

THE STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

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Case No. 2012-CP-07-1530  
Court of Appeals No.: 2013-000305

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Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince  
d/b/a The Law Office of Beth  
Ann Gilleland, LLC,

Appellant.

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RECORD ON APPEAL

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**pp.101-186**

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**SC Court of Appeals**

the local board of fire underwriters and other fire insurance rating organizations for the area in which the Shopping Center is situated, pertaining to the Premises or the use and occupancy thereof, including the making of such alternations, modifications and improvements as may be so required. In the event Tenant shall fail or neglect to comply with any of the aforesaid laws, rules, regulations, orders, directions, requirements or recommendations, Landlord or its agents may enter the Premises and take all such action and do all such work in or to the Premises as may be necessary in order to comply with such laws, rules, regulations, orders, directions, requirements or recommendations, and Tenant shall reimburse Landlord promptly upon demand for the expense incurred by Landlord in taking such action and performing such work. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, including but not limited to public liability, or which will prevent Landlord from procuring such policies in companies reasonably acceptable to Landlord; and if anything done, omitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon or about the Premises shall cause the cost of fire or other insurance on the Premises, in companies reasonably acceptable to Landlord, to be increased, Tenant will pay the amount of such increase promptly upon Landlord's demand.

#### ARTICLE XIV NUISANCES

14.1 Tenant shall not permit any objectionable noise, offensive odors and sounds to be emitted from the Premises, nor do or permit anything tending to create a nuisance.

#### ARTICLE XV REMODELING AND ALTERATIONS

15.1 Tenant accepts the Premises in its "AS IS" condition. Landlord is under no obligation to make any structural or other alterations, decorations, additions, improvements, renovations or other changes (collectively "Alterations") in or to the Premises.

15.2 Tenant shall not alter or in any way change the exterior of the Premises. Tenant may, at its expense, make such non-structural alterations and improvements to the interior of the Premises and install interior partitions as may be required for the conduct of its business; provided, however, that the written approval of Landlord is first obtained, the improvements and alterations are done in a workmanlike manner and the work is done in conformance with all building codes and regulations and is in no way harmful to the structure of the Premises; and provided further that, if Landlord so requests in writing at least thirty (30) days prior to the expiration of the Term of this Lease or any renewal or extension thereof, Tenant shall, at its expense and immediately prior to such expiration, restore the Premises, including without limitation walls, ceilings and floors, to their condition immediately prior to the making by Tenant of such improvements and alterations, and otherwise restore the Premises to its original condition as received, reasonable wear and tear excepted.

15.3 Any trade or lighting fixtures and/or equipment placed in or upon the Premises by Tenant shall remain Tenant' property, with the right to remove the same at any the; provided,

however, that Tenant is not in default under any provisions of this Lease and that Tenant shall repair any damage to the Premises occasioned by such removal. Tenant agrees to install all show cases and sales fixtures in the sales space of the Premises so that all fixtures and equipment visible to store customers are neat, clean and attractive in appearance.

15.4 Landlord shall, at its option, have the right to remodel or alter the exterior of the Property, including the store front of the Premises and Tenant grants Landlord permission to temporarily remove Tenant' signs and perform any other action which Landlord deems appropriate for such remodeling or alterations.

#### ARTICLE XVI MECHANICS LIENS

16.1 Tenant covenants not to suffer or permit any mechanics' or materialmen's liens (or a petition to establish such lien) or other similar liens to be filed against the Premises, the fee estate or any leasehold interest in this Shopping Center or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant. If any such lien shall at any time be filed, Tenant shall, within thirty (30) days after receiving notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Tenant shall also defend on Landlord's behalf and at Tenant' sole cost and expense any action, suit or proceeding for the enforcement of any such lien, and Tenant shall pay as additional rent any damages and satisfy and discharge any judgment entered thereon and indemnify and save Landlord harmless from any fees, costs, expenses, claims or damages resulting therefrom.

#### ARTICLE XVII ROOF AND WALLS

17.1 Landlord shall have the exclusive right to use all or any part of the roof and side walls of the Premises and the Building for any purpose, to erect additional stores or other structures over or adjacent to all or any part of the Premises or the Building, and to erect and maintain in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises or the Building; provided, however, that access to the interior of the Premises shall not be denied and that there shall be no encroachment upon the interior of the Premises.

#### ARTICLE XVIII INDEMNITY

18.1 Landlord, its employees and agents shall not be liable to Tenant, its employees, agents, invitees or any other person or entity claiming through Tenant for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on or arising out of any cause whatsoever (except as otherwise provided in this Section), including without limitation the following: (a) repair to any portion of the Premises, (b) interruption in the use of the Premises or any equipment therein; (c) any

accident or damage resulting from any use or operation (by Landlord, Tenant or any other person or entity) of elevators or heating, cooling, electrical, sewerage or plumbing equipment or apparatus; (d) termination of this Lease by reason of damage to the Premises, the Building or the Shopping Center; (e) fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; (f) actions of any other person or entity; (g) failure or inability of Landlord to furnish any utility or service specified in this Lease; and (h) leakage in any part of the Premises, the Building, or from water, rain, ice or snow that may leak into, or flow from, any part of the Premises, the Building, or from drains, pipes or plumbing fixtures in the Premises. Landlord shall not be liable in damages, nor shall this Lease be affected, for conditions arising or resulting from the construction of contiguous premises, which may affect the Building of which the Premises are a part. Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Premises. If any employee of Landlord receives any package or article delivered for Tenant, then such employee shall be acting as Tenant's agent for such purpose and not as Landlord's agent. For purposes of this Article XVIII, the term "Shopping Center" shall be deemed to include the Land. Notwithstanding the foregoing provisions of this Section, Landlord shall not be released from liability to Tenant for any physical injury or any natural person caused solely by Landlord's or its employees' or agents' gross negligence or willful misconduct except to the extent covered by Article XIX of this Lease

18.2 Tenant shall indemnify and hold Landlord, its employees and agents harmless from and against all costs, damages, claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, expenses and damages of any kind and nature (including without limitation attorneys' fees and the costs of investigation and settlement of any claims) asserted by or on behalf of any person, entity or governmental authority against Landlord, directly or indirectly, based on or arising out of (a) Tenant's use and occupancy of the Premises or the business conducted by Tenant therein, (b) any act or omission of Tenant or any employee, agent, or invitee of Tenant in or on the Premises, the Building, and (c) any accident, injury or damage whatsoever to any person, or the property of any person, occurring in or on the Premises, the Building unless the same was caused by the sole gross negligence or willful misconduct of Landlord, its employees or agents.

18.3 Tenant and all those claiming by, through or under Tenant shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto and all other portions of the Property solely at their own risk, and Tenant and all those claiming by, through or under Tenant hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

18.4 Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury, or damage to property or business or for business interruption that may be occasioned by or through the acts, omissions or negligence of any other persons or any other Tenants or occupants of any portion of the Shopping Center.

18.5 Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in any buildings or improvements in the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life or injury or damage to any person or to any property or business of Tenant, or those claiming by, through or under Tenant, caused by or resulting from the bursting, breaking, exploding, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises, the Building or caused by or resulting from acts of God, or the elements, or resulting from any defect or negligence by third parties in the occupancy, construction, operation or use of any buildings or improvements in the Property, including the Premises.

18.6 Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or in the Building of any defects therein or in any of its fixtures, machinery or equipment.

#### ARTICLE XIX INSURANCE

19.1 Landlord agrees that it will keep the Property insured against loss due to fire and other property risks included in standard all risk coverage insurance policies, and covering loss of income from such property risk, or in lieu thereof, insure the Property against loss or damage as a self insurer.

19.2 Throughout the Lease Term, Tenant shall insure the contents of the Premises, including, without limitation, alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by or on behalf of Tenant, and the other personal property of Tenant in the Premises, against loss due to fire and other property risks included in standard all risk coverage insurance policies, in an amount equal to the replacement cost thereof and covering loss of income from such property risk. All insurance carried by Tenant hereunder shall be primary and not contributing with any insurance carried by Landlord.

19.3 Landlord and Tenant agree that all insurance policies required to be carried pursuant to Section 19.1 hereof shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Tenant, and that all insurance policies required to be carried pursuant to Section 19.2 shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Landlord, its managing agent and any mortgagee of Landlord. Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, maintained by such party or required to be maintained by such party under this Lease, to the extent that such loss or damage is recovered under said insurance policies or would have been recovered if the insurance policies required hereunder had been maintained as required pursuant to this Lease. Written notice of the terms of said mutual waivers shall be given to each insurance carrier and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

19.4 Throughout the Lease Term, Tenant shall obtain and maintain commercial general liability insurance on any occurrence basis protecting against any liability occasioned by any occurrence on or about the Premises and containing contractual liability coverage and business interruption coverage. Such insurance shall be initially in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate and shall be for a minimum term of one (1) year.

#### ARTICLE XX TRASH

20.1 Tenant, at its sole cost and expense, shall keep the Premises clean, both inside and outside, and will remove all refuse from the Premises and from adjacent areas, all at its own expense. Tenant will not burn any trash or garbage of any kind in the Premises, the Building, nor permit refuse, rubbish or garbage to accumulate or fire hazard to exist about the Premises, the Building or the Shopping Center. No trash shall be stored outside Tenant' Premises.

#### ARTICLE XXI SIGNS

21.1 Tenant may place a sign which refers to its trade name on the exterior of the Premises where designated by Landlord provided Landlord gives its written approval prior to installation. This sign shall comply with Landlord's specifications for size, color, style and materials. No other signs shall be permitted to be exposed to the exterior of the Premises. Signs and window displays shall not revolve, move, blink or flash. Sign shall conform to all zoning regulations, and be properly maintained at Tenant' expense.

#### ARTICLE XXIII SUBORDINATION

23.1 This Lease is subject and subordinate at all times to all ground or underlying leases, all mortgages and/or deeds of trust, all covenants, restrictions, easements, and encumbrances which may now or hereafter affect such leases or the real property of which the Premises form a part, and all future renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee or trustee. In confirmation of such subordination, Tenant shall promptly execute and deliver without charge any certificate or document that Landlord may request in a form which recognizes this Lease and is otherwise reasonably acceptable to Tenant within ten (10) days following Landlord's written request. Tenant hereby constitutes and appoints Landlord as Tenant' attorney-in-fact to execute any such certificate or certificates for and on behalf of Tenant. Provided, however, that notwithstanding the foregoing, the party secured by any such deed of trust shall have the right to recognize this Lease, and in the event of any foreclosure sale under such deed of trust, this Lease shall continue in full force and effect at the option of the party secured by such deed of trust or the purchaser under any such foreclosure sale, in which event Tenant shall attorn to such party secured by such deed of trust or purchaser as Landlord under this Lease. Upon such attornment such party secured by such deed of trust or purchaser shall not be (a) bound by any payment of rent or additional rent more than one (1) month in advance, (b) bound by any amendment of this Lease made without the consent of the

holder of the deed of trust existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord, or (d) subject to any offsets or defenses which Tenant might have against any prior landlord; provided, however, that after succeeding to Landlord's interest, such party secured by such deed of trust or purchaser shall perform, in accordance with the terms of this Lease, all obligations of Landlord arising after the date of acquisition of title to the Shopping Center. Tenant covenants and agrees that it will, at the written request of the party secured by any such deed of trust, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of said deed of trust to the lien of this Lease.

23.2 At the option of any landlord under any ground or underlying lease to which this Lease is now or may hereafter become subject or subordinate, Tenant agrees that neither the cancellation nor termination of such ground or underlying lease shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenant hereunder, and Tenant covenants and agrees to attorn to such Landlord or to any successor to Landlord's interest in such ground or underlying lease subject to the attornment provisions set forth in Section 23.1 above. In that event, this Lease shall continue as a direct lease between Tenant herein and such landlord or its successor.

