] Direct Examination of Brian Wilson; Direct Examination of Todd Brockmann; Direct Examination of Mark Mather.

[10] *See* Pl. Ex. 42; Direct and Cross Examination of Anthony Swainey.

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lender would require a two-year lease. Even accepting these contentions as true, as a matter of law, Grapevine had no justifiable right to rely upon those statements.

i. Grapevine "thought it would be leasing a condominium"

Even if Grapevine could overcome the hurdle that the alleged statement "Grapevine 'would be offered a lease of a condominium'" is a statement regarding future events, and not a representation of then-existing fact, Grapevine cannot establish that its reliance on that alleged misstatement was justifiable. By executing the Lease, Grapevine affirmed that "the Lease contains the entire agreement between the parties hereto." Ex. 1, ¶43. Nothing in the Lease describes the Demised Premises as a "condominium."

As a matter of law, "[t]here can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter." Id. (citing Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App. 1992)). Furthermore, "every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it." Burwell v. South Carolina Nat. Bank, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789 (1986)(internal citations omitted). "[T]here is no right to rely . . . where there is no confidential or fiduciary relationship, and there is an arms' length transaction between mature, educated people. This is especially true where one should have utilized precaution and protection to safeguard his interests." DeHart v. Dodge City of Spartanburg, Inc., 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993)(car salesman's representation that he and customer were signing a "character witness statement," and not a purchase contract, was not actionable where truth was discoverable by simply reading the document before signing).

Grapevine's lease plainly describes the "Demised Premises" as a "space" within "a mixed-use retail, mercantile and residential building." Ex. 1, Background Statement A. Nothing in the

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lease describes the "Demised Premises" as a condominium. Therefore, to the extent Grapevine subjectively *believed* it would be leasing a "condominium," and not "space within a mixed-use building," it could have easily corrected that misbelief by simply reading its lease. As a matter of law, Grapevine cannot show that it justifiably relied upon that alleged misrepresentation.

ii. Landlord's lender will require a "two-year lease"

Here again, the statement is not actionable, as a matter of law. *See* Ex. 1, ¶43. Furthermore, the alleged "misrepresentation" is merely a statement forecasting future events – a prediction of what Building 6's lender *will* require (in the future) as a condition of making a construction loan. Even if the statement ultimately proved inaccurate, which it did not, Grapevine had no right to rely upon the statement, as a matter of law. "[A]n unspecific and false statement of opinion such as occurs in puffing generally cannot constitute [an actionable misrepresentation]. Similarly, a false prediction or promise of future events generally cannot be a basis for [a misrepresentation claim] because it is not a representation, *there is no right to rely upon it*, and it is not false when made." Miller v. Premier Corp., 608 F.2d 973, 981 (4th Cir. 1979)(applying South Carolina law)(internal citations omitted, emphasis added).

When presented with Dave Williams' explanation as to why Grapevine would be required to lease and not allowed to purchase, Grapevine had a choice – it could sign a lease or it could forgo the opportunity to open a business in the River District of Riverwalk. Grapevine chose to sign a lease, in order to take advantage of the business opportunity it was offered. As a matter of law, it cannot demonstrate that its reliance upon Mr. Williams' explanation was justifiable. In fact, Grapevine expressly disclaimed any reliance upon any "prior representations, discussions, covenants or warranties" when it executed its Lease. Ex. 1, ¶43. Defendants are entitled to JNOV as to Grapevine's negligent misrepresentation cause of action.

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III. Building 6 is entitled to JNOV as to Plaintiff's claim for breach of contract for "loss of use" of the Common Areas because Grapevine's lease did not confer any right upon it to use the Common Areas for its business operations.

The jury returned a verdict (Verdict Question # 2) that is inconsistent with the plain language of Grapevine's lease and its own pleadings in this action. Grapevine's lease does not include any outdoor areas or "patios" as part of Grapevine's Demised Premises. The Lease defines the "Demised Premises" as "1490 square feet, more or less . . . depicted as 'Wine Shop' on Exhibit A and being located within the Building." Ex. 1, ¶ 1. Neither the body of the Lease, nor Exhibit A depicts any outdoor areas as a part of Grapevine's "Demised Premises." That fact, alone, should foreclose Grapevine's breach of contract claim for "loss of the patio" as a matter of law.

This court should also note that Grapevine's pleadings do not *allege* that Grapevine utilized those areas pursuant to any contractual right. *See* Plaintiff's Second Am. Complaint ¶ 139(c)("[O]n information and belief, Defendants knew that [use of outdoor areas] would not be permitted under the Lease."). Its claim for breach of contract is fatally flawed, because Grapevine neither alleged nor proved the existence of a "binding contract" that entitled it to use of the Common Areas. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

Pursuant to the provisions of the South Carolina Declaratory Judgment Act (S.C. Code Ann. § 15-53-10 – 140 (Law. Co-op. 2005)), Defendant Riverwalk River District Building 6, LLC ("Building 6") moves for a declaratory judgment as to the rights and duties of Building 6 and of Plaintiff, The Grapevine of Riverwalk, Inc. ("Grapevine") under the written lease agreement between those parties, in light of the jury's verdict at trial of this case.

Motion for Declaratory Judgment as to Enforceability and Terms of the Lease

During its deliberations at trial, the jury asked a salient question – "Does a finding that the defendant breached the contract cause the contract to be cancelled?" The court instructed the jury not to consider that issue in its deliberations, but the court's response does not resolve that question

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for these parties. Both Plaintiff and Building 6 need to understand the terms of their contractual agreement moving forward, if one exists. Unfortunately, the jury's verdict still leaves many legal issues unsettled.

South Carolina's Declaratory Judgment Act empowers this court "to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (Law. Co-op. 2005). The Act also entitles "any person interested" to seek a declaration of its "rights, status or other legal relations" under a written contract. S.C. Code Ann. §15-53-30 (Law. Co-op. 2006). The Act is to be "liberally construed" and its "purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15-53-130 (Law. Co-op. 2005). Because of the unsettled nature of the rights, obligations and relations of Building 6 and Grapevine, and in light of the fact that Grapevine's lease continues through 2026, it is necessary for this court to declare the "rights, status and other legal relations" of the parties under the lease.

Specifically, Building 6 seeks a judicial declaration as to each of the following issues:

1. That, unless and until Grapevine terminates its lease (either by purchase of the Demised Premises or otherwise), the Lease remains in full force and effect, and is the contractual agreement that governs the relationship of Grapevine and its Landlord, Building 6;

2. That pursuant to the terms of the written Lease (Lease ¶ 1), Grapevine's Demised Premises consists of 1,490 square feet of space currently occupied by Grapevine, and the Lease does not confer upon Grapevine any right to operate its business within the Common Areas of the Building;

3. That Grapevine is required to adhere to the terms of its lease which specify and limit the "Purpose" for which it may use and occupy the Demised Premises (Lease ¶ 3);

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4. That Grapevine continues to be bound by the terms of the Lease that require it to pay rent, CAM and other charges as set forth in the Lease (Lease ¶¶6, 7, 11 and 12);

5. That Grapevine is not entitled to exclusive occupancy or use of any Common Areas, but is bound by the provisions of the Lease with regard to use and occupancy of the Common Areas by tenants (Lease ¶ 15);

6. That Grapevine is required to comply with all applicable laws, ordinances and regulations related to its business operations including, but not limited to, those laws, ordinances and regulations concerning the sale and service of alcoholic beverages (Lease ¶ 20);

7. That Grapevine is not permitted under the terms of its lease to serve alcoholic beverages for consumption within the Common Areas of the Building, because the Common Areas are not part of its Demised Premises;

8. That Grapevine is otherwise required to comply with the terms and conditions of its written lease agreement; and

9. That Building 6 is entitled to enforce the terms of the Lease and to exercise the rights and remedies set forth in the Lease in the event of any breach of the Lease by Grapevine.

Motions to Require Election of Remedy

I. If the court determines that Grapevine is entitled to judgment on Jury Question # 1, and also determines that specific performance is an appropriate remedy, then Grapevine must be required to elect between specific performance and the jury's award of damages as to that claim (Verdict Question # 1).

In the event this court denies Building 6's motion for JNOV as to Plaintiff's breach of contract cause of action (Jury Question # 1) and also determines that specific performance of Grapevine's purchase option is an appropriate remedy then, in such event, Grapevine must be required to elect its remedy. "Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action." Austin

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v. Stokes-Craven Holding Corp., 387 S.C. 22, 56, 691 S.E.2d 135, 152-53 (2010). "The basic purpose of election of remedies is to prevent double recovery for a single wrong." Id.

At trial, Grapevine presented evidence that it had suffered compensable damages as a result of Building 6, LLC's alleged breach of Grapevine's purchase option. The jury returned a verdict in Grapevine's favor for damages totaling $221,700 based upon that claim. "In a breach of contract action. damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed." South Carolina Fed. Sav. Bank v. Thornton-Crosby Development Co., Inc., 303 S.C. 74, 77, 389 S.E.2d 8, 10-11 (Ct. App. 1990)(citing Carolina Winds Owners' Assoc., Inc. v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897 (Ct. App. 1988)). "That is, damages give him the benefit of his bargain." Id. Specific performance is an equitable remedy that actually *enforces* the parties' bargain. "The plaintiff has the right to bring an action at law to recover damages for breach of the contract; he also [has] the right to invoke the aid of the court in the exercise of its chancery powers. He, however, [cannot] resort to both remedies." Singleton v. Cuttino, 107 S.C. 465, 92 S.E.1046, 1047 (1917).

If this court determines that specific performance is an appropriate and available remedy, then Grapevine must be required to elect between specific performance and its recovery of damages in the sum of $221,700 (Verdict Question 1). It cannot recover damages *and* obtain specific performance of its purchase option. Grapevine must elect its remedy.

II. If Grapevine's negligent misrepresentation verdict is permitted to stand, then Grapevine must be required to elect between its remedy for breach of contract for "loss of the patio" (Verdict Question 2) and its remedy for negligent misrepresentation (Verdict Question 3) in order to avoid a double recovery for the same alleged wrong.

It is undeniable that Grapevine's negligent misrepresentation claim and its breach of contract claim arise from the same alleged facts. *See* Second Amended Complaint, filed 1/15/2021

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at ¶¶ 70-72 (breach of contract claim) and ¶ 139 a-d (negligent misrepresentation claim). The breach of contract claim is based upon an allegation that Grapevine was deprived of the "benefit of its bargain" when Building 6 failed to honor the purchase option and, again, when Building 6 required Grapevine to stop serving its customers in the Common Areas of the Building. The negligent misrepresentation claim takes a different path to the same destination – Grapevine alleges that it was misled to believe it would be permitted to purchase its space after leasing for two year and also alleges that it was misled to believe that it would have use of a patio under the terms of its lease. In each case, the alleged "wrong" is the same. Therefore, if Defendants are not granted JNOV as to Grapevine's negligent misrepresentation claim, then Grapevine must be required to elect its remedy. It cannot recover on both claims for the same alleged wrong(s).

> When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both. The plaintiff should have a full opportunity to prove his claim to some form of relief, but he should not receive a double recovery. The invocation of one remedy constitutes an election of remedies that will bar another remedy consistent therewith where the suit upon the remedy first invoked reached the stage of final adjudication.

Cowart v. Poore, 337 S.C. 359, 364, 523 S.E.2d 182, 185 (Ct. App. 1999)(internal citations omitted). A defendant may raise the issue of election at any stage of the case. "Indeed, to carry out the doctrine's purpose, the trial judge should on his own motion require election if he lets both causes of action go to the jury." Id. If Grapevine were permitted to recover damages under its breach of contract theory and, again, under its negligent misrepresentation theory it would receive a double recovery for the same alleged "wrong." If both verdicts are allowed to stand, then Grapevine must be required to elect its remedy.

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Motions for New Trial

I. Building 6 is entitled to a new trial *nisi remittitur* or, alternatively, to a new trial absolute as to Grapevine's claim for breach of contract for use of the common areas (Jury Question # 2).

Grapevine's claim for breach of contract "for use of the Common Areas" was based entirely upon the assertion that Grapevine suffered lost profits when it was deprived of its right to serve customers in the Common Areas. However, by the express terms of its lease, Grapevine agreed that "in no event shall any special, consequential or punitive damages be awardable against or recoverable from Landlord or the Landlord Interest hereunder." Lease ¶ 56. Grapevine's recovery of lost profits for its alleged "loss of use of the patio" runs afoul of this provision. "Lost profits are well recognized as a species of consequential damages." John D. Hollingsworth on Wheels, Inc. v. Arkon Corp., 279 S.C. 183, 186, 305 S.E.2d 71, 73 (1983)(citing South Carolina Finance Corp. of Anderson v. West Side Fin. Co., 236 S.C. 109, 122, 113 S.E.2d 329; Hiers v. Southeastern Carolinas Tel. Co., 216 S.C. 437, 58 S.E.2d 692; Georgetown Towing Co. v. National Supply Co., 204 S.C. 445, 29 S.E.2d 765; Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719; National Tire & Rubber Co. v. Hoover, 128 S.C. 344, 122 S.E.2d 858). "Where a proper exclusion of consequential and incidental damages is contractually agreed to, a plaintiff's remedy is limited by the terms of that exclusion." Eaton Corp. v. Trane Carolina Plains, 350 F. Supp. 2d 699, 705 (D.S.C. 2004).

The jury awarded a type of damages that it had no right to award or, even, consider. Therefore, its verdict for damages related to "loss of the patio" is *per se* excessive. The court should remit (reduce) Grapevine's verdict to eliminate the lost profits that were awarded by the jury (Verdict Question 2). *See* Howard v. Roberson, 376 S.C. 143, 155, 645 S.E.2d 877, 883 (Ct. App. 2007)(citing Elliott v. Black River Elec. Coop., 233 S.C. 233, 104 S.E.2d 357, 372 (1958)). If Grapevine refuses to accept the remittitur, then the court should grant a new trial as to that cause

of action. Id. Grapevine has no right to recover consequential damages under the terms of its lease, and Building 6 has no obligation to pay them.

II. All Defendants are entitled to a new trial, because they were deprived of their contractual right to a non-jury trial.

Grapevine's entire case arose from its written lease agreement with Building 6. By the express terms of that lease, Grapevine "KNOWINGLY AND VOLUNTARILY WAIVE[D] ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE." The contractual waiver of a right to jury trial was conspicuously set forth in the Lease in all capital letters, and the page containing that waiver was initialed by Plaintiff's principals.

It is the well-settled law of this state that a party may waive its right to a jury trial by contract. Wachovia Bank, N.A. v. Blackburn, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014) (citing Beach Co. v. Twillman, Ltd., 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2003) and N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)). A contractual waiver of jury trial, like other contract language, "must be construed using [its] plain, ordinary and popular language." Twillman, 351 S.C. at 63, 566 S.E.2d at 866. Furthermore, a party "who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Id. "[W]hen a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. The law does not impose a duty on the [other party] to explain to an individual what he could learn from simply reading the document." Id. (internal citations omitted).

By executing the Lease, Plaintiff voluntarily waived its right to demand a jury trial as to "any claim arising" under the Lease or "relating to" the Lease. Defendants were deprived of a

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substantial right when this court refused to strike Grapevine's jury demand and enforce the parties' contract as it was drafted. Defendants are entitled to a new trial, in a non-jury proceeding.

September 10, 2021

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	
The Grapevine of Riverwalk, Inc.,)	C/A No. 2018-CP-46-03726
)	
Plaintiff,)	
)	
v.)	MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SPECIFIC PERFORMANCE
)	
Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC,)	
)	
Defendants.)	
)	

Defendants submit the following memorandum in opposition to Grapevine's motion for specific performance.

ARGUMENT

I. As a matter of law, Grapevine is not entitled to specific performance of its option to purchase because Grapevine never properly exercised the option contained in its lease.

Grapevine cannot be granted specific performance of the purchase option contained within its lease because its attempt to exercise that option was ineffective as a matter of law. The South Carolina Supreme Court's opinion in Ingram v. Kasey's Associates[1] is directly on point, and controls. The facts and procedural history of Ingram warrant further discussion.

Like Grapevine, Ingram had executed a ten-year lease for commercial space which contained an option whereby Ingram could "purchase the PREMISES at any time during the term [of the lease]."[2] Ingram v. Kasey's Assoc., 328 S.C. 399, 404, 493 S.E.2d 856, 859 (Ct. App.

[1] 340 S.C. 98, 531 S.E.2d 287 (2000).
[2] Grapevine's option was executable during the "third lease year."

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1997), *reversed*, 340 S.C. 98, 531 S.E.2d 287 (2000). Before Ingram's lease expired, he wrote his landlord: "This will serve to advise you that I am hereby exercising my option and right to purchase the above referenced premises." Id. When Ingram's landlord refused to convey the leased premises, Ingram filed suit for specific performance "and raised various other claims." Id. Ingram's claims were referred to the Master in Equity for trial. The Master found that Ingram had failed to properly execute his purchase option because he had not tendered the parties' agreed purchase price during the applicable option period (i.e. – "before the end of the lease's term"). Id. at 405, 493 S.E.2d at 860. Consequently, the Master ruled in favor of Ingram's landlord and denied specific performance. Ingram appealed.

Before the South Carolina Court of Appeals, Ingram argued that the Master "erred in ruling that, in order to properly exercise the option, [Ingram] had to tender the purchase price to [his landlord] before the end of the lease's term." Id. The South Carolina Court of Appeals agreed with Ingram and reversed. Id. at 414, 493 S.E.2d at 865. The South Carolina Supreme Court granted certiorari and then *reversed* the Court of Appeals. Ingram v. Kasey's Assoc., 531 S.E.2d 287, 340 S.C. 98 (2000).

Of particular relevance, South Carolina's Supreme Court found that Ingram was not entitled to specific performance because he "did not comply with the exact terms of the option contract." Id. at 292, 531 S.E.2d at 108. "He [only] provided written notice . . . that he planned to exercise his option in the future." Id. "The fact that the tenant gave notice that he wished to [exercise] the option was irrelevant. The lessor was entitled to 'exact compliance with the terms of the option and there is simply no way to equate a requirement to pay money with the giving of notice.'" 340 S.C. at 111, 531 S.E.2d 287, 294 (quoting Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976)).

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Grapevine finds itself in the same predicament as Ingram. In July 2017, Grapevine's attorney sent a letter purporting to "CONSTITUTE NOTICE, pursuant to paragraph 33 of the Lease, of [Grapevine's] *intent* to exercise its purchase option for a closing date of February 2, 2018, which is during the third lease year." Pl. Ex. 2. That letter also referred to Exhibit G to Grapevine's lease which, according to Grapevine's lawyer, "sets forth the parameters of the purchase with more specificity." Id. By its express terms, lease Exhibit G required Grapevine to make a $25,000 "Deposit due upon execution of this Agreement." Pl. Ex. ___ (Exhibit G at 2). It is undisputed that Grapevine *never* tendered the parties' agreed purchase price for the Demised Premises ($270,000) *or* the $25,000 deposit that the parties agreed would be "due upon execution" of Exhibit G. "The fact that [Grapevine] gave notice . . . was irrelevant." Ingram, at 110, 531 S.E.2d 287, 294. Grapevine's landlord "was entitled to 'exact compliance with the terms of the option **and there is simply no way to equate a requirement to pay money with the giving of notice.**'" 340 S.C. at 111, 531 S.E.2d 287, 294 (quoting Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976))(emphasis added); *see also* Cotter at 653, 230 S.E.2d 715, 718 ("It is also well settled in this state that if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required."). Ingram is controlling precedent, which dictates that Grapevine's motion for specific performance must be denied.

II. As a matter of equity, Grapevine's motion for specific performance should be denied because the so-called "relief" Grapevine requests goes far beyond the terms its lease, far beyond the terms of its purchase option and far beyond the "relief" Grapevine sought in its complaint.

As South Carolina's Supreme Court recognized in Ingram, specific performance is an equitable remedy, which "should be granted only if there is no adequate remedy at law and specific

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performance of the contract is equitable between the parties." 340 S.C. 98, 105, 531 S.E.2d 287, 291. In cases of equity, our courts are guided by several maxims which have "evolved over a long period of time from prior cases to assist a court in applying and balancing equitable considerations." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011). One such maxim, which applies here, is "he who seeks equity must do equity." Another is that "equity regards as done that which ought to be done." Much of the so-called "equitable relief" that Grapevine seeks through this motion runs afoul of those two maxims.

As our Court of Appeals recognized in Regions Bank, "[t]he rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." Id. at 254, 715 S.E.2d at 355 (quoting Good v. Jarrard, 93 S.C. 229, 239, 76 S.E. 698, 702 (1912)). Yet, that is precisely how Grapevine now seeks to invoke the equitable power of this court. Grapevine seeks to be relieved of: any obligation to pay rent for the use of its space since February 2, 2018 (Plaintiff's Motion ¶ 17); any obligation to abide by reasonable use restrictions for the common areas of its building (Plaintiff's Motion ¶ 15); and, apparently, *even* its contractual agreement to pay the parties' agreed purchase price for purchase of the Demised Premises (Plaintiff's Motion ¶ 11)("If specific performance is granted then *Defendant Riverwalk can pay* the relevant portion of the damage award that it would otherwise pay to Plaintiff to the Bank"). Each of these requests for "equitable relief" goes far beyond the terms of the purchase option that Grapevine negotiated for itself, and far beyond the "equitable relief" sought in Plaintiff's complaint. Grapevine only negotiated an option to purchase its Demised Premises for an agreed price of $270,000. Grapevine did not negotiate an option that would give it unregulated use of the building's common areas following its purchase of the Demised Premises. Nor did Grapevine negotiate any agreement that would entitle it to "free use" of its space for a period of years (during

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which Grapevine's own records reflect that it generated hundreds of thousands of dollars in operating profits). It would be inequitable and unjust for this court to grant the relief that Grapevine now seeks through this motion, just as it is inequitable and unjust for Grapevine to request such overreaching "relief."

"He who seeks equity must do equity." Grapevine has not come close to honoring that maxim. Grapevine cannot improve the terms of its negotiated deal through the guise of "equitable relief." Regions Bank at 254, 715 S.E.2d at 355. Its motion for specific performance should be denied as a matter of equity.

CONCLUSION

As a matter of law, and as a matter of equity, Grapevine's motion for specific performance of its purchase option must be denied. Grapevine has no legal right to enforce its purchase option because it never properly exercised that option. Furthermore, it would be inequitable and unjust for this court to grant the relief that Grapevine now seeks through this motion. Grapevine has an adequate remedy at law and the relief it seeks through this motion would require this court to impose obligations that were never contemplated by the parties. For each of these reasons, Grapevine's motion for specific performance must be denied.

October 8, 2021

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc., Plaintiff, v. Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC, Defendants.	))))))))))))	C/A No. 2018-CP-46-03726 DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR FEES AND COSTS

South Carolina follows the "American Rule" with regard to attorney's fees and costs in litigation. Under that rule, attorney's fees are not recoverable from another party "unless authorized by contract or statute." Blumberg v. Nealco, Inc., 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). "Costs and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute…" Oliver v. South Carolina Dept. of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128 (1992). As the Fourth Circuit has recognized, contractual "attorney's fees provisions must be strictly construed to avoid inferring duties that the parties did not intend to create." Parkway 1046, LLC v. U.S. Home Corporation, 961 F.3d 301, 313 (2020). Similarly, because taxation of "costs 'have always been regarded in this state as in the nature of penalties . . . statutes allowing them are strictly construed, and the party who claims the right to tax them against another must be able to point to some statute which allows him to do so.'" Id. at 318.

For each of the reasons set forth below, Plaintiff's motion for attorney's fees must be denied and its motion for costs must be denied or, at the very least, significantly reduced.

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I. Plaintiff is equitably estopped from seeking to recover its attorney's fees.

Plaintiff's motion for attorney's fees is based upon paragraph 38 of its lease with Building 6. *See* Pl. Motion for Costs and Fees, at 2 ¶ 6. Apparently, Plaintiff contends that lease provision may be enforced in a way that entitles Plaintiff to recover "*all* of its costs and attorney's fees incurred in connection with this action." Id. at 7. It is perplexing that Plaintiff seeks to enforce the lease's attorney's fee provision when it ignored and, in some cases, actively opposed the enforcement of other provisions of that same lease. For example:

- Despite Plaintiff's contractual agreement that "in no event shall any special, consequential or punitive damages be awardable or recoverable against Landlord"[1] Plaintiff aggressively pursued the recovery of both consequential and punitive damages throughout this litigation. In fact, Plaintiff twice opposed Defendants' efforts to amend their pleadings to assert South Carolina's statutory cap on punitive damages as an affirmative defense. *See* Pl. Mem. in Opposition, filed 9/16/2020; *see also* Plaintiff's Motion to Strike Affirmative Defense, filed 2/18/2021;

- Despite Plaintiff's contractual agreement that "THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE,"[2] Plaintiff demanded a jury trial in its complaint and then vigorously opposed Defendants' efforts to enforce Plaintiff's waiver of jury trial provision of the lease. *See* Complaint, filed 12/10/2018 (jury trial demanded); Amended Complaint, filed 3/25/2020 (jury trial demanded); Second Amended Complaint, filed 1/15/2021 (jury trial demanded); *see also* Pl. Mem. in Opposition, filed 2/26/2021 (opposing Defendants' motion to strike jury demand);

[1] See Pl. Ex. 1, ¶ 56.

[2] See Pl. Ex. 1, ¶ 59.

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- Despite the fact that paragraph 38 of the Lease prescribes "actual damages, together with attorney's fees and costs" as Plaintiff's "sole and exclusive remedy" for a Landlord default, Plaintiff ignored that language and aggressively pursued the recovery of consequential, punitive and statutorily enhanced treble damages.

Courts have regularly invoked equitable estoppel to prevent a party from seeking to enforce some provisions of a written contract while seeking to avoid other provisions of that same contract. "Equitable estoppel precludes a party from asserting rights 'he otherwise would have had against another' when his own conduct renders assertion of those rights contrary to equity." *See, e.g.,* International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 417-418 (plaintiff cannot avoid contract's arbitration provision while also claiming some benefit under that same contract). "To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would . . . disregard equity. . . ." Id. at 418 (quoting Avila Group, Inc. v. Norma J. of California, 426 F. Supp. 537, 542 (S.D.N.Y. 1977); *see also* Beverly v. Grand Strand Medical Center, LLC, 429 S.C. 502, 510, 839 S.E.2d 468, 472 (Ct. App. 2020)("[A litigant] cannot selectively enjoy certain benefits of [a contract] while disregarding terms beneficial to [the other party]."). In this case, it would inequitable for Plaintiff to enforce a provision of its lease to recover attorney's fees while simultaneously avoiding its contractual waivers of jury trial and the limitations on recoverable damages that were contained within that same agreement. Plaintiff "cannot selectively enjoy certain benefits of [its lease] while disregarding terms beneficial to [its landlord]." Beverly, 429 S.C. at 510, 839 S.E.2d at 472. Because Plaintiff chose to ignore its contractually agreed limitations on recovery, it is now estopped from enforcing the attorney's fee provision within that same contract.

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II. Plaintiff is judicially estopped from seeking to recover its attorney's fees.

Plaintiff's claim for attorney's fees is also barred by the doctrine of judicial estoppel. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). "The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries." Id.

As this court will recall, Plaintiff vigorously (and successfully) opposed Defendants' motion to strike Plaintiff's jury demand. Plaintiff's opposition to that motion was based, at least in part, upon the following argument:

> Defendant [Building 6] is only one of five named Defendants. **There is no lease or other contractual agreement between Plaintiff and any of the other defendants.** Accordingly, even assuming that any alleged contractual jury trial waiver contained in the Lease between Plaintiff and [Building 6] is valid and enforceable (which is denied), such waiver cannot be imputed to Plaintiff's claims against any Defendant other than Defendant [Building 6].

Pl. Mem. in Opposition to Motion to Strike Demand for Jury Trial, filed 2/26/2021 (emphasis added).

Plaintiff cannot disavow the existence of a written contract between plaintiff "and any of the other defendants" and then rely upon that same contract as a basis to recover its attorney's fees from those same defendants. "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Bailey, 327 S.C. at 252, 489 S.E.2d at 477. Plaintiff had no contract with any defendant other than Building 6 and, therefore, has no right to seek to recover the fees that Plaintiff incurred in pursuing its claims against "the other defendants."

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III. Even if Plaintiff were not estopped from seeking recovery of its attorney's fees, Plaintiff cannot recover the fees its seeks because Plaintiff and Building 6 never agreed that Plaintiff would be entitled to recover fees incurred in the pursuit of parties, claims and forms of relief that were well-outside of the "exclusive remedy" set forth in Plaintiff's lease.

It is well settled in this state (and country) that attorney's fees are not recoverable from another party "unless authorized by contract or statute." Blumberg v. Nealco, Inc., 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). A contractual attorney's fee provision, just like every other provision of a written contract, must be "construed under rules of contract interpretation." South Carolina Dept. of Transp. V. M&T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 656, 667 S.E.2d 7, 12 (Ct. App. 2008). The "cardinal rule" is to ascertain and give effect to the intention of the parties. To accomplish that objective, the court "must first look to the language of the contract." Id. Courts are "without authority to alter an unambiguous contract by construction or to make new contracts for the parties." Furthermore, as the Fourth Circuit has recognized, contractual "attorney's fees provisions must be strictly construed to avoid inferring duties that the parties did not intend to create." Parkway 1046, LLC v. U.S. Home Corporation, 961 F.3d 301, 313 (2020)(applying Maryland law);[3] *see also* Hooper Associates, Ltd. v. AGS Computers, Inc., 74 N.Y.2d 487, 492 (N.Y. App. 1989)("Inasmuch as a promise by one party to a contract to indemnify the other for attorney's fees incurred in litigation between them is contrary to the well-understood rule that parties are responsible for their own attorney's fees, the court should not infer a party's intention to waive the benefit of the rule unless the intention to do so is unmistakably clear from the language of the promise.").

[3] Maryland, like South Carolina, follows the "American Rule" which states that, "generally, a prevailing party is not awarded attorney's fees 'unless . . . the parties to a contract have an agreement to that effect." Parkway 1046, LLC, 961 F.3d at 313.

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In this instance, as a term of Plaintiff's lease, Plaintiff and Building 6 agreed:

> "In the event of any default by Landlord hereunder . . . Tenant may commence an action against **Landlord** for its actual damages, together with attorney's fees and costs, as its **sole and exclusive remedy** on account thereof."

Pl. Ex. 1, ¶ 38 (emphasis added). No reasonable interpretation of that provision would entitle Plaintiff to recover its fees for this litigation, particularly when the provision is construed in a way that "avoid[s] inferring duties that the parties did not intend to create." Parkway 1046, LLC, 961 F.3d at 313. The provision does not entitle Plaintiff to recover its fees incurred in pursuing consequential, punitive or statutorily enhanced damages from its landlord. It certainly does not entitle Plaintiff to recover its fees incurred to pursue theories of "amalgamation" or claims against persons and entities that were never parties to its lease. When Plaintiff elected to forgo the "exclusive remedy" available under its lease - to pursue claims, parties and forms of relief that Plaintiff and Building 6 never contemplated - it also gave up its right to insist that its attorney's fees and costs for that litigation be reimbursed by Building 6.

Plaintiff's claims in this lawsuit are governed by the "American Rule," and not by the contractual attorney's fee provision within Plaintiff's lease. Plaintiff is responsible for its own fees. This court cannot award attorney's fees without rewriting the parties' lease in a way that would create "duties that the parties did not intend to create." Plaintiff's motion for fees must be denied.

IV. Plaintiff's claimed attorney's fees are not reasonable, when considered in light of the enumerated factors set forth in Blumberg.

Even if Plaintiff were entitled to recover its attorney's fees, the amount claimed is unreasonable. In South Carolina, where the amount of attorney's fees is not set by the parties' contract, the court must evaluate the claim and award only fees that are reasonable under the circumstances. NationsBank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995). "The

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award of fees is left to the discretion of the trial judge," based upon a consideration of six factors: (1) nature, extent and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993). With due respect to Plaintiff's Counsel, the fee affidavit submitted in support of Plaintiff's motion is not reasonable.

While it is impossible for Defendants to determine the precise nature of the legal services provided[4] by each of the seventeen lawyers, paralegals and support staff[5] whose fees are claimed as part of Plaintiff's fee application, the staffing levels assigned to this case by Plaintiff's Counsel appear excessive. It is also troubling that Plaintiff now claims Defendants somehow "complicated" this case by *defending* it.

If this court determines that Plaintiff is entitled to an award of attorney's fees, which it should not, then the court must also determine the reasonableness of any award. Defendants are, therefore, compelled to bring the following matters to this court's attention:

1. Plaintiff pursued ten distinct causes of action in this case. Only two of those causes of action (specific performance and breach of contract) arguably fall within the "attorney's fee" provision of Plaintiff's lease. Three of Plaintiff's causes of action (fraud, fraudulent inducement and breach of the implied covenant of good faith and fair dealing) were dismissed through summary judgment. *See* Order filed March 10, 2021. Three of Plaintiff's remaining causes of action (breach of contract accompanied by fraud, tortious interference with contract and violation

[4] Plaintiff has asserted attorney-client privilege as to each of the invoices filed in support of its motion.

[5] The affidavit of Steve Meckler reflects that six (6) partners, five (5) associates, five (5) paralegals and a legal assistant devoted substantive attention to this case.

of UTPA) were dismissed by directed verdict at the close of Plaintiff's case. So, too, was Plaintiff's "amalgamation" theory of liability *and* its claims for punitive damages.

Of the three claims that survived dismissal and were submitted to the jury, the jury found in Plaintiff's favor on two of those claims and in Defendants' favor on the third. Thus, Plaintiff actually obtained a verdict in its favor on just *two* of its ten causes of action (breach of contract and negligent misrepresentation). As to those two claims, the jury awarded approximately one-half of the amount Plaintiff claimed as its damages.

Plaintiff apparently paid its lawyers $58,500 more to *pursue* its claims than the amount the jury awarded as damages. By any objective measure, it would be a stretch to characterize the result obtained by Plaintiff's Counsel as "beneficial."

2. Based upon a review of the redacted billing records submitted in support of Plaintiff's motion, Plaintiff seeks reimbursement of over $6,000 in attorney billings that actually pre-date Plaintiff's October 5, 2018 notice of default. Even under Plaintiff's theory, those fees are not recoverable because they were incurred *before* Plaintiff declared any alleged breach of the lease and *before* the contractually-agreed "cure" period had expired.