#### ARTICLE XXIV DESTRUCTION

24.1 If the Premises, the Building shall be partially damaged by fire or other casualty insured under Landlord's insurance policies, then, upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenant' trade fixtures, decorations, signs and comments) substantially in the condition immediately prior to such damage or destruction; such repair or restoration shall be limited, however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence: (a) the Premises are rendered wholly untenantable; (b) the Premises are damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance policies; (c) the Premises are damaged in whole or in part during the last two (2) years of the term or of any renewal term hereof; (d) the Building is or are damaged (whether or not the Premises are damaged) to an extent of fifty percent (50%) or more of the then replacement value thereof; or (e) any or all of said building are damaged (whether or not the Premises are damaged) to such an extent that the property cannot, in the sole judgment of Landlord, be operated as an integral unit, then, or in any of such events, Landlord may elect either to repair the damage as aforesaid or to cancel this Lease by written notice of cancellation given to Tenant within one hundred twenty (120) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in Landlord's notice was the date herein fixed for the expiration of the Term hereof, and Tenant shall vacate and surrender the Premises to Landlord. Upon the termination of this Lease as aforesaid, Tenant' liability for the rents reserved hereunder shall cease as of the effective date of termination of this Lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth. Unless this Lease is terminated by Landlord as aforesaid, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary, and Tenant shall repair, restore or replace Tenant' trade fixtures, decorations, signs and contents in the Premises in a manner and to

at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by Tenant on said property shall be held in trust by Tenant for the purposes of such repair, restoration or replacement. If by reason of such fire or other casualty the Premises are rendered wholly untenantable, the Fixed Minimum Rent shall be fully abated, or if only partially damaged, the Fixed Minimum Rent shall be abated proportionately as to that portion of the Premises rendered untenantable, in either event (unless Landlord shall elect to terminate this Lease as aforesaid) until fifteen (15) days after notice by Landlord to Tenant that the Premises have been substantially repaired and restored or until Tenant's business operations are restored in the entire Premises, whichever shall occur sooner. Tenant shall continue the operation of Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management and, except for such abatement of the Fixed Minimum Rent as hereinabove set forth, nothing herein contained shall be construed to abate Tenant's obligations for the payment of the Fixed Minimum Rent, Percentage Rent or any other additional rent and charges reserved hereunder, except that the computation of such Percentage Rent shall be based upon the revised Fixed Minimum Rent as the same may be abated. If such damage or other casualty shall be caused by the negligence of Tenant or of Tenant's subtenants, concessionaires, licensees, contractors or invitees or their respective agents or employees, there shall be no abatement of rent. Except for the abatement of the Fixed Minimum Rent hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Premises and/or the Common Areas and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute, rule, regulation, ordinance, order or other law which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenant is given the right to terminate a lease upon the occurrence of any such damage or destruction, are hereby expressly waived by Tenant.

#### ARTICLE XXV CONDEMNATION

25.1 Total: If the entire Premises or such part thereof as will render the remainder untenantable shall be acquired or taken by eminent domain for any public or quasi-public use or purpose or by private purchase in lieu thereof, then this Lease and the Term hereof shall automatically cease and terminate as of the date of title vesting in such public authority.

25.2 Partial: If any part of the Premises shall be taken by eminent domain and such partial taking shall render that portion not so taken unsuitable for the purposes for which the Premises were leased, then Landlord and Tenant shall each have the right to terminate this Lease by written notice given to the other within sixty (60) days after notice of such taking. If any part of the Premises shall be so taken and this Lease shall not be terminated as aforesaid, then this Lease and all of the terms and provisions hereof shall continue in full force and effect, except that the Fixed Minimum Rent shall be reduced in the same proportion that the floor area of the Premises taken (including basement and mezzanine space, if any) bears to the original floor area demised, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations (exclusive of Tenant's trade fixtures, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances

will permit, and to the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit; provided, however, that Landlord, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Landlord as damages for the taking of such part of the Premises and of the Building, and Tenant, at Tenant' expense, shall make all necessary repairs and alterations to Tenant' trade fixtures, decorations, signs and contents.

25.3 As used herein, the amount received by Landlord shall mean that portion of the award in condemnation received by Landlord from the condemning authority which is free and clear of all prior claims or collections by the holders of mortgages or deeds of trust or other liens and encumbrances.

25.4 If more than twenty percent (20%) of the floor area of the Building shall be taken as aforesaid, Landlord shall have the right, by written notice given to Tenant, to terminate this Lease, such termination to be effective as of the date of title vesting in such authority.

25.5 If this Lease is terminated as provided in this Article XXV, all rent shall be paid by Tenant up to the date that title vests in such public authority, and Landlord shall make an equitable refund of any rent paid by Tenant in advance and not yet earned.

25.6 Award: All damages or compensation awarded or paid for any such taking whether for the whole or a part of the Premises or any part of the Land, buildings and improvements constituting the Property, shall belong to and be the property of Landlord without any participation by Tenant, whether such damages or compensation shall be awarded or paid for diminution in value of the fee or any interest of Landlord in any ground or underlying lease covering the Property or in the leasehold estate created hereby, and Tenant hereby expressly waives and relinquishes all claims to such award or compensation or any part thereof and of the right to participate in any such condemnation proceedings against the owners of any interest in the Property. Tenant shall not make any claim against Landlord or the authority for any portion of such award, damages or compensation. Tenant may, if allowed by statute, seek such awards or damages for moving expenses, loss of profits and fixtures and other equipment installed by it which do not, under the terms of this Lease, become the property of Landlord at the termination hereof. Such awards or damages must be made by a condemnation court or other authority and must be separate and distinct from any award to Landlord for the Land and Shopping Center and shall not diminish or otherwise adversely affect Landlord's award. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section of the Lease.

#### ARTICLE XXVI BANKRUPTCY

26.1 The following shall be Events of Bankruptcy under this Lease: (a) Tenant, a guarantor or a general partner of Tenant ("General Partner") becoming insolvent, as that term is defined in Title 11 of the United States Code (the "Bankruptcy Code"), or under the insolvency laws of any state (the "Insolvency Laws"); (b) appointment of a receiver or custodian for any property of Tenant, a guarantor or a General Partner, or the institution of a foreclosure or

attachment action upon any property of Tenant, a guarantor or a General Partner; (c) filing of a voluntary petition by Tenant, a guarantor or a General Partner under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenant, a guarantor or a General Partner as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (i) is not dismissed within sixty (60) days of filing, or (ii) results in the issuance of an order for relief against the debtor; or (e) Tenant, a guarantor or a General Partner making or consenting to an assignment for the benefit of creditors or a composition of creditors.

#### ARTICLE XXVII DEFAULT

27.1 Each of the following shall constitute an Event of Default: (a) Tenant' failure to make any payment of the Fixed Minimum Rent, Percentage Rent, additional rent or any other sum within ten (10) days of written notice from Landlord of Tenant' failure to make such payment on such payment's due date; (b) Tenant' failure to take possession of the Premises within thirty (30) calendar days after delivery thereof to Tenant; (c) Tenant' failure to continuously operate its business in the Premises as required by the terms of this Lease; (d) Tenant' violation or failure to perform or observe any other covenant or condition of this Lease for a period of thirty (30) days following Landlord's written notice thereof to Tenant; (e) Tenant' abandonment or vacation of the Premises; (f) an Event of Bankruptcy as specified in Section 26.1 with respect to Tenant, any General Partner or any guarantor; or (g) Tenant' dissolution or liquidation.

27.2 If there shall be an Event of Default, including an Event of Default prior to the Lease Commencement Date, then Landlord shall have the right, at its sole option, to terminate this Lease. In addition, with or without terminating this Lease, Landlord may reenter the Premises, terminate Tenant' right of possession and take possession of the Premises. The provisions of this Section shall operate as a notice to quit, any other notice to quit or of Landlord's intention to reenter the Premises being hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Premises under and by virtue of the laws of the jurisdiction in which the Property is located, or by such other proceedings, including reentry and possession, as may be applicable. If Landlord elects to terminate this Lease and/or elects to terminate Tenants right of possession, then everything contained in this Lease to be done and performed by Landlord shall cease, without prejudice, however, to Landlord's right to recover from Tenant all rent and other sums due hereunder through the Lease Expiration Date as defined in Section 2.1. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant.

27.3 Landlord's rights and remedies set forth in this Lease are cumulative and in addition to Landlord's other rights and remedies at law or in equity, including those available as a result of any anticipated breach of this Lease. Landlord's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Landlord's delay or failure to exercise or enforce any of Landlord's rights or remedies or Tenant' obligations shall not constitute a waiver of any such rights, remedies or obligations.

27.4 No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent or other charges herein stipulated shall be deemed to be a payment in full of the stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. Landlord shall have the right to apply Tenant's payments to any balance or arrearage Tenant has outstanding. Landlord's reentry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

#### ARTICLE XXVIII WAIVER OF JURY TRIAL

28.1 LANDLORD, TENANT, AND ALL GUARANTORS AND GENERAL PARTNERS OF TENANT AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF SAID PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

28.2 Tenant consents to service of process and any pleading relating to any such action at the Premises; provided, however, that nothing herein shall be construed as requiring such service at the Premises. Landlord, Tenant, all guarantors and all General Partners of Tenant waive any objection to the venue of any action filed in any court situated in the jurisdiction in which the Shopping Center is located and waive any right under the doctrine of forum non conveniens or otherwise, to transfer any such action filed in any such court to any other court.

#### ARTICLE XXIX LEGAL FEES

29.1 If, as a result of any breach or default in the performance of any of the provisions of this Lease (whether or not such default is later cured), Landlord uses the services of an attorney in order to secure compliance with such provisions or recover damages, or to terminate this Lease or evict Tenant, or if Landlord is required to defend itself or the terms of this Lease and Landlord uses the services of an attorney, then Tenant shall reimburse Landlord, if prevailing, upon demand for any and all attorneys' fees and expenses so incurred by such prevailing party with such amounts being additional rent in the event Landlord is the prevailing party. In the event of default by Landlord, then Tenant shall have the same rights as described above for Landlord.

#### ARTICLE XXXI ACCESS TO PREMISES

31.1 Landlord, its employees and representatives shall have the right at any time during the Lease Term, upon reasonable notice except in an emergency, to enter into and upon any and

all parts of the Premises during business hours (or, in an emergency, at any hour) to (a) view, inspect, secure and clean the Premises, (b) make repairs to the Premises, the Building or the Property, or introduce, replace, repair, alter or make new or change existing connections from any fixture, pipes, wires, ducts, conduits, or other construction therein, (c) remove, without being held responsible therefore, placards, signs, lettering, window or door coverings and the like not expressly consented to or (d) show the Premises to prospective Tenant, purchasers or lenders; and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall such be deemed to be an actual or constructive eviction. Landlord shall have the right to use a portion of the Premises for all necessary pipes and wires heading to and from the portions of the Building not hereby leased, which will not unreasonably interfere with Tenant' use of the Premises. Landlord may, within one hundred and twenty (120) days preceding the expiration of the Lease Term, enter the Premises to place and maintain notices for letting, free from hindrance or control of Tenant. If Tenant shall vacate the Premises during the last month of the Lease Term, Landlord shall have the unrestricted right to enter the Premises after Tenant' moving to commence preparations for the succeeding Tenant or for any other purpose whatever, without affecting Tenant' obligation to pay rent for the full Lease Term.

#### ARTICLE XXXII EXCAVATION

32.1 If any excavation shall be made upon land adjacent to the Premises, Tenant shall permit the party authorized to cause such excavation to be made to enter upon the Premises for the purpose of doing such work as such party may deemed necessary to preserve the wall of the building of which the Premises form a part from damage and to support the same by proper foundations and shoring, and Tenant hereby waives all claims for inconvenience, disturbance, loss of business or other damages against Landlord therefore and without in any manner affecting Tenant' obligations under this Lease, nor shall the same constitute any ground for an abatement of any rent hereunder.

#### ARTICLE XXXIII QUIET ENJOYMENT

33.1 If Tenant pays all the rent herein reserved and performs and observes all of the other terms, covenants and conditions of this Lease on Tenant' part to be performed and observed hereunder, Tenant shall, during the Term, peaceably and quietly have, hold and enjoy the Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease.

#### ARTICLE XXXIV SURRENDER OF PREMISES

34.1 Upon the expiration or sooner termination of the Term of this Lease, Tenant agrees to quit and surrender the Premises, broom-clean, in good condition and repair, reasonable wear and tear and casualty excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except Personal Property and other

unattached movable trade fixtures put in at Tenant' expense, all of which shall thereupon become the property of Landlord without any claim by Tenant therefore but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenant shall remove all of Tenant' Personal Property and unattached movable trade fixtures and, at Landlord's option, Tenant shall also remove any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenant in, upon or to the interior or exterior of the Premises. If Tenant shall fail to remove any of Tenant' Personal Property and trade fixtures, such property shall, at the option of Landlord, be deemed abandoned and become the exclusive property of Landlord or Landlord shall have the right to remove and store said property, at the expense of Tenant, without further notice to or demand upon Tenant, and hold Tenant responsible for any and all charges and expenses incurred by Landlord therefore. If the Premises is not surrendered as and when aforesaid, Tenant shall indemnify Landlord against all loss or liability resulting from the delay by Tenant in so surrendering same, including without limitation any claims made by any succeeding occupant founded on such delay. Tenant' obligations under this Section shall survive the expiration or sooner termination of the Term of this Lease.

#### ARTICLE XXXV HOLDING OVER

35.1 This Lease shall terminate on the Lease Expiration Date pursuant to the terms of this Lease without the necessity of notice from either Landlord or Tenant. Any holding over by Tenant after the Lease Expiration Date without Landlord's prior written consent as provided in Section 35.2 shall be an unlawful detainer and Tenant shall be subject to immediate eviction. During such hold over, all the terms and conditions set forth in this Lease shall apply, except that Tenant shall pay to Landlord Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term ("Hold Over Rent"). In addition to paying to Landlord the Hold Over Rent, if Tenant fails to surrender and vacate the Premises on the Lease Expiration Date, Tenant shall indemnify and hold Landlord harmless from and against any and all loss, liability, damages and expenses (including without limitation, attorneys' fees, the costs of investigation and settlement of any claims) sustained or incurred by Landlord on account of or resulting from such failure, including, without limitation, claims made by any succeeding Tenant of all or any part of the Premises or the loss by Landlord of the rent from any succeeding Tenant of all or any part of the Premises.

35.2 If, within the written consent of Landlord, Tenant or any party claiming by, through or under Tenant remains in possession of the Premises, or any part thereof, after the Lease Expiration Date, Landlord shall treat such holding over by Tenant as the creation of a month-to-month tenancy, subject to all the terms, covenants and conditions set forth in this Lease insofar as the same are applicable to a month-to-month tenancy, except that Tenant shall pay a Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term. Tenant shall give to Landlord at least thirty (30) days' prior written notice from the first day of the month of any intention to quit said Premises, and Tenant shall be entitled to the same thirty (30) days' prior written notice to quit said Premises, except in the event of non-payment of rent in advance or of any breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit.

the usual thirty (30) days' notice to quit being hereby expressly waived; provided, however, that in the event Tenant shall hold over after the expiration of the Lease Term, and if Landlord shall desire to regain possession of the Premises promptly at the expiration of the Lease Term, then at any time prior to Landlord's acceptance of rent from Tenant as a monthly Tenant hereunder, Landlord, at its option, may forthwith reenter and take possession of the Premises without process, or by legal process in force in the jurisdiction in which the Property is located.

#### ARTICLE XXXVI NO WAIVER

36.1 The failure of Landlord to insist upon the strict performance of any provisions of this Lease or the failure of Landlord to exercise any rights, options or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Landlord of any act by Tenant requiring Landlord's consent or approval shall not be construed to waive or render the requirement of Landlord's consent or approval of any subsequent similar act by Tenant. The receipt by Landlord of rent with knowledge of a breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord. No waiver of Landlord in favor of any other Tenant or occupant of the Property shall constitute a waiver in favor of Tenant herein.

#### ARTICLE XL LIMITATION OF LIABILITY OF LANDLORD

40.1 Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to Landlord's equity in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be kept, observed and performed by Landlord, subject, however, to the prior rights of any ground or underlying landlords or any mortgagee of all or any part of the Property, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

#### ARTICLE XLI NOTICES

41.1 All notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefore (such as Federal Express) or by certified mail. Notices to Landlord shall be sent to Bluffton Towne Center, LLC, 2217 Princess Anne Street, Suite 325, Fredericksburg, Virginia 22401. Notices to Tenant shall be sent to: PO Box 2145, West Columbia, SC 29171.

## ARTICLE XLV MISCELLANEOUS

45.1 No Representations. Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises or the Shopping Center except as herein expressly set forth, and no rights, privileges, easements or licenses are being acquired by Tenant except as herein expressly set forth.

45.2 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of landlord and Tenant.

45.3 Authority. Landlord and Tenant covenant each for itself, that each has full right, power and authority to enter into this Lease upon the terms and conditions herein set forth.

45.4 Force Majeure. If Landlord is in any way delayed or prevented from performing any of its obligations under this Lease due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Landlord's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention.

45.5 Additional Rent. All other costs and expenses which Tenant assumes or agrees to pay to Landlord pursuant to this Lease shall be deemed to be "additional rent" and, in the event of nonpayment thereof, Landlord shall have all the rights and remedies provided for in the case of nonpayment of rent, including assessment of interest and late fees. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectable as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

45.6 No Recording. Both Landlord and Tenant agree that this Lease shall not be recorded in any office legally established for the purpose of giving public notice of real estate records and any attempt to do so may be treated by Landlord as an Event of Default under this Lease.

45.7 Governing Law. This Lease is governed under the laws of the jurisdiction in which the Property is located.

45.8 Captions. Section headings are used for convenience and shall not be considered when construing this Lease.

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

45.10 Tenant Liability. If two or more individuals, corporations, partnerships or other persons (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other persons to pay the rent and perform all other obligations hereunder shall be deemed to be joint and several.

45.11 Time is of the Essence. Time is of the essence with respect to each and every provision of this Lease.

45.12 Entire Agreement. This Lease contains the entire agreement of the parties in regard to the Premises and this Lease and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease shall be of any force or effect. This Lease may not be amended, modified or changed in whole or in part in any manner other than by an agreement in writing duly signed by both parties hereto.

45.13 Benefit and Burden. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective heirs, executors, administrators, successors, and assigns. Landlord may freely assign its interest hereunder.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

45.16 Survival. Tenant's liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

45.17 Submission of Lease. The submission of this Lease for examination does not constitute a reservation of or an option for lease, and the same shall not be effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

45.18 Designation of Agent. Landlord's registered agent for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon Landlord and the registered agent's office address is William M. Smoot, Esq., Smoot, Pitts Elliot & Biel, 15C Lafayette Place, Hilton Head, SC 23439.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed under seal by a duly authorized officer, intending to be legally bound hereby, as of the day and year first above written. The covenants of Tenant are joint and several obligations of each party signing as Tenant, and, when the parties signing as Tenant are partners, shall be the obligations of the firm and of the individual members thereof.

**TENANT:**

Joe Wilson for Congress

By: \_\_\_\_\_

**LANDLORD:**

Bluffton Towne Center, LLC

By: \_\_\_\_\_



PLAINTIFF'S  
EXHIBIT

11 - A

## LEASING COMMISSION INVOICE

July 27, 2010

**Landlord:** Bluffton Towne Center, LLC  
2217 Princess Anne St., Suite 325  
Fredericksburg, VA 22401

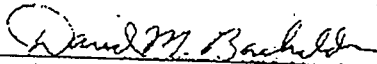
**Location:** Bluffton Towne Center, Unit 104  
27 Mellichamp Drive  
Bluffton, SC 29910

**Tenant:** Joe Wilson for Congress

**Terms:** 4 month lease @ \$4,800.00 (7/15/10 - 11/15/10)  
8% commission

**Total Due:** \$384.00

If Tenant decides to purchase unit, Broker will be paid a commission of 6% of the purchase price less the amount of unearned leasing commission that has been paid.

  
\_\_\_\_\_  
David M. Bachelder, President, CCIM

\_\_\_\_\_  
Paul Watson

Please make check payable and mail to: Charter I Commercial, Inc.  
1544 Fording Island Road  
Hilton Head Island, SC 29926

1544 Fording Island Road • Hilton Head Island, SC 29926  
(843) 837-4460 • FAX (843) 837-4461 • 888-837-4460  
[www.charter1commercial.com](http://www.charter1commercial.com)

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Record on Appeal  
2013-000305

Plaintiff  
000078

12

5-31-11

Date: Tuesday, May 31, 2011 4:26 PM
From: pcwatson@cox.net
To: downtowndell23@yahoo.com
Subject: Re: Zumba

I have not heard back from the zumba people, so I am assuming they are not interested. I just spoke to Lynn Jackson and she said she got my name and number from Leah. Thanks. It sounds like she might complement you all better than Zumba and she only needs about 1200-1300 sq. ft. As you probably know, she wants to move/open a gift shop.

Attached is the unit 104 floorplan. While I was there last week, I measured the back two offices. The back corner office is 13.5 X 13.5, or about 182 sq. ft. Both offices combined would be about 351 sq. ft. Since you all only need about 200 sq. ft., I assume the one corner office would work. If so, I am willing to carve out that office and let you all connect with the deli. I think the rent should be \$175 per mo. This is about \$11.50 per sq. ft., but includes CAM, taxes and utilities, which would total well over \$2 per sq. ft.

If we are to do this, I want you all to sign a lease extension of at least one year. Also, you all take it as is and do the work to connect the two spaces. I will have someone finish out the wall on the unit 104 side after you have closed it off.

----- Original message ----- wrote:

Hey Paul...any word from the zumba guy. He want to move forward as quickly as possible with that space so we can get it set up this summer. In time for our wedding season beginning in August. Thanks for everything

Ryan
Sent on the Sprint® Now Network from my BlackBerry®
Paul Watson, CBA, CMAA, CCIM, CBI

HFI Companies / Capital Business Appraisers
2217 Princess Anne Street
Suite 325
Fredericksburg, VA 22401
Tel. 540-373-9500
MAX 540-373-9527
Cell 540-287-4064

351 SF
@ \$11.50
= \$335/mo
(\$4,036.50/yr)

unit104\_deli.pdf

Begin July 1
Current - \$1975 / mo
New (\$104) 335
-----
\$2,310 / mo

## LEASE

THIS AGREEMENT OF LEASE is made this 29 day of July, 2011, by and between Bluffton Towne Center, LLC (hereinafter called "Landlord") and Ryan McCarthy and Leah McCarthy (hereinafter called "Tenants").

## ARTICLE I PREMISES

Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Tenants, its successors and assigns, to be paid, kept, observed and performed, by these presents does hereby lease, rent, let and demise unto Tenants, and Tenants does hereby take and hire, upon and subject to the terms, provisions, covenants, conditions and limitations hereof, the retail premises, known as the Bluffton Towne Center, Unit 105 and approximately two office spaces located in unit 104 (shown on the attached Exhibit A), all located at 27 Dr. Mellichamp Drive, Bluffton, SC 29910.

## ARTICLE II TERM

2.1 The Lease Term shall be for one (1) year ("Term"). The Lease Term shall commence on August 1, 2011 ("Lease Commencement Date"). If the Lease Commencement Date is not the first day of a month, then the Lease Term shall be extended to include the partial month in which the Lease Commencement Date occurs. The date on which the Lease Term expires shall be the Lease Expiration Date.