3. During the course of this litigation, Plaintiff's Counsel filed two motions to compel discovery responses. The first motion was granted, and Plaintiff was separately awarded $1,563.83 in attorney's fees for that motion. *See* Order for Attorney's fees, filed 2/18/2020. It is not clear from Plaintiff's motion, or from the affidavit of Steve Meckler, if those fees are also included in the amounts Plaintiff now claims. Since those fees have already been reduced to a judgment, they should not be included in the amount now claimed.

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Plaintiff's second motion to compel was filed on July 21, 2020, just five days after Defense Counsel appeared in this action.[6] *See* Motion to Compel, filed 7/21/2020; *see also* Affidavit of W. Keith Martens. On July 22, 2020, Defense Counsel was forced to file a motion for protective order to obtain more time to respond to Plaintiff's discovery requests. *See* Motion for Protective Order, filed 7/22/2020. The parties appeared before the court on August 24, 2020 to argue their competing motions. At the conclusion of that hearing, the court order that "all motions are continued for 30 days." *See* Order filed 8/26/2020. On September 23, 2020, the parties returned to court to argue the previously-continued motions. Following that hearing, the court entered a Form 4 Order: "After careful consideration, Plaintiff's Motion to Compel is DENIED." *See* Order, filed 10/6/2020. Based upon a review of the redacted billing records filed by Plaintiff's Counsel, it appears that Plaintiff's Counsel charged several thousand dollars in fees and expenses related to that unsuccessful motion.[7] Much of that expense could have been avoided through consultation and a brief extension of Defendants' discovery deadline.

4. On June 2020, Plaintiff's Counsel traveled from Charlotte to York County to oppose a motion by Defendants' prior counsel to withdraw from this case. While it is impossible to determine the cost of this opposition from Counsel's redacted billing records, it appears that Plaintiff was charged $1,365 in fees and another $51.39 in expenses to oppose that motion. As expected, the motion was granted over the objection of Plaintiff's Counsel.

5. Plaintiff's (first) Amended Complaint included allegations that Plaintiff had been induced to enter its lease by misrepresentations "that the Riverwalk development, and specifically

[6] Plaintiff's Counsel refused to grant any extensions or additional time for Defense Counsel to respond to Plaintiff's outstanding discovery.

[7] The redacted billing records of Plaintiff's Counsel include a time entry of 5.1 hours ($1989) on August 24, 2020 and 4.3 hours ($1,677) on September 23, 2020.

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the land where Building 6 would be constructed and located . . . had been cleaned up" when, in fact, the property allegedly remained contaminated. Am. Compl. ¶¶ 78 - 84. Plaintiff's Counsel pursued discovery concerning those allegations, even forcing Defendants to obtain a protective order to prohibit much of that discovery. *See* Order, filed March 24, 2020.

When Plaintiff's 30(b)(6) designee was deposed in December 2020, the designee was asked about those allegations:

> Q: [T]here are allegations [in Grapevine's amended complaint] that there was no environmental contamination on this property and that it was – you subsequently learned that there was, in fact, asbestos somewhere on – along the Riverwalk property. Are you familiar with those allegations?
>
> A: **I'm not sure that that has anything to do with us**. I mean, its build on the old Celanese site.
>
> Q: And I guess that's my question. Does the fact that there was asbestos discovered at some other location on this development have anything to do with the issues in dispute in this case?
>
> A: I don't think so.

After that deposition, Plaintiff removed those allegations when it filed its second amended complaint. From Plaintiff's Counsel's redacted billing records, it is impossible to tell whether Counsel's pursuit of discovery concerning that "non-issue" is included in the fees Plaintiff now seeks to recover. They should not be.

6. Plaintiff's Counsel drafted and served myriad distinct discovery requests, including 188 interrogatories and 200 requests for production that were served on Defendants Mather, Greens of Rock Hill, GRH Development Resources and Assured Administration, LLC while those

parties were unrepresented. That discovery related almost entirely to Plaintiff's ultimately-unsuccessful amalgamation theory of liability and its unsuccessful efforts to obtain detailed tax returns and financial information from each of the "other" defendants. *See* Exhibits to Plaintiff's Motion to Compel, filed 7/22/2020. Not one of the documents produced in response to Plaintiff's supplemental discovery requests was introduced in support of any of Plaintiff's claims at trial.

7. Plaintiff's Counsel prepared and served thirty-three requests for "Admissions Regarding the Authenticity of Documents Pursuant to S.C. Code § 19-1-60." Defense Counsel sent a one-page letter objecting to those requests, and the requests were withdrawn. It is unclear from Counsel's redacted billing records how much time Plaintiff's Counsel spent (and billed) to prepare those (withdrawn) requests.

8. Plaintiff's Counsel unsuccessfully pursued a motion in North Carolina's state court to compel a non-party to respond to a subpoena issued in that state. Defendants did not assert any objection to the subpoena and did not attempt to quash the subpoena. Had Plaintiff successfully compelled the third party to comply with its subpoena, it could have obtained an award of costs and fees from that third party. However, Plaintiff's motion to compel the third-party subpoena was denied. From Plaintiff's Counsel's redacted billing records, it appears that Counsel devoted at least three hours ($1200 in billable time) to that unsuccessful effort.

9. Since July 16, 2020 (the date current Defense Counsel first appeared in this case), the billings of Plaintiff's Counsel have been more than three times the billings of Defense Counsel. Plaintiff's Counsel has billed $370,777.31 since July 16, 2020. During that same time period, Defense Counsel billed $127,696.

10. Plaintiff's Counsel staffed this case for trial with two partners, whose combined hourly rate was $910 per hour. *See* Affidavit of Steve Meckler. In the month of August 2021 (the

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month of trial) Plaintiff's Counsel billed $195,935, compared to $57,270 billed by Defense Counsel during that same month. The fees charged by Plaintiff's Counsel to try this case greatly exceed the fees customarily charged in this locale for similar services.

Defendants readily acknowledge that Plaintiff had the right to pursue its claims in this case with any level of aggression and staffing that Plaintiff, in consultation with its attorneys, deemed appropriate. However, Plaintiff does not have any right – either under the terms of its lease or the law of this state - to pursue a "scorched earth" litigation strategy and then attempt to foist the cost of that strategy upon Defendants. If this court determines that Plaintiff is entitled to recover any of its attorney's fees for this litigation, the court should carefully scrutinize the billing records of Plaintiff's Counsel and should significantly discount any fee award to bring Plaintiff's claim in line with rates that are customarily charged in this locale and the terms of the parties' contractual agreement.

V. Plaintiff's claim for costs must be denied or drastically reduced because the claim includes many alleged "costs" that are not recoverable under the law of this state.

Plaintiff's motion for costs must also be denied or, at the very least, drastically reduced. As Plaintiff notes in its motion, its entitlement to costs is generally governed by the provisions of Rule 54. It is well-established that "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute…" Oliver v. South Carolina Dept. of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128 (1992). "Further, costs 'have always been regarded in this state as in the nature of penalties; hence statutes allowing [costs] are strictly construed, and the party who claims the right to tax them against another must be able to point to some statute which allows him to do so.'" Id. at 318. Other than by its general reference to Rule 54, Plaintiff has not identified a single statute or rule that would permit recovery of the costs its seeks and, for that reason alone, its motion for taxation of costs is fatally flawed. *See* Black v.

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Roche Biomedical Laboratories, Inc., 315 S.C. 223, 228, 433 S.E.2d 21, 24 (Ct. App. 1993)(holding that, because Rule 54 does not provide "the trial court with an independent basis for imposing costs," a party seeking to recover costs "must point to a specific statute or rule of court to support each of his claims for costs, fees and disbursements."). Defendants will address each claimed cost:

Document Reproduction and Color Copying (¶ 8.b to Meckler Aff.)

Plaintiff seeks taxation of its costs incurred in "document reproduction and color copying." In Black v. Roche Biomedical Laboratories, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993), the Court of Appeals observed that "[u]nder § 15-37-40 'the expense of printing the papers for any hearing *when required by a rule of the court*' may be taxed as costs." The Court of Appeals affirmed the trial judge's exclusion of document copying charges because, "[i]t [was] impossible for [the] court to determine whether the copying was required by rule of court." Id. at 229. Similarly, in this case the Plaintiff has not presented any evidence or supporting documentation to show that its requested costs related to "document reproduction and color copying" was required by rule of court. Therefore, these costs must be denied.

Fees of the Clerk (¶ 8.c to Meckler Aff.)

Plaintiff is also requesting that the court tax certain "fees of the clerk," totaling $1448.70, and has included in this amount "filing fees and motion/hearing fees paid to the Clerk of Court for York County, SC, as well as fees paid to the Clerks of Court for North Carolina and Massachusetts in connection with the foreign Subpoenas Duces Tecum issued to Matthew Blackham and Todd Brockmann." Plaintiff has made no attempt to identify which of those fees was paid to which court.

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With regard to "fees of the clerk," Rule 54 is directly on point. Specifically, Rule 54(e)(2) provides that, "Taxable costs shall include . . . All filing and recording fees charged by the clerk of the court *in which the action was pending . . . .*" (emphasis added). Fees paid to the York County Clerk of Court are recoverable, but fees paid to the Clerks of Court in North Carolina and Massachussetts are not. Because Plaintiff has not separated its "recoverable" costs (i.e. – the fees paid to York County's Clerk of Court) from its "non-recoverable" costs, its motion must be denied as to all of these amounts. Black v. Roche Biomedical Laboratories, Inc., 315 S.C. 223, 228, 433 S.E.2d 21, 24 (Ct. App. 1993)(holding that a party seeking to recover costs "must point to a specific statute or rule of court to support each of his claims for costs, fees and disbursements."

Fees of the Sheriff (¶ 8.d to Meckler Aff.)

Plaintiff claims $40.00 for "fees of the sheriff." It appears that Rule 54(c)(4) permits the recovery of these amounts as taxable costs.

Service of Process Fees (Other than Sheriff Fees)(¶ 8.e to Meckler Aff.)

Pursuant to Rule 54(e)(4), SCRCP, "[a]ll fees and costs incurred in the service of summons and complaint, or subpoenas for the witnesses who testified at trial, or for the production of documents and materials actually used at trial, *in an amount not to exceed that which may be charged by the sheriff for comparable services*, are taxable" (emphasis added). The York County Sheriff's published service and fees schedule is attached as Exhibit A. The Sheriff would have charged $45.00 to serve three trial subpoenas, yet Plaintiff has claimed $295.00 as recoverable costs. This portion of Plaintiff's claim must be reduced by $250.00.

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Postage Fees and Federal Express (¶8.f to Meckler Aff.)

Plaintiff seeks taxation of $1,240.70 in postage and Federal Express charges as recoverable costs but, here again, has failed to identify any rule or statute that permits the recovery of these expenses as "costs." These costs must be denied. Black, 315 S.C. at 230, 433 S.E.2d at 26 (Because party seeking costs "did not bring to the trial court's . . . attention a rule of court or statute that authorizes these reimbursements" the claim was properly denied).

Witness Fees (¶8.g to Meckler Aff.)

Plaintiff has claimed $35,028.71 of "witness fees," but has not identified any statute or rule of court that would permit recovery of those fees as costs. For that reason alone, the claim for "witness fees" must be denied. Black, 315 S.C. at 228, 433 S.E.2d at 24. Furthermore, the bulk of these claimed "costs" ($34,379.25) are actually fees charged by Plaintiff's expert witnesses, John Scott and Jason Ligon. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are *not* taxable as costs unless there is a statute specifically allowing such an expense." Oliver at 319, 422 S.E.2d at 132 (emphasis added)(citing 20 C.J.S. *Costs* § 116 (1990)). The fees of Plaintiff's experts are not recoverable as "costs." The fees of other witnesses, at the rate of $25 per day plus mileage, are taxable.

Mediator's Fee (¶ 8.h to Meckler Aff.)

Plaintiff seeks reimbursement of $2,123.37, which represents Plaintiff's share of the costs of the parties' mediation. Rule 9(c) S.C.A.D.R. expressly provides "unless otherwise agreed to by the parties or ordered by the court, fees and expenses for the ADR conference shall be paid in equal shares by the parties." Plaintiff has failed to identify any order, agreement, rule or statute that overrides the provisions of Rule 9(c) S.C.A.D.R.

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Court Reporter Fees and Costs of Transcripts (¶8.i to Meckler Aff.)

Plaintiff seeks $9,266.77 as reimbursement for "court reporter fees and costs of transcripts." In Black v. Roche Biomedical Laboratories, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993), the South Carolina Court of Appeals affirmed a trial court's denial of court reporter's fees as recoverable "costs" and expressed "doubt" whether S.C. Code § 15-37-40[8] is "applicabl[e] . . . to present day deposition practice." Defendants are not aware of any statute or rule that would entitle Plaintiff to recover its court reporter's fees as costs, and Plaintiff has failed to identify any such rule or statute. This portion of Plaintiff's claim for costs must, therefore, be denied.

Westlaw/Lexis-Nexis (Legal Research)(¶8.j to Meckler Aff.)

Plaintiff seeks $1,512.97 as reimbursement of "charges for specific legal research and document retrieval, even though "in many instances Shumaker 'wrote off' these charges as a courtesy to its client." *See* Meckler Aff. Nothing in Rule 54 authorizes the recovery of "charges for legal research and document retrieval," particularly such charges were not actually paid by the litigant. Nor has Plaintiff identified any other rule or statute that would permit it to recover these costs. This claim must be denied. Black, 315 S.C. at 230, 433 S.E.2d 21, 26.

Third-Party Litigation Support Vendors (¶8.k to Meckler Aff.)

Plaintiff seeks $2,420.20 in "charges . . . for poster boards, binders, etc. used at hearings and trial." Rule 54(e)(6) permits the recovery of "the costs of one copy of a document introduced in evidence in lieu of the original . . . and the costs of one copy of a photograph introduced into evidence." Nothing in that rule permits a party to recover the costs of "poster boards, binders,

[8] Section 15-37-40 provides for the recovery of the "reasonable compensation of commissioners in taking depositions."

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etc." and Plaintiff has not pointed to any other statute or rule that would permit these costs. This claim must be denied. Black at 230, 433 S.E.2d at 26.

Costs of Certified Documents (S.C. Secretary of State)(¶8.l to Meckler Aff.)

Plaintiff seeks $103.50 in "costs to obtain certified copies of the corporate documents of the named Defendants for purposes of trial." While Rule 54(e)(6) permits the recovery of "the costs of one copy of a document introduced in evidence" Plaintiff did not actually introduce any certified copies of "corporate documents" as evidence at trial. Therefore, these costs are not properly recoverable.

Courier Service (¶8.m to Meckler Aff.)

Plaintiff seeks reimbursement of $143.70 in "charges incurred in connection with efforts to obtain a response to the subpoena" to a third-party "and in filing a motion to compel in Union County, North Carolina." It is virtually inconceivable that Defendants could somehow be responsible for the "costs" of Plaintiff's attempts to enforce an out-of-state subpoena against a third party. The claim becomes more tenuous, given that Plaintiff's motion to compel compliance with that subpoena (in Union County, North Carolina) was *denied*. Nothing in Rule 54 or Rule 45 permits a party to recover the costs of its unsuccessful attempts to subpoena out-of-state documents from a third party.

Travel Expenses/Mileage Reimbursement (¶8.n)

Plaintiff seeks recovery of $1,496.70 for "charges incurred for attendance of SLK attorneys and other personnel at hearings, trial, etc." No provision of Rule 54 makes "travel expenses" a taxable cost, and Plaintiff has not identified any other rule or statute that would permit those costs to be taxed against Defendants. The claim must be denied. *See* Black, 315 S.C. at 230, 433 S.E.2d

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at 26 (denying applicant's claim for "travel, lodging, car rentals, parking, mailings, telephone calls, publications and mileage" where applicant did not "bring to the court's attention . . . a rule of court or statute that authorizes these reimbursements.").

Meals of SLK attorneys and other personnel during trial (¶ 8.o to Meckler Aff.)

Plaintiff seeks reimbursement of $202.16 in "meals for SLK attorneys and other personnel during trial." Plaintiff is not entitled to recover that cost. In Black, the Court of Appeals affirmed the trial judge's exclusion of costs for "travel, lodging, car rentals, *meals*, parking, mailings, telephone calls, publications, and mileage" because the claimant "did not bring to the trial court's, and has not brought to this court's attention, a rule of court or statute that authorizes these reimbursements." Black, 315 S.C. 223, 230, 433 S.E.2d 21, 26. Plaintiff has, likewise, failed to meet its burden of proof as to this alleged "cost." The cost of meals during trial are not taxable.

CONCLUSION

For each of the reasons set forth above, this court should deny Plaintiff's motion for attorney's fees and costs.

October 8, 2021

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ELECTRONICALLY FILED - 2021 Dec 22 10:07 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
The Grapevine of Riverwalk, Inc.,	)	C/A No. 2018-CP-46-03726
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' RULE 59(e) MOTION
	)	
Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC and Assured Administration, LLC,	)	
	)	
Defendants.	)	

Defendants move for reconsideration of this court's Order Regarding Post-Trial Motions filed December 13, 2021 (the "December 13 Order"), pursuant to the provisions of Rule 59(e) S.C. R. Civ. P. In support of this motion, Defendants assert that the December 13 Order overlooked or misapprehended the following matters. These matters came to light as a result of the December 13 Order, and were not previously addressed by the parties or the court.[1] Defendants respectfully request that this court should reconsider the following portions of its December 13 Order before entering a final judgment in this case:

[1] Defendants are mindful of the South Carolina Supreme Court's admonition that litigants should avoid filing "successive [Rule 59(e)] motions, raising issues already raised to and ruled upon by the trial judge." Quality Trailer Products, Inc. v. CSL Equipment Co., Inc., 349 S.C. 216, 562 S.E.2d 615 (2002). This motion seeks reconsideration only of the following matters that were first decided by the court in its December 13, 2021 Order (Paragraph 1 – Plaintiff's post-trial motion for specific performance; and Paragraph 2 – Plaintiff's post-trial motion for attorney's fees and costs). *See* Collins Music Co., Inc. v. IGT, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002)(holding that "successive post-trial motions are permissible, [provided the] subsequent motion . . . seek[s] relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment.").

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1. This court should reconsider its award of specific performance (paragraph 1 of December 13 Order) and, in particular, that portion of the order that provides "upon closing [of Plaintiff's purchase], the lease shall immediately terminate, but Plaintiff shall retain the right to jointly use the Common Areas . . . and the condominium documents shall expressly so provide." December 13 Order at 1. As currently written, the court's order would impose duties and obligations upon (prospective) member(s) of a horizontal property regime that has not been formed, where those prospective member(s) of the regime were not parties to this litigation, were not subject to the personal jurisdiction of this court, and did not have any opportunity to appear and protect their interests. Defendants respectfully submit that this court does not have the requisite subject matter or personal jurisdiction to prospectively impose such obligations on a putative horizontal property regime or upon its putative members.

2. This court should reconsider and further reduce its award of attorney's fees and costs to Plaintiff (Paragraph 2 of December 13 Order) for each of the following reasons:

a. While the court ordered an across-the-board reduction in the plaintiff's claimed attorney's fees to account for "a distinction in the claims and the time allotted to assert claims unrelated to the breach of lease claims," the court failed to consider that the plaintiff also pursued claims against multiple defendants, most of whom had no contractual relationship with the plaintiff. As a result, the court's award of attorney's fees and costs places a disproportionate burden upon Defendant Riverwalk River District Building 6, LLC to pay attorney's fees and costs for which it has no contractual obligation and it disproportionately awards to Plaintiff attorney's fees and costs that it has no contractual or statutory right to recover. *See* Parkway 1046, LLC v. U.S. Home Corporation, 961 F.3d 301, 313 (2020)(holding contractual "attorney's fees provisions must be strictly construed to avoid inferring duties that the parties did not intend to create."). The court should order an additional reduction in attorney's fees to account for the distinction in the claims asserted by Plaintiff against Building 6 versus those asserted by Plaintiff against the other defendants.

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b. With regard to Plaintiff's claim for costs, the court failed to consider that the vast majority of the plaintiff's claimed costs, including amounts claimed for (i) expert witness fees ($35,028.71), (ii) fees paid to court reporters for depositions ($9,266.67), (iii) legal research ($1,512.97), (iv) payments to "third-party litigation support vendors" ($2,420.20), (iv) transportation costs of Plaintiff's Counsel ($1,496.70) (vi) fees paid to mediators ($2,133.37) and (vii) costs of attorney's meals ($202.16) are not recoverable costs under the law of this state. *See* Rule 54 S.C. R. Civ. P.; Oliver v. South Carolina Dep't. of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128 (1992); Black v. Roche Biomedical Laboratories, Inc., 315 S.C. 223, 228, 433 S.E.2d 21, 24 (Ct. App. 1993). Therefore, this court should have disallowed, not simply discounted, the vast majority of the amounts the plaintiff claimed as "costs" of this litigation.

This motion is based upon the provisions of Rule 59(e) S.C. R. Civ. P. and the applicable statutory and case law. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he had no obligation to consult with opposing counsel prior to filing this motion.

December 22, 2021

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ATTORNEYS FOR DEFENDANTS

ELECTRONICALLY FILED - 2022 Jan 03 2:31 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC,

Defendants.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 59(e) MOTION

NOW COMES the Plaintiff, through undersigned counsel, and hereby serves its response in opposition to the Rule 59(e) Motion filed by Defendants:

As Defendants' note in their Motion, the South Carolina Supreme Court admonished litigants from filing successive motions that merely recite the issues and arguments already decided by the trial judge. *Quality Trailer Prods, Inc. v. CSL Equip. Co., Inc.*, 349 S.C. 216, 562 S.E.2d 615 (2002). Defendants' Motion is yet another attempt to relitigate the same issues that were previously tried and decided by the jury, presented by motion during trial, presented again in Defendants' Post-Trial Motions (and argued at the hearing thereon), and ultimately decided by this Court's entry of the Order Regarding Post-Trial Motions on December 13, 2021. The Court received extensive prior briefing, considered multiple oral arguments, and rendered well-reasoned Orders on the issues that Defendants seek to have reconsidered. Defendants' recourse should be limited to an appeal, not to reconsideration of the same issues that have been

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previously considered and decided by this Court, especially where there is no suggestion under Rule 60 of newly discovered evidence, inadvertence, clerical mistake, or fraud.

I. THE AWARD OF SPECIFIC PERFORMANCE SHOULD STAND.

Defendants raise the same issues based on the same arguments made numerous times to this Court. The jury unequivocally determined that what Plaintiff leased included not only the area within the four walls of the demised premises but also the right to use the Common Areas adjacent thereto. Plaintiff is purchasing that which it leased. The parties' intent, as clearly expressed in the Lease, was for the Common Areas to primarily benefit the businesses located within the building on a non-exclusive basis in common with all other businesses.[1] That is all that Plaintiff seeks to preserve, all that this Court's prior Order requires, and is consistent with the jury's findings. Jurisdiction is clear as the parties are residents or businesses located in York County, the property is located in York County, and the Lease/Option was entered into in York County. The Court's prior Order should stand as written.

The jury likewise determined that it was uniquely Defendants' duty to create the horizontal property regime and that their failure to do so was part and parcel of the breach of contract. Defendants cannot now complain that the consequence of their breach places an undue burden on the regime or its members. In any event, there is no real duty or obligation being imposed because allowing Plaintiff to retain its right to jointly use the Common Areas merely maintains the status quo that existed for years prior to Defendants' wrongful revocation of Plaintiff's rights. It would be illogical for the horizontal property regime to provide that the Common Areas can be used by everyone *except Grapevine*.

[1] "Common Areas" are defined as those areas which "Tenant, its customers, employees and invitees shall have the non-exclusive right to use and enjoy … [and which] are *intended primarily for the use by customers or clients of the businesses in the Building*." Lease, ¶ 15 (Ex. 1 at Trial) (emphasis added).

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For all of the foregoing reasons, and for all of the other reasons previously presented and argued in support of an award of specific performance, Defendants' Motion should be denied and the Court's well-reasoned prior Order granting specific performance should stand as written.

II. THE AWARD OF COSTS AND ATTORNEYS' FEES SHOULD STAND.

Defendants' Motion assumes, without any evidence, that this Court overlooked some detail or did not otherwise appropriately consider its prior Order awarding costs and attorneys' fees, and despite the fact that the underlying motion was briefed by the parties, supported by affidavits from counsel, and accompanied by unredacted copies of the monthly billing invoices submitted by undersigned counsel to Plaintiff and which were duly paid by Plaintiff.

The Court applied a thirty percent (30%) "across the board" reduction of the total amount of costs and attorneys' fees originally sought, which reduction was intended to account for the non-contractual claims not subject to the contractual fee shifting provision and presumably also for the fact that there were multiple Defendants but only one Defendant (Defendant Riverwalk) that was subject to the fee shifting provision. Regardless, the nature of the litigation was such that the number of Defendants was of little consequence to the costs and fees actually incurred. The same amount and number of discovery and depositions would have been taken and the trial would have lasted just as long. To infer otherwise, without specific evidence to dispute the costs and attorneys' fees incurred, would be mere conjecture. The Court properly exercised its discretion by reducing the award of costs and attorneys' fees in the manner in which it did. The Court should not reconsider or overturn its well-reasoned prior Order on the matter.

Also, Defendants seem to overlook the fact that the parties had a contractual agreement regarding Plaintiff's recovery of its costs and attorneys' fees in the event of a Landlord default under the Lease. *See* Lease, ¶ 38 (Ex. 1 at Trial). The existence of an express contractual

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agreement renders Plaintiff's costs recoverable regardless of statutory authority. The two cases cited by Defendants (*Oliver v. S.C. Dep't. of Highways* and *Black v. Roche Biomedical*) are personal injury or medical malpractice cases where there was no contractual costs shifting agreement between the parties, and therefore the award of costs in those cases was properly limited to what the statutes authorized. However, an award of costs in this case must be considered in light of the parties' agreement that Plaintiff can recover its costs in the event of a default by Landlord. A review of the costs submitted by Plaintiff confirms that all costs were directly related to the litigation. The Court reduced the award of costs by thirty percent (30%) across the board (in the same respect as with Plaintiff's attorneys' fees) to account for the various claims and Defendants and otherwise in the exercise of its discretion regarding the amount of costs recoverable.

For all of the foregoing reasons, and for all of the other reasons previously presented in support of an award of Plaintiff's costs and attorneys' fees, Defendants' Motion should be denied and the Court's well-reasoned prior Order granting attorneys' fees and costs with a thirty percent (30%) across the board reduction should stand.

Respectfully submitted, this is the 3rd day of January, 2022.

/s/ *Christian Staples*
Steven A. Meckler, SC Bar No. 68402
Christian H. Staples, SC Bar No. 101470
Shumaker, Loop & Kendrick, LLP
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Charlotte, North Carolina 28280
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 59(e) MOTION** was electronically filed using the Court's CM/ECF system, which will send notice of filing to the following:

W. Keith Martens
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
Attorneys for Defendants

This the 3rd day of January, 2022.

/s/ Christian Staples
Christian H. Staples
Shumaker, Loop & Kendrick, LLP

ELECTRONICALLY FILED - 2022 May 31 4:24 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA)) COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc.,)) Plaintiff,)) v.)) Riverwalk River District Building 6, LLC,) Mark S. Mather, GRH Development) Resources, LLC, The Greens of Rock Hill,) LLC and Assured Administration, LLC,)) Defendants.)	C/A No. 2018-CP-46-03726 MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT

On April 19, 2022, The Honorable William A. McKinnon issued an Order which, *inter alia*, directs the execution of a conveyance of a condominium unit by Defendant Riverwalk River District Building 6, LLC to Plaintiff The Grapevine of Riverwalk, Inc. Defendants, including Defendant Riverwalk River District Building 6, LLC, served their Notice of Appeal on April 29, 2022.

Pursuant to Rule 62(d) of the South Carolina Rules of Civil Procedure, Defendants respectfully move this court to stay the execution of judgment during the pendency of their appeal. Pursuant to S.C. Code § 18-9-160, Defendant Riverwalk River District Building 6, LLC has executed a deed of conveyance for the condominium unit and deposited it with the clerk of this Court, to abide the judgment of the appellate court. Moreover, pursuant to S.C. Code § 18-9-130(A), Defendants respectfully request a stay of execution as to the money judgment against them and an order for bond in the amount of the judgment.

This motion is based upon the provisions of Rule 62 and the applicable statutory and case law. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he consulted with opposing counsel prior to filing this motion.

May 30, 2022

s/W. Keith Martens
W. Keith Martens
S.C. Bar 8645
HAMILTON MARTENS, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
keith.martens@hamiltonmartens.com

ATTORNEYS FOR DEFENDANTS/
APPELLANTS

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HAMILTON MARTENS
ATTORNEYS AT LAW

W. Keith Martens
keith.martens@hamiltonmartens.com
803.329.7672

May 30, 2022

VIA HAND DELIVERY
The Honorable David Hamilton
York County Clerk of Court
Post Office Box 649
York, SC 29745

RE: *The Grapevine of Riverwalk, Inc. v. Riverwalk River District Building 6, LLC, et al.*
C/A No. 2018-CP-46-03726
Our File 11929-003

Dear Mr. Hamilton:

I represented Riverwalk River District Building 6, LLC in the trial of the above-referenced matter in August 2021. Following trial of that case, Judge McKinnon issued an order compelling my client to convey a condominium unit to Plaintiff, and specified May 31, 2022 as the date for conveyance.

My client has recently filed an appeal of Judge McKinnon's order. In order to stay the portion of the order that compels conveyance of the condominium unit, I am delivering a fully executed copy of the Deed of Conveyance to you in compliance with the provisions of S.C. Code Ann. § 18-9-160 (Law. Co-op. 2014). Pursuant to that statute, the Master Deed and Deed should not be recorded, but should be held by your office until the appeal is concluded. Upon conclusion of the appeal, your office is directed to "abide the judgment of the appellate court."

Thank you for your assistance in this matter. Please call me if you have any questions.

Sincerely,

W. Keith Martens

WKM/
Enclosure (as noted)
cc: Via Email and U.S. Mail
Christian H. Staples
Shumaker
101 South Tryon Street
Suite 2200
Charlotte, NC 28280

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Drawn by and after recording return to:
Todd C. Brockmann, Esq.
17250 Lancaster Highway, Suite 608
Charlotte, North Carolina 28277

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDENTURE DEED

THIS INDENTURE, made the day hereinbelow stated, by and between RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company (hereinafter, "GRANTOR," which expression shall include its heirs, successors and assigns); and THE GRAPEVINE OF RIVERWALK, INC., a South Carolina corporation, whose address is _____ (hereinafter, "GRANTEE," which expression shall include its successors and assigns).

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained, and the sum of _____ DOLLARS, paid to GRANTOR by GRANTEE, the receipt of which is hereby acknowledged, GRANTOR has, subject to the Permitted Exceptions (defined below), granted, bargained, sold and released, and by these presents does, subject to the Permitted Exceptions, grant, bargain, sell and release unto GRANTEE and its successors and assigns forever, the condominium unit situate in York County, South Carolina, described as follows (the "Premises"):

> The Premises is conveyed subject to all of the provisions of the By-Laws of Riverwalk River District Building Owners Association, Inc. ("Bylaws"), the Master Deed (defined below), including, without limitation, the grant of powers-of-attorney set forth therein, and all other easements, rights-of-way, restrictions or other matters of record or apparent upon an inspection of the Premises, including without limitation any master declaration of Riverwalk as modified from time-to-time (collectively, the "Permitted Exceptions").
>
> Unit No. 1D in Riverwalk River District Building 6 Condominium Horizontal Property Regime, a Horizontal Property Regime (the "Condominium") established by Grantor pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted

by that certain Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime dated May 31, 2022, recorded May 31, 2022, in Book _____, Page _____, Office of the Clerk of Court for York County, South Carolina (the "Master Deed").

TOGETHER WITH the undivided percentage interest in the Common Elements as provided in the Master Deed.

TOGETHER with all of the appurtenances thereto according to the Master Deed, and GRANTEE assumes and agrees to observe and perform its obligations under the Master Deed including, without limitation, the payment of assessments for the maintenance and operation of the Condominium.

BEING a portion of the same property conveyed to Riverwalk River District Building 6, LLC, by The Greens of Rock Hill LLC, by deed dated July 30, 2014, and recorded July 14, 2014, in Volume 14275, Page 4, in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: Being a portion of 662-07-01-147

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE. GRANTEE, by the acceptance and execution of this Indenture Deed, acknowledges that this conveyance is subject to all of the terms, covenants, conditions and restrictions of the Master Deed, the Bylaws, including the provisions of all exhibits thereto, and the other Permitted Exceptions, and GRANTEE hereby accepts, ratifies and confirms all of such terms, covenants, conditions and restrictions. GRANTEE acknowledges and agrees that all of said terms, covenants, conditions and restrictions are reasonable, fair and equitable; and GRANTEE acknowledges and agrees that the Master Deed, the Bylaws, and all exhibits thereto, contain all of the warranties, representations, and the inducements concerning the purchase by GRANTEE of the Premises.

TOGETHER with, subject to the Permitted Exceptions, all and singular the rights, members, hereditaments, and appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular the Premises before mentioned unto GRANTEE and its successors and assigns.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted Exceptions, all and singular the Premises unto GRANTEE and its successors and assigns, against itself and its successors, but against no others.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, GRANTOR has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and delivered

in the presence of:

Witness #1

Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Manager:

ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company

By: _____
Mark Mather, Manager

STATE OF S.C.

COUNTY OF York

ACKNOWLEDGMENT

I, L. Melia Sweatt, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this 30th day of May, 2022.

Notary Public

My commission expires: 7-9-22

ROA 326

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IN WITNESS WHEREOF, GRANTEE has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and

delivered in the presence of:

THE GRAPEVINE OF RIVERWALK, INC.,
a South Carolina corporation

_____
Witness #1

By:_____

Name:_____

_____
Witness #2

Title:_____

STATE OF _____

ACKNOWLEDGMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he/she, being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this _____ day of _____ 2022.

_____
Notary Public

My commission expires: _____

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC.,

Plaintiff,

v.

RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC

Defendants.