2.2 If Landlord is unable to give possession of the Premises on or about the Anticipated Occupancy Date by reason of the holding over or retention of possession of any Tenants or occupant, or if repairs, improvements or decorations to the Premises, or to the building of which the Premises form a part ("Building") are not completed, or for any other reason, Landlord shall not be subject to any liability for the failure to give possession on the Anticipated Occupancy Date. Under such circumstances the rent reserved and covenanted to be paid herein shall not commence until the possession of the Premises is given or the Premises are available for occupancy by Tenants, and no such failure to give possession on the Anticipated Occupancy Date shall in any other respect affect the validity of this Lease or the obligations of Tenants hereunder, nor shall the same be construed in any way to extend the Term of this Lease. If permission is given to Tenants to possess the Premises or to occupy premises other than the Premises prior to the Anticipated Occupancy Date, Tenants covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease.

## ARTICLE III RENT

3.1 Tenants covenant and agree to pay to Bluffton Towne Center, LLC at 2217 Princess Anne Street, Suite 325, Fredericksburg, VA 22401 without notice or demand and

without abatement, deduction or setoff, in funds drawn on a member bank of the Federal Reserve System, Fifth District, the following:

3.2 Minimum Rent: Tenants shall pay in advance, on the first day of each calendar month, annual minimum rent of Twenty four thousand four hundred twenty and 00/100 Dollars (\$24,420.00) (hereinafter called the "Fixed Minimum Rent") for the first Lease Year in equal monthly installments in the amount of Two thousand thirty five and 00/100 Dollars (\$2,035.00). Such Fixed Minimum Rent (and the monthly installments thereof) shall be adjusted annually pursuant to Section 3.3 hereof. The first payment shall be made August 15, 2011, and the second and subsequent monthly payments shall be made on the fifteenth day of each and every calendar month. The Rent Commencement Date shall be August 1, 2011.

3.3 Additional Rent. Tenants shall pay as additional rent, \$100.00 per month for common area maintenance, \$75 per month, as its pro-rata share of real estate taxes and \$100 per month for trash, with the monthly rent.

3.4 The term "Lease Year" shall mean each period of twelve (12) consecutive calendar months commencing on the Lease Commencement Date, except that if the Lease Commencement Date is not the first day of a month, then the first Lease Year shall commence on the Lease Commencement Date and shall continue for the balance of the month in which the Lease Commencement Date occurs, and for a period of twelve (12) calendar months thereafter and subsequent Lease Years shall commence on the day following the last day of the preceding Lease Year. The term "Partial Lease Year" shall mean any period of less than twelve (12) calendar months during the last Lease Year of the Lease if the Lease Expiration Date occurs prior to the end of a full Lease Year.

#### ARTICLE IV SECURITY DEPOSIT

4.1 Tenants' security deposit was waived at occupancy.

#### ARTICLE V USE OF THE PREMISES AND OPERATION OF BUSINESS

5.1 Permitted Use: Tenants will use and occupy the Premises solely for the following express use(s) and purpose(s) and for no other use or purpose: restaurant, deli and catering business.

5.2 Trade Name: Tenants will conduct business in the Premises in the trade name of Downtown Deli and Downtown Catering.

#### ARTICLE VI ENVIRONMENTAL COVENANTS

6.1 (a) Tenants, its employees, agents, contractors and invitees shall, at Tenants' own expense, comply with all Environmental Laws, as herein defined, in connection with its use

and occupancy of the Premises or the Shopping Center and shall obtain, maintain and comply with all necessary environmental permits, approvals, registrations and licenses.

(b) Tenants, its employees, agents, contractors and invitees shall not use, generate, release, manufacture, treat, refine, produce, process, store, dump or dispose of any Hazardous Substance, as herein defined, on, under, or about the Premises, the Building or the Shopping Center, or transport to or from the Premises, the Building or the Shopping Center any Hazardous Substance except normal office products, which products shall be used, stored and disposed of in accordance with all Environmental Laws.

(c) Tenants shall, at Tenants' own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities or Authority") under the Environmental Laws. Tenants shall provide Landlord with copies of any environmental audit prepared by or for Tenants with respect to the Premises and any report(s) or filing(s) made by Tenants with any Authority.

#### ARTICLE VII LATE CHARGE

7.1 Tenants agrees to pay to Landlord, as additional rent, a late fee equal to five percent (5%) of any amount due for monthly Fixed Minimum Rent or other payments due hereunder if said payments have not been received by Landlord within five (5) days of the due date

#### ARTICLE IX ASSIGNMENT & SUBLETTING

8.1 Tenants shall not assign this Lease or any of Tenants' rights or obligations hereunder, or sublet or permit anyone to occupy the Premises or any part hereof, without the prior written consent of Landlord which will not be unreasonably withheld. No assignment or transfer of this Lease may be effected by operation of law or otherwise without Landlord's prior written consent. The consent of Landlord to any assignment or subletting shall not be construed as a waiver or release of Tenants from liability for the performance of all covenants and obligations to be performed by Tenants under this Lease. The transfer, whether a single transfer or multiple transfers, of fifty percent (50%) or more of the ownership interests of Tenants within a twelve (12) month period shall be deemed equivalent to an assignment or subletting requiring consent of Landlord. Any attempted assignment or subletting made without Landlord's consent shall, at the option of Landlord, be deemed an Event of Default under this Lease. Landlord's acceptance or collection of rent from any assignee, sub-Tenants or occupant shall not be construed (a) as a consent to or acceptance of such assignee, sub-Tenants or occupant as a Tenants, (b) as a waiver by Landlord of any provision hereof, (c) as a waiver or release of Tenants from liability for the performance of any obligation to be performed under this Lease by Tenants, or (d) as relieving Tenants or any assignee, sub-Tenants or occupant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment, subletting or occupancy. Tenants hereby assigns to Landlord any rent due from any assignee, sub-Tenants or occupant of Tenants as security for Tenants' performance of its obligations pursuant to this Lease; provided, however,

that Tenants shall have the right to collect such rent as long as Tenants is not in default under the terms of this Lease. Tenants authorizes each such assignee, sub-Tenants or occupant to pay such rent directly to Landlord if such assignee, sub-Tenants or occupant receives written notice from Landlord specifying that such rent shall be paid directly to Landlord. In the event of default by any assignee of Tenants or any successor of Tenants in the performance of any of the terms hereof, Landlord may proceed directly against Tenants without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenants, without notifying Tenants, or any successor of Tenants, and without obtaining its or their consent thereto and such action shall not relieve Tenants of liability under this Lease. Tenants shall not mortgage this Lease without Landlord's consent, which consent may be granted or withheld in Landlord's reasonable discretion. All restrictions and obligations imposed pursuant to this Lease on Tenants shall be deemed to extend to any sub-Tenants, assignee or occupant of Tenants, and Tenants shall cause such persons to comply with all such restrictions and obligations.

#### ARTICLE X: Repairs

10.1 Landlord shall keep and maintain the roof and other exterior portions of the Premises (exclusive of doors, windows, glass, showcases and storefronts) in good repair, provided that Tenants shall give Landlord written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by Tenants, its agents, contractors, invitees or employees, in which event Tenants shall be responsible therefore and shall promptly repair such damage. The provisions of this Section 10.1 shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain in which event the obligations of Landlord shall be as set forth in Articles XXV and XXVI. Except as provided in this Section 10.1, Landlord shall have no obligation or liability for repair or maintenance of the Premises, or any part thereof, nor shall Landlord be obligated to make any improvements of any kind upon the Premises, or to make any repairs, replacements or improvements to any equipment, facilities or fixtures contained therein, except Landlord shall be responsible for replacing any defective heating and air conditioning equipment.

10.2 Tenants, at Tenants' sole cost and expense, shall keep the interior of the Premises, including but not limited to all doors, windows and glass, and other mechanical installations and equipment used by or in connection with the Premises in clean, safe and sanitary condition and in good order and repair, and promptly replace any plate glass which may be broken or damaged with glass of like kind and quality, and will suffer no waste or injury thereto, and quit and surrender the Premises at the expiration of the Term in as good condition as when received, except for ordinary wear and tear. Without limitation of the generality of the foregoing, Tenants, at Tenants' sole cost and expense, shall promptly make all repairs and replacements to (a) Tenants' signs, (b) all glass, window panes and doors. Tenants shall be responsible, at Tenants' sole cost and expense, for providing all janitorial, cleaning, pest and termite control services for the Premises. All such services shall be provided in accordance with standards customarily maintained for similar shopping centers and Tenants shall maintain, at Tenants' sole cost and expense, service contracts therefore. Tenants will not overload the electrical wiring and will not install any additional electrical wiring or plumbing unless it has first obtained Landlord's written

consent thereto, and if such consent is given, Tenants will install such wiring or plumbing at its own cost and expense. Tenants will repair promptly, at its own expense, any damage to the Premises or the Building caused by bringing into the Premises or the Building any property for Tenants' use or by the installation, use or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused by Landlord's, its agents', employees' or contractors' gross negligence or willful misconduct.

10.3 Intentionally Deleted.

10.4 If permitted by law, Landlord shall have the right at any time and from time to time during the Lease Term to either continue to contract for service from the current utility service provider or contract for service from a different company or companies providing utility service (each such company shall hereinafter be referred to as an "Alternate Service Provider"). Tenants shall cooperate with Landlord, the utility service provider, and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, utility service provider, and any Alternate Service Provider reasonable access to the Property's pipes, electric lines, feeders, risers, wiring, and any other machinery within the Premises. Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenants may sustain or incur by reason of any change, failure, interference, disruption, or defect in the supply or character of the utility service furnished to the Premises, or if the quantity or character of the service supplied by the utility service provider or any Alternate Service Provider is no longer available or suitable for Tenants' requirements, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenants to any abatement or diminution of rent, or relieve Tenants from any of its obligations under the Lease.

ARTICLE XI UTILITIES

11.1 Tenants, at its own expense, shall arrange with the appropriate utility companies for the provision of any and all utilities. Tenants shall pay promptly when due the charges for all utility services rendered or furnished on the Premises, including, without limitation, heat, water, sewer, telephone, gas and electricity (whether by meter or sub-meter). Landlord will provide and maintain the necessary mains and electrical conduits to bring water, gas and electricity to the perimeter of the Premises. Under no circumstances shall Landlord be liable to Tenants in damages or otherwise (a) if any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (b) for any interruption in service of electricity, water, sewer, gas, heat, ventilation, telephone or air conditioning caused by fire, accidents, strikes, breakdowns, necessary maintenance, alterations, repairs, acts of God or any other causes; and the foregoing shall not constitute a termination of this Lease or an actual or constructive eviction and shall not entitle Tenants to terminate this Lease or to an abatement of rent payable hereunder. Notwithstanding the foregoing, the utilities for the space in unit 104 shall be furnished by the Landlord and included in the rent.

ARTICLE XII TENANTS' TAXES

12.1 Tenants shall pay before delinquency any business, rent or other taxes that are now or hereafter levied, assessed or imposed upon Tenants' use or occupancy of the Premises.

the conduct of Tenants' business at the Premises, or Tenants' equipment, fixtures, furnishings, inventory or personal property. If any such taxes are enacted, changed or altered so that any of such taxes are levied against Landlord, or the mode of collection of such taxes is changed so that Landlord is responsible for the collection or payment of such taxes, then Tenants shall pay as additional rent due hereunder the amount of any and all such taxes.