PLAINTIFF'S RULE 70 MOTION TO COMPEL COMPLIANCE WITH FINAL JUDGMENT, FOR CONTEMPT ORDER, AND FOR ORDER REGARDING NON-PAYMENT OF RENT PENDING APPEAL

NOW COMES the Plaintiff the Grapevine of Riverwalk, Inc., by and through its undersigned counsel, pursuant to the Final Judgment entered in this action on April 19, 2022, Rules 7(b) and 70 of the South Carolina Rules of Civil Procedure, and S.C. Code § 18-9-160, and hereby moves the Court for the entry of an Order compelling Defendants' compliance with the Final Judgment, holding Defendants in contempt due to their non-compliance, and directing the non-payment of future rent under the parties' Lease Agreement pending the outcome of Defendants' appeal, and in support thereof, states the following:

1) The Amended Order on Rule 59 Motion and Final Judgment entered in this action on April 19, 2022 (the "Final Judgment"), directs that the closing on the purchase/sale of the property located at 829 Terrace Park, Suite 104, Rock Hill, SC 29730 (the "Property"), shall occur by May 31, 2022, and that time is of the essence.

2) The Final Judgment further directs that the Master Deed establishing the horizontal property regime for the building in which the Property is located shall be in

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substantially the same form as that prepared by Todd Brockmann, Esq. on behalf of Defendant Riverwalk River District Building 6, LLC ("Defendant Riverwalk") in January 2018 and subsequently approved by Plaintiff.

3) The Final Judgment further directs that Defendant Riverwalk shall deliver good, clear, insurable, and marketable fee simple title to the Property by a "General Warranty Deed" running to Plaintiff, free and clear of all liens and encumbrances, subject only to certain permitted exceptions specified therein.

4) Defendants filed a Notice of Appeal from the Final Judgment on April 29, 2022.

5) Defendants caused a Master Deed to be filed and recorded in York County on or about May 31, 2022. However, the Master Deed contains certain provisions that were not contained in the January 2018 version previously agreed to by the parties and is otherwise not in "substantially the same form" as the January 2018 version, and therefore does not comply with the Final Judgment. Those new and objectionable provisions include, but are not limited to, Section 6.1(h) (right of first refusal) and Section 7.3 (assessment of $3,000 per day for any violation of prohibited use of common areas). There may be other differences that a detailed comparison would reveal.

6) Additionally, on May 30, 2022, Defendant Mark S. Mather, acting on behalf of Defendant Riverwalk, executed an incomplete "Indenture Deed" but has failed to deliver said Indenture Deed to Plaintiff or to deposit the same with the Clerk with whom the Final Judgment is entered, to abide the judgment of the appellate court, as required by S.C. Code § 18-9-160, in order to obtain a stay of the specific performance directed by the Final Judgment. Defendants filed a Motion for Stay of Proceedings to Enforce Judgment on May 31, 2022.

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7) Also, the Indenture Deed does not comply with the Final Judgment, which requires a General Warranty Deed.

8) Furthermore, the Plats depicting the Property and the Common Areas for the building within which the Property is located filed and recorded by Defendants in connection with the Master Deed appear to reduce and restrict the Common Areas (a/k/a the outdoor patio areas) available for Plaintiff's use, in violation of the Final Judgment.

9) Based upon all of the foregoing, Defendants have failed to comply with the Final Judgment in numerous respects, have also failed to comply with the provisions of S.C. Code § 18-9-160 relative to their request for a stay of enforcement of the Final Judgment pending their appeal and, in fact, appear to be deliberately violating the Final Judgment by attempting to wrongfully interfere with, reduce and restrict Plaintiff's rights in and to the Property.

10) Rule 70 of the South Carolina Rules of Civil Procedure provides as follows:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk. (emphasis added).

11) In light of Defendants disobedience and failure to comply with the Final Judgment in a timely manner (or to ensure that S.C. Code § 18-91-60 was fully and properly complied with prior to the closing date of May 31, 2022, in light of Defendants' appeal), this

Court should exercise its powers under Rule 70 to compel Defendants' obedience to the Final Judgment. Plaintiff proposes that the Court immediately divest title from Defendant Riverwalk and appoint Brian C. Wilson, Esq. or some other qualified individual to oversee the creation, filing and recording of a compliant Master Deed, Plat, and General Warranty Deed, all at Defendants' cost and expense.

12) Finally, Plaintiff seeks an Order directing that no further rent or other charges be imposed or payable, or otherwise become due and owing, under the Lease Agreement between Plaintiff and Defendant Riverwalk, and that Plaintiff receive an additional credit against the Purchase Price for any amounts paid by Plaintiff to Defendant Riverwalk in connection with the Lease after May 31, 2022 (or otherwise that Defendant Riverwalk be ordered to refund any such amounts paid by Plaintiff).

13) The undersigned hereby certifies, pursuant to Rule 11, SCRCP, that he consulted with opposing counsel prior to the filing of this motion.

WHEREFORE, based on the foregoing, and for good cause shown, Plaintiff respectfully requests the entry of an Order compelling Defendants' compliance with the Final Judgment, holding Defendants in contempt as a result of their prior non-compliance, directing such further action as may be required under Rule 70, SCRCP, directing the non-payment of future rent under the Lease (and providing for an equitable credit or return of any rent paid after May 31, 2022), and providing such further relief as justice may require, including an Order directing that all costs, expenses, and reasonable attorneys' fees incurred by Plaintiff in connection with or as a result of this Motion be paid, taxed and/or accessed to Defendants.

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This the 3rd day of June, 2022.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
South Carolina State Bar No. 101470
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was electronically filed using the Court's e-filing system which will send notice of filing to the following:

W. Keith Martens
Steven D. Dluzneski
HAMILTON MARTENS, LLC
241 Oakland Avenue (29730)
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
steve.dluzneski@hamiltonmartens.com
Attorneys for Defendants

This the 3rd day of June, 2022.

/s/ Christian H. Staples
Steven A. Meckler
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Christian H. Staples
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Attorneys for Plaintiff

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	2018-CP-46-03726

THE GRAPEVINE OF RIVERWALK, INC., Plaintiff, v. RIVERWALK RIVER DISTRICT BUILDING 6, LLC, MARK S. MATHER, GRH DEVELOPMENT RESOURCES, LLC, THE GREENS OF ROCK HILL, LLC, and ASSURED ADMINISTRATION, LLC Defendants.	**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF RULE 70 MOTION TO COMPEL DEFENDANTS' COMPLIANCE WITH FINAL JUDGMENT, FOR CONTEMPT ORDER, AND FOR ORDER REGARDING NON-PAYMENT OF RENT PENDING APPEAL, AND IN OPPOSITION TO DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT**

Plaintiff The Grapevine of Riverwalk, Inc., by and through its undersigned counsel, hereby submits this Memorandum of Law in support of all pending motions scheduled for hearing on August 1, 2022, by the Honorable William A. McKinnon ("Judge McKinnon").

FACTUAL/PROCEDURAL BACKGROUND RELEVANT TO PENDING MOTIONS

On April 19, 2022, this Court entered an Amended Order on Rule 59 Motion and Final Judgment (the "Final Judgment"), which, among other things, affirms Plaintiff's right to specific performance of the option to purchase contained in the commercial lease agreement between Plaintiff and Defendant Riverwalk River District Building 6, LLC ("Defendant Riverwalk").

The Final Judgment contains at least four (4) specific rulings of relevance to the pending motions. First, it requires that the Master Deed filed by Defendant Riverwalk to implement the horizontal property regime for Building 6 "be in substantially the same form as that prepared by Todd Brockmann, Esq. on behalf of Defendant Riverwalk River District Building 6, LLC in January 2018 and subsequently approved by Plaintiff." Second, it requires that Defendant

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Riverwalk "deliver good, clear, insurable, and marketable fee simple title by a General Warranty Deed running to Plaintiff … ." Third, it provides that "[t]he closing on the purchase/sale of the property located at 829 Terrace Park, Suite 104, Rock Hill, SC 29730, shall occur by May 31, 2022. Fourth, it provides that "[t]ime is of the essence."

Counsel for Plaintiff prepared a draft Final Judgment and presented it to counsel for Defendants prior to submission to the Court for entry. The draft Final Judgment prepared by counsel for Plaintiff contained each of the four rulings stated above. Upon review, counsel for Defendants stated "I do not have any specific comments regarding the draft final judgment that you prepared." *See* **Exhibit 1**. Accordingly, the Final Judgment was presented to and subsequently entered by the Court in the form prepared by counsel for Plaintiff, to which counsel for Defendants expressed no objection or proposed revision. Defendants are now time-barred from moving to alter or amend the Final Judgment. *See* Rule 59(e), SCRCP. Defendants have not moved for relief from the Final Judgment under Rule 60, SCRCP.

May 31, 2022, the deadline for the closing established by the Final Judgment, came and went, and no closing occurred. Instead, at the eleventh hour, Defendants moved to stay the execution of the Final Judgment pending appeal pursuant to S.C. Code §§ 18-9-130 and 18-9-160. However, as discussed below, Defendants failed to comply with the statutory requirements necessary for a stay prior to the May 31, 2022 deadline (or at any time since), with time being of the essence. Moreover, the evidence strongly suggests that Defendants willfully disobeyed the Final Judgment through the filing of a non-compliant Master Deed and Plats for the horizontal property regime, and the tendering of a non-compliant and incomplete deed of transfer to the clerk of court (which was never accepted by the clerk and is wholly ineffective to transfer title).

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Accordingly, for the reasons stated herein, Plaintiff is entitled to an order compelling Defendants' compliance with the Final Judgment (or directing that such compliance be achieved through one or more of the authorized means under Rule 70), sanctioning Defendants for contempt, and denying Defendants' Motion to Stay Enforcement. Plaintiff also seeks an Order directing that no further rent be due under the Lease, or that all future rent payments be held in escrow pending appeal.

ARGUMENT

I. Defendants' Notice of Appeal does not automatically stay enforcement of the Final Judgment.

Pursuant to Rule 241(a) of the South Carolina Rules of Appellate Procedure, "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." However, Rule 241(b) sets forth a number of exceptions to the general rule, including money judgments and judgments directing the execution of conveyances or other instruments.

Each component of the Final Judgment falls within one of the enumerated exceptions under Rule 241(b) to the automatic stay granted by Rule 241(a). Accordingly, Defendants' Notice of Appeal filed on April 29, 2022, does not automatically stay enforcement of the Final Judgment, and Defendants were required to follow the requirements of S.C. Code §§ 18-9-130 and 18-9-160 in order to achieve a stay of enforcement pending appeal. Those statutory provisions require the following:

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- A court order directing a stay of execution of a money judgment, which may be conditioned upon a bond or other surety to guarantee the payment of the judgment pending appeal (S.C. Code § 18-9-130)[1]; and

- Deposit of the executed conveyance or other instrument with the clerk with whom the judgment is entered, to abide the judgment of the appellate court (S.C. Code § 18-9-160).

While it is still technically possible for Defendants to comply with these statutes, the Final Judgment provided that "time is of the essence" and therefore the deadline for Defendants' compliance was May 31, 2022, not thereafter. Defendants had ample time and opportunity to obtain a stay of enforcement, whether by motion or otherwise, prior to May 31, 2022[2], but elected instead to wait until the very last minute to even attempt to obtain a stay[3].

For the reasons argued below, Defendants' attempted compliance falls far short of what the Final Judgment and the relevant statutes governing stay of execution require, and instead tend to evidence a willful intent to disobey the foregoing for the sole purposes of frustrating Plaintiff's efforts to obtain title to the property (or adequate security therefor pending appeal) and necessitating further litigation in this matter at significant cost to Plaintiff.

Accordingly, this Court should not indulge Defendants' late request to stay enforcement of the Final Judgment pending appeal. Instead, this Court should exercise its powers under Rule 70, SCRCP, to ensure that Plaintiff's interests are fully protected pending appeal.

---

[1] Plaintiff contends that Defendants should be required to post a bond in the amount of the money judgment (including the order awarding costs and attorneys' fees), plus interest, in order to provide adequate security to Plaintiff pending appeal.

[2] The Order on Post-Trial Motions, which granted Plaintiff's Motion for Specific Performance and directed that the closing occur on or before May 31, 2022, was filed on December 13, 2021. Thus, Defendants had at least five (5) months' notice of the closing date and ample time and opportunity to take the necessary steps to obtain a stay of enforcement prior to the closing date.

[3] As stated in Defendants' motion, counsel for Defendants attempted to tender a deed of transfer to the clerk of court on May 31, 2022, the last possible date to do so. Counsel for Defendants did not provide a draft or form of the deed of transfer, or of the recorded Master Deed, to counsel for Plaintiff prior to that date.

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II. The Master Deed and the Plats filed by Defendants in May 2022 violate the Final Judgment in several respects.

On May 31, 2022, Defendants caused a Master Deed to be recorded with the Register of Deeds for York County. *See* **Exhibit 2**. However, the recorded version of the Master Deed contains several provisions that were not contained in the January 2018 version previously agreed to by the parties and is not in "substantially the same form" as the January 2018 version, as required by the Final Judgment. A true and correct copy of the January 2018 version of the Master Deed is attached hereto as **Exhibit 3**.

The new, different, and objectionable provisions contained in the recorded version of the Master Deed include, but are not limited to, the following:

- Statement of Purpose (the third paragraph extends the powers of the owners' association (the "Association") to other condominium properties throughout Riverwalk, not just to Building 6 where Plaintiff's unit is located) (*see also* Sections 1.1, 7.5, 7.15, 10.2, and Article XIII of Master Deed and Section 2.1 of the Bylaws for similar provisions);
- Section 1.11 (Declarant Control Period extended from 75% to 95% threshold for ownership by others than the Declarant);
- Section 1.19 (Different definition/provision for Plans/Plats);
- Sections 5.1(g) and 5.2(e) (Different definitions/provisions for Common Elements and Limited Common Elements);
- Section 5.5 (Provides that either the Declarant or the Association may enter into a lease for the Common Elements);
- Section 6.1(e) (Authorizes the Declarant to add additional property to Association oversight and control);
- Section 6.1(h) (Grants Declarant a right of first refusal in any subsequent sale of a unit);
- Section 7.1 (Provides that commercial uses of a unit require approval of the Declarant or the Association);

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- Section 7.2 (Expands the definition of nuisance so as to allow Declarant to prohibit any activity it finds "annoying" in its sole discretion);

- Section 7.3 (Adds new prohibitions on use of the Common Elements, including the requirement of written permission for gatherings or commercial uses, or for placement of personal property, with the right to assess $3,000/day for any violation);

- Section 7.6 (Gives Declarant the right to approve all leases of units without establishing any objective standards, which likely violates the S.C. Horizontal Property Act's requirement of specificity for lease restrictions);

- Section 9.2 (Different provision on Encroachment Easements);

- Exhibit B to Master Deed (Different unit numbers and Common Elements Interests); and

- Bylaws, Section 8.1 (Eliminates the collection of and transfer to the Association of initial capital assessments).

Based on the foregoing, the recorded version of the Master Deed does not comply with the Final Judgment in that it is not "substantially the same" as the 2018 version of the Master Deed and, in fact, contains numerous provisions that can only be described as willful attempts to limit, restrict, remove, and otherwise frustrate Grapevine's rights.

Furthermore, the Plats depicting Building 6 (where Plaintiff's unit is located) and the surrounding Common Areas which were filed and recorded by Defendants on May 27, 2022, appear to substantially reduce and restrict the Common Areas (specifically including the outdoor patio areas) available for Plaintiff's use, in further violation of the Final Judgment. *See* **Exhibits 4 and 5**. The Final Judgment expressly provides that "Plaintiff shall retain the right to jointly use the Common Areas (as defined in the lease and determined by the jury) with the remaining tenants, that the condominium documents shall expressly so provide, and that Defendants shall not restrict or limit Plaintiff's right to use the Common Areas in conjunction with the remaining tenants in the building."

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Based on the foregoing, Plaintiff is entitled to an order adjudging Defendants in contempt for failing to comply with the Final Judgment (and most likely acting in willful disobedience to the Final Judgment by recording a clearly non-compliant Master Deed and Plats), directing that Defendants take immediate action to rectify the situation by recording a compliant Master Deed and Plats that do not impede, restrict, or reduce Plaintiff's access to and use of the Common Areas, or other rights to the unit, in any respect. If necessary (which Plaintiff contends it is), the Court can exercise its powers under Rule 70, SCRCP, to ensure that this is done.

III. Defendants have yet to tender a compliant deed of transfer for the Premises to the clerk of court, as required by S.C. Code § 18-9-160, to stay the order for specific performance.

Defendants' Motion for Stay of Proceedings to Enforce Judgment states that Defendant Riverwalk "has executed a deed of conveyance for the condominium unit and deposited it with the clerk of this Court, to abide the judgment of the appellate court." While it may be true that a deed of conveyance was tendered to the clerk, upon information and belief, based upon subsequent discussion with counsel for Defendants, the clerk refused to accept it. This was likely for good reason, as explained below.

First, the deed tendered to the clerk is labeled "Indenture Deed" and not "General Warranty Deed" as required by the Final Judgment. A copy of the Indenture Deed tendered by counsel for Defendants to the clerk of court was filed in connection with Defendants' Motion to Stay. It is unclear to the undersigned exactly how an Indenture Deed is distinguished from a General Warranty Deed, although, by counsel for Defendants' own admission, the Indenture Deed tendered to the clerk of court does not contain the typically warranties contained in a General Warranty Deed, but instead is akin to a Special Warranty Deed.[4]

[4] The Indenture Deed tendered to the clerk of court on May 31, 2022, contains the following warranty language: "GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted

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The Indenture Deed, though signed by Defendant Riverwalk, is also incomplete in several respects, in that it contains a number of blanks requiring the insertion of additional information, including the Grantee's address, the purchase price, and the book and page number for the recorded Master Deed. It is unclear who Defendants contend should fill in these blanks, and when. As currently drafted and as tendered the clerk of court, the Indenture Deed is insufficient to transfer title to anything to anyone, notwithstanding its non-conformance the Final Judgment. It's no wonder the clerk refused to accept it.

Finally, the Indenture Deed references the Master Deed filed and recorded by Defendants on May 31, 2022, which, as discussed in the preceding section of this brief, likewise violates the Final Judgment and otherwise significantly prejudices Plaintiff's rights by including new and different provisions than were included in the 2018 version of the Master Deed, which Plaintiff never agreed to (nor would it).

For these reasons, Defendants have wholly failed to comply with the Final Judgment or the requirement of S.C. Code § 18-9-160 regarding tender of fully executed and compliant conveyance documents in order to obtain a stay of enforcement pending appeal.

IV. This Court should exercise its powers under Rule 70 to enforce the Final Judgment and/or Defendants' compliance with the statutory requirements governing the stay of enforcement pending appeal.

As an initial matter, it should be noted that this Court retains jurisdiction over all matters not affected by the appeal. *See* Rule 205, S.C. Rules of Appellate Procedure ("Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not

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Exceptions, all and singular the Premises unto GRANTEE and its successors and assigns, against itself and its successors, but against no others." (emphasis added). However, on July 13, 2022, counsel for Defendants emailed a different form of Indenture Deed to counsel for Plaintiff, which revises the last sentence of the warranty to read as follows: "… against the lawful claims of all persons whomsoever." *See* **Exhibit 6**.

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affected by the appeal."). Thus, the Court can rule on the pending motions without invading the jurisdiction of the Court of Appeals.

Rule 70 of the South Carolina Rules of Civil Procedure provides as follows:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk. (emphasis added).

The Final Judgment clearly and unequivocally directs Defendant Riverwalk to execute a conveyance of land (i.e., specific performance of the option to purchase) and to accomplish the same by recording a specific version of the Master Deed and delivering a General Warranty Deed to Plaintiff. Defendant Riverwalk failed to comply with the Final Judgment for all of the reasons discussed in Sections II and III above. Defendants likewise failed to comply with the requirements of S.C. Code § 18-9-160 regarding stay of the order for specific performance contained in the Final Judgment, despite having ample time and opportunity to do so.

And, in fact, the evidence strongly suggests that Defendants acted in willful disobedience to the Final Judgment by recording an obviously non-compliant Master Deed, tendering to the clerk of court an obviously non-compliant deed of transfer (i.e., Indenture Deed), and by recording two Plats that eliminate and restrict the Common Areas available for Plaintiff's use and benefit.

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Accordingly, this Court should do one or more of the following:

- Issue a writ of attachment or sequestration against Building 6 and/or the Premises to compel obedience to the Final Judgment;
- Direct that a compliant Master Deed, Plat, and General Warranty Deed be prepared, filed, recorded and/or delivered to the clerk of court, as the case may be, to abide the judgment, at Defendants' cost, by some person appointed by the court (Plaintiff proposes that Emily Brown, Esq., is a suitable person to accomplish the foregoing and who is willing to serve in such capacity)[5];
- Adjudge Defendants in contempt and/or otherwise sanction Defendants;
- Enter a judgment divesting title to Building 6 and/or the Premises from Defendants and vesting it in others, such as Plaintiff, the clerk of court, Emily Brown, Esq., or another qualified person; and
- Order Defendants to pay Plaintiffs costs and expenses, including reasonable legal fees, incurred in bringing this motion and in opposing Defendants' motion for stay of execution.

Each of the foregoing are within the Court's powers under Rule 70 and are necessary to ensure Defendants' obedience to the Final Judgment (and/or the provisions of S.C. Code § 18-9-160 in the event that the Court determines a stay is appropriate) and to otherwise protect Plaintiff's interests pending appeal.

V. The Court should order that no rent be due under the Lease pending appeal or, alternatively, that the rent be paid to the clerk of court or otherwise held in escrow pending appeal.

The Final Judgment contemplated that the sale would occur on or before May 31, 2022, and therefore it only addressed the rent that would become due and owing under the Lease through that date. The Final Judgment provided that, "[a]t the closing, Plaintiff shall pay the Purchase Price as defined in the Lease Agreement, which price shall be further reduced by the total amount of Base Rent paid by Plaintiff since February 2, 2018, through the Closing Date." Plaintiff has paid $129,679.44 in Base Rent under the Lease through July 31, 2022. The Base

[5] Print-outs from Ms. Brown's website discussing her experience and qualifications are attached hereto as **Exhibit 7**.

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Rent for August 2022 is an additional $2,516.97, which has yet to be paid but which is imminently due and will be paid by Plaintiff barring an order of this Court.

Plaintiff contends that, pending appeal, all future Base Rent under the Lease should be abated, or, alternatively, paid to the clerk of court. This is only fair, especially given the concerns addressed herein regarding Defendants' failure to comply with the Final Judgment and/or the provisions of S.C. Code § 18-9-160 governing tender of fully executed and compliant conveyance documents to the clerk of court pending appeal.

Assuming that the sale were to be consummated in August 2022, after Plaintiff has paid Base Rent for the month, the Purchase Price under the Lease, as modified by the Final Judgment, would be $106,098.59, calculated as follows:

Original Purchase Price	$270,000.00
Credit Per Lease	($25,000.00)
Security Deposit	($6,705.00)
Add'l Rent Credit	($132,196.41)
TOTAL	**$106,098.59**

Thus, there is a real risk that, through the pendency of the appeal, Plaintiff could ultimately pay an amount of Base Rent that would render the total price below $0, resulting in a windfall to Defendants. Admittedly, this would take about three (3) years, but it is a possibility nonetheless. Furthermore, the Initial Term of the Lease expires in February 2026, approximately 3.5 years from now. In the interest of finality and the avoidance of future hearings on the issue, and in order to protect Plaintiff's interests, Plaintiff contends that some arrangement for the abatement of future rent (and/or the retention of same in escrow by some disinterested party, such as the clerk of court) must be made.

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CONCLUSION

Based on the foregoing, and for good cause shown, Plaintiff respectfully requests the entry of an Order compelling Defendants' compliance with the Final Judgment, holding Defendants in contempt as a result of their prior and ongoing non-compliance therewith, directing such further action as may be required under Rule 70, SCRCP, to abide the Final Judgment (and/or the requirements of S.C. Code § 18-9-160), directing the non-payment of future rent under the Lease (or that future payments be held in escrow by a neutral party), and providing such further relief as justice may require, including an Order directing that all costs, expenses, and reasonable attorneys' fees incurred by Plaintiff in connection with or as a result of the pending motions be taxed to and assessed against Defendants.

This the 28th day of July, 2022.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
South Carolina State Bar No. 101470
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was electronically filed using the Court's e-filing system which will send notice of filing to the following:

W. Keith Martens
Steven D. Dluzneski
HAMILTON MARTENS, LLC
241 Oakland Avenue (29730)
P.O. Box 10940
Rock Hill, SC 29731
keith.martens@hamiltonmartens.com
steve.dluzneski@hamiltonmartens.com
Attorneys for Defendants

This the 28th day of July, 2022.

/s/ Christian H. Staples
Steven A. Meckler
South Carolina State Bar No. 68402
Christian H. Staples
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smeckler@shumaker.com
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Attorneys for Plaintiff

Staples, Christian H.

From: Keith Martens <keith.martens@hamiltonmartens.com>
Sent: Monday, April 11, 2022 9:58 AM
To: Staples, Christian H.
Subject: RE: Grapevine/Riverwalk

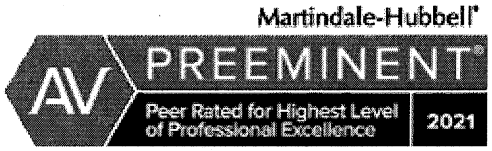
CAUTION: External Email

Christian,

I do not have any specific comments regarding the draft final judgment that you prepared. Thank you.

W. KEITH MARTENS

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CERTIFIED CIRCUIT COURT MEDIATOR



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From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Wednesday, April 6, 2022 3:33 PM
To: Keith Martens <keith.martens@hamiltonmartens.com>
Subject: Grapevine/Riverwalk

Keith,

Hope all is well. As you're probably aware, it's been well over 30 days since we argued your Rule 59(e) Motion to Judge McKinnon. The last time I inquired as to the timing/status of one of his rulings, he did not seem too pleased. However, given that his existing orders require the sale to occur by May 31, I think both sides need to have some clarity and finality so that we can plan accordingly. Melanie recently mentioned that the space was being surveyed, so I assume that was coordinated by your client in an effort to prepare for the sale. In any event, my thought is to send Judge McKinnon a proposed Final Judgment with some blanks he can fill in for any 59(e) rulings as a means of politely reminding him that he has yet to rule on the motion and that the parties are currently operating under an assumed

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closing date of May 31, which is not too far away. To that end, I've attached a proposed Final Judgment and I ask that you let me know of any revisions you may have. I'd like to get this over to Judge McKinnon by Friday afternoon. Of course, if you have another thought on how we might prompt a ruling, let me know. It is your motion after all, and I assume your client needs to know how to proceed. If you want to talk, I should be available Thursday afternoon and Friday morning.

Thanks,

Christian

Christian H. Staples
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YORK COUNTY ASSESSOR
Tax Map:
Date: 06/01/2022

E H

YORK COUNTY, SC	
2022025206	MASTER DECLARATION
RECORDING FEES	$25.00
STATE TAX	$0.00
COUNTY TAX	$0.00
05-31-2022	03:41:37 PM
BK:RB 20214	PG:425-480

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Drawn by and after recording return to:
Todd C. Brockmann, Esq.
17250 Lancaster Highway
Suite 608
Charlotte, North Carolina 28277

NOTICE IS HEREBY GIVEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN. § 15-48-10 (a), THAT CERTAIN PROVISIONS OF THIS MASTER DEED ARE SUBJECT TO MANDATORY ARBITRATION.

MASTER DEED
FOR
RIVERWALK RIVER DISTRICT BUILDING 6
HORIZONTAL PROPERTY REGIME
May 31, 2022

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

MASTER DEED FOR RIVERWALK RIVER DISTRICT BUILDING 6 CONDOMINIUM HORIZONTAL PROPERTY REGIME

This Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime (this "Master Deed") is made, published, and declared this 31st day of May, 2022, by **RIVERWALK RIVER DISTRICT BUILDING 6, LLC**, a South Carolina limited liability company ("Declarant"), pursuant to the provisions of the South Carolina Horizontal Property Act, § 27-31-10 et seq. of the S. C. Code of Laws of 1976, as amended (the "Act").

STATEMENT OF PURPOSE

Declarant is the fee simple owner of a parcel of real estate containing approximately 0.39 acres, located in the Riverwalk development in the City of Rock Hill, York County, South Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed the Building containing the condominium units described in this Master Deed. Declarant has also constructed common amenities on the Land. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the Act.

The purpose of this Master Deed is to establish, pursuant to the Act, a horizontal property regime to be known as Riverwalk River District Building 6 Condominium Horizontal Property Regime. Declarant, by filing of record this Master Deed, publishes and declares that the Property shall be owned, occupied, used, conveyed, encumbered, leased, and improved in accordance with the provisions of the Act and in accordance with the covenants, restrictions, encumbrances, and obligations set forth or incorporated by reference in this Master Deed, all of which shall be deemed to be covenants and obligations running with the land.

In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of (i) maintaining and administering the common areas and facilities on the Property and other similarly situated condominium properties located in the River District of Riverwalk (collectively referred to as the "River District Condominiums"), (ii) administering and enforcing the covenants and restrictions created in this Master Deed and the master deeds of all River District Condominiums, (iii) levying, collecting and disbursing the assessments and charges created in this Master Deed, the master deeds of other River District Condominiums or any other declarations applicable to the River District Condominiums (including, without limitation, assessments and charges from any master association or river district association of Riverwalk), (iv) taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the units within the River District Condominiums and (v) promoting the recreation, health, safety and welfare of the unit owners within the River District Condominiums. In order to accomplish the foregoing, Declarant is entering into this Master Deed.

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NOW, THEREFORE, Declarant hereby declares that all of the Property shall be owned, held, transferred, sold, conveyed, encumbered, leased, occupied and used subject to the Act and to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their successors, heirs and assigns.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Master Deed:

Section 1.1 "Association" shall mean and refer to Riverwalk River District Condominium Owners Association, Inc., a corporation organized and existing under the South Carolina Non-Profit Corporation Act pursuant to and in accordance with this Master Deed, the Bylaws, and the Act. The Association shall constitute the council of co-owners described in the Act. The Association shall govern the Property as well as other River District Condominiums.

Section 1.2 "Building" shall mean and refer to the four (4) story building located on the Land, which contains the Units described in Exhibit B to this Master Deed and shown on the Plans.

Section 1.3 "Bylaws" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit D, and all amendments to such Bylaws which may from time to time be adopted.

Section 1.4 "Commercial Unit" shall mean and refer to a Unit that is used solely for commercial, non-residential purposes.

Section 1.5 "Common Elements" shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Master Deed.

Section 1.6 "Common Elements Interest" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit based on the value of each Unit in relation to the value of the Property as a whole, as set forth on Exhibit B attached hereto, as may be modified in accordance with the Act and this Master Deed.

Section 1.7 "Common Expenses" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Master Deed, the Bylaws, and the Act. Common Expenses shall include assessments allocated by any master association or river district association applicable to the Property.

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Section 1.8 "Condominium" shall mean and refer to the Riverwalk River District Building 6 Condominium Horizontal Property Regime, as established by the submission of the Property to the terms of the Act by this Master Deed.

Section 1.9 "Condominium Documents" shall mean and refer to this Master Deed, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.10 "Declarant" shall mean and refer to Riverwalk River District Building 6, LLC, a South Carolina limited liability company. Following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 6.2 of this Master Deed, the term "Declarant" also shall mean and refer to that transferee.

Section 1.11 "Declarant Control Period" shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of ninety-five (95%) of the Units to an Owner other than Declarant; or (ii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.12 "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Act.

Section 1.13 "Land" shall mean and refer to the real property subject to this Master Deed, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.14 "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by this Master Deed for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Master Deed, and as may be depicted on the Plans.

Section 1.15 "Master Deed" shall mean and refer to this Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime, as it may be amended from time to time in the future.

Section 1.16 "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.17 "Mortgagee" shall mean and refer to the owner and holder of a Mortgage that has notified the Association and Declarant in writing of its name, address, and the name of a representative of Mortgagee who is authorized to act for Mortgagee, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVI. The holder of a mortgage or deed of trust on a

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Unit shall not be deemed a "Mortgagee" under this Master Deed until such notice has been received by the Association and Declarant.

Section 1.18 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.19 "Plans" shall mean the recorded plat attached hereto as Exhibit C and incorporated herein by this reference, and full-size copies of the Plans are recorded in the Office of the Clerk of Court for York County, South Carolina, in the plat book and pages referenced on Exhibit C hereto. The term "Plans" includes any amendments or supplements to the Plans that may be attached to any Amendment to Master Deed.

Section 1.20 "Property" shall mean and refer to the Land, the Building and all other improvements and structures located on the Land; and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.21 "Residential Unit" shall mean and refer to a Unit that is used solely for residential purposes.

Section 1.22 "Special Declarant Rights" shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VI of this Master Deed.

Section 1.23 "The Act" shall mean and refer to Title 27, Chapter 31 of the South Carolina Code of Laws of 1976, as amended.

Section 1.24 "Unit" shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Master Deed and on Exhibit B hereto, that is the subject of individual ownership by an Owner.

ARTICLE II
DESIGNATION OF CONDOMINIUM

Section 2.1 Location and Designation. The Land on which the Building and other improvements are located is located in the City of Rock Hill, York County, South Carolina, contains approximately 0.39 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. Declarant hereby subjects the Property, and Declarant's fee simple interest therein, to the terms of the Act by this Master Deed.

Section 2.2 Name. The name of the Condominium is Riverwalk River District Building 6 Condominium Horizontal Property Regime.

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ARTICLE III
DESCRIPTION OF BUILDING

The Building is a four-story building containing approximately 34,038 square feet. The Building initially contains a total of eight (8) Units and is more particularly described in the Plans, which show all particulars of the Building.

ARTICLE IV
DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans.

Section 4.2 Units. The location of Units within the Building and their dimensions and area are shown on the Plans. The identifying number for each Unit is set forth on Exhibit B and on the Plans. As set forth in Article IX of this Master Deed, Declarant reserves the right to subdivide or combine existing Units in the Building prior to Declarant's sale or lease of such Units to a third party. If Declarant exercises its right to subdivide or combine existing Units in the Building, Declarant shall record an amendment to this Master Deed, which shall contain a revised set of Plans and which shall show the location of the new Units.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the lower face of the finished ceiling surface, extended to the intersection of the vertical demising boundaries. As depicted on the Plans, the ceilings in certain portions of the Unit may be at different elevations; in such cases, the upper boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated, unfinished upper surfaces of the floor facing the interior of each Unit extending to the intersection of the vertical demising boundaries. As depicted on the Plans, the floor in certain portions of the Unit may be at different elevations; in such cases, the lower boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Demising Boundaries: The vertical planes which include the front, unfinished surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

All lath, flooring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. If any chute, flue,

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duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

ARTICLE V
COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units owned by the Association, including without limitation:

(a) The Land.

(b) All improvements located on the Land outside of the Building, including without limitation landscaped areas, surfaced parking areas, paved access roads, walkways, a dumpster pad and common trash receptacle.

(c) All portions of the Building located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.

(d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building, which are not part of a Unit.

(e) Any public connections and meters, vaults, and manholes for utility services that are not owned by the public utility or municipal agency providing such services.

(f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

(g) Any other areas designated as Common Elements by the Declarant from time-to-time during the Declarant Control Period, including, without limitation, any areas that may be conveyed to the Association from time-to-time.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, meter, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.

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(b) Any awnings and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

(d) Those areas indicated as Limited Common Elements on the Plans, which shall be allocated to the Unit to which such Limited Common Elements are servicing.

(e) Any other areas designated as Limited Common Elements by the Declarant from time-to-time during the Declarant Control Period.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Master Deed, or any provision of the Bylaws or the Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Master Deed to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Master Deed shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Master Deed or by the Act.

Section 5.4 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except for the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, customers, employees or invitees, which shall be the responsibility of that Owner. Notwithstanding the above, in the event that Declarant allocates parking spaces as a Limited Common Element, as provided in Section 6.1 below, the Association shall continue to be responsible for maintenance and repair of such parking spaces and the costs thereof shall be deemed a Common Expense.

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Section 5.5 Lease of Common Elements. The Declarant during the Declarant Control Period, and the Association, thereafter, may lease portions of the Common Elements or Limited Common Elements to Owners or other parties from time-to-time on terms as they shall agree in their sole discretion. Any rental pursuant to such leases shall be paid to the Association.

ARTICLE VI
SPECIAL DECLARANT RIGHTS

Section 6.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights:

(a) The right to complete any improvements shown on the Plans.

(b) The right to maintain sales offices, model units and signs advertising the Condominium.

(c) The right to use easements through the Common Elements for the purpose of completing construction.

(d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.

(e) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents including, without limitation, the right to add additional property to the Condominium and/or to add other River District Condominiums to the Association.

(f) The right to allocate to each Unit specific parking spaces which shall become Limited Common Elements applicable to each Unit.

(g) The right (i) to create Common Elements and Limited Common Elements, (ii) to change Common Elements to Limited Common Elements (and vice versa) and (iii) to allocate Limited Common Elements to Units.

(h) During the Declarant Control Period, the right of first refusal to purchase any Unit under the following terms:

(i) No Owner (other than the Declarant) shall sell, agree to sell, accept any offer to sell or enter into any agreement for the sale of a Unit (or any portion thereof) unless Owner complies with the terms of this subsection (h) and only after Owner giving written notice to Declarant as herein provided.

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(ii) If an Owner receives an offer (which must be in writing in the form of a letter of intent (binding or non-binding) or similar document) made in good faith which specifies the proposed purchase price (the "Purchase Price") and other material economic terms and conditions relating to the contemplated transaction from any third party to purchase all or any portion of Owner's Unit (the "Third Party Offer"), and Owner intends to accept the Third Party Offer, Declarant shall have a right of first refusal to purchase Owner's Unit (the "Right of First Refusal") at the Purchase Price and pursuant to the other terms of the Third Party Offer by providing written notice to the Owner of Declarant's intent to purchase the Unit.

(iii) Owner shall give Declarant notice of any Third Party Offer it receives, and Declarant must exercise its Right of First Refusal by delivering to Owner written notice of its intent to do so no later than thirty (30) days after Declarant receives notice of the Third Party Offer from Owner (the "Review Period"). Failure by Declarant to provide Owner with such notice during the Review Period shall be deemed a waiver by Declarant of its Right of First Refusal. Owner shall not accept the Third Party Offer unless and until Declarant has notified Owner in writing that it will not exercise its Right of First Refusal or the Review Period has expired without the required notice from Declarant that it is exercising its Right of First Refusal.

(iv) If subsequent to Declarant not exercising its Right of First Refusal or the expiration of the Review Period the terms and conditions of the Third Party Offer are modified or amended in any material way, including, but not limited to, any modification that results in the Purchase Price being reduced by one percent (1%) or more, an extension of any due diligence period or time for closing or the transaction contemplated by the Third Party Offer is not consummated within one hundred eighty (180) days after the date of receipt by Declarant of the Third Party Offer, then, in either event, Declarant's rights hereunder shall be reinstated as to any modified or amended Third Party Offer, any Offer continuing beyond such one hundred eighty (180) day period, or any subsequent Third Party Offer.

(v) This Right of First Refusal shall apply to all Owners (other than Declarant) and all Units (other than those owned by Declarant) at all times but shall expire upon the expiration of the Declarant Control Period.

Section 6.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Clerk of Court for York County, South Carolina. The instrument shall not be effective unless it is executed by the transferor and the transferee.

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ARTICLE VII
RESTRICTIONS ON USE

Section 7.1 Use. Commercial Units shall be located on the first floor, and Residential Units shall be located on the second, third, and fourth floors of the Building. Permitted uses of the Commercial Units shall be limited to commercial use as shall be permitted under zoning regulations and any private restrictions applicable to the Property. In addition, the use of Commercial Units shall require the approval of the Declarant during the Declarant Control Period and thereafter by the Association as well as the association of the River District.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements or any public or private areas of Riverwalk generally, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners or within Riverwalk generally, or endanger the health and safety of any Owner or other owners or residents within Riverwalk. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property. Owners of Commercial Units shall comply in all respects with any statutes, rules or regulations applicable to their businesses.

Section 7.3 Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the placement or storage of personal or commercial property of any kind at any time. Stairs, entrances, lobbies, hallways, sidewalks, yards, driveways, parking areas and any other Common Elements or Limited Common Elements shall not be obstructed in any way or used for other than their intended purposes. Common Elements shall not be used for gatherings or any commercial uses without the express written permission of the Association. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements or the Limited Common Elements which detracts from the appearance of the Property of the unfettered use of the Common Elements by all Owners at all times. In no event shall any personal property or fixtures of any Owner be allowed to be located on any stairs, entrances, lobbies, hallways, sidewalks, yards, driveways, parking areas and any other Common Elements or Limited Common Elements unless expressly approved in writing by the Declarant during the Declarant Control Period or the Association thereafter. In the event any Owner shall be deemed in violation of this Section 7.3 in anyway, the Declarant during the Declarant Control Period, or the Association, thereafter, may assess such Owner in an amount not to exceed $3,000 per day for each such occurrence and such amount shall be enforceable as set forth in Section 8.2, below, as well as Section 8 of the Bylaws.

Section 7.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in the common trash receptacles located within the Common Elements.

Section 7.5 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Property except wholly within those portions of the Common Elements designated as parking areas by the Association (or as maintained by any river

district association or master association), and in particular shall not block any entrances, drive aisles, and fire lanes. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property. No Owner or any employee, agent or invitee of such Owner shall park in any other Owners' spaces which are designated as Limited Common Elements, if any, so long as such spaces are clearly labeled as non-public parking. The Association shall have the right to tow any vehicle in violation of this Section 7.5 at its owner's expense. It is understood that parking around the Building may be maintained by a river district association or master association and may be subject to additional rules promulgated by either or both of them. Any assessments from any applicable river district association or master association related to parking or any other ancillary matter shall be deemed Common Expenses.

Section 7.6 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than six (6) months without the written consent of the Association. Commercial Units may only be leased and occupied by someone other than the Owner pursuant to a written lease reviewed and approved by Declarant during the Declarant Control Period and thereafter by the Association, which approval shall include, without limitation, the right to approve the tenant, the use and the term of the lease. Once approved, no amendments shall be made to the lease without a review and approval as set forth above.

Section 7.7 No Timeshares. No interest in any Unit may be subjected to a time share program.

Section 7.8 Animals. No animals, livestock, or poultry of any kind shall be kept, maintained or allowed on the Property other than household pets of Owners of Residential Units, which household pets must be kept in strict accordance with the administrative rules and regulations related to household pets from time-to-time adopted or approved by the Association.

Section 7.9 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association.

Section 7.10 Floor Load. There shall be no floor load in any Unit in excess of fifty (50) pounds per square feet, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

Section 7.11 Windows. No curtains, blinds or draperies shall be installed or hung in any window of any Unit which are visible from the exterior of the Building except the Building standard shades installed by Declarant, unless otherwise approved by the Association.

Section 7.12 Architectural Control. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior

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addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association.

Section 7.13 Signs. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except as approved by Declarant during the Declarant Control Period and thereafter, by the Association. Any such signage which is approved by the Declarant or Association, as applicable, shall be installed in such manner, and shall be subject to such rules and regulations as shall be adopted from time to time by the Declarant during the Declarant Control Period and thereafter, by the Association. The cost of such signage, and the installation thereof shall be borne by the Owner requesting such signage. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations. Furthermore, each Owner shall have the right to display temporary "For Sale" or "For Rent" signs in areas, and subject to such rules and regulations, as shall be adopted from time to time by the Declarant during the Declarant Control Period and thereafter, by the Association.

Section 7.14 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto (except parking spaces, if any, which shall remain a Common Expense). Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 7.15 Rules and Regulations. In addition to the use restrictions set forth in this Master Deed, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request. Declarant, during the Declarant Control Period, and the Association, thereafter, shall have the right, as a part of the rules and regulations of the Condominium, to designate certain parking spaces as reserved for the use of individual Units without specifically designating such parking spaces as Limited Common Elements. In addition, the Property is subject to the requirements of the master declaration for Riverwalk (as amended from time-to-time) and any rules and regulations promulgated thereunder by the associations governing the Riverwalk generally and the river district of Riverwalk specifically.

Section 7.16 Hazardous Substances. No Unit may be used for the treatment, storage, use or disposal of toxic or hazardous wastes or substances or any other substance that is prohibited, limited or regulated by any quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants and patrons of the Units or of the surrounding property; provided, however, any Unit may be used for the treatment, storage, use or disposal of toxic or hazardous substances provided that such treatment, storage, use or disposal is incident to a lawful and permitted activity being conducted within such Unit

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and is conducted in compliance with all necessary permits and authorizations and in accordance with all applicable laws, ordinances, rules, orders and regulations. Each Owner shall indemnify and save every other Owner harmless from and against any claims, liabilities, penalties, fines, costs, expenses or damages resulting from any violation of the provisions of this Section.

ARTICLE VIII
THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit South Carolina corporation known and designated as Riverwalk River District Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the Act. A true copy of the initial Bylaws of the Association is attached hereto as Exhibit D. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Master Deed, to levy and collect assessments in the manner provided in Article X below and in Section 8 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed and shall be enforceable by the Association in accordance with the Act and Section 8 of the Bylaws.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however that not later than 60 days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 8.4 Books and Records. The Association shall maintain current copies of (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.15 from time to time; and (c) all financial records of the Association, as required by the Act. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

Section 8.5 Liability. Neither the Association nor any officers or board members of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. Owners shall indemnify and hold harmless the Association and the officers and board members of the Association against all contractual liability to others arising out of contracts made on behalf of the Association. It is also intended that the liability of any Owner arising out of any contract

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made by the Association or out of the indemnity herein shall be limited to such proportion of the total liability thereunder as such Owner's interest in the Common Elements bears to the interests of all the Owners in the Common Elements. Every agreement made by the Association or by the managing agent, or the manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as such Owner's interest in the Common Elements bears to the interests of all Owners in the Common Elements.

ARTICLE IX
EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by it, shall have the irrevocable right of access to the Common Elements, the Limited Common Elements and to each Unit to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property. Pursuant to S.C. Code Ann. § 27-31-280, the Association shall also have the irrevocable right of access to each Unit as may be necessary for the maintenance, repair or replacement of Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or other Units.

Section 9.2 Encroachment Easements. If any Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may, and Declarant hereby reserves the right to, grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; fiber optic lines; and other wires, lines, pipes, fixtures or equipment over, under, along and on any portion of the Common Elements or the Limited Common Elements; and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete the construction of the Building and the other improvements within the Property.

Section 9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

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Section 9.5 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, and each Owner and each Owner's Mortgagee shall sign, an amendment to this Master Deed and a plat which identifies the Units involved, describes and depicts the altered boundaries, gives the dimensions of the altered Units, and also reallocates the interests in the Common Elements allocated to each Unit. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Clerk of Court in the names of the Adjoining Owners.

(b) Subdivision of Units.

(i) By Declarant. Notwithstanding any other provision of this Master Deed to the contrary, Declarant reserves the unilateral right to subdivide or combine existing Units in the Building prior to Declarant's sale or lease of such Units to a third party. Declarant shall execute and record an amendment to this Master Deed, along with the applicable revised Plans and a revised Exhibit B, to affect any such subdivision or combination. Each Owner and its Mortgagee, by acceptance of a deed (or Mortgage, as applicable) to a Unit, hereby consents in advance to any such subdivision or combination, provided such subdivision or combination shall not alter the boundaries of or Common Elements interest in the Unit owned by such Owner (or in which its Mortgagee holds a Mortgage). Furthermore, each Owner and its Mortgagee, by acceptance of a deed (or Mortgage, as applicable) to a Unit, hereby agrees to execute and deliver to Declarant, promptly upon Declarant's request, any documents requested by Declarant to effect such subdivision or combination, and each Owner and its Mortgagee hereby grants to Declarant an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner and its Mortgagee such instruments as may be necessary to effectuate the foregoing. Any such amendment to Master Deed also may contain such additions to the provisions of this Master Deed as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Master Deed, and provided that such additions shall not apply to any Unit created prior to recordation of the amendment to Master Deed and which has been conveyed by Declarant to an Owner, or to the Owner or Mortgagee of any such Unit.

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(ii) By Unit Owners other than Declarant. No Owner other than Declarant may subdivide or combine Units in the Building without the prior written consent of the Association and, during the Declarant Control Period, Declarant. No such subdivision by an Owner other than Declarant shall be binding upon any Mortgagee holding a Mortgage on any Unit which is subdivided, unless consented to in writing by such Mortgagee. Any Owner other than Declarant desiring to subdivide or combine a Unit shall submit an application to the Association. Each such application shall be in such form and contain such information as may be reasonably required by the Association or Declarant, as applicable, and shall be accompanied by a plat detailing the proposed subdivision of the Unit. Unless the Association or Declarant, as applicable, determines within thirty (30) days after submission to it of the application that the proposed subdivision is unreasonable, the application shall be deemed approved. Upon approval of the application, the Association shall cause to be prepared and filed at the Owner's sole expense, and each Owner shall sign, an amendment to this Master Deed together with plans, which shall identify the Unit which is subdivided, assign an identifying number to each new Unit created, describe and depict the location, dimensions, area and boundaries of each new Unit created, and reallocate among the new Units the allocated Commons Elements Interests of the subdivided Unit in accordance with the Act. Such an amendment shall be filed as an amendment to Master Deed.

(c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 9.6 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Master Deed and to the provisions of the Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Master Deed and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Master Deed and to the lien of assessments for Common Expenses provided for in Section 8.2 of this Master Deed. Nothing in this Section 9.6 shall be construed to limit the right of any Owner to convey or to encumber his

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allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

Section 9.8 Appurtenant Easements. If the Land on which the Condominium has been constructed is benefited by certain easements, then, to the extent allowed by the terms of such easements or applicable law, those easements will also benefit each of the Units. In addition to the above, the Units will each be conveyed subject to all covenants, conditions, restrictions and easements of record which affect the Land in the Office of the Clerk of Court for York County, South Carolina, as may be supplemented or amended from time to time.

ARTICLE X
ASSESSMENTS

Section 10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units may not be separately assessed until calendar year 2023 with respect to York County ad valorem property taxes, and any such taxes for calendar year 2022 shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share).

Section 10.2 Common Expenses. Except as otherwise provided in this Master Deed or in the Bylaws, each Owner (including the Declarant) shall contribute a percentage share of the Common Expenses equal to such Owner's allocated interest in the Common Elements, in accordance with the definition of Common Elements set forth in this Master Deed, the Bylaws and the provisions of the Act. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to a party other than Declarant. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least monthly. Common Expenses for each Owner shall also reflect charges applicable to the River District generally to the extent such costs relate to Common Elements owned by the Association and available for use by the Owners.

Section 10.3 Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in shares equal to such Owner's allocated interest in the Common Elements; provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Master Deed imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner

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provided in Section 11.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in shares equal to each Owner's allocated interest in the Common Elements.

ARTICLE XI
INSURANCE

Section 11.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Property (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Property at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of $10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of South Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 11.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner, with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than $1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

Section 11.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be

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determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 11.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

Section 11.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

(2) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(1) If it is determined, as provided in Article XII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(a) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(b) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(c) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, and such other insurance coverage as such Owner may desire. Each Owner of a Commercial Unit shall obtain and maintain public liability insurance coverage in the amount of at least $1,000,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase and shall provide, upon renewal, evidence of such renewal. The Association and the Declarant shall be named as a loss payer or additional insured, as applicable, on all such insurance policies.

ARTICLE XII
DUTY TO REPAIR OR RECONSTRUCT

Section 12.1 Reconstruction. In the event of casualty loss or damage to the Property, the Association shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of this Article XII, subject to the terms of the Act. In accordance with S.C. Code Ann. § 27-31-250, reconstruction or repair shall be mandatory unless (i) repair or replacement is illegal under a state statute or local health ordinance or (ii) at least eighty percent (80%) of the Owners (including the Owner of the Unit which is not to be rebuilt) vote not to rebuild. If the entire Property is not repaired or replaced, the insurance proceeds shall be allocated and applied in accordance with S.C. Code Ann. § 27-31-250. The remaining portion of the Property, as applicable, shall be subject to an action for partition at the suit of any Owner or lienor as if owned in common. In the event of suit for partition, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered one fund and distributed pro-rata among all Owners and their Mortgagees jointly

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in proportion to their respective interests in Common Elements as shown on Exhibit B, subject to the terms of the Act.

If the damaged portion of the Property is required to be repaired or replaced by the Act or this Master Deed, the Property shall be reconstructed or repaired in the following manner, subject to the terms of the Act:

(a) Any reconstruction or repair must follow substantially the original Plans and specifications of the Building and/or the Property, unless the Owners holding at least eighty per cent (80%) or more of the total interest in Common Elements vote to adopt different plans and specifications and all Owners whose Units are affected by the alterations unanimously consent.

(b) The Association shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include professional fees and premiums for bonds as the Association deems necessary or desirable, in its reasonable discretion.

(c) If the insurance proceeds paid to the Association are insufficient to cover the cost of reconstruction, the deficiency shall be paid as a special assessment by the Owners whose Units are directly affected by the damage in proportion to the damage done to their respective Units.

(d) The insurance proceeds received by the Association and any special assessments collected to cover a deficiency in insurance shall constitute a construction fund from which the Association shall disburse payment of the costs of reconstruction and repair. It shall be presumed that the first disbursements from the construction fund are insurance proceeds; and if there is a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to the Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall belong to the Association and shall be considered part of the Common Surplus.

Section 12.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Master Deed. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Master Deed, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, as all of the foregoing may be amended and

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supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Master Deed, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease. Each deed of conveyance from Declarant to an Owner shall be substantially in the form of the deed of indenture attached hereto as Exhibit E and incorporated herein by this reference.

Additionally, all present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of any master declaration and any rules and regulations as may be adopted by any master association or River District association, as all of the foregoing may be amended and supplemented from time to time. In addition, Owners and the Association shall be subject to assessments levied by such associations in regard to infrastructure outside of the Property utilized by all present and future Owners, tenants, and occupants of the Units.

ARTICLE XIV
AMENDMENT TO AND SUPPLEMENT OF MASTER DEED

Except as is otherwise specifically authorized herein, this Master Deed may be amended only by the vote of not less than sixty-seven percent (67%) of the total number of votes in the Association, and not less than fifty-one percent (51%) of the Mortgagee Votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, or by signature of the requisite number of Owners and Mortgagee Votes on the amendment itself or a written consent or similar document. Except to the extent expressly permitted by the other provisions of this Master Deed or the Act, any amendment which amends or alters the Common Elements Interest of any Unit or changes the boundaries of any Unit, shall require the consent of the Owner of such Unit, and any amendment which changes the use to which any Unit is restricted, or modifies the terms of this Article XIV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. Except to the extent expressly permitted by the other provisions of this Master Deed or the Act, no amendment to the Master Deed shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Clerk of Court for York County, South Carolina. No amendment to this Master Deed shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Master Deed shall be effective without the written consent of Declarant. Furthermore, notwithstanding any provision of this Master Deed to the contrary, during the Declarant Control Period, Declarant reserves and shall have the unilateral right to amend this Master Deed (i) to comply with the Act or as may be required by law, (ii) to correct any typographical error, or (iii) coordinate the Condominium with the larger development of the River District or (iv) to effect Declarant's intent with respect to the creation of the Condominium, provided any such amendment may not materially and adversely prejudice the rights of a Unit Owner by increasing its share of the Common Expenses, except as otherwise expressly permitted by this Master Deed.

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ARTICLE XV
TERMINATION

The Condominium may be terminated, and the Property removed from the provisions of the Act, only by the agreement of all of the Owners and their respective Mortgagees, as evidenced by execution of a termination agreement, or ratification thereof, by the Owners and Mortgagees. The termination shall comply with the requirements of the Act and must be recorded in the Office of the Clerk of Court for York County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in the Act.

ARTICLE XVI
MORTGAGEE PROTECTION

Section 16.1 General Provisions. This Article XVI establishes certain standards and covenants for the benefit of Mortgagees. This Article XVI is supplemental to, and not in substitution for, any other provisions of the Condominium Documents.

Section 16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees (*i.e.*, "51% of Mortgagees") is required, (the "Specified Percentage"), such Specified Percentage shall not be based on the specific number of Mortgagees, but rather shall be based on the votes allocated to the Units on which Mortgagees hold Mortgages (the "Mortgagee Votes"). The actual percentage of Mortgagees for determining whether a Specified Percentage has been met shall, therefore, be equal to the product of (a) 100, and (b) a fraction, the numerator of which is the sum of all Mortgagee Votes consenting or approving to the subject action, and denominator of which is the sum of all Mortgagee Votes.

Section 16.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 16.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 16.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

(a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held,

insured, or guaranteed by such Mortgagee, which default remains uncured for a period of thirty (30) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

Notwithstanding any provision of the Condominium Documents to the contrary, the failure of any Mortgagee to respond in writing within seven (7) days to any written request of the Association or Declarant, sent by registered or certified mail, return receipt requested, or overnight delivery, for approval of an addition or amendment to the Condominium Documents wherever Mortgagee approval is required or requested by Declarant or the Association, shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 16.5 Consent and Notice Required. Except as otherwise provided in this Master Deed or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 16.5 shall be effective without notice to all Mortgagees, as required by Section 16.4, and the vote of at least sixty-seven percent (67%) of the votes in the Association (or any greater percentage required by the terms of the Condominium Documents), and not less than fifty-one percent (51%) of the Mortgagee Votes (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

(a) Voting rights.

(b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.

(d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.

(e) Except for the rights of Declarant reserved as Special Declarant Rights under Article VI above and Declarant's subdivision and other rights under Article IX above, reallocation of interests in the Common Elements or the Limited Common Elements.

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(f) Except for the rights of Declarant reserved as Special Declarant Rights under Article VI above and Declarant's subdivision and other rights under Article IX above, redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.

(h) The requirements for insurance and fidelity bonds.

(i) The imposition of any restrictions on the leasing of Units.

(j) The imposition of any restrictions on an Owner's right to sell or transfer a Unit except as set forth in Section 6.1(h), above.

(k) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(l) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(m) Any provision that expressly benefits the Mortgagees.

Upon default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage, which default remains uncured for a period of thirty (30) days, the Association shall provide such Mortgagee with notice as provided in Section 16.4 above. Notwithstanding any provision contained herein to the contrary, each Mortgagee shall have an additional twenty (20) days, beyond the time any monetary default in respect of the Unit its Mortgage encumbers or if the Owner thereof would otherwise become delinquent, to cure any such default which constitutes a default by such Owner or which relates to such Unit hereunder in respect to the payment of money; and an additional reasonable period not to exceed sixty (60) days, beyond the time that any non-monetary default in respect of the Unit its Mortgage encumbers or if the Owner thereof would otherwise become delinquent, to cure any such default which constitutes a default of any non-monetary obligation by such Owner or which relates to any such Unit hereunder, so long as such Mortgagee immediately commences and diligently prosecutes such cure with reasonable prospect of success. Commencement and diligent prosecution of reasonable efforts to gain possession shall constitute commencement of cure. To the extent any Mortgagee is given any rights (including, without limitation, an express right of consent or approval) pursuant to the terms of this Master Deed, it is intended that such Mortgagee shall have the right (but not the obligation) to enforce such rights, in law or in equity (including, without limitation, the right of specific performance) notwithstanding that such Mortgagee is not a party to this Master Deed.

Section 16.6 Other Mortgagee Rights. Notwithstanding any other provision of this Master Deed or the Bylaws, the Association may not change the period for collection of

regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 16.7 Enforcement. The provisions of this Article XVI are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVII
CONDEMNATION

Section 17.1 Awards Paid in Trust. The taking by eminent domain or threat of condemnation of any portion of a Unit or of any part of the Common Elements shall be regarded in the same manner as a casualty to the Property, and awards made for the taking shall be payable to the Association as trustee for the Owners and their respective Mortgagees. If any compensation or award is paid directly to an Owner, he shall entrust the funds to the Association; and in the event he fails to do so, a special assessment may be made against him in the amount of the award, or the amount of the award may be set off against the sums payable to the Owner as hereinafter provided.

Section 17.2 Reduced But Tenantable Condominiums. If any taking by eminent domain reduces the size of a Unit and the remaining portion can be made tenantable, the award shall be used for the following purposes in the order stated:

(a) The Unit shall be made tenantable. If the cost of making the Unit tenantable exceeds the amount of the award, the additional funds required shall be assessed against the Owner.

(b) The balance of the award, if any, shall be paid jointly to the Owner and his Mortgagee.

(c) If the balance of the award paid to the Owner and his Mortgagee is material, the interest in Common Elements appurtenant to that Condominium shall be equitably reduced.

Section 17.3 Untenantable Condominiums. If any taking destroys or so diminishes the size of a Unit that it cannot be made tenantable, the award paid for the taking shall be used for the following purposes in the order stated:

(a) The market value of the Unit prior to the taking shall be paid jointly to the Owner and his Mortgagee. The Mortgagee shall thereupon satisfy his Mortgage, and the Owner shall convey all his remaining right, title and interest in the Unit to the Association.

(b) The remaining portion of such Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all Owners in a manner approved by the Association.

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(c) The percentage interests in Common Elements appurtenant to each Unit shall be equitably adjusted to apportion ownership among the reduced number of Owners who continue to be part of the Condominium following the taking.

(d) If the amount of the award paid for the taking is insufficient to pay the market value of the condemned Unit to the Owner and to condition the remaining portion for use as part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all those who continue to be Owners after the changes effected by the taking. Such assessments shall be made in proportion to the shared percentage of such Owners in the Common Elements after the changes effected by the taking.

Section 17.4. Arbitration. If the market value of a Unit immediately prior to the taking cannot be determined by agreement among the Owner, his Mortgagee, and the Association within thirty (30) days, the value shall be determined by arbitration in accordance with the prevailing rules of the American Arbitration Association, provided that the arbitrators shall be three (3) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the market value of the Unit; and a judgement of specific performance upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of any arbitration proceedings shall be assessed against all Owners in proportion to their respective percentage interest in the Common Elements prior to the change effected by the taking.

Section 17.5. Amendment to Master Deed. The changes in Units, in Common Elements, and in each Owner's percentage interest in Common Elements caused by condemnation shall be evidenced by an amendment to this Master Deed, executed and filed of record by an authorized officer of the Association.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

Section 18.1 Severability. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Master Deed, and in such event, such invalid provision shall be severable, and all the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

Section 18.2 Waiver. No provisions contained in the Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed or the intent of any provision hereof.

Section 18.4 Law Controlling. This Master Deed and the Condominium Documents shall be construed and controlled by and under the laws of the State of South Carolina.

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Section 18.5 Liberal Construction. The provisions of this Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the Act. Throughout this Master Deed wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

Section 18.6 The Act. To the extent that any of the terms or provisions of this Master Deed attempt to vary, modify or waive any provisions of the Act, such terms or provisions shall be so varied, modified or waived to the extent permitted by the Act, it being the intention of the parties hereto that the terms and provisions of this Master Deed shall govern over conflicting provisions in the Act, to the extent permitted by the Act.

ARTICLE XIX
ENFORCEMENT; ARBITRATION

Section 19.1 Actions by Declarant or the Association. Declarant and/or the Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 19.2 Actions by Owners. Any Owner may also bring a civil action against any other Owner, or against the Association, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 19.3 Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner or the Association may require that any unresolved matter between the Owners or before the Executive Board or before the Association be submitted to binding arbitration pursuant to the prevailing rules of the American Arbitration Association, as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

[*remainder of page intentionally left blank*]

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IN WITNESS WHEREOF, Declarant has executed and delivered this Master Deed the day and year first above written.

Signed, sealed and delivered

in the presence of:

Witness #1

Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Manager:

ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company

By: _____
Mark Mather, Manager

STATE OF Sc

COUNTY OF York

I, Shelley S Weeks, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company, the Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this 31 day of May 2022.

Notary Public

My commission expires: Mar 1, 2031

SHELLEY S. WEEKS NOTARY PUBLIC SOUTH CAROLINA

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EXHIBIT A

LEGAL DESCRIPTION OF LAND

BEING +/-.39 Acres of property shown on recorded Survey, Plat Book E253, Page 5, York County Registry; and more particularly described as follows:

Beginning at the South West intersect of Herrons Ferry Road and Terrace Park at a #5 Rebar Set being the Point of Beginning; thence running with the right of way of Terrace Park S 22°13'21" W a distance of 59.96' to a #5 Rebar Set; continuing with said right of way S 82°13'41" W for a distance of 22.76' to a #5 Rebar Set; continuing with said right of way S 22°13'41" W for a distance of 75.54'to a #5 Rebar Set; thence turning and running with the property of The Greens of Rock Hill LLC for the following four (4) courses; N 67°46'19" W for a distance of 74.94' to a #5 Rebar Set; thence N 22°13'41" E for a distance of 32.95' to a #5 Rebar Set; thence N 67°46'19" W for a distance of 9.80' to a #5 Rebar Set; thence N 01°00'12" W for a distance of 122.76' to a #5 Rebar Set; thence turning and running with the right of way of Herrons Ferry Road with a curve turning to the right with an arc length of 45.98', with a radius of 127.50', with a chord bearing of S 78°06'09" E, with a chord length of 45.73', to a #5 Rebar Set; continuing with said right of way S 67°46'19" E for a distance of 100.81' to a #5 Rebar Set; continuing with said right of way S 22°46'19" E for a distance of 10.00' to a #5 Rebar Set; which is the point of beginning, having an area of 17,138.23 square feet, 0.39 acres.

BEING the same property conveyed to Riverwalk River District Building 6, LLC, by The Greens of Rock Hill LLC, by deed dated July 30, 2014, and recorded July 14, 2014, in Volume 14275, Page 4, in the Office of the Clerk of Court for York County, South Carolina.

TMS: 662-07-01-147

This transfer also includes all development rights and vested units of any type or nature associated with the real property transferred to the Grantee described herein and arising or related to that certain Riverwalk Development Agreement ("Development Agreement") recorded in Book 11006, Page 1 in the Office of the Clerk of Court for York County, South Carolina.

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EXHIBIT B

SCHEDULE OF UNITS AND COMMON ELEMENTS INTEREST

Unit	Approximate Useable Square Feet	Common Elements Interest	Unit Value*
1D	1,443	6.00%	$234,462
1A	6,615	28.00%	$1,094,156
2A	2,627	7.38%	$288,388
2B	5,261	14.62%	$571,306
3A	2,627	7.38%	$288,388
3B	5,261	14.62%	$571,306
4A	2,627	7.38%	$288,388
4B	5,261	14.62%	$571,306
TOTAL		100.00%	$3,907,700

*The total value of the Property and the Unit values assigned above are fixed at the tax value for the sole purpose of complying with the Act and do not necessarily reflect the market value, appraised value or any other value of any Unit or the Property. These assigned values shall in no way restrict or inhibit any Owner of a Unit from fixing a different circumstantial value or sales price to a particular Unit in all types of acts or contracts.

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EXHIBIT C

Plans

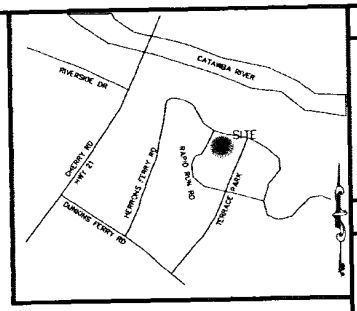
The Plans attached hereto consist of reduced copies of a plat entitled "Condominium Horizontal Property Regine for the Lands of Riverwalk River District Building 6 LLC dated May 22, 2022, and prepared by Veritas Land, PC.

Full size copies of the Plans have been recorded in Plat Book 169, Pages 174-175, Office of the Clerk of Court for York County, South Carolina.