#### ARTICLE XIII COMPLIANCE WITH LAWS

13.1 Tenants shall comply with all present and future laws, rules, regulations, orders, directions and requirements of all governmental departments, bodies, bureaus, agencies and officers, and with all rules, directions, requirements and recommendations of fire departments, the local board of fire underwriters and other fire insurance rating organizations for the area in which the Shopping Center is situated, pertaining to the Premises or the use and occupancy thereof, including the making of such alterations, modifications and improvements as may be so required. In the event Tenants shall fail or neglect to comply with any of the aforesaid laws, rules, regulations, orders, directions, requirements or recommendations, Landlord or its agents may enter the Premises and take all such action and do all such work in or to the Premises as may be necessary in order to comply with such laws, rules, regulations, orders, directions, requirements or recommendations, and Tenants shall reimburse Landlord promptly upon demand for the expense incurred by Landlord in taking such action and performing such work. Tenants shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, including but not limited to public liability, or which will prevent Landlord from procuring such policies in companies reasonably acceptable to Landlord; and if anything done, omitted to be done or suffered to be done by Tenants, or kept or suffered by Tenants to be kept in, upon or about the Premises shall cause the cost of fire or other insurance on the Premises, in companies reasonably acceptable to Landlord, to be increased, Tenants will pay the amount of such increase promptly upon Landlord's demand.

#### ARTICLE XIV NUISANCES

14.1 Tenants shall not permit any objectionable noise, offensive odors and sounds to be emitted from the Premises, nor do or permit anything tending to create a nuisance.

#### ARTICLE XV REMODELING AND ALTERATIONS

15.1 Tenants accept the Premises in its "AS IS" condition. Tenants will make the necessary alterations in order to connect units 104 and 105. The Landlord is under no obligation to make any structural or other alterations, decorations, additions, improvements, renovations or other changes (collectively "Alterations") in or to the Premises.

15.2 Tenants shall not alter or in any way change the exterior of the Premises. Tenants may, at its expense, make such non-structural alterations and improvements to the interior of the

Premises and install interior partitions as may be required for the conduct of its business; provided, however, that the written approval of Landlord is first obtained, the improvements and alterations are done in a workmanlike manner and the work is done in conformance with all building codes and regulations and is in no way harmful to the structure of the Premises; and provided further that, if Landlord so requests in writing at least thirty (30) days prior to the expiration of the Term of this Lease or any renewal or extension thereof, Tenants shall, at its expense and immediately prior to such expiration, restore the Premises, including without limitation walls, ceilings and floors, to their condition immediately prior to the making by Tenants of such improvements and alterations, and otherwise restore the Premises to its original condition as received, reasonable wear and tear excepted.

15.3 Any trade or lighting fixtures and/or equipment placed in or upon the Premises by Tenants shall remain Tenants' property, with the right to remove the same at any time; provided, however, that Tenants is not in default under any provisions of this Lease and that Tenants shall repair any damage to the Premises occasioned by such removal. Tenants agrees to install all show cases and sales fixtures in the sales space of the Premises so that all fixtures and equipment visible to store customers are neat, clean and attractive in appearance.

15.4 Landlord shall, at its option, have the right to remodel or alter the exterior of the Property, including the store front of the Premises and Tenants grants Landlord permission to temporarily remove Tenants' signs and perform any other action which Landlord deems appropriate for such remodeling or alterations; with notice to Tenant.

#### ARTICLE XVI MECHANICS LIENS

16.1 Tenants covenants not to suffer or permit any mechanics' or materialmen's liens (or a petition to establish such lien) or other similar liens to be filed against the Premises, the fee estate or any leasehold interest in this Shopping Center or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenants or anyone holding the Premises or any part thereof through or under Tenants. If any such lien shall at any time be filed, Tenants shall, within thirty (30) days after receiving notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Tenants shall also defend on Landlord's behalf and at Tenants' sole cost and expense any action, suit or proceeding for the enforcement of any such lien, and Tenants shall pay as additional rent any damages and satisfy and discharge any judgment entered thereon and indemnify and save Landlord harmless from any fees, costs, expenses, claims or damages resulting therefrom.

#### ARTICLE XVII ROOF AND WALLS

17.1 Landlord shall have the exclusive right to use all or any part of the roof and side walls of the Premises and the Building for any purpose, to erect additional stores or other structures over or adjacent to all or any part of the Premises or the Building, and to erect and maintain in connection with the construction thereof temporary scaffolds and other aids to

construction on the exterior of the Premises or the Building; provided, however, that access to the interior of the Premises shall not be denied and that there shall be no encroachment upon the interior of the Premises.

#### ARTICLE XVIII INDEMNITY

18.1 Landlord, its employees and agents shall not be liable to Tenants, its employees, agents, invitees or any other person or entity claiming through Tenants for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on or arising out of any cause whatsoever (except as otherwise provided in this Section), including without limitation the following: (a) repair to any portion of the Premises, (b) interruption in the use of the Premises or any equipment therein; (c) any accident or damage resulting from any use or operation (by Landlord, Tenants or any other person or entity) of elevators or heating, cooling, electrical, sewerage or plumbing equipment or apparatus; (d) termination of this Lease by reason of damage to the Premises, the Building or the Shopping Center; (e) fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; (f) actions of any other person or entity; (g) failure or inability of Landlord to furnish any utility or service specified in this Lease; and (h) leakage in any part of the Premises, the Building, or from water, rain, ice or snow that may leak into, or flow from, any part of the Premises, the Building, or from drains, pipes or plumbing fixtures in the Premises. Landlord shall not be liable in damages, nor shall this Lease be affected, for conditions arising or resulting from the construction of contiguous premises, which may affect the Building of which the Premises are a part. Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Premises. If any employee of Landlord receives any package or article delivered for Tenants, then such employee shall be acting as Tenants' agent for such purpose and not as Landlord's agent. For purposes of this Article XVIII, the term "Shopping Center" shall be deemed to include the Land. Notwithstanding the foregoing provisions of this Section, Landlord shall not be released from liability to Tenants for any physical injury or any natural person caused solely by Landlord's or its employees' or agents' gross negligence or willful misconduct except to the extent covered by Article XIX of this Lease.

18.2 Tenants shall indemnify and hold Landlord, its employees and agents harmless from and against all costs, damages, claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, expenses and damages of any kind and nature (including without limitation attorneys' fees and the costs of investigation and settlement of any claims) asserted by or on behalf of any person, entity or governmental authority against Landlord, directly or indirectly, based on or arising out of (a) Tenants' use and occupancy of the Premises or the business conducted by Tenants therein, (b) any act or omission of Tenants or any employee, agent, or invitee of Tenants in or on the Premises, the Building, and (c) any accident, injury or damage whatsoever to any person, or the property of any person, occurring in or on the Premises, the Building unless the same was caused by the sole gross negligence or willful misconduct of Landlord, its employees or agents.

18.3 Tenants and all those claiming by, through or under Tenants shall store their property in and shall occupy and use the Premises and any improvements therein and

appurtenances thereto and all other portions of the Property solely at their own risk, and Tenants and all those claiming by, through or under Tenants hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

18.4 Landlord shall not be responsible or liable at any time to Tenants, or to those claiming by, through or under Tenants, for any loss of life, bodily or personal injury, or damage to property or business or for business interruption that may be occasioned by or through the acts, omissions or negligence of any other persons or any other Tenants or occupants of any portion of the Shopping Center.

18.5 Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in any buildings or improvements in the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life or injury or damage to any person or to any property or business of Tenants, or those claiming by, through or under Tenants, caused by or resulting from the bursting, breaking, exploding, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises, the Building or caused by or resulting from acts of God or the elements, or resulting from any defect or negligence by third parties in the occupancy, construction, operation or use of any buildings or improvements in the Property, including the Premises.

18.6 Tenants shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or in the Building of any defects therein or in any of its fixtures, machinery or equipment.

#### ARTICLE XIX INSURANCE

19.1 Landlord agrees that it will keep the Property insured against loss due to fire and other property risks included in standard all risk coverage insurance policies, and covering loss of income from such property risk, or in lieu thereof, insure the Property against loss or damage as a self insurer.

19.2 Throughout the Lease Term, Tenants shall insure the contents of the Premises, including, without limitation, alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by or on behalf of Tenants, and the other personal property of Tenants in the Premises, against loss due to fire and other property risks included in standard all risk coverage insurance policies, in an amount equal to the replacement cost thereof and covering loss of income from such property risk. All insurance carried by Tenants hereunder shall be primary and not contributing with any insurance carried by Landlord.

19.3 Landlord and Tenants agree that all insurance policies required to be carried pursuant to Section 19.1 hereof shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Tenants, and that all

insurance policies required to be carried pursuant to Section 19.2 shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Landlord, its managing agent and any mortgagee of Landlord. Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, maintained by such party or required to be maintained by such party under this Lease, to the extent that such loss or damage is recovered under said insurance policies or would have been recovered if the insurance policies required hereunder had been maintained as required pursuant to this Lease. Written notice of the terms of said mutual waivers shall be given to each insurance carrier and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

19.4 Throughout the Lease Term, Tenants shall obtain and maintain commercial general liability insurance on any occurrence basis protecting against any liability occasioned by any occurrence on or about the Premises and containing contractual liability coverage and business interruption coverage. Such insurance shall be initially in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate and shall be for a minimum term of one (1) year.

#### ARTICLE XX TRASH

20.1 Tenants, at its sole cost and expense, shall keep the Premises clean, both inside and outside, and will remove all refuse from the Premises and from adjacent areas, all at its own expense. Tenants will not burn any trash or garbage of any kind in the Premises, the Building, nor permit refuse, rubbish or garbage to accumulate or fire hazard to exist about the Premises, the Building or the Shopping Center. No trash shall be stored outside Tenants' Premises.

#### ARTICLE XXI SIGNS

21.1 Tenants may place a sign which refers to its trade name on the exterior of the Premises where designated by Landlord provided Landlord gives its written approval prior to installation. This sign shall comply with Landlord's specifications for size, color, style and materials. No other signs shall be permitted to be exposed to the exterior of the Premises. Signs and window displays shall not revolve, move, blink or flash. Sign shall conform to all zoning regulations, and be properly maintained at Tenants' expense.

#### ARTICLE XXIII SUBORDINATION

23.1 This Lease is subject and subordinate at all times to all ground or underlying leases, all mortgages and/or deeds of trust, all covenants, restrictions, easements, and encumbrances which may now or hereafter affect such leases or the real property of which the Premises form a part, and all future renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination

shall be required by any mortgagee or trustee. In confirmation of such subordination, Tenants shall promptly execute and deliver without charge any certificate or document that Landlord may request in a form which recognizes this Lease and is otherwise reasonably acceptable to Tenants within ten (10) days following Landlord's written request. Tenants hereby constitutes and appoints Landlord as Tenants' attorney-in-fact to execute any such certificate or certificates for and on behalf of Tenants. Provided, however, that notwithstanding the foregoing, the party secured by any such deed of trust shall have the right to recognize this Lease, and in the event of any foreclosure sale under such deed of trust, this Lease shall continue in full force and effect at the option of the party secured by such deed of trust or the purchaser under any such foreclosure sale, in which event Tenants shall attorn to such party secured by such deed of trust or purchaser as Landlord under this Lease. Upon such attornment such party secured by such deed of trust or purchaser shall not be (a) bound by any payment of rent or additional rent more than one (1) month in advance, (b) bound by any amendment of this Lease made without the consent of the holder of the deed of trust existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord, or (d) subject to any offsets or defenses which Tenants might have against any prior landlord; provided, however, that after succeeding to Landlord's interest, such party secured by such deed of trust or purchaser shall perform, in accordance with the terms of this Lease, all obligations of Landlord arising after the date of acquisition of title to the Shopping Center. Tenants covenants and agrees that it will, at the written request of the party secured by any such deed of trust, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of said deed of trust to the lien of this Lease.

23.2 At the option of any landlord under any ground or underlying lease to which this Lease is now or may hereafter become subject or subordinate, Tenants agrees that neither the cancellation nor termination of such ground or underlying lease shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenants hereunder, and Tenants covenants and agrees to attorn to such Landlord or to any successor to Landlord's interest in such ground or underlying lease subject to the attornment provisions set forth in Section 23.1 above. In that event, this Lease shall continue as a direct lease between Tenants herein and such landlord or its successor.

#### ARTICLE XXIV DESTRUCTION

24.1 If the Premises, the Building shall be partially damaged by fire or other casualty insured under Landlord's insurance policies, then, upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenants' trade fixtures, decorations, signs and comments) substantially in the condition immediately prior to such damage or destruction; such repair or restoration shall be limited, however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence: (a) the Premises are rendered wholly unTenantsable; (b) the Premises are damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance policies; (c) the Premises are damaged in whole or in part during the last two (2) years of the term or of any renewal term hereof; (d) the Building is or are damaged (whether or not the Premises are damaged) to an extent of fifty percent (50%) or more of the then replacement value

thereof; or (e) any or all of said building are damaged (whether or not the Premises are damaged) to such an extent that the property cannot, in the sole judgment of Landlord, be operated as an integral unit, then, or in any of such events, Landlord may elect either to repair the damage as aforesaid or to cancel this Lease by written notice of cancellation given to Tenants within one hundred twenty (120) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in Landlord's notice was the date herein fixed for the expiration of the Term hereof, and Tenants shall vacate and surrender the Premises to Landlord. Upon the termination of this Lease as aforesaid, Tenants' liability for the rents reserved hereunder shall cease as of the effective date of termination of this Lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth. Unless this Lease is terminated by Landlord as aforesaid, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary, and Tenants shall repair, restore or replace Tenants' trade fixtures, decorations, signs and contents in the Premises in a manner and to at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by Tenants on said property shall be held in trust by Tenants for the purposes of such repair, restoration or replacement. If by reason of such fire or other casualty the Premises are rendered wholly unTenantsable, the Fixed Minimum Rent shall be fully abated, or if only partially damaged, the Fixed Minimum Rent shall be abated proportionately as to that portion of the Premises rendered unTenantsable, in either event (unless Landlord shall elect to terminate this Lease as aforesaid) until fifteen (15) days after notice by Landlord to Tenants that the Premises have been substantially repaired and restored or until Tenants' business operations are restored in the entire Premises, whichever shall occur sooner. Tenants shall continue the operation of Tenants' business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management and, except for such abatement of the Fixed Minimum Rent as hereinabove set forth, nothing herein contained shall be construed to abate Tenants' obligations for the payment of the Fixed Minimum Rent, Percentage Rent or any other additional rent and charges reserved hereunder, except that the computation of such Percentage Rent shall be based upon the revised Fixed Minimum Rent as the same may be abated. If such damage or other casualty shall be caused by the negligence of Tenants or of Tenants' subTenants, concessionaires, licensees, contractors or invitees or their respective agents or employees, there shall be no abatement of rent. Except for the abatement of the Fixed Minimum Rent hereinabove set forth, Tenants shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Premises and/or the Common Areas and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute, rule, regulation, ordinance, order or other law which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenants is given the right to terminate a lease upon the occurrence of any such damage or destruction, are hereby expressly waived by Tenants.

#### ARTICLE XXV CONDEMNATION

25.1 Total: If the entire Premises or such part thereof as will render the remainder unTenantsable shall be acquired or taken by eminent domain for any public or quasi-public use

or purpose or by private purchase in lieu thereof, then this Lease and the Term hereof shall automatically cease and terminate as of the date of title vesting in such public authority.

25.2 Partial: If any part of the Premises shall be taken by eminent domain and such partial taking shall render that portion not so taken unsuitable for the purposes for which the Premises were leased, then Landlord and Tenants shall each have the right to terminate this Lease by written notice given to the other within sixty (60) days after notice of such taking. If any part of the Premises shall be so taken and this Lease shall not be terminated as aforesaid, then this Lease and all of the terms and provisions hereof shall continue in full force and effect, except that the Fixed Minimum Rent shall be reduced in the same proportion that the floor area of the Premises taken (including basement and mezzanine space, if any) bears to the original floor area demised, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations (exclusive of Tenants' trade fixtures, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit, and to the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit; provided, however, that Landlord, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Landlord as damages for the taking of such part of the Premises and of the Building, and Tenants, at Tenants' expense, shall make all necessary repairs and alterations to Tenants' trade fixtures, decorations, signs and contents.

25.3 As used herein, the amount received by Landlord shall mean that portion of the award in condemnation received by Landlord from the condemning authority which is free and clear of all prior claims or collections by the holders of mortgages or deeds of trust or other liens and encumbrances.

25.4 If more than twenty percent (20%) of the floor area of the Building shall be taken as aforesaid, Landlord shall have the right, by written notice given to Tenants, to terminate this Lease, such termination to be effective as of the date of title vesting in such authority.

25.5 If this Lease is terminated as provided in this Article XXV, all rent shall be paid by Tenants up to the date that title vests in such public authority, and Landlord shall make an equitable refund of any rent paid by Tenants in advance and not yet earned.

25.6 Award: All damages or compensation awarded or paid for any such taking whether for the whole or a part of the Premises or any part of the Land, buildings and improvements constituting the Property, shall belong to and be the property of Landlord without any participation by Tenants, whether such damages or compensation shall be awarded or paid for diminution in value of the fee or any interest of Landlord in any ground or underlying lease covering the Property or in the leasehold estate created hereby, and Tenants hereby expressly waives and relinquishes all claims to such award or compensation or any part thereof and of the right to participate in any such condemnation proceedings against the owners of any interest in the Property. Tenants shall not make any claim against Landlord or the authority for any portion of such award, damages or compensation. Tenants may, if allowed by statute, seek such awards or damages for moving expenses, loss of profits and fixtures and other equipment installed by it which do not, under the terms of this Lease, become the property of Landlord at the termination

hereof. Such awards or damages must be made by a condemnation court or other authority and must be separate and distinct from any award to Landlord for the Land and Shopping Center and shall not diminish or otherwise adversely affect Landlord's award. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section of the Lease.

#### ARTICLE XXVI BANKRUPTCY

26.1 The following shall be Events of Bankruptcy under this Lease: (a) Tenants, a guarantor or a general partner of Tenants ("General Partner") becoming insolvent, as that term is defined in Title 11 of the United States Code (the "Bankruptcy Code"); or under the insolvency laws of any state (the "Insolvency Laws"); (b) appointment of a receiver or custodian for any property of Tenants, a guarantor or a General Partner, or the institution of a foreclosure or attachment action upon any property of Tenants, a guarantor or a General Partner; (c) filing of a voluntary petition by Tenants, a guarantor or a General Partner under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenants, a guarantor or a General Partner as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (i) is not dismissed within sixty (60) days of filing, or (ii) results in the issuance of an order for relief against the debtor; or (e) Tenants, a guarantor or a General Partner making or consenting to an assignment for the benefit of creditors or a composition of creditors.

#### ARTICLE XXVII DEFAULT

27.1 Each of the following shall constitute an Event of Default: (a) Tenants' failure to make any payment of the Fixed Minimum Rent, Percentage Rent, additional rent or any other sum within ten (10) days of written notice from Landlord of Tenants' failure to make such payment on such payment's due date; (b) Tenants' failure to take possession of the Premises within thirty (30) calendar days after delivery thereof to Tenants; (c) Tenants' failure to continuously operate its business in the Premises as required by the terms of this Lease; (d) Tenants' violation or failure to perform or observe any other covenant or condition of this Lease for a period of thirty (30) days following Landlord's written notice thereof to Tenants; (e) Tenants' abandonment or vacation of the Premises; (f) an Event of Bankruptcy as specified in Section 26.1 with respect to Tenants, any General Partner or any guarantor; or (g) Tenants' dissolution or liquidation.

27.2 If there shall be an Event of Default, including an Event of Default prior to the Lease Commencement Date, then Landlord shall have the right, at its sole option, to terminate this Lease. In addition, with or without terminating this Lease, Landlord may reenter the Premises, terminate Tenants' right of possession and take possession of the Premises. The provisions of this Section shall operate as a notice to quit, any other notice to quit or of Landlord's intention to reenter the Premises being hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Premises under and by virtue of the laws of the jurisdiction in which the Property is located, or by such other proceedings, including reentry and possession, as may be applicable. If Landlord elects to terminate this Lease and/or elects to

terminate Tenant's right of possession, then everything contained in this Lease to be done and performed by Landlord shall cease, without prejudice, however, to Landlord's right to recover from Tenants all rent and other sums due hereunder through the Lease Expiration Date as defined in Section 2.1. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenants.

27.3 Landlord's rights and remedies set forth in this Lease are cumulative and in addition to Landlord's other rights and remedies at law or in equity, including those available as a result of any anticipated breach of this Lease. Landlord's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Landlord's delay or failure to exercise or enforce any of Landlord's rights or remedies or Tenants' obligations shall not constitute a waiver of any such rights, remedies or obligations.

27.4 No payment by Tenants or receipt by Landlord of a lesser amount than the monthly installments of rent or other charges herein stipulated shall be deemed to be a payment in full of the stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. Landlord shall have the right to apply Tenants' payments to any balance or arrearage Tenants has outstanding. Landlord's reentry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

#### ARTICLE XXVIII WAIVER OF JURY TRIAL

28.1 LANDLORD, TENANTS, AND ALL GUARANTORS AND GENERAL PARTNERS OF TENANTS AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. THE RELATIONSHIP OF LANDLORD AND TENANTS, TENANTS' USE OR OCCUPANCY OF SAID PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

28.2 Tenants consents to service of process and any pleading relating to any such action at the Premises; provided, however, that nothing herein shall be construed as requiring such service at the Premises. Landlord, Tenants, all guarantors and all General Partners of Tenants waive any objection to the venue of any action filed in any court situated in the jurisdiction in which the Shopping Center is located and waive any right under the doctrine of forum non conveniens or otherwise, to transfer any such action filed in any such court to any other court.

#### ARTICLE XXIX LEGAL FEES

29.1 If, as a result of any breach or default in the performance of any of the provisions of this Lease (whether or not such default is later cured), Landlord uses the services of an attorney in order to secure compliance with such provisions or recover damages, or to terminate this Lease or evict Tenants, or if Landlord is required to defend itself or the terms of this Lease and Landlord uses the services of an attorney, then Tenants shall reimburse Landlord, if prevailing, upon demand for any and all attorneys' fees and expenses so incurred by such prevailing party with such amounts being additional rent in the event Landlord is the prevailing party. In the event of default by Landlord, then Tenants shall have the same rights as described above for Landlord.

#### ARTICLE XXXI ACCESS TO PREMISES

31.J Landlord, its employees and representatives shall have the right at any time during the Lease Term, upon reasonable notice except in an emergency, to enter into and upon any and all parts of the Premises during business hours (or, in an emergency, at any hour) to (a) view, inspect, secure and clean the Premises, (b) make repairs to the Premises, the Building or the Property, or introduce, replace, repair, alter or make new or change existing connections from any fixture, pipes, wires, ducts, conduits, or other construction therein, (c) remove, without being held responsible therefore, placards, signs, lettering, window or door coverings and the like not expressly consented to or (d) show the Premises to prospective Tenants, purchasers or lenders; and Tenants shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall such be deemed to be an actual or constructive eviction. Landlord shall have the right to use a portion of the Premises for all necessary pipes and wires heading to and from the portions of the Building not hereby leased, which will not unreasonably interfere with Tenants' use of the Premises. Landlord may, within one hundred and twenty (120) days preceding the expiration of the Lease Term, enter the Premises to place and maintain notices for letting, free from hindrance or control of Tenants. If Tenants shall vacate the Premises during the last month of the Lease Term, Landlord shall have the unrestricted right to enter the Premises after Tenants' moving to commence preparations for the succeeding Tenants or for any other purpose whatever, without affecting Tenants' obligation to pay rent for the full Lease Term.