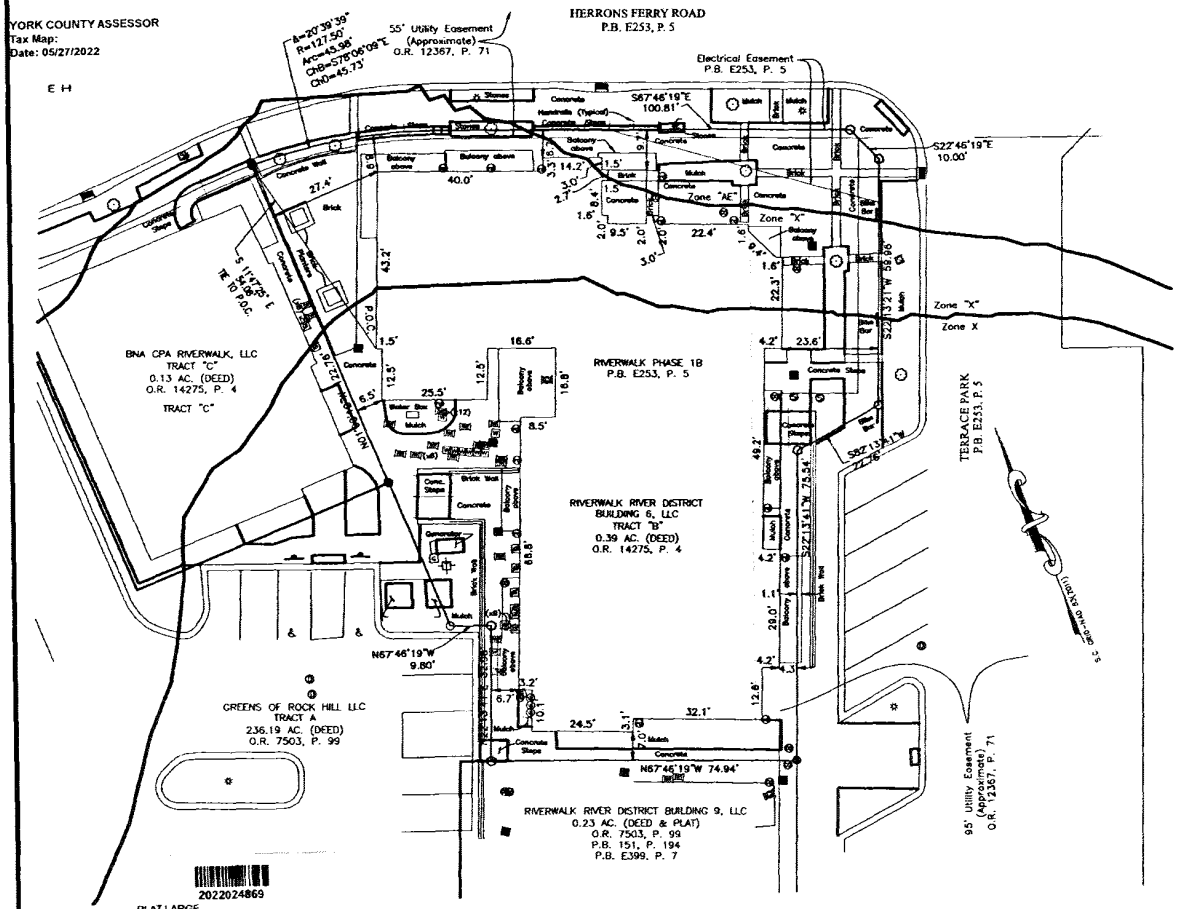
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PRELIMINARY CALCULATIONS (NOT FOR LEASE)						INTERMEDIATE CALCULATIONS								FINAL CALCULATIONS			OPTIONAL ADJUSTMENTS	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
INPUT	MEASURE	MEASURE	MEASURE	MEASURE	=B-C-D-E	INPUT	MEASURE	MEASURE	=H+I	MEASURE	=F-J-K	=(J+L)/ J	=bM	=EF/EN	=MxO	=NxO or HxP	1	=HxR
FLOOR LEVEL	INTERIOR GROSS AREA	MAJOR VERTICAL PENETRATIONS	PARKING	OCCUPANT STORAGE	PRELIMINARY FLOOR AREA	SPACE ID	OCCUPANT AREA	BUILDING AMENITY AREAS	USABLE AREA (U)	BUILDING SERVICE AREAS	FLOOR SERVICE & AMENITY	R/O RATIO	OPPUPANT + ALLOCATED AREA (O)	R/P RATIO	LOAD FACTOR A	RENTABLE AREA	CAPPED LOAD FACTOR	CAPPED RENTABLE AREA
1st Floor	9,016	469	-	-	8,547	Tenant 1	6,815	-	6,815	689	-	1.00	6,815	1.06	1.06	7,017	1.00	6,815.00
					-	Tenant 2	1,443	-	1,443			1.00	1,443	1.06	1.06	1,531	1.00	1,443.00
FLOOR TOTALS	9,016	469	-	-	8,547		8,258	-	8,258			1.00	8,258	1.06	1.06	8,547	1.00	8,258.00
2nd Floor	9,094	434	-	-	8,660	Tenant 3	8,660	-	8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00
3rd Floor	9,094	434	-	-	8,660	Tenant 4	8,660	-	8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00
4th Floor	9,094	434	-	-	8,660	Tenant 5	8,660	-	8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00



VICINITY MAP – N.T.S.



NOTES

1. THIS PROPERTY MAY BE SUBJECT TO ANY EASEMENTS AND\OR RIGHTS-OF-WAY, WHETHER WRITTEN OR UNWRITTEN, RECORDED OR UNRECORDED, VISIBLE EVIDENCE INDICATING ANY SUCH USE OF THE LAND AS SHOWN.
2. THE SUBJECT PROPERTY IS CURRENTLY OWNED BY RIVERWALK BUSINESS DISTRICT BUILDING 6 LLC, TAX PARCEL ID NUMBER: 662-07-01-147, DB 1427 PG 45; PB E253, PG 5.
3. SUBJECT PROPERTY SITE ADDRESS:
629 TERRACE PARK
SUITE 104
RIVERWALK CAROLINAS
ROCK HILL, SC
4. THIS PROPERTY ZONED MP-C; AS PER YORK COUNTY GIS.
5. AREAS COMPUTED BY COORDINATE METHOD AND ARE AS SHOWN.
6. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN ENGINEERING FEET.
7. PORTIONS OF THIS PLAT ARE LOCATED IN "ZONE AE" & "ZONE X", BASED ON EXAMINATION OF FEMA PANEL #45091C0326F REVISED MAY 16, 2017.
8. DATE OF SURVEY: 04-26-22.
9. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
10. ELEVATIONS SHOWN HEREON REFERENCE THE NAVD 88 DATUM.
11. THIS PLAT CONTAINS 2 (TWO) SHEETS AND IS CONSIDERED INCOMPLETE WITHOUT BOTH COPIES.

LEGEND

P.O.B. – POINT OF BEGINNING
P.O.C. – POINT OF COMMENCEMENT
SIGN
DISABLED PARKING
TELEPHONE PULL BOX
LIGHT POLE
TREE
ELECTRIC METER
WATER VALVE
WATER HEATER
WATER METER
SANITARY SEWER CLEANOUT
SANITARY SEWER MANHOLE
DROP INLET
STORM DRAIN MANHOLE
CATCH BASIN
ROOF DRAIN
GAS METER
GAS VALVE
FENCE

2022024869
PLAT LARGE RECORDING FEES $25.00

PRESENTED & RECORDED:
05-27-2022 01:15:22 PM
BK: PLAT 169
PG: 174
DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC BY CASSI REDDIX AT 03 PM

GRAPHIC SCALE
20 0 10 20
(IN FEET)
1 inch = 20 ft.

TOP OF BUILDING

LEVEL 4	573.7'	
LEVEL 3	554.3'	
LEVEL 2	543.5'	61.0'
LEVEL 1 "GROUND FLOOR"	532.7'	
	512.7'	

ELEVATION OF FLOOR NOT TO SCALE

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY DEDICATE ALL STREETS, ALLEYS, WALKS, COMMON AREAS, PARKS AND OTHER SITES TO PUBLIC OR PRIVATE USE AS NOTED.

Manager — MAY 22, 2022
(OWNER) — (DATE)
Riverwalk River District Building 6, LLC

NORTH CAROLINA PROFESSIONAL LAND SURVEYOR SEAL NO. L-3206 J. MARK FISHER

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEET OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; THIS SURVEY IS OF AN EXISTING PARCEL OF LAND WITH IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND. WITNESS MY SEAL AND SIGNATURE, THIS DATE OF 05-10-22

REGISTERED LAND SURVEYOR — REG # L-3206

PREPARED BY:
J. MARK FISHER
SC PLS
3556-A CENTRE CIRCLE
FORT MILL, SC 29715
OFFICE: 704.504.1554
mfisher@vertexpdc.com
NC FIRM C-3126

CLIENT:
RIVERWALK RIVER DISTRICT BUILDING 6, LLC
998 RIVERWALK PARKWAY
ROCK HILL, SC 29730
803-328-0085

PROJECT:
RIVERWALK RIVER DISTRICT BUILDING 6 CONDOMINIUM SURVEY

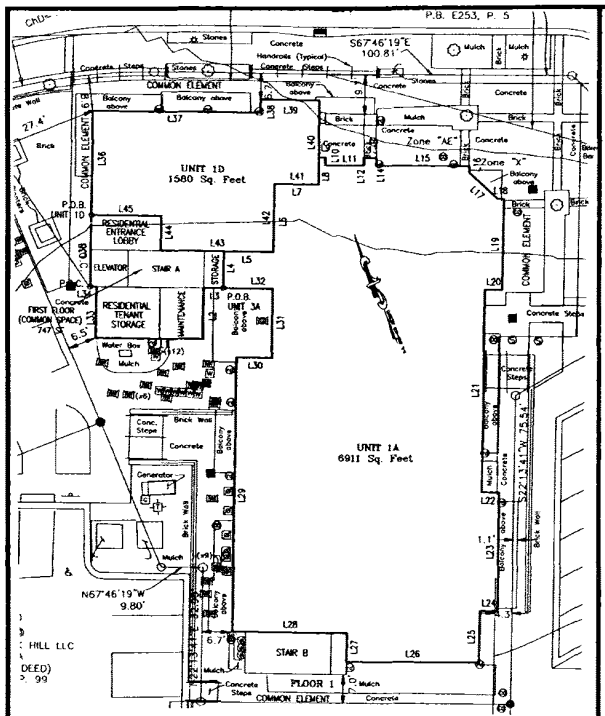
PROJ.DATE:	04-28-22
SCALE:	1"=20'
DRAWN BY:	JMT
CHECKED BY:	JMF

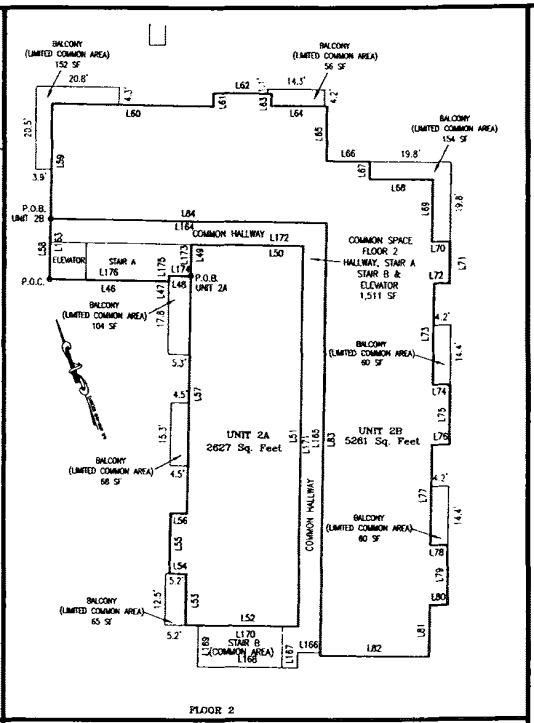
TITLE:
CONDOMINIUM HORIZONTAL PROPERTY REGIME
FOR THE LANDS OF
RIVERWALK RIVER DISTRICT BUILDING 6 LLC
TAX PARCEL ID # 662-07-01-147
CITY OF ROCK HILL, YORK COUNTY, SOUTH CAROLINA

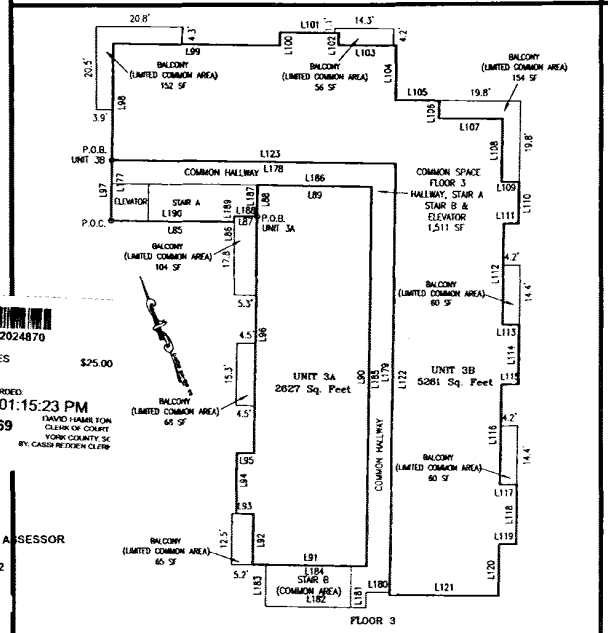
SHEET 1 OF 2

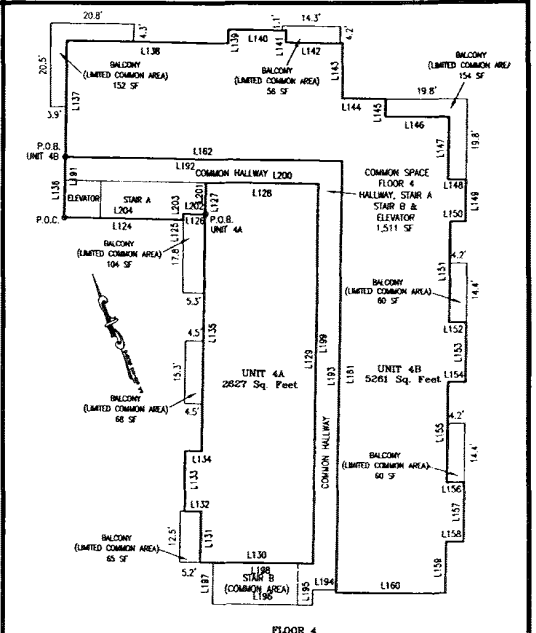
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LINE	BEARING	DISTANCE
L1	S 67°46'19" E	25.50'
L2	N 22°13'41" E	12.50'
L3	S 67°46'19" E	4.70'
L4	N 22°13'41" E	9.00'
L5	S 67°46'19" E	11.81'
L6	N 22°13'41" E	16.70'
L7	S 67°46'19" E	10.64'
L8	N 22°13'41" E	6.77'
L9	S 67°46'19" E	1.55'
L10	S 23°19'27" W	1.97'
L11	S 67°46'19" E	9.50'
L12	N 22°13'41" E	1.97'
L13	S 67°46'19" E	33.00'
L14	S 22°13'41" W	1.97'
L15	S 67°46'19" E	22.39'
L16	S 22°13'41" W	1.60'
L17	S 24°56'18" E	9.35'
L18	S 67°46'19" E	1.60'
L19	S 22°13'41" W	22.30'
L20	N 67°46'19" W	4.20'
L21	S 22°13'41" W	49.20'
L22	S 67°46'19" E	4.20'
L23	S 22°13'41" W	29.00'
L24	N 67°46'19" W	4.20'
L25	S 22°13'41" W	12.60'
L26	N 67°46'19" W	32.10'
L27	N 22°13'41" E	7.00'
L28	N 67°46'19" W	27.70'
L29	N 22°13'41" E	66.76'
L30	S 67°46'19" E	8.50'
L31	N 22°13'41" E	16.80'
L32	N 67°46'19" W	11.81'
L33	N 22°13'41" E	12.50'
L34	N 67°46'19" W	1.50'
L35	N 22°13'41" E	17.50'
L36	N 22°13'41" E	25.70'
L37	S 67°46'19" E	40.00'
L38	N 22°13'41" E	3.30'
L39	S 67°46'19" E	14.20'
L40	S 22°13'41" W	20.80'
L41	N 67°46'19" W	10.64'
L42	S 22°13'41" W	16.70'
L43	N 67°46'19" W	26.81'
L44	N 22°13'41" E	8.50'
L45	N 67°46'19" W	16.75'
L46	S 67°46'19" E	29.58'
L47	N 21°46'45" E	1.40'
L48	S 67°46'19" E	5.49'
L49	N 22°13'41" E	7.65'
L50	S 67°46'19" E	27.70'
L51	S 22°13'41" W	92.61'
L52	N 67°46'19" W	24.50'
L53	N 22°13'41" E	12.46'
L54	N 67°46'19" W	4.13'
L55	N 27°05'12" E	14.84'
L56	S 68°08'17" E	4.17'
L57	N 22°13'41" E	57.64'
L58	N 22°13'41" E	14.75'
L59	S 67°46'19" E	28.45'
L60	N 22°13'41" E	40.00'
L61	N 67°46'19" W	3.30'
L62	S 67°46'19" E	14.20'
L63	S 22°13'41" W	2.97'
L64	S 67°46'19" E	14.01'
L65	S 22°13'41" W	13.40'
L66	S 67°46'19" E	10.59'
L67	S 22°13'41" W	4.40'
L68	S 67°46'19" E	15.35'
L69	S 22°13'41" W	15.35'
L70	S 67°46'19" E	4.40'
L71	S 22°13'41" W	10.13'
L72	N 67°46'19" W	3.70'
L73	S 22°13'41" W	24.56'
L74	S 67°46'19" E	4.20'
L75	S 22°13'41" W	14.61'
L76	N 67°46'19" W	4.20'
L77	S 22°13'41" W	24.43'
L78	S 67°46'19" E	4.20'
L79	S 22°13'41" W	14.61'
L80	N 67°46'19" W	4.20'
L81	S 22°13'41" W	12.60'
L82	N 67°46'19" W	26.40'
L83	N 22°13'41" E	105.31'
L84	N 67°46'19" W	68.46'
L85	S 67°46'19" E	29.58'
L86	N 21°46'45" E	1.40'
L87	S 67°46'19" E	5.49'
L88	N 22°13'41" E	7.65'
L89	S 67°46'19" E	27.70'
L90	S 22°13'41" W	92.61'
L91	N 67°46'19" W	27.70'
L92	N 22°13'41" E	12.46'
L93	N 67°46'19" W	4.13'
L94	N 27°05'12" E	14.84'
L95	S 68°08'17" E	4.17'
L96	N 22°13'41" E	57.64'
L97	N 22°13'41" E	14.75'
L98	N 22°13'41" E	28.45'
L99	S 67°46'19" E	40.00'
L100	N 22°13'41" E	3.30'
L101	S 67°46'19" E	14.20'
L102	S 22°13'41" W	2.97'

LINE	BEARING	DISTANCE
L103	S 67°46'19" E	14.01'
L104	S 22°13'41" W	13.40'
L105	S 67°46'19" E	10.59'
L106	S 22°13'41" W	4.40'
L107	S 67°46'19" E	15.35'
L108	S 22°13'41" W	15.35'
L109	S 67°46'19" E	4.40'
L110	S 22°13'41" W	10.13'
L111	N 67°46'19" W	3.70'
L112	S 22°13'41" W	24.56'
L113	S 67°46'19" E	4.20'
L114	S 22°13'41" W	14.61'
L115	N 67°46'19" W	4.20'
L116	S 22°13'41" W	24.43'
L117	S 67°46'19" E	4.20'
L118	S 22°13'41" W	14.61'
L119	N 67°46'19" W	4.20'
L120	S 22°13'41" W	12.60'
L121	N 67°46'19" W	26.40'
L122	N 22°13'41" E	105.31'
L123	N 67°46'19" W	68.46'
L124	S 67°46'19" E	29.58'
L125	N 21°46'45" E	1.40'
L126	S 67°46'19" E	5.49'
L127	N 22°13'41" E	7.65'
L128	S 67°46'19" E	27.70'
L129	S 22°13'41" W	92.61'
L130	N 67°46'19" W	27.70'
L131	N 22°13'41" E	12.46'
L132	N 67°46'19" W	4.13'
L133	N 27°05'12" E	14.84'
L134	S 68°08'17" E	4.17'
L135	N 22°13'41" E	57.64'
L136	N 22°13'41" E	14.75'
L137	N 22°13'41" E	28.45'
L138	S 67°46'19" E	40.00'
L139	N 22°13'41" E	3.30'
L140	S 67°46'19" E	14.20'
L141	S 22°13'41" W	2.97'
L142	S 67°46'19" E	14.01'
L143	S 22°13'41" W	13.40'
L144	S 67°46'19" E	10.59'
L145	S 22°13'41" W	4.40'
L146	S 67°46'19" E	15.35'
L147	S 22°13'41" W	15.35'
L148	S 67°46'19" E	4.40'
L149	S 22°13'41" W	10.13'
L150	N 67°46'19" W	3.70'
L151	S 22°13'41" W	24.56'
L152	S 67°46'19" E	4.20'
L153	S 22°13'41" W	14.61'
L154	N 67°46'19" W	4.20'
L155	S 22°13'41" W	24.43'
L156	S 67°46'19" E	4.20'
L157	S 22°13'41" W	14.61'
L158	N 67°46'19" W	4.20'
L159	S 22°13'41" W	12.60'
L160	N 67°46'19" W	26.40'
L161	N 22°13'41" E	105.31'
L162	N 67°46'19" W	68.46'
L163	N 22°13'41" E	14.75'
L164	S 67°46'19" E	68.46'
L165	S 22°13'41" W	104.61'
L166	N 67°46'19" W	5.70'
L167	S 22°13'41" W	3.80'
L168	N 67°46'19" W	24.50'
L169	N 22°13'41" E	10.10'
L170	S 67°46'19" E	24.50'
L171	N 22°13'41" E	92.61'
L172	N 67°46'19" W	27.70'
L173	S 22°13'41" W	7.65'
L174	N 67°46'19" W	5.49'
L175	S 21°46'45" W	1.40'
L176	N 67°46'19" W	29.58'
L177	N 22°13'41" E	14.75'
L178	S 67°46'19" E	68.46'
L179	S 22°13'41" W	104.61'
L180	N 67°46'19" W	5.70'
L181	S 22°13'41" W	3.80'
L182	N 67°46'19" W	24.50'
L183	N 22°13'41" E	10.10'
L184	S 67°46'19" E	24.50'
L185	N 22°13'41" E	92.61'
L186	N 67°46'19" W	27.70'
L187	S 22°13'41" W	7.65'
L188	N 67°46'19" W	5.49'
L189	S 21°46'45" W	1.40'
L190	N 67°46'19" W	29.58'
L191	N 22°13'41" E	14.75'
L192	S 67°46'19" E	68.46'
L193	S 22°13'41" W	104.61'
L194	N 67°46'19" W	5.70'
L195	S 22°13'41" W	3.80'
L196	N 67°46'19" W	24.50'
L197	N 22°13'41" E	10.10'
L198	S 67°46'19" E	24.50'
L199	N 22°13'41" E	92.61'
L200	N 67°46'19" W	27.70'
L201	S 22°13'41" W	7.65'
L202	N 67°46'19" W	5.49'
L203	S 21°46'45" W	1.40'
L204	N 67°46'19" W	29.58'

GRAPHIC SCALE
20 0 10 20
(IN FEET)
1 inch = 20 ft.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEET OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. THIS SURVEY IS OF AN EXISTING PARCEL OF LAND WITH IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND. WITNESS MY SEAL AND SIGNATURE, THIS DATE OF 05-19-22

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 27208 JEFFREY MARK FISHER

REGISTERED LAND SURVEYOR REG # L-27208

PREPARED BY :
J. MARK FISHER
SC PLS
3556-A CENTRE CIRCLE
FORT MILL, SC 29715
OFFICE: 704 556-0554
mfisher@venturesandsc.com
NC 73841 C-3126

CLIENT:
RIVERWALK RIVER DISTRICT BUILDING 6, LLC
998 RIVERWALK PARKWAY
ROCK HILL, SC 29730
803-328-0085

PROJECT:
RIVERWALK RIVER DISTRICT BUILDING 6 CONDOMINIUM SURVEY

PROJ DATE :	04-28-22
SCALE :	1"=20'
DRAWN BY :	JMT
CHECKED BY :	JMF

TITLE
CONDOMINIUM HORIZONTAL PROPERTY REGIME
FOR THE LANDS OF
RIVERWALK RIVER DISTRICT BUILDING 6 LLC
TAX PARCEL ID # 662-07-01-147
CITY OF ROCK HILL, YORK COUNTY, SOUTH CAROLINA

SHEET 2 OF 2

2022024870
PLAT LARGE
RECORDING FEES $25.00
PRESENTED & RECORDED:
05-27-2022 01:15:23 PM
BK: PLAT 169
PG: 175
DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC BY: CASSI REDDEN CLERK

YORK COUNTY ASSESSOR
Tax Map:
Date: 05/27/2022

E H

* THIS PLAT CONTAINS TWO SHEETS AND IS CONSIDERED INCOMPLETE WITHOUT BOTH SHEETS*

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EXHIBIT D

BYLAWS OF RIVERWALK RIVER DISTRICT CONDOMINIUM OWNERS ASSOCIATION, INC.

Section 1

Definitions

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime, recorded in the Office of the Clerk of Court for York County, South Carolina, to which a copy of these Bylaws is attached as Exhibit D.

Section 2

Administration of Condominium

Section 2.1 Authority and Responsibility: Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements of Riverwalk River District Building 6 as well as any additional buildings in the River District subject to a master deed naming the Association as the association thereunder. It is understood that the Association shall in the future be responsible for administering, operating and managing other similar condominium projects in the River District of Riverwalk.

Section 2.2 Official Action: Unless specifically required in the Condominium Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Executive Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Executive Board as set forth in the Condominium Documents or these Bylaws. The Association, its Executive Board, officers and members shall at all times act in conformity with the Nonprofit Corporation Act of the State of South Carolina, the Condominium Documents, and the Act.

Section 3

Offices - Seal - Fiscal Year

Section 3.1 Principal Office and Registered Office: The initial principal office of the Association shall be located at 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. The Association shall also maintain a registered office in the State of South Carolina as required by the Nonprofit Corporation Act of the State of South Carolina.

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Section 3.2 Other Offices: The Association may have other offices at such other places within the State of South Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

Section 3.3 Seal: The seal of the Association, if the Association or the Executive Board elects to obtain a seal, shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Executive Board.

Section 3.4 Fiscal Year: The fiscal year of the Association shall be the calendar year.

Section 4

Membership

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Clerk of Court for York County of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 Place of Meetings: All meetings of the membership shall be held at a place in York County, South Carolina, designated by the Executive Board.

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the third Monday in November of each year at 9:00 a.m., Eastern Standard Time. If the third Monday in November shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Executive Board shall be elected in accordance with these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 Substitute Annual Meeting: If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5 Special Meeting: After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty

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percent (20%) of all Owners; or by not less than fifty-one percent (51%) of the Executive Board members. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meeting: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Master Deed or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) days, or if notice is mailed by other than first class or registered mail, thirty (30) days, nor more than sixty (60) days, before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast fifty percent (50%) of the votes which may be cast for election of the Executive Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8 Voting Right: The total number of votes of the Association Membership shall be equal to one hundred (100). Each Owner shall have one (1) vote for each percentage (or any fraction thereof) of allocated interest in the Common Elements. For example, in the event an Owner is allocated thirteen and 57/100 percent (13.57%) of the Common Elements, such Owner shall have thirteen and 57/100 (13.57) votes. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit.

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Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the vote which may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

Section 4.10 Majority Vote: The casting of a majority of at least fifty-one percent (51%) of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Master Deed, the Articles of Incorporation of the Association, or the Act.

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Section 5

Executive Board

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Section 6 of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Master Deed, to terminate the Condominium, to elect members of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Executive Board shall consist of the three (3) individuals appointed by the incorporator of the Association. During the Declarant Control Period, the Executive Board shall have three (3) members, and Declarant may appoint and remove members of the Executive Board; subject, however to the limitations

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contained in Section 8.3 of the Master Deed. Prior to the expiration of the Declarant Control Period, the Members shall elect five (5) Board members, each to serve for a term of one (1) year, and thereafter the Executive Board shall have five (5) members. Board members may succeed themselves in office.

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4 Removal: Any Board member, other than a member appointed by Declarant, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: A vacancy occurring in the Executive Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.5, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

Section 5.6 Chairman: A member of the Executive Board shall be elected as Chairman of the Executive Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Executive Board, the President shall preside.

Section 5.7 Compensation: No Member of the Executive Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of *quantum meruit*. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers.

Section 5.9 Liability of Board Members: To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act in effect at the applicable time, each Board member is hereby indemnified by the Association with respect to any liability and expense of

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litigation arising out of his activities as a Board member. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10 Meetings of the Executive Board:

A. Regular Meeting: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any board member, after not less than three (3) or more than thirty (30) days written notice to each Board member.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (2) deposit of same in his Unit mailbox; (3) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in York County, South Carolina, unless otherwise designated by the Board.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person

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acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

Section 5.13 Powers and Duties: The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

A. Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

B. Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;

C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Master Deed;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;

I. Supervising all officers, agents and employees of the Association and ensuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Master Deed, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Master Deed, the institution of actions to foreclose liens for such assessments in accordance with the terms of the Act, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines not to exceed Two Hundred Fifty and No/100 Dollars ($250.00) for violations of the Master Deed, Bylaws and rules and regulations of the Association;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Master Deed, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Master Deed or the rules and regulations hereinafter promulgated governing use of the Common Elements;

M. Paying all taxes and assessments which are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;

N. Hiring attorneys and other professionals;

O. Maintaining and repairing any Unit, if such maintenance or repair is required by the Master Deed or is necessary in the discretion of the Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

P. Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Executive Board to be an emergency;

Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

R. Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor;

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S. Making reasonable rules and regulations and approving the appearance and location of all signage on the Property;

T. Reviewing and approving, or disapproving, plans for any proposed alterations or improvements to any Units proposed by the Owners of such Unit;

U. Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Master Deed, the Articles of Incorporation, these Bylaws, or the Act.

Section 5.14 Independent Manager: The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Property as the Executive Board deems appropriate, including, without limitation, pursuant to S.C. Code Ann. § 27-31-160, the care, upkeep and surveillance of the Property and its general or limited common elements and services, and the designation and dismissal of the personnel necessary for the works and the general or limited common services of the Property. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Act or the South Carolina Nonprofit Corporation Act. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

Section 6

Committees

Section 6.1 Creation: The Executive Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Executive Board to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least two (2) members of the Executive Board.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Executive Board.

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Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

Section 6.4 Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Executive Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

Section 7

Officers

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Executive Board may from time to time elect. Except for the President, no officer need be a member of the Executive Board.

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the Board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Executive Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 Vacancy: A vacancy in any office may be filled by the election by the Executive Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Executive Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the

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Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under South Carolina law in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Executive Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Executive Board at the Association's principal office; he shall have charge of such books and papers as the Executive Board may direct; and he shall, in general, perform all duties incident to the office of Secretary of a corporation organized under South Carolina law.

Section 7.9 Treasurer: Except as otherwise may be delegated by the Executive Board to the Independent Manager pursuant to Section 5.14 of these Bylaws, provided such delegation does not violate the terms of the Act or the South Carolina Nonprofit Corporation Act, the Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Master Deed. He shall perform all duties incident to the office of Treasurer of a corporation organized under South Carolina law.

Section 7.10 Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Executive Board.

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 7.12 Indemnification: To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

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Section 8.

Operation of the Property

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners consistent with the Master Deed. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Master Deed. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

The Association, acting through the Executive Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

Section 8.2 Payment of Common Expenses: All Owners shall be obligated to pay the Common Expenses assessed by the Executive Board pursuant to the provisions of Section 8.1 hereof at such time or times as the Board shall determine.

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Master Deed and applicable restrictions of record) of such Unit. A

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purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3 Collection of Assessments: The Executive Board shall assess Common Expenses against the Units from time to time and at least monthly in accordance with the allocations set forth in the Master Deed. The Executive Board shall take prompt action to collect any Common Expenses which remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Executive Board shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4 Default in Payment of Common Expenses, Remedies: In the event of default by any Owner in paying to the Executive Board the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Executive Board in any proceeding brought to collect such unpaid Common Expenses. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Executive Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Executive Board shall also have the right to impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Condominium Documents and the Act, the Executive Board shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5 Lien and Personal Obligations: All Common Expenses provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit

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and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the Office of the Clerk of Court for York County, South Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

The lien for unpaid assessments shall not be affected by the sale or transfer of the Unit, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any assessments against such Unit that became due prior to the date of acquisition of title by such purchaser. Such unpaid assessments shall be deemed Common Expenses collectible from all Owners of Units, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any assessment against his Unit. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Executive Board to foreclose on a Unit because of unpaid Common Expenses, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7 Abatement and Enjoinment of Violations by Owners: The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Master Deed, shall give the Board the right, in addition to any other rights set forth in the Master Deed, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed Two Hundred Fifty and No/100 Dollars ($250.00) per day for continuing violations.

Section 8.8 Maintenance and Repair: (a) Except as is specifically provided in the Master Deed, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, other than parking spaces, if any, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Master Deed, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Executive Board to the extent the Executive Board receives insurance proceeds for such repairs.

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Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with the terms of the Master Deed.

Section 8.10 Use of Common Elements: An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees and invitees.

Section 8.11 Right of Access: An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Board with the approval of a majority of Owners. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 8.13 Common Expenses for Utilities: Any utilities which may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Elements, shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Board, such may be paid by the Board and assessed against the Units as a Common Expense.

Section 9

Amendments

Subject to the provisions of Article XVI of the Master Deed, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Clerk of Court for York County, South Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to

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abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant.

Section 10

Miscellaneous

Section 10.1 Severability: Invalidation of any covenant, condition, restriction or other provisions of the Master Deed or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 10.2 Successors Bound: The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

Section 10.3 Gender, Singular, Plural: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 10.4 Nonprofit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

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THIS IS TO CERTIFY that the above bylaws of RIVERWALK RIVER DISTRICT CONDOMINIUM OWNERS ASSOCIATION, INC. were adopted by the Directors of the corporation by action without a meeting effective as of the ____ day of _____, 2022.

DIRECTORS:

_____
[INSERT NAME], President

_____
[INSERT NAME], Secretary

_____
[INSERT NAME], Treasurer

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EXHIBIT E

[Form of Indenture Deed]

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDENTURE DEED

THIS INDENTURE, made the day hereinbelow stated, by and between **RIVERWALK RIVER DISTRICT BUILDING 6, LLC**, a South Carolina limited liability company (hereinafter, "Grantor," which expression shall include its heirs, successors and assigns); and _____, whose address is _____ (hereinafter, "Grantee," which expression shall include their/his/her heirs and assigns, and/or its successors and assigns).

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained, and the sum of _____ DOLLARS, paid to GRANTOR by GRANTEE(S), the receipt of which is hereby acknowledged, GRANTOR has, subject to the Permitted Exceptions (defined below), granted, bargained, sold and released, and by these presents does, subject to the Permitted Exceptions, grant, bargain, sell and release unto GRANTEE(S), their/his/her heirs, successors and assigns forever, the condominium unit situate in York County, South Carolina, described as follows (the "Premises"):

The Premises is conveyed subject to all of the provisions of the By-Laws of Riverwalk River District Building Owners Association, Inc. ("Bylaws"), the Master Deed (defined below), including, without limitation, the grant of powers-of-attorney set forth therein, and all other easements, rights-of-way, restrictions or other matters of record or apparent upon an inspection of the Premises, including without limitation any master declaration of Riverwalk as modified from time-to-time (collectively, the "Permitted Exceptions").

Unit No. _____ in Riverwalk River District Building 6 Condominium Horizontal Property Regime, a Horizontal Property Regime (the "Condominium") established by Grantor pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by that certain Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime dated _____, 2022, recorded _____, 2022, in **Record Book** ____, **Page** ____, Office of the Clerk of Court for York County, South Carolina (the "Master Deed").

TOGETHER WITH the undivided percentage interest in the Common Elements as provided in the Master Deed.

TOGETHER with all of the appurtenances thereto according to the Master Deed, and GRANTEE(S) assume and agree to observe and perform their obligations under the Master Deed including, without limitation, the payment of assessments for the maintenance and operation of the Condominium.

Derivation: Deed from The Greens of Rock Hill LLC to GRANTOR recorded in Volume 14275 at Page 4 in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: Being a portion of _____

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE(S). GRANTEE(S), by the acceptance and execution of this Indenture Deed, acknowledge that this conveyance is subject to all of the terms, covenants, conditions and restrictions of the Master Deed, the Bylaws, including the provisions of all exhibits thereto, and the other Permitted Exceptions, and GRANTEES hereby accept, ratify and confirm all of such terms, covenants, conditions and restrictions. GRANTEE(S) acknowledge and agree that all of said terms, covenants, conditions and restrictions are reasonable, fair and equitable; and GRANTEE(S) acknowledge and agree that the Master Deed, the Bylaws, and all exhibits thereto, contain all of the warranties, representations, and the inducements concerning the purchase by GRANTEE(S) of the Premises.

TOGETHER with, subject to the Permitted Exceptions, all and singular the rights, members, hereditaments, and appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular the Premises before mentioned unto GRANTEE(S), their/his/her heirs and assigns.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted Exceptions, all and singular the Premises unto GRANTEE(S) and their/his/her heirs and assigns, against itself and its successors, but against no others.

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IN WITNESS WHEREOF, GRANTOR and GRANTEE(S) have caused these presents to be signed, sealed, and delivered as of the date(s) set forth below.

Signed, sealed and delivered

in the presence of:

_____
Witness #1

_____
Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Manager:

ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company

By: [Exhibit Only; No Signature]
Mark Mather, Manager

STATE OF _____

COUNTY OF _____

ACKNOWLEDGMENT

I, _____, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this ___ day of _____ 2022.

_____
Notary Public

My commission expires: _____

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Signed, sealed and
delivered in the presence of:

_____

_____

[INSERT GRANTEE NAME]

By: [Exhibit Only; No Signature]
Name:_____
Title:_____

STATE OF _____

ACKNOWLEDGMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he/she, being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this ___ day of _____ 2022.

_____
Notary Public

My commission expires: _____

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Drawn by and after recording return to:
Todd C. Brockmann, Esq.
17250 Lancaster Highway
Suite 608
Charlotte, North Carolina 28277

NOTICE IS HEREBY GIVEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN. § 15-48-10 (a), THAT CERTAIN PROVISIONS OF THIS MASTER DEED ARE SUBJECT TO MANDATORY ARBITRATION.

MASTER DEED
FOR
RIVERWALK BUILDING 6 CONDOMINIUM
HORIZONTAL PROPERTY REGIME

January ____, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

MASTER DEED FOR RIVERWALK BUILDING 6 CONDOMINIUM HORIZONTAL PROPERTY REGIME

This Master Deed for Riverwalk Building 6 Condominium Horizontal Property Regime (this "Master Deed") is made, published, and declared this ____ day of January, 2018, by **RIVERWALK RIVER DISTRICT BUILDING 6, LLC**, a South Carolina limited liability company ("Declarant"), pursuant to the provisions of the South Carolina Horizontal Property Act, § 27-31-10 et seq. of the S. C. Code of Laws of 1976, as amended (the "Act").

STATEMENT OF PURPOSE

Declarant is the fee simple owner of a parcel of real estate containing approximately 0.39 acres, located in the Riverwalk development in the City of Rock Hill, York County, South Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed on the Land an approximately _____ square foot building (the "Building"), containing the condominium units described in this Master Deed. Declarant has also constructed common amenities on the Land such as sidewalks, driveways, landscaped areas and other improvements. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the Act.

The purpose of this Master Deed is to establish, pursuant to the Act, a horizontal property regime to be known as Riverwalk Building 6 Condominium Horizontal Property Regime. Declarant, by filing of record this Master Deed, publishes and declares that the Property shall be owned, occupied, used, conveyed, encumbered, leased, and improved in accordance with the provisions of the Act and in accordance with the covenants, restrictions, encumbrances, and obligations set forth or incorporated by reference in this Master Deed, all of which shall be deemed to be covenants and obligations running with the land.

In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Property, of administering and enforcing the covenants and restrictions created in this Master Deed, of levying, collecting and disbursing the assessments and charges created in this Master Deed, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and to promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Master Deed.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be owned, held, transferred, sold, conveyed, encumbered, leased, occupied and used subject to the Act and to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land to both burden and benefit

Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their successors, heirs and assigns.

ARTICLE I
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Master Deed:

Section 1.1 "Association" shall mean and refer to Riverwalk Building 6 Condominium Owners Association, Inc., a corporation organized and existing under the South Carolina Non-Profit Corporation Act pursuant to and in accordance with this Master Deed, the Bylaws, and the Act. The Association shall constitute the council of co-owners described in the Act.

Section 1.2 "Building" shall mean and refer to the approximately _____ square foot building located on the Land, which contains the Units described in Exhibit B to this Master Deed and shown on the Plans.

Section 1.3 "Bylaws" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit D, and all amendments to such Bylaws which may from time to time be adopted.

Section 1.4 "Commercial Unit" shall mean and refer to a Unit that is used solely for commercial, non-residential purposes.

Section 1.5 "Common Elements" shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Master Deed.

Section 1.6 "Common Elements Interest" shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit based on the value of each Unit in relation to the value of the Property as a whole, as set forth on Exhibit B attached hereto, as may be modified in accordance with the Act and this Master Deed.

Section 1.7 "Common Expenses" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Master Deed, the Bylaws, and the Act.

Section 1.8 "Condominium" shall mean and refer to the Riverwalk Building 6 Condominium Horizontal Property Regime, as established by the submission of the Property to the terms of the Act by this Master Deed.

Section 1.9 "Condominium Documents" shall mean and refer to this Master Deed, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing

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the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.10 "Declarant" shall mean and refer to Riverwalk River District Building 6, LLC, a South Carolina limited liability company. Following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 6.2 of this Master Deed, the term "Declarant" also shall mean and refer to that transferee.

Section 1.11 "Declarant Control Period" shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units to an Owner other than Declarant; or (ii) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.12 "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Act.

Section 1.13 "Land" shall mean and refer to the real property subject to this Master Deed, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.14 "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by this Master Deed for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Master Deed, and as may be depicted on the Plans.

Section 1.15 "Master Deed" shall mean and refer to this Master Deed for Riverwalk Building 6 Condominium Horizontal Property Regime, as it may be amended from time to time in the future.

Section 1.16 "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.17 "Mortgagee" shall mean and refer to the owner and holder of a Mortgage that has notified the Association and Declarant in writing of its name, address, and the name of a representative of Mortgagee who is authorized to act for Mortgagee, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVI. The holder of a mortgage or deed of trust on a Unit shall not be deemed a "Mortgagee" under this Master Deed until such notice has been received by the Association and Declarant.

Section 1.18 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

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Section 1.19 "Plans" shall collectively mean and refer to the following: the plat of physical survey showing the horizontal and vertical location of the Building and the other improvements on the Land prepared, signed and sealed by a South Carolina registered land surveyor; a plot plan showing the location of the Building and other improvements on the Land; and a set of floor plans of the Building prepared, signed and sealed by an architect licensed in South Carolina, which show graphically the dimensions, area and location of each Unit and the Common Elements providing access thereto, and, insofar as possible, other Common Elements. Reduced copies of the foregoing Plans are attached hereto as Exhibit C and incorporated herein by this reference, and full size copies of the Plans are recorded in the Office of the Clerk of Court for York County, South Carolina, in the plat book and pages referenced on Exhibit C hereto. The term "Plans" includes any amendments or supplements to the Plans that may be attached to any Amendment to Master Deed.

Section 1.20 "Property" shall mean and refer to the Land, the Building and all other improvements and structures located on the Land; and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.21 "Residential Unit" shall mean and refer to a Unit that is used solely for residential purposes.

Section 1.22 "Special Declarant Rights" shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VI of this Master Deed.

Section 1.23 "The Act" shall mean and refer to Title 27, Chapter 31 of the South Carolina Code of Laws of 1976, as amended.

Section 1.24 "Unit" shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Master Deed and on Exhibit B hereto, that is the subject of individual ownership by an Owner.

ARTICLE II
DESIGNATION OF CONDOMINIUM

Section 2.1 Location and Designation. The Land on which the Building and other improvements are located is located in the City of Rock Hill, York County, South Carolina, contains approximately 0.39 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. Declarant hereby subjects the Property, and Declarant's fee simple interest therein, to the terms of the Act by this Master Deed.

Section 2.2 Name. The name of the Condominium is Riverwalk Building 6 Condominium Horizontal Property Regime.

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ARTICLE III
DESCRIPTION OF BUILDING

The Building is a four-story building containing approximately _____ square feet. The Building initially contains a total of five (5) Units and is more particularly described in the Plans, which show all particulars of the Building. The Plans contain a certification by a South Carolina licensed architect that the Plans contain all the information required by S.C. Code Ann. § 27-31-110. As set forth in Article IX of this Master Deed, Declarant reserves the right to subdivide or combine existing Units in the Building prior to Declarant's sale or lease of such Units to a third party.

ARTICLE IV
DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans.

Section 4.2 Units. The location of Units within the Building and their dimensions and area are shown on the Plans. There are a total of five (5) Units in the Building, in the locations as shown on the Plans. The identifying number for each Unit is set forth on Exhibit B and on the Plans. As set forth in Article IX of this Master Deed, Declarant reserves the right to subdivide or combine existing Units in the Building prior to Declarant's sale or lease of such Units to a third party. If Declarant exercises its right to subdivide or combine existing Units in the Building, Declarant shall record an amendment to this Master Deed, which shall contain a revised set of Plans and which shall show the location of the new Units.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the lower face of the finished ceiling surface, extended to the intersection of the vertical demising boundaries. As depicted on the Plans, the ceilings in certain portions of the Unit may be at different elevations; in such cases, the upper boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated, unfinished upper surfaces of the floor facing the interior of each Unit extending to the intersection of the vertical demising boundaries. As depicted on the Plans, the floor in certain portions of the Unit may be at different elevations; in such cases, the lower boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Demising Boundaries: The vertical planes which include the front, unfinished surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

All lath, flooring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. If any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

ARTICLE V
COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

(a) The Land.

(b) All improvements located on the Land outside of the Building, including without limitation landscaped areas, surfaced parking areas, paved access roads, walkways, a dumpster pad and common trash receptacle.

(c) All portions of the Building located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below.

(d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building, that are not part of a Unit.

(e) Any public connections and meters, vaults, and manholes for utility services that are not owned by the public utility or municipal agency providing such services.

(f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, meter, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.

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(b) Any awnings and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

(d) Those areas indicated as Limited Common Elements on the Plans, which shall be allocated to the Unit to which such Limited Common Elements are servicing.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Master Deed, or any provision of the Bylaws or the Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Master Deed to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Master Deed shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Master Deed or by the Act.

Section 5.4 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except for the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner. Notwithstanding the above, in the event that Declarant allocates parking spaces as a Limited Common Element, as provided in Section 6.1 below, the Association shall continue to be responsible for maintenance and repair of such parking spaces and the costs thereof shall be deemed a Common Expense.

ARTICLE VI
SPECIAL DECLARANT RIGHTS

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Section 6.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights:

(a) The right to complete any improvements shown on the Plans.

(b) The right to maintain sales offices, model units and signs advertising the Condominium.

(c) The right to use easements through the Common Elements for the purpose of completing construction.

(d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.

(e) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents.

(f) The right to allocate to each Unit specific parking spaces which shall become Limited Common Elements applicable to each Unit.

Section 6.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Clerk of Court for York County, South Carolina. The instrument shall not be effective unless it is executed by the transferor and the transferee.

ARTICLE VII
RESTRICTIONS ON USE

Section 7.1 Use. Commercial Units shall be located on the first floor, and Residential Units shall be located on the second, third, and fourth floors of the Building. Permitted uses of the Commercial Units shall be limited to commercial use as shall be permitted under zoning regulations and any private restrictions applicable to the Property.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

Section 7.3 Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal or commercial property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, yards, driveways, parking areas and any other Common Elements or Limited Common Elements

shall not be obstructed in any way or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements or the Limited Common Elements which detracts from the appearance of the Property of the use of the Common Elements by all Owners.

Section 7.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in the common trash receptacles located within the Common Elements.

Section 7.5 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Property except wholly within those portions of the Common Elements designated as parking areas by the Association, and in particular shall not block any entrances, drive aisles, and fire lanes. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property. No Owner or any employee, agent or invitee of such Owner shall park in any other Owners' spaces which are designated as Limited Common Elements, if any, so long as such spaces are clearly labeled as non-public parking. The Association shall have the right to tow any vehicle in violation of this Section 7.5 at its owner's expense.

Section 7.6 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than six (6) months without the written consent of the Association.

Section 7.7 No Timeshares. No interest in any Unit may be subjected to a time share program.

Section 7.8 Animals. No animals, livestock, or poultry of any kind shall be kept, maintained or allowed on the Property other than household pets of Owners of Residential Units, which household pets must be kept in strict accordance with the administrative rules and regulations related to household pets from time-to-time adopted or approved by the Association.

Section 7.9 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association.

Section 7.10 Floor Load. There shall be no floor load in any Unit in excess of fifty (50) pounds per square feet, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

Section 7.11 Windows. No curtains, blinds or draperies shall be installed or hung in any window of any Unit which are visible from the exterior of the Building except the Building standard shades installed by Declarant, unless otherwise approved by the Association.

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Section 7.12 Architectural Control. No building, landscaping, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association.

Section 7.13 Signs. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except as approved by Declarant during the Declarant Control Period and thereafter, by the Association. Any such signage which is approved by the Declarant or Association, as applicable, shall be installed in such manner, and shall be subject to such rules and regulations as shall be adopted from time to time by the Declarant during the Declarant Control Period and thereafter, by the Association. The cost of such signage, and the installation thereof shall be borne by the Owner requesting such signage. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations. Furthermore, each Owner shall have the right to display temporary "For Sale" or "For Rent" signs in areas, and subject to such rules and regulations, as shall be adopted from time to time by the Declarant during the Declarant Control Period and thereafter, by the Association.

Section 7.14 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto (except parking spaces, if any, which shall remain a Common Expense). Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 7.15 Rules and Regulations. In addition to the use restrictions set forth in this Master Deed, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request. Declarant, during the Declarant Control Period, and the Association, thereafter, shall have the right, as a part of the rules and regulations of the Condominium, to designate certain parking spaces as reserved for the use of individual Units without specifically designating such parking spaces as Limited Common Elements.

Section 7.16 Hazardous Substances. No Unit may be used for the treatment, storage, use or disposal of toxic or hazardous wastes or substances or any other substance that is prohibited, limited or regulated by any quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants and patrons of the Units or of the surrounding property; provided, however, any Unit may be used for the treatment, storage, use or disposal of toxic or hazardous substances provided that such treatment, storage, use or disposal is incident to a lawful and permitted activity being conducted within such Unit

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and is conducted in compliance with all necessary permits and authorizations and in accordance with all applicable laws, ordinances, rules, orders and regulations. Each Owner shall indemnify and save every other Owner harmless from and against any claims, liabilities, penalties, fines, costs, expenses or damages resulting from any violation of the provisions of this Section.

ARTICLE VIII
THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit South Carolina corporation known and designated as Riverwalk Building 6 Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the Act. A true copy of the initial Bylaws of the Association is attached hereto as Exhibit D. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Master Deed, to levy and collect assessments in the manner provided in Article X below and in Section 8 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed and shall be enforceable by the Association in accordance with the Act and Section 8 of the Bylaws.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however that not later than 60 days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 8.4 Books and Records. The Association shall maintain current copies of (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.15 from time to time; and (c) all financial records of the Association, as required by the Act. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

ARTICLE IX
EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by it, shall have the irrevocable right of access to the Common Elements, the Limited Common Elements and to each Unit to the extent necessary for performance by the Association of its

obligations of maintenance, repair, or replacement of the Property. Pursuant to S.C. Code Ann. § 27-31-280, the Association shall also have the irrevocable right of access to each Unit as may be necessary for the maintenance, repair or replacement of Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or other Units.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of any Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such Building shall stand. If any Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may, and Declarant hereby reserves the right to, grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; fiber optic lines; and other wires, lines, pipes, fixtures or equipment over, under, along and on any portion of the Common Elements or the Limited Common Elements; and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete the construction of the Building and the other improvements within the Property.

Section 9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 9.5 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Association determines within

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thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, and each Owner and each Owner's Mortgagee shall sign, an amendment to this Master Deed and a plat which identifies the Units involved, describes and depicts the altered boundaries, gives the dimensions of the altered Units, and also reallocates the interests in the Common Elements allocated to each Unit. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Clerk of Court in the names of the Adjoining Owners.

(b) Subdivision of Units.

(i) By Declarant. Notwithstanding any other provision of this Master Deed to the contrary, Declarant reserves the unilateral right to subdivide or combine existing Units in the Building prior to Declarant's sale or lease of such Units to a third party. Declarant shall execute and record an amendment to this Master Deed, along with the applicable revised Plans and a revised Exhibit B, to effect any such subdivision or combination. Each Owner and its Mortgagee, by acceptance of a deed (or Mortgage, as applicable) to a Unit, hereby consents in advance to any such subdivision or combination, provided such subdivision or combination shall not alter the boundaries of or Common Elements interest in the Unit owned by such Owner (or in which its Mortgagee holds a Mortgage). Furthermore, each Owner and its Mortgagee, by acceptance of a deed (or Mortgage, as applicable) to a Unit, hereby agrees to execute and deliver to Declarant, promptly upon Declarant's request, any documents requested by Declarant to effect such subdivision or combination, and each Owner and its Mortgagee hereby grants to Declarant an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner and its Mortgagee such instruments as may be necessary to effectuate the foregoing. Any such amendment to Master Deed also may contain such additions to the provisions of this Master Deed as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Master Deed, and provided that such additions shall not apply to any Unit created prior to recordation of the amendment to Master Deed and which has been conveyed by Declarant to an Owner, or to the Owner or Mortgagee of any such Unit.

(ii) By Unit Owners other than Declarant. No Owner other than Declarant may subdivide or combine Units in the Building without the prior written consent of the Association and, during the Declarant Control Period, Declarant. No such subdivision by an Owner other than Declarant shall be binding upon any Mortgagee holding a Mortgage on any Unit which is subdivided, unless consented to in writing by such Mortgagee. Any Owner other than Declarant desiring to subdivide or combine a Unit shall submit an application to the Association. Each such application shall be in such form and contain such information as may be reasonably required by the Association or Declarant, as applicable, and shall be accompanied by a plat detailing the proposed subdivision of the Unit. Unless the Association or Declarant, as applicable, determines within thirty (30) days after submission to it of the application that the proposed subdivision is unreasonable, the application shall be deemed approved. Upon approval of the application, the Association shall cause to be prepared and filed at the Owner's sole

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expense, and each Owner shall sign, an amendment to this Master Deed together with plans, which shall identify the Unit which is subdivided, assign an identifying number to each new Unit created, describe and depict the location, dimensions, area and boundaries of each new Unit created, and reallocate among the new Units the allocated Commons Elements Interests of the subdivided Unit in accordance with the Act. Such an amendment shall be filed as an amendment to Master Deed.

(c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form by law permitted.

Section 9.6 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Master Deed and to the provisions of the Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Master Deed and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Master Deed and to the lien of assessments for Common Expenses provided for in Section 8.2 of this Master Deed. Nothing in this Section 9.6 shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 9.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

Section 9.8 Appurtenant Easements. If the Land on which the Condominium has been constructed is benefited by certain easements, then, to the extent allowed by the terms of such easements or applicable law, those easements will also benefit each of the Units. In addition to

the above, the Units will each be conveyed subject to all covenants, conditions, restrictions and easements of record which affect the Land in the Office of the Clerk of Court for York County, South Carolina, as may be supplemented or amended from time to time.

ARTICLE X
ASSESSMENTS

Section 10.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units may not be separately assessed until calendar year 2019 with respect to York County ad valorem property taxes, and any such taxes for calendar year 2018 shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share).

Section 10.2 Common Expenses. Except as otherwise provided in this Master Deed or in the Bylaws, each Owner shall contribute a percentage share of the Common Expenses equal to such Owner's allocated interest in the Common Elements, in accordance with the definition of Common Elements set forth in this Master Deed, the Bylaws and the provisions of the Act. Assessments for all Units shall begin as of the date of the first conveyance of a Unit to a party other than Declarant. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least monthly.

Section 10.3 Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in shares equal to such Owner's allocated interest in the Common Elements; provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Master Deed imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 11.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in shares equal to each Owner's allocated interest in the Common Elements.

ARTICLE XI
INSURANCE

Section 11.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Property (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Property at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of $10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of South Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an insured person with respect to his

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Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 11.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner, with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than $1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

Section 11.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 11.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

Section 11.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

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(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

(2) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(1) If it is determined, as provided in Article XII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(a) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(b) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(c) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

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Section 11.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, and such other insurance coverage as such Owner may desire. Each Owner of a Commercial Unit shall obtain and maintain public liability insurance coverage in the amount of at least $1,000,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase and shall provide, upon renewal, evidence of such renewal. The Association and the Declarant shall be named as a loss payer or additional insured, as applicable, on all such insurance policies.

ARTICLE XII
DUTY TO REPAIR OR RECONSTRUCT

Section 12.1 Reconstruction. In the event of casualty loss or damage to the Property, the Association shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of this Article XII, subject to the terms of the Act. In accordance with S.C. Code Ann. § 27-31-250, reconstruction or repair shall be mandatory unless (i) repair or replacement is illegal under a state statute or local health ordinance or (ii) at least eighty percent (80%) of the Owners (including the Owner of the Unit which is not to be rebuilt) vote not to rebuild. If the entire Property is not repaired or replaced, the insurance proceeds shall be allocated and applied in accordance with S.C. Code Ann. § 27-31-250. The remaining portion of the Property, as applicable, shall be subject to an action for partition at the suit of any Owner or lienor as if owned in common. In the event of suit for partition, the net proceeds of sale, together with the net proceeds of insurance policies, shall be considered one fund and distributed pro-rata among all Owners and their Mortgagees jointly in proportion to their respective interests in Common Elements as shown on Exhibit B, subject to the terms of the Act.

If the damaged portion of the Property is required to be repaired or replaced by the Act or this Master Deed, the Property shall be reconstructed or repaired in the following manner, subject to the terms of the Act,:

(a) Any reconstruction or repair must follow substantially the original Plans and specifications of the Building and/or the Property, unless the Owners holding at least eighty per cent (80%) or more of the total interest in Common Elements vote to adopt different plans and specifications and all Owners whose Units are affected by the alterations unanimously consent.

(b) The Association shall promptly obtain estimates of the cost required to restore the damaged property to its condition before the casualty occurred. Such costs may include professional fees and premiums for bonds as the Association deems necessary or desirable, in its reasonable discretion.

(c) If the insurance proceeds paid to the Association are insufficient to cover the cost of reconstruction, the deficiency shall be paid as a special assessment by the Owners

whose Units are directly affected by the damage in proportion to the damage done to their respective Units.

(d) The insurance proceeds received by the Association and any special assessments collected to cover a deficiency in insurance shall constitute a construction fund from which the Association shall disburse payment of the costs of reconstruction and repair. It shall be presumed that the first disbursements from the construction fund are insurance proceeds; and if there is a balance in the fund after payment of all costs of reconstruction and repair, it shall be distributed to the Owners who paid special assessments in proportion to their payments. Any balance remaining after such distribution shall belong to the Association and shall be considered part of the Common Surplus.

Section 12.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Master Deed. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIII
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Master Deed, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Master Deed, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease. Each deed of conveyance from Declarant to an Owner shall be substantially in the form of the deed of indenture attached hereto as Exhibit E and incorporated herein by this reference.

ARTICLE XIV
AMENDMENT TO AND SUPPLEMENT OF MASTER DEED

Except as is otherwise specifically authorized herein, this Master Deed may be amended only by the vote of not less than sixty-seven percent (67%) of the total number of votes in the Association, and not less than fifty-one percent (51%) of the Mortgagee Votes, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, or by signature of the requisite number of Owners and Mortgagee Votes on the amendment itself or a written consent or similar document. Except to the extent expressly permitted by the other provisions of this Master Deed or the Act, any amendment which amends or alters the Common Elements

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Interest of any Unit or changes the boundaries of any Unit, shall require the consent of the Owner of such Unit, and any amendment which changes the use to which any Unit is restricted, or modifies the terms of this Article XIV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. Except to the extent expressly permitted by the other provisions of this Master Deed or the Act, no amendment to the Master Deed shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Clerk of Court for York County, South Carolina. No amendment to this Master Deed shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Master Deed shall be effective without the written consent of Declarant. Furthermore, notwithstanding any provision of this Master Deed to the contrary, during the Declarant Control Period, Declarant reserves and shall have the unilateral right to amend this Master Deed on the advice of counsel, or to comply with the Act or as may be required by law, or to or correct any typographical error, or to effect Declarant's intent with respect to the creation of the Condominium, provided any such amendment may not prejudice the rights of a Unit Owner by increasing its share of the Common Expenses, except as otherwise expressly permitted by this Master Deed.

ARTICLE XV
TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the Act only by the agreement of all of the Owners and their respective Mortgagees, as evidenced by execution of a termination agreement, or ratification thereof, by the Owners and Mortgagees. The termination shall comply with the requirements of the Act and must be recorded in the Office of the Clerk of Court for York County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in the Act.

ARTICLE XVI
MORTGAGEE PROTECTION

Section 16.1 General Provisions. This Article XVI establishes certain standards and covenants for the benefit of Mortgagees. This Article XVI is supplemental to, and not in substitution for, any other provisions of the Condominium Documents.

Section 16.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees (*i.e.*, "51% of Mortgagees") is required, (the "Specified Percentage"), such Specified Percentage shall not be based on the specific number of Mortgagees, but rather shall be based on the votes allocated to the Units on which Mortgagees hold Mortgages (the "Mortgagee Votes"). The actual percentage of Mortgagees for determining whether a Specified Percentage has been met shall, therefore, be equal to the product of (a) 100, and (b) a fraction, the numerator of which is the sum of all

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Mortgagee Votes consenting or approving to the subject action, and denominator of which is the sum of all Mortgagee Votes.

Section 16.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 16.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 16.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

(a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of thirty (30) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

Notwithstanding any provision of the Condominium Documents to the contrary, the failure of any Mortgagee to respond in writing within seven (7) days to any written request of the Association or Declarant, sent by registered or certified mail, return receipt requested, or overnight delivery, for approval of an addition or amendment to the Condominium Documents wherever Mortgagee approval is required or requested by Declarant or the Association, shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 16.5 Consent and Notice Required. Except as otherwise provided in this Master Deed or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 16.5 shall be effective without notice to all Mortgagees, as required by Section 16.4, and the vote of at least sixty-seven percent (67%) of the votes in the Association (or any greater percentage required by the terms of the Condominium

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Documents), and not less than fifty-one percent (51%) of the Mortgagee Votes (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

(a) Voting rights.

(b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.

(d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.

(e) Except for the rights of Declarant reserved as Special Declarant Rights under Article VI above and Declarant's subdivision and other rights under Article IX above, reallocation of interests in the Common Elements or the Limited Common Elements.

(f) Except for the rights of Declarant reserved as Special Declarant Rights under Article VI above and Declarant's subdivision and other rights under Article IX above, redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.

(h) The requirements for insurance and fidelity bonds.

(i) The imposition of any restrictions on the leasing of Units.

(j) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.

(k) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(l) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(m) Any provision that expressly benefits the Mortgagees.

Upon default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage, which default remains

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uncured for a period of thirty (30) days, the Association shall provide such Mortgagee with notice as provided in Section 16.4 above. Notwithstanding any provision contained herein to the contrary, each Mortgagee shall have an additional twenty (20) days, beyond the time any monetary default in respect of the Unit its Mortgage encumbers or if the Owner thereof would otherwise become delinquent, to cure any such default which constitutes a default by such Owner or which relates to such Unit hereunder in respect to the payment of money; and an additional reasonable period not to exceed sixty (60) days, beyond the time that any non-monetary default in respect of the Unit its Mortgage encumbers or if the Owner thereof would otherwise become delinquent, to cure any such default which constitutes a default of any non-monetary obligation by such Owner or which relates to any such Unit hereunder, so long as such Mortgagee immediately commences and diligently prosecutes such cure with reasonable prospect of success. Commencement and diligent prosecution of reasonable efforts to gain possession shall constitute commencement of cure. To the extent any Mortgagee is given any rights (including, without limitation, an express right of consent or approval) pursuant to the terms of this Master Deed, it is intended that such Mortgagee shall have the right (but not the obligation) to enforce such rights, in law or in equity (including, without limitation, the right of specific performance) notwithstanding that such Mortgagee is not a party to this Master Deed.

Section 16.6 Other Mortgagee Rights. Notwithstanding any other provision of this Master Deed or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 16.7 Enforcement. The provisions of this Article XVI are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVII
CONDEMNATION

Section 17.1 Awards Paid in Trust. The taking by eminent domain or threat of condemnation of any portion of a Unit or of any part of the Common Elements shall be regarded in the same manner as a casualty to the Property, and awards made for the taking shall be payable to the Association as trustee for the Owners and their respective Mortgagees. If any compensation or award is paid directly to an Owner, he shall entrust the funds to the Association; and in the event he fails to do so, a special assessment may be made against him in the amount of the award or the amount of the award may be set off against the sums payable to the Owner as hereinafter provided.

Section 17.2 Reduced But Tenantable Condominiums. If any taking by eminent domain reduces the size of a Unit and the remaining portion can be made tenantable, the award shall be used for the following purposes in the order stated:

(a) The Unit shall be made tenantable. If the cost of making the Unit tenantable exceeds the amount of the award, the additional funds required shall be assessed against the Owner.

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(b) The balance of the award, if any, shall be paid jointly to the Owner and his Mortgagee.

(c) If the balance of the award paid to the Owner and his Mortgagee is material, the interest in Common Elements appurtenant to that Condominium shall be equitably reduced.

Section 17.3 Untenantable Condominiums. If any taking destroys or so diminishes the size of a Unit that it cannot be made tenantable, the award paid for the taking shall be used for the following purposes in the order stated:

(a) The market value of the Unit prior to the taking shall be paid jointly to the Owner and his Mortgagee. The Mortgagee shall thereupon satisfy his Mortgage, and the Owner shall convey all his remaining right, title and interest in the Unit to the Association.

(b) The remaining portion of such Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all Owners in a manner approved by the Association.

(c) The percentage interests in Common Elements appurtenant to each Unit shall be equitably adjusted to apportion ownership among the reduced number of Owners who continue to be part of the Condominium following the taking.

(d) If the amount of the award paid for the taking is insufficient to pay the market value of the condemned Unit to the Owner and to condition the remaining portion for use as part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all those who continue to be Owners after the changes effected by the taking. Such assessments shall be made in proportion to the shared percentage of such Owners in the Common Elements after the changes effected by the taking.

Section 17.4. Arbitration. If the market value of a Unit immediately prior to the taking cannot be determined by agreement among the Owner, his Mortgagee, and the Association within thirty (30) days, the value shall be determined by arbitration in accordance with the prevailing rules of the American Arbitration Association, provided that the arbitrators shall be three (3) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the market value of the Unit; and a judgement of specific performance upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of any arbitration proceedings shall be assessed against all Owners in proportion to their respective percentage interest in the Common Elements prior to the change effected by the taking.

Section 17.5. Amendment to Master Deed. The changes in Units, in Common Elements, and in each Owner's percentage interest in Common Elements caused by condemnation shall be evidenced by an amendment to this Master Deed, executed and filed of record by an authorized officer of the Association.

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ARTICLE XVIII
MISCELLANEOUS PROVISIONS

Section 18.1 Severability. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Master Deed, and in such event, such invalid provision shall be severable, and all the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

Section 18.2 Waiver. No provisions contained in the Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Master Deed or the intent of any provision hereof.

Section 18.4 Law Controlling. This Master Deed and the Condominium Documents shall be construed and controlled by and under the laws of the State of South Carolina.

Section 18.5 Liberal Construction. The provisions of this Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the Act. Throughout this Master Deed wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

Section 18.6 The Act. To the extent that any of the terms or provisions of this Master Deed attempt to vary, modify or waive any provisions of the Act, such terms or provisions shall be so varied, modified or waived to the extent permitted by the Act, it being the intention of the parties hereto that the terms and provisions of this Master Deed shall govern over conflicting provisions in the Act, to the extent permitted by the Act.

ARTICLE XIX
ENFORCEMENT; ARBITRATION

Section 19.1 Actions by Declarant or the Association. Declarant and/or the Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 19.2 Actions by Owners. Any Owner may also bring a civil action against any other Owner, or against the Association, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Master Deed or the other Condominium Documents.

Section 19.3 Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner or the Association may require that any unresolved matter between the Owners or before the Executive Board or before the Association be submitted to binding arbitration pursuant to the prevailing rules of the American Arbitration Association, as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

ARTICLE XX
CONSENT OF MORTGAGEE

Section 20.1 The Land and the Building are encumbered by the lien of a Mortgage dated July 30, 2014, recorded July 30, 2014, in Record Book 14275, Page 9, in the Office of the Clerk of Court for York County, South Carolina (the "Mortgage"), executed and delivered by Declarant to Bank of the Ozarks (the "Lender"). A Consent of Mortgagee executed by the Lender, consenting to the execution and recordation of this Master Deed, is recorded contemporaneously with this Master Deed.

[*remainder of page intentionally left blank*]

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IN WITNESS WHEREOF, Declarant has executed and delivered this Master Deed the day and year first above written.