#### ARTICLE XXXII EXCAVATION

32.1 If any excavation shall be made upon land adjacent to the Premises, Tenants shall permit the party authorized to cause such excavation to be made to enter upon the Premises for the purpose of doing such work as such party may deem necessary to preserve the wall of the building of which the Premises form a part from damage and to support the same by proper foundations and shoring, and Tenants hereby waives all claims for inconvenience, disturbance, loss of business or other damages against Landlord therefore and without in any manner affecting Tenants' obligations under this Lease, nor shall the same constitute any ground for an abatement of any rent hereunder.

### ARTICLE XXXIII QUIET ENJOYMENT

33.1 If Tenants pays all the rent herein reserved and performs and observes all of the other terms, covenants and conditions of this Lease on Tenants' part to be performed and observed hereunder, Tenants shall, during the Term, peaceably and quietly have, hold and enjoy the Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease.

### ARTICLE XXXIV SURRENDER OF PREMISES

34.1 Upon the expiration or sooner termination of the Term of this Lease, Tenants agrees to quit and surrender the Premises, broom-clean, in good condition and repair, reasonable wear and tear and casualty excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except Personal Property and other unattached movable trade fixtures put in at Tenants' expense, all of which shall thereupon become the property of Landlord without any claim by Tenants therefore but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenants shall remove all of Tenants' Personal Property and unattached movable trade fixtures and, at Landlord's option, Tenants shall also remove any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenants in, upon or to the interior or exterior of the Premises. If Tenants shall fail to remove any of Tenants' Personal Property and trade fixtures, such property shall, at the option of Landlord, be deemed abandoned and become the exclusive property of Landlord or Landlord shall have the right to remove and store said property, at the expense of Tenants, without further notice to or demand upon Tenants, and hold Tenants responsible for any and all charges and expenses incurred by Landlord therefore. If the Premises is not surrendered as and when aforesaid, Tenants shall indemnify Landlord against all loss or liability resulting from the delay by Tenants in so surrendering same, including without limitation any claims made by any succeeding occupant founded on such delay. Tenants' obligations under this Section shall survive the expiration or sooner termination of the Term of this Lease.

### ARTICLE XXXV HOLDING OVER

35.1 This Lease shall terminate on the Lease Expiration Date pursuant to the terms of this Lease without the necessity of notice from either Landlord or Tenants. Any holding over by Tenants after the Lease Expiration Date without Landlord's prior written consent as provided in Section 35.2 shall be an unlawful detainer and Tenants shall be subject to immediate eviction. During such hold over, all the terms and conditions set forth in this Lease shall apply, except that Tenants shall pay to Landlord Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term ("Hold Over Rent"). In addition to paying to Landlord the Hold Over Rent, if Tenants fails to surrender and vacate the Premises on the Lease Expiration Date, Tenants shall indemnify and hold Landlord harmless from and against any and all loss, liability, damages and expenses

(including without limitation, attorneys' fees, the costs of investigation and settlement of any claims) sustained or incurred by Landlord on account of or resulting from such failure, including, without limitation, claims made by any succeeding Tenants of all or any part of the Premises or the loss by Landlord of the rent from any succeeding Tenants of all or any part of the Premises.

35.2 If, within the written consent of Landlord, Tenants or any party claiming by, through or under Tenants remains in possession of the Premises, or any part thereof, after the Lease Expiration Date, Landlord shall treat such holding over by Tenants as the creation of a month-to-month tenancy, subject to all the terms, covenants and conditions set forth in this Lease insofar as the same are applicable to a month-to-month tenancy, except that Tenants shall pay a Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term. Tenants shall give to Landlord at least thirty (30) days' prior written notice from the first day of the month of any intention to quit said Premises, and Tenants shall be entitled to the same thirty (30) days' prior written notice to quit said Premises, except in the event of non-payment of rent in advance or of any breach of any other covenant by Tenants, in which event Tenants shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being hereby expressly waived; provided, however, that in the event Tenants shall hold over after the expiration of the Lease Term, and if Landlord shall desire to regain possession of the Premises promptly at the expiration of the Lease Term, then at any time prior to Landlord's acceptance of rent from Tenants as a monthly Tenants hereunder, Landlord, at its option, may forthwith reenter and take possession of the Premises without process, or by legal process in force in the jurisdiction in which the Property is located.

#### ARTICLE XXXVI NO WAIVER

36.1 The failure of Landlord to insist upon the strict performance of any provisions of this Lease or the failure of Landlord to exercise any rights, options or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Landlord of any act by Tenants requiring Landlord's consent or approval shall not be construed to waive or render the requirement of Landlord's consent or approval of any subsequent similar act by Tenants. The receipt by Landlord of rent with knowledge of a breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord. No waiver of Landlord in favor of any other Tenants or occupant of the Property shall constitute a waiver in favor of Tenants herein.

#### ARTICLE XL LIMITATION OF LIABILITY OF LANDLORD

40.1 Anything contained in this Lease to the contrary notwithstanding, Tenants agrees that Tenants shall look solely to Landlord's equity in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by

Landlord with respect to any of the terms and provisions of this Lease to be kept, observed and performed by Landlord, subject, however, to the prior rights of any ground or underlying landlords or any mortgagee of all or any part of the Property, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenants' claim.

#### ARTICLE XLI NOTICES

41.1 All notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefore (such as Federal Express) or by certified mail. Notices to Landlord shall be sent to Bluffton Towne Center, LLC, 2217 Princess Anne Street, Suite 325, Fredericksburg, Virginia 22401. Notices to Tenants shall be sent to the Premises. Tenants merely elects domicile at the Premises for the purpose of service of all notices, writs of summons, or other legal documents, or process, in any suit, action, or proceeding which Landlord may undertake under this Lease.

#### ARTICLE XLV MISCELLANEOUS

45.1 No Representations. Tenants acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises or the Shopping Center except as herein expressly set forth, and no rights, privileges, easements or licenses are being acquired by Tenants except as herein expressly set forth.

45.2 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenants, or to create any other relationship between the parties hereto other than that of landlord and Tenants.

45.3 Authority. Landlord and Tenants covenant each for itself, that each has full right, power and authority to enter into this Lease upon the terms and conditions herein set forth.

45.4 Force Majeure. If Landlord is in any way delayed or prevented from performing any of its obligations under this Lease due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Landlord's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention.

45.5 Additional Rent. All other costs and expenses which Tenants assumes or agrees to pay to Landlord pursuant to this Lease shall be deemed to be "additional rent" and, in the event of nonpayment thereof, Landlord shall have all the rights and remedies provided for in the case of nonpayment of rent, including assessment of interest and late fees. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectable as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any

amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

45.6 No Recording. Both Landlord and Tenants agree that this Lease shall not be recorded in any office legally established for the purpose of giving public notice of real estate records and any attempt to do so may be treated by Landlord as an Event of Default under this Lease.

45.7 Governing Law. This Lease is governed under the laws of the jurisdiction in which the Property is located.

45.8 Captions. Section headings are used for convenience and shall not be considered when construing this Lease.

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

45.10 Tenants Liability. If two or more individuals, corporations, partnerships or other persons (or any combination of two or more thereof) shall sign this Lease as Tenants, the liability of each such individual, corporation, partnership or other persons to pay the rent and perform all other obligations hereunder shall be deemed to be joint and several.

45.11 Time is of the Essence. Time is of the essence with respect to each and every provision of this Lease.

45.12 Entire Agreement. This Lease contains the entire agreement of the parties in regard to the Premises and this Lease and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease shall be of any force or effect. This Lease may not be amended, modified or changed in whole or in part in any manner other than by an agreement in writing duly signed by both parties hereto.

45.13 Benefit and Burden. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective heirs, executors, administrators, successors, and assigns. Landlord may freely assign its interest hereunder.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

45.16 Survival. Tenants' liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

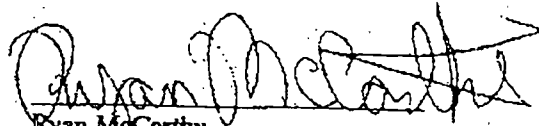
45.16 Survival. Tenants' liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

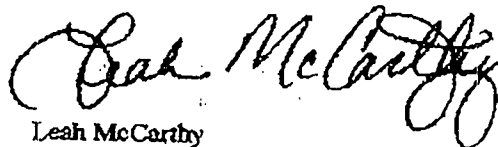
45.17 Submission of Lease. The submission of this Lease for examination does not constitute a reservation of or an option for lease, and the same shall not be effective as a lease or otherwise until execution and delivery by both Landlord and Tenants.

45.18 Designation of Agent. Landlord's registered agent for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon Landlord and the registered agent's office address is William M. Smoot, Esq., Smoot, Pitts Elliot & Biel, 15C Lafayette Place, Hilton Head, SC 23439.

IN WITNESS WHEREOF, Landlord and Tenants have caused this Lease to be executed under seal by a duly authorized officer, intending to be legally bound hereby, as of the day and year first above written. The covenants of Tenants are joint and several obligations of each party signing as Tenants, and, when the parties signing as Tenants are partners, shall be the obligations of the firm and of the individual members thereof.

TENANTS:

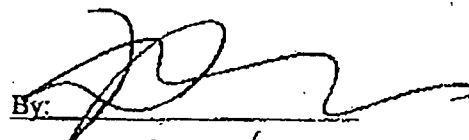
  
Ryan McCarthy

  
Leah McCarthy

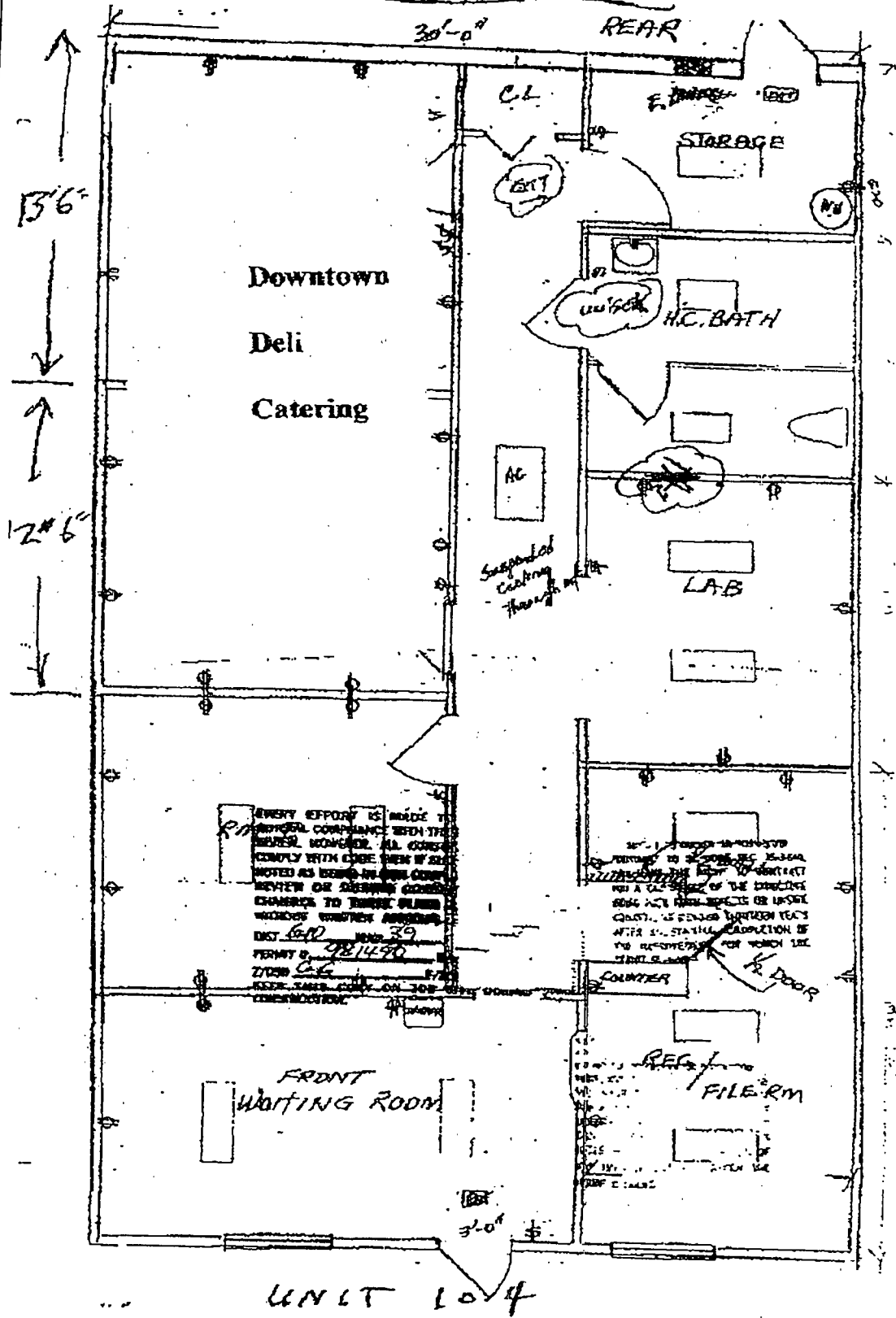
LANDLORD:

Bluffton Towne Center, LLC

23

By:   
7/29/11

# EXHIBIT A



Russell P. Patterson, P.A. 