Signed, sealed and delivered

in the presence of:

_____
Witness #1

_____
Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Sole Member and Manager:

ASSURED ADMINISTRATION, LLC,
an Ohio limited liability company

By: _____
Mark Mather, Manager

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Sole Member and Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this ___ day of _____ 2018.

_____
Notary Public

[NOTARIAL SEAL]

My commission expires: _____

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EXHIBIT A

LEGAL DESCRIPTION OF LAND

BEING +/-.39 Acres of property shown on recorded Survey, Plat Book E253, Page 5, York County Registry; and more particularly described as follows:

Beginning at the South West intersect of Herrons Ferry Road and Terrace Park at a #5 Rebar Set being the Point of Beginning; thence running with the right of way of Terrace Park S 22°13'21" W a distance of 59.96' to a #5 Rebar Set; continuing with said right of way S 82°13'41" W for a distance of 22.76' to a #5 Rebar Set; continuing with said right of way S 22°13'41" W for a distance of 75.54'to a #5 Rebar Set; thence turning and running with the property of The Greens of Rock Hill LLC for the following four (4) courses; N 67°46'19" W for a distance of 74.94' to a #5 Rebar Set; thence N 22°13'41" E for a distance of 32.95' to a #5 Rebar Set; thence N 67°46'19" W for a distance of 9.80' to a #5 Rebar Set; thence N 01°00'12" W for a distance of 122.76' to a #5 Rebar Set; thence turning and running with the right of way of Herrons Ferry Road with a curve turning to the right with an arc length of 45.98', with a radius of 127.50', with a chord bearing of S 78°06'09" E, with a chord length of 45.73', to a #5 Rebar Set; continuing with said right of way S 67°46'19" E for a distance of 100.81' to a #5 Rebar Set; continuing with said right of way S 22°46'19" E for a distance of 10.00' to a #5 Rebar Set; which is the point of beginning, having an area of 17,138.23 square feet, 0.39 acres.

BEING a portion of the same property conveyed to The Greens of Rock Hill LLC by Deed recorded in Deed Book 7503 at Page 99 in the Office of the Clerk of Court for York County, South Carolina.

TMS: 662-07-01-147

This transfer also includes all development rights and vested units of any type or nature associated with the real property transferred to the Grantee described herein and arising or related to that certain Riverwalk Development Agreement ("Development Agreement") recorded in Book 11006, Page 1 in the Office of the Clerk of Court for York County, South Carolina.

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EXHIBIT B

SCHEDULE OF UNITS AND COMMON ELEMENTS INTEREST

Unit	Useable Square Feet	Common Elements Interest	Unit Value*
1A	1,443	5.3%	$268,515
1B	6,618	24.2%	$1,231,485
2	8,061	23.5%	$1,200,000
3	8,061	23.5%	$1,200,000
4	8,061	23.5%	$1,200,000
TOTAL		100%	

*The total value of the Property and the Unit values assigned above are fixed for the sole purpose of complying with the Act and do not necessarily reflect the market value, appraised value or any other value of any Unit or the Property. These assigned values shall in no way restrict or inhibit any Owner of a Unit from fixing a different circumstantial value or sales price to a particular Unit in all types of acts or contracts.

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EXHIBIT C

[Attach Copies of Plans]

The Plans attached hereto consist of reduced copies of (i) a plat entitled "_____" dated January ____, 2018, and prepared by Pittman Professional Land Surveying, Project No. T243L12, and (ii) floor plans and building elevation drawings entitled "Riverwalk River District Building #6 – Mixed-Use Building" dated December 3, 2014, and prepared by Charles Allan McGuire, a South Carolina licensed architect with license number 9037.

Full size copies of the Plans have been recorded contemporaneously herewith in Plat Book _____, Pages _____, Office of the Clerk of Court for York County, South Carolina.

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EXHIBIT D

BYLAWS OF
RIVERWALK BUILDING 6 CONDOMINIUM
OWNERS ASSOCIATION, INC.

Section 1

Definitions

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Master Deed for Riverwalk Building 6 Condominium Horizontal Property Regime, recorded in the Office of the Clerk of Court for York County, South Carolina, to which a copy of these Bylaws is attached as Exhibit D.

Section 2

Administration of Condominium

Section 2.1 Authority and Responsibility: Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements.

Section 2.2 Official Action: Unless specifically required in the Condominium Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Executive Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Executive Board as set forth in the Condominium Documents or these Bylaws. The Association, its Executive Board, officers and members shall at all times act in conformity with the Nonprofit Corporation Act of the State of South Carolina, the Condominium Documents, and the Act.

Section 3

Offices - Seal - Fiscal Year

Section 3.1 Principal Office and Registered Office: The initial principal office of the Association shall be located at 998 Riverwalk Parkway, Suite 202, Rock Hill, SC 29730. The Association shall also maintain a registered office in the State of South Carolina as required by the Nonprofit Corporation Act of the State of South Carolina.

Section 3.2 Other Offices: The Association may have other offices at such other places within the State of South Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

Section 3.3 Seal: The seal of the Association, if the Association or the Executive Board elects to obtain a seal, shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Executive Board.

Section 3.4 Fiscal Year: The fiscal year of the Association shall be the calendar year.

Section 4

Membership

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Clerk of Court for York County of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 Place of Meetings: All meetings of the membership shall be held at a place in York County, South Carolina, designated by the Executive Board.

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the third Monday in November of each year at 9:00 a.m., Eastern Standard Time. If the third Monday in November shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Executive Board shall be elected in accordance with these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 Substitute Annual Meeting: If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5 Special Meeting: After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty percent (20%) of all Owners; or by not less than fifty-one percent (51%) of the Executive Board members. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

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Section 4.6 Notices of Meeting: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Master Deed or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) days, or if notice is mailed by other than first class or registered mail, thirty (30) days, nor more than sixty (60) days, before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast fifty percent (50%) of the votes which may be cast for election of the Executive Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4.8 Voting Right: The total number of votes of the Association Membership shall be equal to one hundred (100). Each Owner shall have one (1) vote for each percentage (or any fraction thereof) of allocated interest in the Common Elements. For example, in the event an Owner is allocated thirteen and 57/100 percent (13.57%) of the Common Elements, such Owner shall have thirteen and 57/100 (13.57) votes. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast the votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit.

Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the vote which may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

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Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

Section 4.10 Majority Vote: The casting of a majority of at least fifty-one percent (51%) of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Master Deed, the Articles of Incorporation of the Association, or the Act.

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Section 5

Executive Board

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Section 6 of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Master Deed, to terminate the Condominium, to elect members of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Executive Board shall consist of the three (3) individuals appointed by the incorporator of the Association. During the Declarant Control Period, the Executive Board shall have three (3) members, and Declarant may appoint and remove members of the Executive Board; subject, however to the limitations contained in Section 8.3 of the Master Deed. Prior to the expiration of the Declarant Control Period, the Members shall elect five (5) Board members, each to serve for a term of one (1) year, and thereafter the Executive Board shall have five (5) members. Board members may succeed themselves in office.

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Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4 Removal: Any Board member, other than a member appointed by Declarant, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: A vacancy occurring in the Executive Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.5, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

Section 5.6 Chairman: A member of the Executive Board shall be elected as Chairman of the Executive Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Executive Board, the President shall preside.

Section 5.7 Compensation: No Member of the Executive Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of *quantum meruit*. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers.

Section 5.9 Liability of Board Members: To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act in effect at the applicable time, each Board member is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Board member. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

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Section 5.10 Meetings of the Executive Board:

A. Regular Meeting: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any board member, after not less than three (3) or more than thirty (30) days written notice to each Board member.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (2) deposit of same in his Unit mail box; (3) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in York County, South Carolina, unless otherwise designated by the Board.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

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Section 5.13 Powers and Duties: The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

A. Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

B. Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;

C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Master Deed;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;

I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Master Deed, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Master Deed, the institution of actions to foreclose liens for such assessments in accordance with the terms of the Act, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable

fines not to exceed Two Hundred Fifty and No/100 Dollars ($250.00) for violations of the Master Deed, Bylaws and rules and regulations of the Association;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Master Deed, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Master Deed or the rules and regulations hereinafter promulgated governing use of the Common Elements;

M. Paying all taxes and assessments which are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;

N. Hiring attorneys and other professionals;

O. Maintaining and repairing any Unit, if such maintenance or repair is required by the Master Deed or is necessary in the discretion of the Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

P. Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Executive Board to be an emergency;

Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

R. Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor;

S. Making reasonable rules and regulations and approving the appearance and location of all signage on the Property;

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T. Reviewing and approving, or disapproving, plans for any proposed alterations or improvements to any Units proposed by the Owners of such Unit;

U. Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Master Deed, the Articles of Incorporation, these Bylaws, or the Act.

Section 5.14 Independent Manager: The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Property as the Executive Board deems appropriate, including, without limitation, pursuant to S.C. Code Ann. § 27-31-160, the care, upkeep and surveillance of the Property and its general or limited common elements and services, and the designation and dismissal of the personnel necessary for the works and the general or limited common services of the Property. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Act or the South Carolina Nonprofit Corporation Act. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

Section 6

Committees

Section 6.1 Creation: The Executive Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Executive Board to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least two (2) members of the Executive Board.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Executive Board.

Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

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Section 6.4 Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Executive Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

Section 7

Officers

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Executive Board may from time to time elect. Except for the President, no officer need be a member of the Executive Board.

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the Board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Executive Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 Vacancy: A vacancy in any office may be filled by the election by the Executive Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Executive Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under South Carolina law in the supervision and control of the management of the Association in accordance with these Bylaws.

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Section 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Executive Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Executive Board at the Association's principal office; he shall have charge of such books and papers as the Executive Board may direct; and he shall, in general, perform all duties incident to the office of Secretary of a corporation organized under South Carolina law.

Section 7.9 Treasurer: Except as otherwise may be delegated by the Executive Board to the Independent Manager pursuant to Section 5.14 of these Bylaws, provided such delegation does not violate the terms of the Act or the South Carolina Nonprofit Corporation Act, the Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Master Deed. He shall perform all duties incident to the office of Treasurer of a corporation organized under South Carolina law.

Section 7.10 Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Executive Board.

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 7.12 Indemnification: To the extent permitted by the provisions of the South Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

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Section 8.

Operation of the Property

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in equal shares (based upon the total number of Units in the Condominium), all in accordance with the procedure set forth in this Section 8, but subject to the limitations set forth in Article XVI of the Master Deed. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Master Deed. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

The Association, acting through the Executive Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

The Declarant, as the agent of the Association, shall collect from each initial purchaser of a Unit at the time of closing an "initial capital assessment" equal to twice the estimated monthly assessment for Common Expenses. Such funds shall not be considered advance payments of assessments. The Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. In addition, upon the expiration of the Declarant Control Period, the Declarant shall forward to the Association a contribution to the working capital fund, in the amount specified above, for each unsold Unit in the Condominium held by Declarant, and in that event, Declarant shall be entitled to retain as a reimbursement the working capital contributions ultimately made by the initial purchasers of such Units. Such funds may be

used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Executive Board may determine. Except for the permitted reimbursement of prepaid contributions referred to above, the Declarant may not use the working capital fund to defray any of the Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits of the Association during the Declarant Control Period.

Section 8.2 Payment of Common Expenses: All Owners shall be obligated to pay the Common Expenses assessed by the Executive Board pursuant to the provisions of Section 8.1 hereof at such time or times as the Board shall determine.

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Master Deed and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3 Collection of Assessments: The Executive Board shall assess Common Expenses against the Units from time to time and at least monthly in accordance with the allocations set forth in the Master Deed. The Executive Board shall take prompt action to collect any Common Expenses which remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Executive Board shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4 Default in Payment of Common Expenses, Remedies: In the event of default by any Owner in paying to the Executive Board the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Executive Board in any proceeding brought to collect such unpaid Common Expenses. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Executive Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Executive Board shall also have the right to

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impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Condominium Documents and the Act, the Executive Board shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5 Lien and Personal Obligations: All Common Expenses provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the Office of the Clerk of Court for York County, South Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied.

The lien for unpaid assessments shall not be affected by the sale or transfer of the Unit, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any assessments against such Unit that became due prior to the date of acquisition of title by such purchaser. Such unpaid assessments shall be deemed Common Expenses collectible from all Owners of Units, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any assessment against his Unit. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Executive Board to foreclose on a Unit because of unpaid Common Expenses, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7 Abatement and Enjoinment of Violations by Owners: The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Master Deed, shall give the Board the right, in addition to any other rights set forth in the Master Deed, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at

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the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed Two Hundred Fifty and No/100 Dollars ($250.00) per day for continuing violations.

Section 8.8 Maintenance and Repair: (a) Except as is specifically provided in the Master Deed, all maintenance and any repairs to any Unit and the Limited Common Elements allocated thereto, other than parking spaces, if any, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Master Deed, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Executive Board to the extent the Executive Board receives insurance proceeds for such repairs.

Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with the terms of the Master Deed.

Section 8.10 Use of Common Elements: An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees and invitees.

Section 8.11 Right of Access: An Owner shall grant a right of access to his Unit and the Limited Common Elements appurtenant thereto to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Board with the approval of a majority of Owners. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 8.13 Common Expenses for Utilities: Any utilities which may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Elements, shall be paid by each Owner as and when billed according to the extent

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of such Owner's use or, at the option of the Board, such may be paid by the Board and assessed against the Units as a Common Expense.

Section 9

Amendments

Subject to the provisions of Article XVI of the Master Deed, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Clerk of Court for York County, South Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Condominium Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant.

Section 10

Miscellaneous

Section 10.1 Severability: Invalidation of any covenant, condition, restriction or other provisions of the Master Deed or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 10.2 Successors Bound: The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

Section 10.3 Gender, Singular, Plural: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 10.4 Nonprofit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

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THIS IS TO CERTIFY that the above bylaws of RIVERWALK BUILDING 6 CONDOMINIUM OWNERS ASSOCIATION, INC. were adopted by the Directors of the corporation by action without a meeting effective as of the ____ day of _____, 2018.

DIRECTORS:

_____
[INSERT NAME], President

_____
[INSERT NAME], Secretary

_____
[INSERT NAME], Treasurer

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EXHIBIT E

[Form of Indenture Deed]

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDENTURE DEED

THIS INDENTURE, made the day hereinbelow stated, by and between **RIVERWALK RIVER DISTRICT BUILDING 6, LLC**, a South Carolina limited liability company (hereinafter, "Grantor," which expression shall include its heirs, successors and assigns); and _____, whose address is _____ (hereinafter, "Grantee," which expression shall include their/his/her heirs and assigns, and/or its successors and assigns).

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained, and the sum of _____ DOLLARS, paid to GRANTOR by GRANTEE(S), the receipt of which is hereby acknowledged, GRANTOR has, subject to the Permitted Exceptions (defined below), granted, bargained, sold and released, and by these presents does, subject to the Permitted Exceptions, grant, bargain, sell and release unto GRANTEE(S), their/his/her heirs, successors and assigns forever, the condominium unit situate in York County, South Carolina, described as follows (the "Premises"):

The Premises is conveyed subject to all of the provisions of the By-Laws of Riverwalk Building 6 Condominium Owners Association, Inc. ("Bylaws"), the Master Deed (defined below), including, without limitation, the grant of powers-of-attorney set forth therein, and all other easements, rights-of-way, restrictions or other matters of record or apparent upon an inspection of the Premises (collectively, the "Permitted Exceptions").

Unit No. _____ in Riverwalk Building 6 Condominium Horizontal Property Regime, a Horizontal Property Regime (the "Condominium") established by Grantor pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by that certain Master Deed for Riverwalk Building 6 Condominium Horizontal Property Regime dated _____, 2018, recorded _____, 2018, in **Record Book ____, Page ____**, Office of the Clerk of Court for York County, South Carolina (the "Master Deed").

TOGETHER WITH the undivided percentage interest in the Common Elements as provided in the Master Deed.

TOGETHER with all of the appurtenances thereto according to the Master Deed, and GRANTEE(S) assume and agree to observe and perform their obligations under the Master Deed including, without limitation, the payment of assessments for the maintenance and operation of the Condominium.

Derivation: Deed from The Greens of Rock Hill LLC to GRANTOR recorded in Deed Book 7503 at Page 99 in the Office of the Clerk of Court for York County, South Carolina.

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE(S). GRANTEE(S), by the acceptance and execution of this Indenture Deed, acknowledge that this conveyance is subject to all of the terms, covenants, conditions and restrictions of the Master Deed, the Bylaws, including the provisions of all exhibits thereto, and the other Permitted Exceptions, and GRANTEES hereby accept, ratify and confirm all of such terms, covenants, conditions and restrictions. GRANTEE(S) acknowledge and agree that all of said terms, covenants, conditions and restrictions are reasonable, fair and equitable; and GRANTEE(S) acknowledge and agree that the Master Deed, the Bylaws, and all exhibits thereto, contain all of the warranties, representations, and the inducements concerning the purchase by GRANTEE(S) of the Premises.

TOGETHER with, subject to the Permitted Exceptions, all and singular the rights, members, hereditaments, and appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular the Premises before mentioned unto GRANTEE(S), their/his/her heirs and assigns.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted Exceptions, all and singular the Premises unto GRANTEE(S) and their/his/her heirs and assigns, against itself and its successors, but against no others.

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IN WITNESS WHEREOF, GRANTOR and GRANTEE(S) have caused these presents to be signed, sealed, and delivered, this __ day of _____, 2018.

Signed, sealed and delivered

in the presence of:

_____
Witness #1

_____
Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Sole Member and Manager:

ASSURED ADMINISTRATION, LLC,
an Ohio limited liability company

By: _____
Mark Mather, Manager

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Sole Member and Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this ___ day of _____ 2018.

_____ [NOTARIAL SEAL]
Notary Public

My commission expires: _____

ROA 455

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Signed, sealed and
delivered in the presence of:

_____

_____

[INSERT GRANTEE NAME]

By: [Exhibit Only; No Signature]
Name:_____
Title:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he saw the within named **[INSERT GRANTEE NAME]**, by _____, as _____, sign, seal and as his act and deed deliver the within written Indenture Deed; and that he with the other witness who signed above witnessed the execution thereof.

SWORN TO before me this
___ day of _____, 2018.

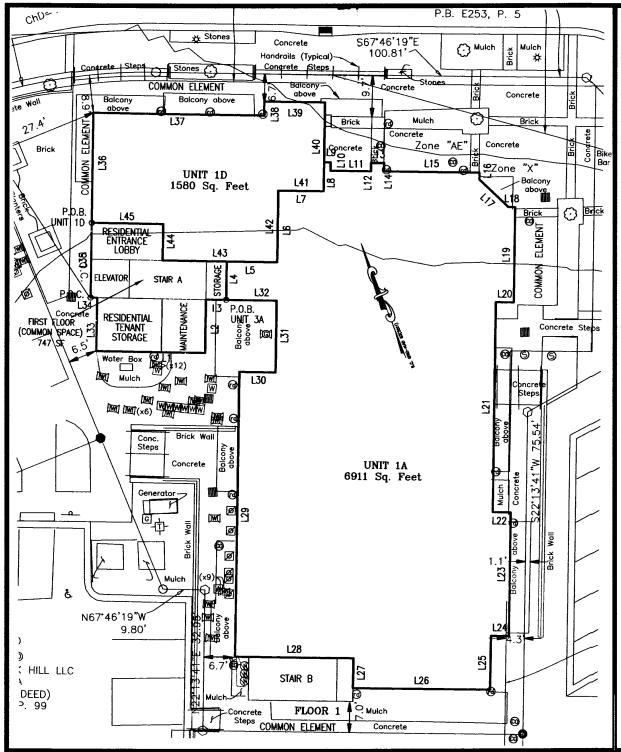
_____
Witness Signature

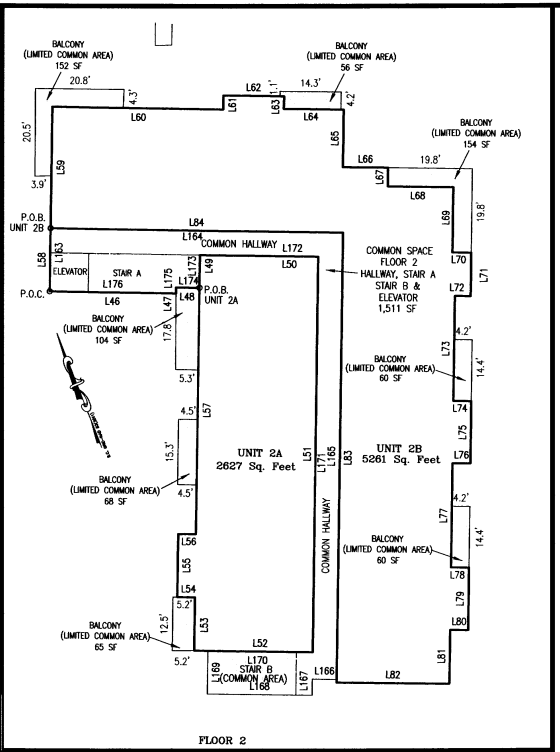
_____
Notary Public for South Carolina

My Commission Expires:_____

ROA 456

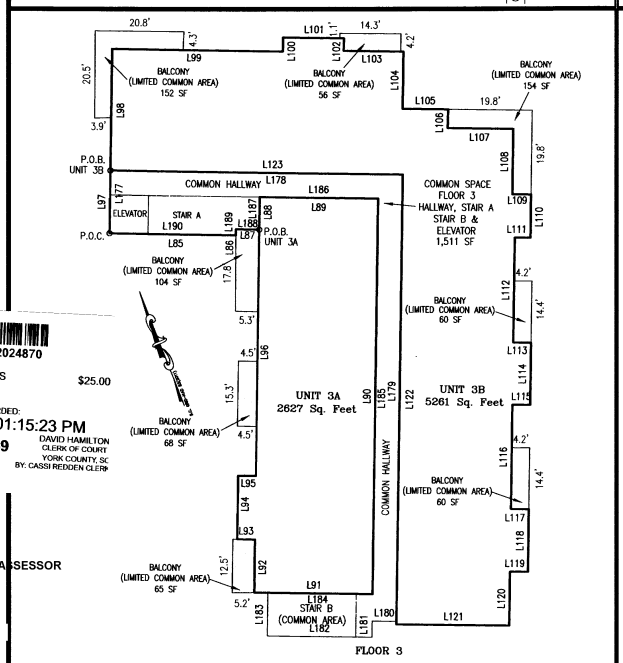
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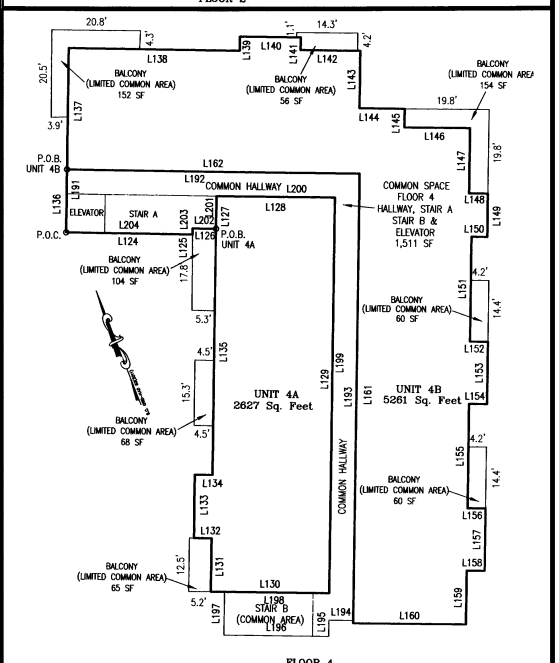




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L2	N 22°13'41" E	12.50'
L3	S 67°46'19" E	4.75'
L4	N 22°13'41" E	9.00'
L5	S 67°46'19" E	11.81'
L6	N 22°13'41" E	16.70'
L7	S 67°46'19" E	10.64'
L8	N 22°13'41" E	6.77'
L9	S 67°46'19" E	1.55'
L10	S 23°19'27" W	1.97'
L11	S 67°46'19" E	9.50'
L12	N 22°13'41" E	1.97'
L13	S 67°46'19" E	3.00'
L14	S 22°13'41" W	1.97'
L15	S 67°46'19" E	22.39'
L16	S 22°13'41" W	1.60'
L17	S 24°56'18" E	9.35'
L18	S 67°46'19" E	1.60'
L19	S 22°13'41" W	22.30'
L20	N 67°46'19" W	4.20'
L21	S 22°13'41" W	49.20'
L22	S 67°46'19" E	4.20'
L23	S 22°13'41" W	29.00'
L24	N 67°46'19" W	4.20'
L25	S 22°13'41" W	12.60'
L26	N 67°46'19" W	32.10'
L27	N 22°13'41" E	7.00'
L28	N 67°46'19" W	27.70'
L29	N 22°13'41" E	66.76'
L30	S 67°46'19" E	8.50'
L31	N 22°13'41" E	16.80'
L32	N 67°46'19" W	11.81'
L33	N 22°13'41" E	12.50'
L34	N 67°46'19" W	1.50'
L35	N 22°13'41" E	17.50'
L36	N 22°13'41" E	25.70'
L37	S 67°46'19" E	40.00'
L38	N 22°13'41" E	3.30'
L39	S 67°46'19" E	14.20'
L40	S 22°13'41" W	20.80'
L41	N 67°46'19" W	10.64'
L42	S 22°13'41" W	16.70'
L43	N 67°46'19" W	26.81'
L44	N 22°13'41" E	8.50'
L45	N 67°46'19" W	16.75'
L46	S 67°46'19" E	29.58'
L47	N 21°46'45" E	1.40'
L48	S 67°46'19" E	5.49'
L49	N 22°13'41" E	7.65'
L50	S 67°46'19" E	27.70'
L51	S 22°13'41" W	92.61'
L52	N 67°46'19" W	24.50'
L53	N 22°13'41" E	12.46'
L54	N 67°46'19" W	4.13'
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L60	S 67°46'19" E	40.00'
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L64	S 67°46'19" E	14.01'
L65	S 22°13'41" W	13.40'
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L68	S 67°46'19" E	15.35'
L69	S 22°13'41" W	15.35'
L70	S 67°46'19" E	4.40'
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L72	N 67°46'19" W	3.70'
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L74	S 67°46'19" E	4.20'
L75	S 22°13'41" W	14.61'
L76	N 67°46'19" W	4.20'
L77	S 22°13'41" W	24.43'
L78	S 67°46'19" E	4.20'
L79	S 22°13'41" W	14.61'
L80	N 67°46'19" W	4.20'
L81	S 22°13'41" W	12.60'
L82	N 67°46'19" W	26.40'
L83	N 22°13'41" E	105.31'
L84	N 67°46'19" W	68.46'
L85	S 67°46'19" E	29.58'
L86	N 21°46'45" E	1.40'
L87	S 67°46'19" E	5.49'
L88	N 22°13'41" E	7.65'
L89	S 67°46'19" E	27.70'
L90	S 22°13'41" W	92.61'
L91	N 67°46'19" W	27.70'
L92	N 22°13'41" E	12.46'
L93	N 67°46'19" W	4.13'
L94	N 22°05'12" E	14.84'
L95	S 68°08'17" E	4.17'
L96	N 22°13'41" E	57.64'
L97	N 22°13'41" E	14.75'
L98	N 22°13'41" E	28.45'
L99	S 67°46'19" E	40.00'
L100	N 22°13'41" E	3.30'
L101	S 67°46'19" E	14.20'
L102	S 22°13'41" W	2.97'

LINE	BEARING	DISTANCE
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L107	S 67°46'19" E	15.35'
L108	S 22°13'41" W	15.35'
L109	S 67°46'19" E	4.40'
L110	S 22°13'41" W	10.13'
L111	N 67°46'19" W	3.70'
L112	S 22°13'41" W	24.56'
L113	S 67°46'19" E	4.20'
L114	S 22°13'41" W	14.61'
L115	N 67°46'19" W	4.20'
L116	S 22°13'41" W	24.43'
L117	S 67°46'19" E	4.20'
L118	S 22°13'41" W	14.61'
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L121	N 67°46'19" W	26.40'
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L123	N 67°46'19" W	68.46'
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L125	N 21°46'45" E	1.40'
L126	S 67°46'19" E	5.49'
L127	N 22°13'41" E	7.65'
L128	S 67°46'19" E	27.70'
L129	S 22°13'41" W	92.61'
L130	N 67°46'19" W	27.70'
L131	N 22°13'41" E	12.46'
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L133	N 22°05'12" E	14.84'
L134	S 68°08'17" E	4.17'
L135	N 22°13'41" E	57.64'
L136	N 22°13'41" E	14.75'
L137	N 22°13'41" E	28.45'
L138	S 67°46'19" E	40.00'
L139	N 22°13'41" E	3.30'
L140	S 67°46'19" E	14.20'
L141	S 22°13'41" W	2.97'
L142	S 67°46'19" E	14.01'
L143	S 22°13'41" W	13.40'
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L148	S 67°46'19" E	4.40'
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L150	N 67°46'19" W	3.70'
L151	S 22°13'41" W	24.56'
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L154	N 67°46'19" W	4.20'
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L159	S 22°13'41" W	12.60'
L160	N 67°46'19" W	26.40'
L161	N 22°13'41" E	105.31'
L162	N 67°46'19" W	68.46'
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L164	S 67°46'19" E	68.46'
L165	S 22°13'41" W	104.61'
L166	N 67°46'19" W	5.70'
L167	S 22°13'41" W	3.80'
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L169	S 22°13'41" W	10.10'
L170	S 67°46'19" E	24.50'
L171	N 22°13'41" E	92.61'
L172	N 67°46'19" W	27.70'
L173	S 22°13'41" W	7.65'
L174	N 67°46'19" W	5.49'
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L176	N 67°46'19" W	29.58'
L177	N 22°13'41" E	14.75'
L178	S 67°46'19" E	68.46'
L179	S 22°13'41" W	104.61'
L180	N 67°46'19" W	5.70'
L181	S 22°13'41" W	3.80'
L182	N 67°46'19" W	24.50'
L183	N 22°13'41" E	10.10'
L184	S 67°46'19" E	24.50'
L185	N 22°13'41" E	92.61'
L186	N 67°46'19" W	27.70'
L187	S 22°13'41" W	7.65'
L188	N 67°46'19" W	5.49'
L189	S 21°46'45" W	1.40'
L190	N 67°46'19" W	29.58'
L191	N 22°13'41" E	14.75'
L192	S 67°46'19" E	68.46'
L193	S 22°13'41" W	104.61'
L194	N 67°46'19" W	5.70'
L195	S 22°13'41" W	3.80'
L196	N 67°46'19" W	24.50'
L197	S 22°13'41" W	10.10'
L198	N 67°46'19" W	24.50'
L199	N 22°13'41" E	92.61'
L200	N 67°46'19" W	27.70'
L201	S 22°13'41" W	7.65'
L202	N 67°46'19" W	5.49'
L203	S 21°46'45" W	1.40'
L204	N 67°46'19" W	29.58'





GRAPHIC SCALE

20 0 10 20

(IN FEET)

1 inch = 20 ft.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEET OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. THIS SURVEY IS OF AN EXISTING PARCEL OF LAND WITH IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND. WITNESS MY SEAL AND SIGNATURE, THIS DATE OF 05-19-22

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 23206 JEFFREY MARK FISHER

REGISTERED LAND SURVEYOR REG # L-23206

2022024870

PLAT LARGE RECORDING FEES $25.00

PRESENTED & RECORDED: 05-27-2022 01:15:23 PM

BK: PLAT 169

PG: 175

DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC BY: CASSI REDDEN CLERK

YORK COUNTY ASSESSOR

Tax Map:

Date: 05/27/2022

E H

* THIS PLAT CONTAINS TWO SHEETS AND IS CONSIDERED INCOMPLETE WITHOUT BOTH SHEETS*

PREPARED BY:

J. MARK FISHER SC PLS
3556-A CENTRE CIRCLE
FORT MILL, SC 29715
OFFICE: 704.506-0554
mfisher@veritasislandpc.com
NC FIRM C-3126

CLIENT:

RIVERWALK RIVER DISTRICT BUILDING 6, LLC
998 RIVERWALK PARKWAY
ROCK HILL, SC 29730
803-326-0085

PROJECT:

RIVERWALK RIVER DISTRICT BUILDING 6 CONDOMINIUM SURVEY

PROJ.DATE :	04-28-22
SCALE :	1"=20'
DRAWN BY :	JMT
CHECKED BY :	JMF

TITLE

CONDOMINIUM HORIZONTAL PROPERTY REGIME

FOR THE LANDS OF

RIVERWALK RIVER DISTRICT BUILDING 6 LLC

TAX PARCEL ID # 662-07-01-147

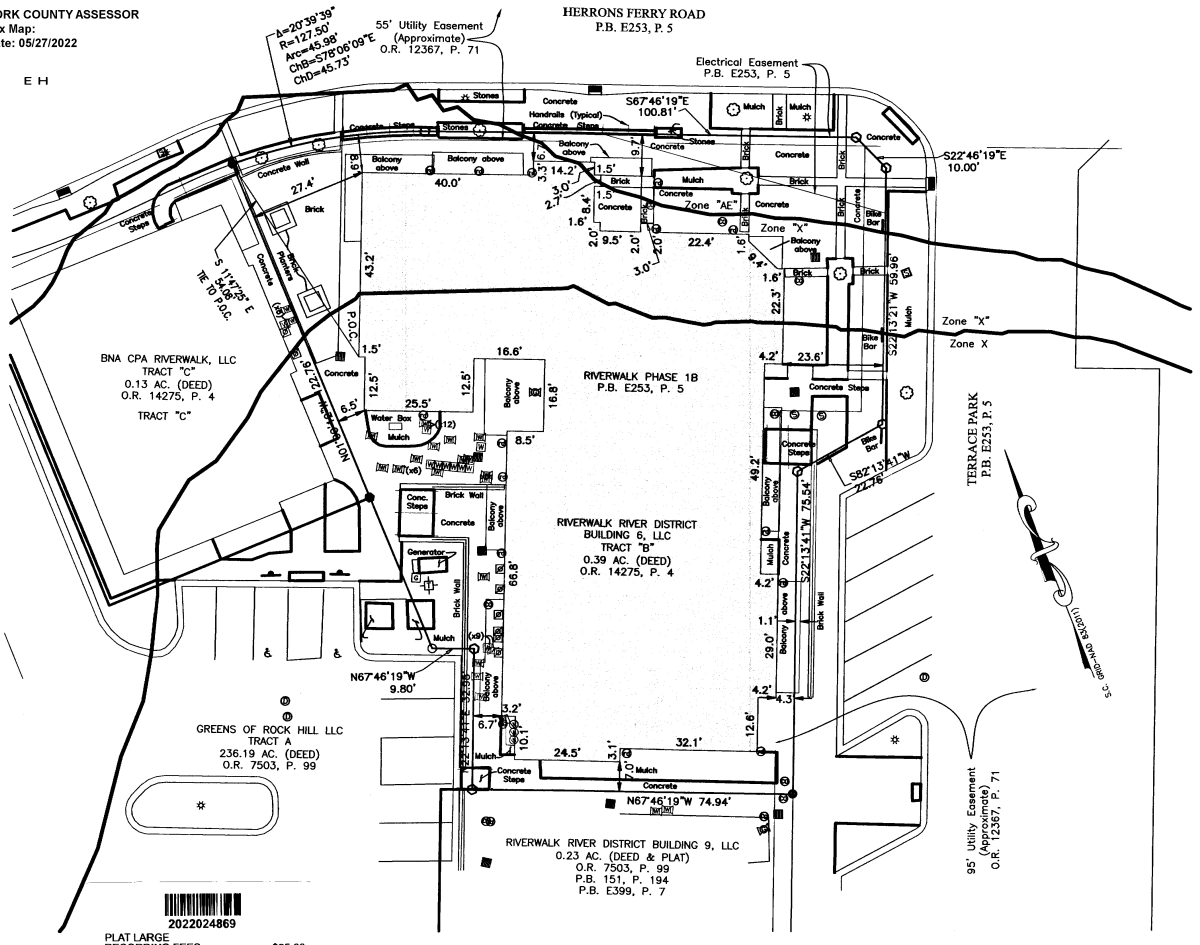
CITY OF ROCK HILL, YORK COUNTY, SOUTH CAROLINA

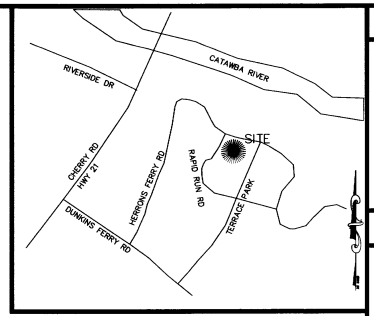
SHEET 2 OF 2

ELECTRONICALLY FILED - 2022 Jun 28 8:09 AM - YORK - COMMON PLEAS - CASE#2018CP4603786

	PRELIMINARY CALCULATIONS (NOT FOR LEASE)					INTERMEDIATE CALCULATIONS								FINAL CALCULATIONS			OPTIONAL ADJUSTMENTS	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
INPUT	MEASURE	MEASURE	MEASURE	MEASURE	=B-C-D-E	INPUT	MEASURE	MEASURE	=H+I	MEASURE	=F-J-K	=(J+L)/	=HxM	=ΣF/ΣN	=MxO	=NxO or HxP	1	=HxR
FLOOR LEVEL	INTERIOR GROSS AREA	MAJOR VERTICAL PENETRATIONS	PARKING	OCCUPANT STORAGE	PRELIMINARY FLOOR AREA	SPACE ID	OCCUPANT AREA	BUILDING AMENITY AREAS	USABLE AREA (U)	BUILDING SERVICE AREAS	FLOOR SERVICE & AMENITY	R/O RATIO	OPPUPANT + ALLOCATED AREA (O)	R/P RATIO	LOAD FACTOR A	RENTABLE AREA	CAPPED LOAD FACTOR	CAPPED RENTABLE AREA
1st Floor	9,016	469		-	8,547	Tenant 1	6,615		6,615	489		1.00	6,615	1.06	1.06	7,017	1.00	6,615.00
				-		Tenant 2	1,443	-	1,443		-	1.00	1,443	1.06	1.06	1,531	1.00	1,443.00
FLOOR TOTALS	9,016	469	-	-	8,547		8,058	-	8,058			1.00	8,058	1.06	1.06	8,547	1.00	8,058.00
2nd Floor	9,094	434		-	8,660	Tenant 3	8,660		8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00
3rd Floor	9,094	434		-	8,660	Tenant 4	8,660		8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00
4th Floor	9,094	434		-	8,660	Tenant 5	8,660		8,660			1.00	8,660	1.00	1.00	8,660	1.00	8,660.00

YORK COUNTY ASSESSOR
Tax Map:
Date: 05/27/2022





VICINITY MAP – N.T.S.

NOTES

1. THIS PROPERTY MAY BE SUBJECT TO ANY EASEMENTS AND\OR RIGHTS-OF-WAY, WHETHER WRITTEN OR UNWRITTEN, RECORDED OR UNRECORDED, VISIBLE EVIDENCE INDICATING ANY SUCH USE OF THE LAND AS SHOWN.
2. THE SUBJECT PROPERTY IS CURRENTLY OWNED BY RIVERWALK BUSINESS DISTRICT BUILDING 6 LLC, TAX PARCEL ID NUMBER: 662-07-01-147, DB 1427 PG 45; PB E253, PG 5.
3. SUBJECT PROPERTY SITE ADDRESS:
829 TERRACE PARK
SUITE 104
RIVERWALK CAROLINAS
ROCK HILL, SC
4. THIS PROPERTY ZONED MP-C; AS PER YORK COUNTY GIS.
5. AREAS COMPUTED BY COORDINATE METHOD AND ARE AS SHOWN.
6. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN ENGINEERING FEET.
7. PORTIONS OF THIS PLAT ARE LOCATED IN 'ZONE AE' & 'ZONE X', BASED ON EXAMINATION OF FEMA PANEL #45091C0326F REVISED MAY 16, 2017.
8. DATE OF SURVEY: 04-26-22.
9. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
10. ELEVATIONS SHOWN HEREON REFERENCE THE NAVD 88 DATUM.
11. THIS PLAT CONTAINS 2 (TWO) SHEETS AND IS CONSIDERED INCOMPLETE WITHOUT BOTH COPIES.

LEGEND

- P.O.B. – POINT OF BEGINNING
- P.O.C. – POINT OF COMMENCEMENT
- SIGN
- DISABLED PARKING
- TELEPHONE PULL BOX
- LIGHT POLE
- TREE
- ELECTRIC METER
- WATER VALVE
- WATER HEATER
- WATER METER
- SANITARY SEWER CLEANOUT
- SANITARY SEWER MANHOLE
- DROP INLET
- STORM DRAIN MANHOLE
- CATCH BASIN
- ROOF DRAIN
- GAS METER
- GAS VALVE
- FENCE

2022024869
PLAT LARGE RECORDING FEES $25.00

PRESENTED & RECORDED:
05-27-2022 01:15:22 PM
BK: PLAT 169
PG: 174
DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC BY: CASSI REDDEN CLERK

GRAPHIC SCALE
20 0 10 20
(IN FEET)
1 inch = 20 ft.

TOP OF BUILDING

LEVEL 4	573.7'	
LEVEL 3	554.3'	
LEVEL 2	543.5'	61.0'
LEVEL 1 "GROUND FLOOR"	532.7'	
ELEVATION OF FLOOR	512.7'	

NOT TO SCALE

CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY DEDICATE ALL STREETS, ALLEYS, WALKS, COMMON AREAS, PARKS AND OTHER SITES TO PUBLIC OR PRIVATE USE AS NOTED.

Manager MAY 27, 2022
(OWNER) (DATE)
Riverwalk River District Building 6, LLC

SOUTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 23206 JEFFREY MARK FISHER

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEET OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. THIS SURVEY IS OF AN EXISTING PARCEL OF LAND WITH IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND. WITNESS MY SEAL AND SIGNATURE, THIS DATE OF 05-10-22

REGISTERED LAND SURVEYOR REG # L-23206

PREPARED BY :
J. MARK FISHER
SC PLS
3556-A CENTRE CIRCLE
ROCK HILL, SC 29715
OFFICE: 704.506.0554
mfisher@veritasandpc.com
NC FIRM C-3126

CLIENT:
RIVERWALK RIVER DISTRICT BUILDING 6, LLC
998 RIVERWALK PARKWAY
ROCK HILL, SC 29730
803-326-0085

PROJECT:
RIVERWALK RIVER DISTRICT BUILDING 6 CONDOMINIUM SURVEY

PROJ.DATE :	04-28-22
SCALE :	1"=20'
DRAWN BY :	JMT
CHECKED BY :	JMF

TITLE
CONDOMINIUM HORIZONTAL PROPERTY REGIME
FOR THE LANDS OF
RIVERWALK RIVER DISTRICT BUILDING 6 LLC
TAX PARCEL ID # 662-07-01-147
CITY OF ROCK HILL, YORK COUNTY, SOUTH CAROLINA

SHEET 1 OF 2

ELECTRONICALLY FILED - 2022 JUN 28 8:00 AM - YORK - COMMON PLEAS - CASE#2016CP4600726

ROA 458
PLAT BK 169 PG 174

From: Keith Martens keith.martens@hamiltonmartens.com
Subject: RE: Grapevine
Date: Jul 13, 2022 at 10:41:11 AM
To: Staples, Christian H. cstaples@shumaker.com

CAUTION: External Email

Christian,

I had this on my calendar to follow up with you on 7/15, but thanks for reaching out.

I have discussed both the Master Deed and the Deed to GV (which we plan to tender to the Clerk, per our motion) with my client and with Todd Brockmann. At this point, my client does not intend to make any revisions to the Master Deed which was recorded in May 2022. If the court directs amendments to the Master Deed, then we will deal with that at the appropriate time. We don't think that GV has the right to dictate the terms of the Master Deed.

As for the deed of conveyance (which, again, we propose to tender to the court) Todd Brockman has made revisions to convert the deed from special warranty to general warranty. Please see attached, and let me know if this addresses your concerns regarding the form of the deed of conveyance. Todd has highlighted the revisions to the deed, converting it from special warranty to general warranty. I also want to point out that the title "Indenture Deed" is the same title that was used when the Master Deed was reviewed and approved by Brian Wilson in 2018. For what it's worth, this is also the form/title of deed that Todd intends to use as other buildings in the River District are converted to condominium regimes. GV would be getting the exact same deed as every other member of the condominium regime – no more and no less.

Please review the form of deed with Emily and let me know if this addresses the concerns you have regarding the form of that deed.

Thank you.

From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Tuesday, July 12, 2022 10:43 AM
To: Keith Martens <keith.martens@hamiltonmartens.com>
Subject: RE: Grapevine

Keith,

Just following up on our prior conversation. Are you planning to send me anything for review prior to the hearing?

Thanks

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

Drawn by and after recording return to:
Todd C. Brockmann, Esq.
17250 Lancaster Highway, Suite 608
Charlotte, North Carolina 28277

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDENTURE DEED

THIS INDENTURE, made the day hereinbelow stated, by and between RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company (hereinafter, "GRANTOR," which expression shall include its heirs, successors and assigns); and THE GRAPEVINE OF RIVERWALK, INC., a South Carolina corporation, whose address is _____ (hereinafter, "GRANTEE," which expression shall include its successors and assigns).

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained, and the sum of _____ DOLLARS, paid to GRANTOR by GRANTEE, the receipt of which is hereby acknowledged, GRANTOR has, subject to the Permitted Exceptions (defined below), granted, bargained, sold and released, and by these presents does, subject to the Permitted Exceptions, grant, bargain, sell and release unto GRANTEE and its successors and assigns forever, the condominium unit situate in York County, South Carolina, described as follows (the "Premises"):

> The Premises is conveyed subject to all of the provisions of the By-Laws of Riverwalk River District Building Owners Association, Inc. ("Bylaws"), the Master Deed (defined below), including, without limitation, the grant of powers-of-attorney set forth therein, and all other easements, rights-of-way, restrictions or other matters of record or apparent upon an inspection of the Premises, including without limitation any master declaration of Riverwalk as modified from time-to-time (collectively, the "Permitted Exceptions").
>
> Unit No. 1D in Riverwalk River District Building 6 Condominium Horizontal Property Regime, a Horizontal Property Regime (the "Condominium") established by Grantor pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted

by that certain Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime dated May 31, 2022, recorded May 31, 2022, in Book RB 20214, Page 425, Office of the Clerk of Court for York County, South Carolina (the "Master Deed").

TOGETHER WITH the undivided percentage interest in the Common Elements as provided in the Master Deed.

TOGETHER with all of the appurtenances thereto according to the Master Deed, and GRANTEE assumes and agrees to observe and perform its obligations under the Master Deed including, without limitation, the payment of assessments for the maintenance and operation of the Condominium.

BEING a portion of the same property conveyed to Riverwalk River District Building 6, LLC, by The Greens of Rock Hill LLC, by deed dated July 30, 2014, and recorded July 14, 2014, in Volume 14275, Page 4, in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: Being a portion of 662-07-01-147

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE. GRANTEE, by the acceptance and execution of this Indenture Deed, acknowledges that this conveyance is subject to all of the terms, covenants, conditions and restrictions of the Master Deed, the Bylaws, including the provisions of all exhibits thereto, and the other Permitted Exceptions, and GRANTEE hereby accepts, ratifies and confirms all of such terms, covenants, conditions and restrictions. GRANTEE acknowledges and agrees that all of said terms, covenants, conditions and restrictions are reasonable, fair and equitable; and GRANTEE acknowledges and agrees that the Master Deed, the Bylaws, and all exhibits thereto, contain all of the warranties, representations, and the inducements concerning the purchase by GRANTEE of the Premises.

TOGETHER with, subject to the Permitted Exceptions, all and singular the rights, members, hereditaments, and appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular the Premises before mentioned unto GRANTEE and its successors and assigns.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted Exceptions, all and singular the Premises unto GRANTEE and its successors and assigns, against the lawful claims of all persons whomsoever.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ROA 461

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

IN WITNESS WHEREOF, GRANTOR has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and delivered

in the presence of:

_____
Witness #1

_____
Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Manager:

ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company

By:_____
Mark Mather, Manager

STATE OF _____

COUNTY OF _____

ACKNOWLEDGMENT

I, _____, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this _____ day of May, 2022.

_____
Notary Public

My commission expires: _____

IN WITNESS WHEREOF, GRANTEE has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and

delivered in the presence of:

THE GRAPEVINE OF RIVERWALK, INC.,
a South Carolina corporation

_____
Witness #1

By:_____

Name:_____

_____
Witness #2

Title:_____

STATE OF _____

ACKNOWLEDGMENT

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he/she, being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this _____ day of _____ 2022.

_____
Notary Public

My commission expires: _____

ROA 463

ELECTRONICALLY FILED - 2022 Jul 28 9:00 AM - YORK - COMMON PLEAS - CASE#2018CP4603726

ELECTRONICALLY FILED - 2022 Jul 29 3:57 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

STATE OF SOUTH CAROLINA)) COUNTY OF YORK)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
The Grapevine of Riverwalk, Inc.,)) Plaintiff,)) v.)) Riverwalk River District Building 6, LLC,) Mark S. Mather, GRH Development) Resources, LLC, The Greens of Rock Hill,) LLC and Assured Administration, LLC,)) Defendants.)	C/A No. 2018-CP-46-03726 MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR STAY AND IN OPPOSITION TO PLAINTIFF'S MOTIONS UNDER RULE 70 S.C. R. CIV. P.

This case is on appeal, but the parties come before this court upon competing motions. Defendant Riverwalk River District Building 6, LLC ("Building 6") seeks an order staying this court's order for specific performance, pursuant to Rule 62(f) S.C. R. Civ. P. and the provisions of S.C. Code § 18-9-160 (Law. Co-op. 2014). Plaintiff, Grapevine of Riverwalk, Inc. ("Grapevine") seeks to invoke the provisions of Rule 70 S.C. R. Civ. P. to amend or rescind a Master Deed and other documents that have already been recorded in compliance with this court's Final Judgment, filed April 19, 2022 (the "Judgment"). For the reasons set forth in this memorandum, the court should:

- Grant Building 6's motion for stay and enter an order directing the York County Clerk of Court to accept the deposit of Building's 6's proffered deed "to abide the judgment of the appellate court." *See* S.C. Code §18-9-160 (Law. Co-op. 2014);

- Deny Grapevine's motion to appoint a "third party" to amend, modify or rescind the Master Deed that was recorded by Building 6 in May 2022, in compliance with the Judgment;

- Deny Grapevine's motion for sanctions pursuant to Rule 70 S.C. R. Civ. P.; and

- Deny Grapevine's motion for abatement of rent.

ROA 464

ELECTRONICALLY FILED - 2022 Jul 29 3:57 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

Building 6's arguments and supporting authority are more fully set forth below.

ARGUMENT

I. This court should stay enforcement of its Judgment for specific performance and direct the York County Clerk of Court to accept Building 6's "deposit" of its deed of conveyance "to abide the judgment of the appellate court."

Building 6 recognizes that its appeal of this court's Judgment did not automatically stay the court's order for specific performance. For that very reason, Building 6 timely moved for a stay pursuant to Rule 62 (f) and the provisions of S.C. Code Ann. § 18-9-160 (Law. Co-op. 2014). *See* Motion for Stay, filed May 31, 2022.

Section 18-9-160 provides:

> If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

Like all statutes, section 18-9-160 "must be read as a whole and in a manner consonant and in harmony with its purpose." CFRE, LLC V. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). It must also be read so that "no word, clause, sentence, provision or part shall be rendered surplusage or superfluous" because "the General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law." Id.

If Section 18-9-160 means anything, it means this: Building 6 is entitled to a stay of this court's order for specific performance while it challenges that order through appeal. In order to obtain its stay, Building 6 must only "deposit with the clerk" an executed copy of the challenged deed with instructions that the clerk should "abide the judgment of the appellate court."

Prior to the date set by this court for specific performance, Building 6 hand-delivered to the York County Clerk of Court a deed of conveyance with instructions consistent with the

ELECTRONICALLY FILED - 2022 Jul 29 3:57 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

provisions of S.C. Code Ann. § 18-9-160. For reasons beyond the control of Building 6, the clerk offered to record the deed but not to accept a "deposit" of the deed. The Clerk's office indicated that it could only accept a "deposit" of the deed if it were "ordered to do so" by this court. Building 6 immediately filed this motion.

Grapevine does not aggressively argue that a stay is unavailable or unwarranted, but it argues that the deed tendered by Building 6 cannot be deposited with the clerk because it is "labeled 'Indenture Deed' and not a 'General Warranty Deed.'" Grapevine fails to articulate any meaningful distinction between the two forms of deed. *See* Pl. Mem. at 7 ("It is unclear to the undersigned exactly how an Indenture Deed is distinguished from a General Warranty Deed."). Furthermore, Grapevine fails to demonstrate with any degree of specificity how it would be prejudiced by accepting an "Indenture Deed." It bears mentioning that a "Form Indenture Deed" was attached as an exhibit to the draft master deed that, by Grapevine's own admission, it reviewed and "approved" in 2018. *See* Ex. 4 to Pl. Mem. Grapevine's hand-wringing over the "Indenture Deed" appears to make much of nothing.

In any regard, Building 6 has redrafted its deed of conveyance to address Grapevine's expressed objections to the "Indenture Deed," and is fully prepared to deposit that redrafted deed with the York County Clerk of Court as soon as this court authorizes and directs the Clerk to accept a "deposit" of the deed. A copy of the redrafted deed has previously been provided to, and reviewed by Grapevine's Counsel. To date, Grapevine's Counsel has not articulated any concerns regarding the form of the redrafted deed. A copy of the redrafted deed, which has been fully executed, is filed as an exhibit to this memorandum.

Building 6 respectfully requests that this court enter an order authorizing and instructing the York County Clerk of Court to deposit the tendered deed in its office "to abide the judgment

ELECTRONICALLY FILED - 2022 Jul 29 3:57 PM - YORK - COMMON PLEAS - CASE#2018CP4603726

of the appellate court," as required by §18-9-160. Upon deposit of that deed, this court's order for specific performance should be stayed for the duration of the appeal.

II. Grapevine's motion to appoint a surrogate to "oversee the creation, recording and filing" of a new Master Deed must be denied, because Rule 70 does not empower this court to take those actions.

Grapevine improperly attempts to invoke Rule 70 S.C. R. Civ. P. as a mechanism to supplant Building 6 as the developer of its own real property, in order to have Grapevines' nominated surrogate "oversee the creation, filing and recording of a . . . Master Deed, Plat, and General Warranty Deed, all at Defendants' cost and expense." Pl's. Motion at 4. Nothing in Rule 70 would entitle Grapevine to impose such draconian measures.

By its express terms, Rule 70 S.C.R. Civ. P. provides:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court . . . .

No portion of Rule 70 is implicated by the parties' present dispute over the terms of the recorded Master Deed. A master deed is not a "conveyance of lands,"[1] and neither the Horizontal Property Regime Act nor this court's Judgment required Building 6 to "deliver" the Master Deed to Grapevine. More importantly, Building 6 did not fail to record a Master Deed "within the time specified" by the court's Judgment. It did exactly as it was ordered to do – it recorded its Master Deed within the time required by this court. *See* Master Deed, Recorded in the Office of the York County Clerk of Court on May 31, 2022 at Book RB 20214, Page 425.

[1] A master deed is the statutorily-prescribed mechanism for creating a horizontal property regime. *See* S.C. Code Ann. § 27-31-30 (Law. Co-op. 2007)("Whenever a lessee, sole owner or co-owners of property expressly declare, through the recordation of a master deed . . . their desire to [create a horizontal property regime] . . . there shall thereby be established a . . . regime.").

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Our federal courts have interpreted Rule 70[2] as a rule that provides the court with only "'a discrete and limited power to deal with parties who thwart final judgments by *refusing* to comply with orders to perform specific acts." Braunstein v. Pickens, 274 F.R.D 568, 570 (D.S.C. 2011)(quoting Analytical Eng'g., Inc. v. Baldwin Filters, Inc., 425 F.3d 443, 449 (7th Cir. 2005). That "limited and discrete" power is not implicated in this case, because Building 6 did not refuse to comply with the court's Judgment. It recorded a Master Deed and otherwise did "whatever [was] required" to ensure it was positioned to convey title to Grapevine's condominium unit on or before May 31, 2022 – just as this court required.

Grapevine's contention that it, somehow, is empowered to re-draft or re-record Building 6's Master Deed to suit its' own self-interest is abhorrent to the provisions of the Horizontal Property Regime Act and the general principals of property law and ownership. The Horizontal Property Regime Act reserves to the "owner or owners" of property the authority and right to establish and dictate the terms of a horizontal property regime affecting that property. S.C. Code Ann. § 27-31-30 & 27-31-100 (Law. Co-op. 2014). It is also black letter law that property owners have the right to utilize and develop their own property as they see fit (subject, of course, to applicable zoning and use restrictions). This court ordered that Grapevine is entitled to purchase a condominium unit in a horizontal property regime established by Building 6. Building 6 is prepared to comply with that order if this court's Judgment is affirmed. Grapevine has no authority, under the terms of the Judgment or otherwise, to dictate how Building 6 develops the remainder of *its* real property. Grapevine's attempt to seize control of Building 6's declarant rights under the auspices of Rule 70 S.C. R. Civ. P. must be denied.

[2] Rule 70 S.C. R. Civ. P. is modeled after Rule 70 Fed. R. Civ. P.

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III. Grapevine's Motion for Contempt Must be Denied, because there is no evidence, much less clear and convincing evidence, that Building 6 intentionally thwarted this court's judgment by recording its Master Deed.

As Grapevine notes, Rule 70 provides that, "in *proper* cases [the court may] adjudge [a recalcitrant] party in contempt." Rule 70 S.C. R. Civ. P. This is not a proper case. As our Court of Appeals has recognized,

> Contempt is an extreme measure and the power to find an individual in contempt is not to be lightly asserted. Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based.

Ex Parte Kent, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). Contempt occurs only when a party "willfully disobeys a clear and definite order." Campione v. Best, 435 S.C. 457, 868 S.E.2d 378, 381 (Ct. App. 2021). It must be proven by "clear and convincing evidence, and the record must demonstrate the specific contemptuous act." Id. at 458, 868 S.E.2d at 381. Grapevine's motion fails to meet that high bar, and its motion for sanctions must, therefore, be denied.

Through its Judgment, this court directed Building 6 to "do whatever is required to put itself into a position to convey the property to Plaintiff, in terms of creation of a horizontal property regime, or otherwise" by May 31, 2022. *See* Judgment filed Apr. 19, 2022, at 3 (hereafter "Judgment"). Building 6 fully complied with that directive. Grapevine does not even argue, much less has it shown, that the recorded Master Deed did not comply with the provisions of § 27-31-100 or that it was, otherwise, somehow ineffective to establish a horizontal property regime. Nor has Grapevine made any other showing that Building 6 was not fully "in a position" to convey a condominium unit to Grapevine by May 31, 2022.

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The crux of Grapevine's argument appears to be that, because Building 6's recorded Master Deed is not substantively *identical* to the one that Grapevine (apparently)[3] reviewed and approved in 2018, that the court should now impose severe and draconian sanctions – including, but not limited to the suggestion that this court should (or could) "divest title to Building 6 . . . from Defendants and vest it in . . . Plaintiff." Pl. Mem. at 10. The very suggestion that Grapevine could seize title to a multi-million dollar building as a "sanction," without any semblance of due process, is repugnant to the very concept of justice!

What Grapevine chooses to ignore, for the sake of its argument, is that this court never ordered Building 6 to record a Master Deed that was identical to the draft approved by Grapevine in 2018. Instead, the court directed Building 6 to record a Master Deed "in substantially the same form as that prepared by Todd Brockmann, Esq. . . . in January 2018 and subsequently approved by Plaintiff." Judgment at 3-4. If the draft master deed filed as an Exhibit to Plaintiff's memorandum is, in fact, the 2018 draft that Grapevine "approved," then Building 6 did just that. The Master Deed that Building 6 recorded in May 2022 contained all of the same Articles, Sections, Subsections and Exhibits as had been included in Mr. Brockman's presumptive 2018 draft. The recorded Master Deed was organized in the same way as the 2018 draft. It addressed each of the same points as the 2018 draft. Even the "Form Indenture Deed" attached as an exhibit to the recorded Master Deed was identical to the one that had been attached to the draft Grapevine apparently approved in 2018.

The phrase "in substantially the same form" is not defined in the Judgment, nor – to Counsel's knowledge, at least - is it a term of art. According to Grapevine's memorandum,

[3] Grapevine did not actually introduce the draft master deed that it "approved" in 2018, so it was not in the record when the court entered its Judgment. For that reason alone, Grapevine's motion for sanctions must fail. *Ex Parte* Kent, 379 S.C. 633, 636, 666 S.E.2d 921, 923 (Ct. App. 2008)("[B]efore a person may be held in contempt, the record must be clear. . . .").

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Grapevine has identified eleven "new, different, and objectionable provisions" in the recorded Master Deed. Pl's. Mem. at 5-6. Left unsaid, though, is that approximately 90% of the recorded Master Deed is identical in form and content to the 2018 draft that Grapevine would prefer. By any reasonably objective measure, Building 6 recorded a Master Deed "in substantially the same form" as Mr. Brockmann's presumptive 2018 draft. At the very least, the court's instructions left room for interpretation and, therefore, Building 6 cannot be held in contempt for proceeding in a way that it believed the Judgment permitted. Campione v. Best, 435 S.C. 457, 868 S.E.2d 378, 381 (Ct. App. 2021)("Civil contempt occurs when a party willfully disobeys a clear and definite order."). If this court had intended that Building 6 must record a master deed that was "identical in form and content" to the one previously approved by Grapevine, it could have written its Judgment to say just that. The fact that the court did not is telling, particularly when Grapevine asks this court to sanction Building 6 for "non-compliance."

Just as Building 6 was ordered to do, it recorded a Master Deed that was in substantially the same form as the one Grapevine had, apparently, reviewed and approved in 2018. Building 6 recorded that Master Deed within the time required by the court, and it otherwise did "whatever [was] required to put itself in a position to convey the property to Plaintiff." Even though Building 6 did not agree with this court's order, and even though it had already exercised its right to appeal, it nonetheless complied. "A party who attempts in good faith to comply with a court order should not be held in contempt." Campione v. Best, 435 S.C. 451, 458 & 459, 868 S.E.2d 378, 382 (Ct. App. 2021). Grapevine's motion for sanctions must also be denied.

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IV. Grapevine's Motion to stay its rent obligations during Appeal should be denied, because it would grant new and additional relief that was neither requested nor awarded by this court's Judgment and because Grapevine has not offered any legal authority to support its position.

Without any legal support, Grapevine argues that it should be permitted to forgo its obligation to pay rent during the entirety of this appeal. As support for that argument, Grapevine states "this is only fair." Pl. Mem. at 11. With due respect, Building 6 submits that it would be patently *unfair* for Grapevine to take advantage of Building 6's space, building, common areas and development to operate a for-profit business without providing any compensation. Any purported "overpayment" of rent can easily be accounted for an adjusted if, and when, Grapevine ultimately takes title to a condominium unit. Until then, Grapevine must be required to pay rent, just like every other tenant under a commercial lease. Grapevine's motion for abatement of rent should be denied.

CONCLUSION

This case has been hotly contested throughout, and it must ultimately be decided by the appellate courts. Building 6 had, and has, every right under the Rules of Court and the law of this state to seek a stay of the court's order for specific performance, even as it appeals that order. Grapevine's motions, which were only filed as a reaction to Building 6's motion for stay, seek to impose draconian punishments upon Building 6 for preserving its right to a stay pending appeal. Building 6's motion to stay should be granted, and this court should issue an order authorizing and directing the York County Clerk of Court to accept a deposit of the proffered deed. Grapevine's motions must be denied.

Respectfully Submitted,

July 29, 2022

s/W. Keith Martens

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ATTORNEYS FOR DEFENDANTS

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Drawn by and after recording return to:
Todd C. Brockmann, Esq.
17250 Lancaster Highway, Suite 608
Charlotte, North Carolina 28277

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDENTURE DEED

THIS INDENTURE, made the day hereinbelow stated, by and between RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company (hereinafter, "GRANTOR," which expression shall include its heirs, successors and assigns); and THE GRAPEVINE OF RIVERWALK, INC., a South Carolina corporation, whose address is _____ (hereinafter, "GRANTEE," which expression shall include its successors and assigns).

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained, and the sum of _____ DOLLARS, paid to GRANTOR by GRANTEE, the receipt of which is hereby acknowledged, GRANTOR has, subject to the Permitted Exceptions (defined below), granted, bargained, sold and released, and by these presents does, subject to the Permitted Exceptions, grant, bargain, sell and release unto GRANTEE and its successors and assigns forever, the condominium unit situate in York County, South Carolina, described as follows (the "Premises"):

> The Premises is conveyed subject to all of the provisions of the By-Laws of Riverwalk River District Building Owners Association, Inc. ("Bylaws"), the Master Deed (defined below), including, without limitation, the grant of powers-of-attorney set forth therein, and all other easements, rights-of-way, restrictions or other matters of record or apparent upon an inspection of the Premises, including without limitation any master declaration of Riverwalk as modified from time-to-time (collectively, the "Permitted Exceptions").
>
> Unit No. 1D in Riverwalk River District Building 6 Condominium Horizontal Property Regime, a Horizontal Property Regime (the "Condominium") established by Grantor pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted

by that certain Master Deed for Riverwalk River District Building 6 Condominium Horizontal Property Regime dated May 31, 2022, recorded May 31, 2022, in Book RB 20214, Page 425, Office of the Clerk of Court for York County, South Carolina (the "Master Deed").

TOGETHER WITH the undivided percentage interest in the Common Elements as provided in the Master Deed.

TOGETHER with all of the appurtenances thereto according to the Master Deed, and GRANTEE assumes and agrees to observe and perform its obligations under the Master Deed including, without limitation, the payment of assessments for the maintenance and operation of the Condominium.

BEING a portion of the same property conveyed to Riverwalk River District Building 6, LLC, by The Greens of Rock Hill LLC, by deed dated July 30, 2014, and recorded July 14, 2014, in Volume 14275, Page 4, in the Office of the Clerk of Court for York County, South Carolina.

Tax Map Number: Being a portion of 662-07-01-147

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE. GRANTEE, by the acceptance and execution of this Indenture Deed, acknowledges that this conveyance is subject to all of the terms, covenants, conditions and restrictions of the Master Deed, the Bylaws, including the provisions of all exhibits thereto, and the other Permitted Exceptions, and GRANTEE hereby accepts, ratifies and confirms all of such terms, covenants, conditions and restrictions. GRANTEE acknowledges and agrees that all of said terms, covenants, conditions and restrictions are reasonable, fair and equitable; and GRANTEE acknowledges and agrees that the Master Deed, the Bylaws, and all exhibits thereto, contain all of the warranties, representations, and the inducements concerning the purchase by GRANTEE of the Premises.

TOGETHER with, subject to the Permitted Exceptions, all and singular the rights, members, hereditaments, and appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular the Premises before mentioned unto GRANTEE and its successors and assigns.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend, subject to the Permitted Exceptions, all and singular the Premises unto GRANTEE and its successors and assigns, against the lawful claims of all persons whomsoever.

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IN WITNESS WHEREOF, GRANTOR has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and delivered

in the presence of:

Witness #1

Witness #2

RIVERWALK RIVER DISTRICT BUILDING 6, LLC,
a South Carolina limited liability company

By Its Manager:

THE GREENS OF ROCK HILL LLC,
a South Carolina limited liability company

By Its Manager:

ASSURED ADMINISTRATION, LLC, a South Carolina limited liability company

By: _____
Mark Mather, Manager

STATE OF South Carolina

COUNTY OF York

ACKNOWLEDGMENT

I, Deborah McMillan, a Notary Public of the County and State aforesaid, certify that MARK MATHER, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of ASSURED ADMINISTRATION, LLC, an Ohio limited liability company, the Manager of THE GREENS OF ROCK HILL LLC, a South Carolina limited liability company, the Manager of RIVERWALK RIVER DISTRICT BUILDING 6, LLC, a South Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this 28th day of May, 2022.

Notary Public

My commission expires: 6/23/2032

ROA 476

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IN WITNESS WHEREOF, GRANTEE has caused these presents to be signed, sealed, and delivered as of the date set forth below.

Signed, sealed and

delivered in the presence of:

Witness #1

Witness #2

THE GRAPEVINE OF RIVERWALK, INC.,
a South Carolina corporation

By:_____

Name:_____

Title:_____

STATE OF South Carolina

COUNTY OF York

ACKNOWLEDGMENT

I, Deborah McMillan, a Notary Public of the County and State aforesaid, certify that Mark Mathis, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he/she, being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this 28th day of July 2022.

Notary Public

My commission expires: 6/23/2032

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