Serving the Lowcountry for over 25 years

21 Office Park Road  
Carolina Bldg. Suite 104  
Hilton Head, SC 29928  
russell@russellpattersonlaw.com

3/9/12  
P.O. Box 8047  
Hilton Head, SC 29938  
(843) 341-9300  
(843) 341-9301 fax.

**PLAINTIFF'S  
EXHIBIT**

14  
March 9, 2012

Beth Ann Gilleland  
4819 Bluffton Pkwy., 2<sup>nd</sup> Floor  
Bluffton, SC 29910

Via E-Mail: bethanngil@aol.com  
and First Class Mail

Re: Bluffton Towne Center, LLC v. Beth Ann Gilleland-Prince d/b/a The Law Office  
of Beth Ann Gilleland, LLC and Miguel Pico d/b/a Hispanic Solutions

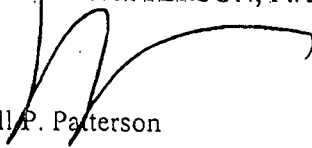
Dear Beth:

Please be advised that my client, Bluffton Towne Center, LLC, has contacted me concerning the rental monies due and owing under your January 1, 2009 lease. I have attached a summary of the total monies due, which amount to \$34,850. Despite his best efforts, my client was only able to rent the property for four and one-half (4½) months to Joe Wilson's campaign, and a portion of the space that was subdivided to Downtown Deli, as reflected in said summary.

Prior to filing an action for the monies due under the lease, I wanted to give you an opportunity to try to work out a resolution of this matter. Please contact me within the next ten (10) days and provide to me your proposal to deal with these outstanding monies.

I look forward to your response.

Sincerely,  
RUSSELL P. PATTERSON, P.A.

  
Russell P. Patterson

RPP:djt  
Enclosure  
cc: Paul Watson (w/encl.) – e-mail

F:\Russell\Watson-Pau\N-B. Gilleland 3-9-12.docx

140/Page

Record on Appeal  
2013-000305

Plaintiff  
000019

Beth Ann Gilleland - lease accounting  
Bluffton Towne Center - unit 104  
27 Dr. Mellichamp Dr. Bluffton, SC 29910

Lease:

Two years (1/1/2009 - 12/31/2011)  
at \$21,900 per year

\$ 43,800.00

Credits:

Rent paid - Jan 2009

\$ 1,875.00

Rent I received from Joe Wilson re-election  
office - 4 1/2 months @ \$1200 / mo

\$ 5,400.00

Rent from Downtown Deli (adjacent tenant that has  
leased two offices in unit 104 at \$335/mo  
Aug - dec 2011 - 5 mo

\$ 1,675.00

Total credits

\$ 8,950.00

Net amount owed

\$ 34,850.00

## **REAL ESTATE LEASE**

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

**PREMISES.** Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

**TERM.** The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

**LEASE PAYMENTS.** Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

**POSSESSION.** Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

**USE OF PREMISES.** Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

**PROPERTY INSURANCE.** Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

**DEFAULTS.** Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

**NOTICE.** Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

**LANDLORD:**

Name: Bluffton Towne Center, LLC  
Address: 2217 Princess Anne St., Suite 325  
Fredericksburg, Virginia 22401

**TENANT:**

Name: Beth Ann Gilleland-Prince and Miguel Picco  
Address: 27 Dr. Mellichamp Dr., Suite 104  
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

**ENTIRE AGREEMENT/AMENDMENT.** This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**CUMULATIVE RIGHTS.** The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

**GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of South Carolina.

**SECURITY DEPOSIT.** At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

**LATE PAYMENTS.** Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

**HOLDOVER.** If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

**NON-SUFFICIENT FUNDS.** Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

**MAINTENANCE.** Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HYAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

**UTILITIES AND SERVICES.**

Tenant shall be responsible for all utilities and services in connection with the Premises.

**LIABILITY INSURANCE.** Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

**TAXES.** Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

**REAL ESTATE TAXES.** Landlord shall pay all real estate taxes and assessments for the Premises.

**PERSONAL TAXES.** Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

**DESTRUCTION OR CONDEMNATION OF PREMISES.** If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

**ACCESS BY LANDLORD TO PREMISES.** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

**DANGEROUS MATERIALS.** Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

**SUBORDINATION OF LEASE.** This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

**LANDLORD:**

Bluffton Towne Center, LLC

By: 

**TENANT:**

  
Beth Ann Gilleland-Prince

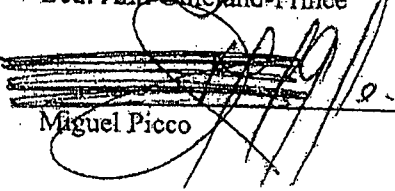
  
Miguel Picco

EXHIBIT A

Landlord shall make the following improvements to unit 104:

1. Reverse door opening from hall way to utility room.
2. Repair and paint sheetrock walls in utility room.
3. Install base cabinet and sink in utility room.

**BLUFFTON TOWNE CENTER, LLC**

**vs.**

**BETH ANN GILLELAND-PRINCE**

**(C.A. 12-CP-07-1530)**

**PLAINTIFF'S  
EXHIBIT**

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**DAMAGES SUMMARY**

**10/23/12**

**Beth Ann Gilleland-Prince**

Bluffton Towne Center - Unit 104  
27 Dr. Mellichamp Dr., Bluffton, SC 29910

A.	<u>Rent Owed Under Lease</u> Three years (1/1/2009 – 12/31/2011) at \$21,900 per year X 3		\$65,700.00
B.	<u>Less: Credits</u>		
	(a) Rent paid – Jan. 2009 – Jan. 2010 by Defendant – 13 mos. X \$1,875	24,375.00	
	(b) Rent from Joe Wilson Re-election Lease – 4½ months @ \$1,200/month Less: Leasing Commission	5,400.00 <u>(384.00)</u>	5,016.00
	(c) Rent from Downtown Deli Lease (adjacent tenant leased two offices in unit 104 at \$335/month) Aug – Dec 2011 – 5 months		<u>1,675.00</u>
	Total Credits		(31,066.00)
C.	<u>Plus: Late Fees</u> – (23 months x \$50 per month)		<u>1,150.00</u>
	<b>Total Damages</b>		<b><u>\$35,784.00</u></b>

Plus: Attorney fees and costs - To be determined by Trial Court

16

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 BLUFFTON TOWNE CENTER, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BETH ANN GILLELAND-PRINCE d/b/a )  
 THE LAW OFFICE OF BETH ANN )  
 GILLELAND, LLC, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THE FOURTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2012-CP-07-1530

**AFFIDAVIT OF ATTORNEY FEES**

PERSONALLY appeared before me, Russell P. Patterson, Esquire, who being duly sworn deposes and says:

1. I am an attorney for the Plaintiff in the above matter.
2. That he is a member of the South Carolina Bar engaged in the general practice of law in the Law Offices of Russell P. Patterson, P.A. of Hilton Head Island, South Carolina.
3. That he is and has been a member of the South Carolina Bar Association and the South Carolina Trial Lawyers Association since November, 1982, and has an hourly billing rate of Two Hundred Twenty-Five and No/100 (\$225.00) Dollars per hour.
4. That Exhibit "A" to this Affidavit, which is a listing of my firm's billing in this matter, as well as the costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through September 30, 2012. These fees and costs total \$2,831.00 in connection with this action.

5. Under Dede v. Strickland, 414 S.E.2d. 134 (S.C. 1992), the Supreme Court has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

a. Nature, Extent and Difficulty of the Legal Services Rendered. As stated earlier, this is an action to enforce the terms and provisions of a long-term lease. That he has reviewed extensive lease documents, attempted to reach a settlement with the Defendant, filed suit, arranged for service, filed and responded to standard discovery, had the case referred and set for trial.

b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. The number of hours he expended in this matter is reflected through the facts stated earlier, as well as from the listing of services performed in Exhibit "A". Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case. That he expects to incur additional costs and fees of approximately \$1,462.50 to complete this matter (6.5 hours).

c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina, as well as the United States Court of Appeals for the Fourth Circuit, and United States District Court for the District of South Carolina. I completed law school in 1984. For approximately the last 30 years, I have been employed as an attorney on Hilton Head Island, South Carolina. I am a member of the Beaufort County Bar Association, the American Bar Association, the Litigation Section of the South Carolina Bar, and other professional

organizations. Approximately 40% of my practice consists of litigation, including construction cases, mechanic's lien cases, foreclosure cases, community association lien and collection cases, land title questions, and other business related litigation. Accordingly, I submit that I have a high professional standing in general and in this area of practice.

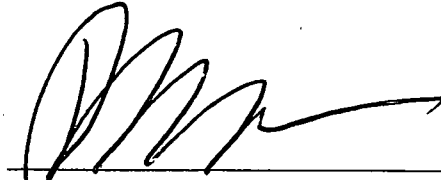
d. Contingency of Compensation. Compensation in this case is based on the hourly rate of \$225.00 per hour.

e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Beaufort area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Beaufort area, from \$200 to \$350 per hour. As stated earlier, my hourly rate is within this range in this case. Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.

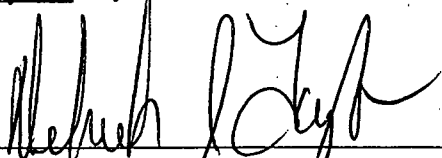
f. Beneficial Results Obtained. This attorney expects to obtain beneficial results for the Plaintiff in this action by securing a judgment enforcing the terms of the lease documents. Accordingly, it is submitted that beneficial results were obtained by this firm on the Plaintiff's behalf.

6. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, the expense time, effort and cost to complete this portion of the case, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiff is entitled to recover \$3,843.55 (\$2,381.05 + \$1,462.50) in attorney's fees.

FURTHER DEPONENT SAYETH NAUGHT.

  
\_\_\_\_\_  
Russell P. Patterson

SWORN TO before me this  
23rd day of October, 2012.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 10-12-17

**Russell P. Patterson, P.A.**

21 Office Park Road, Carolina Building, Ste. 104  
P.O. Drawer 8047  
Hilton Head Island, SC 29938 USA

Ph:(843) 341-9300

Fax:(843) 341-9301

Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

495•00 +  
90•00 +  
157•50 +  
719•95 +  
180•00 +  
70•30 +  
555•25 +  
313•75 +  
249•30 +  
2,831•05 \*

April 2, 2010

File #: 0350  
Inv #: 927

Attention:

RE: Collection - Gilleland R

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-17-10	Initial telephone conference with client [REDACTED] [REDACTED], Draft memo to client [REDACTED] [REDACTED]	0.40	90.00	RPP
Mar-25-10	Receipt and review documents and e-mails from client; Contact Gilleland; [REDACTED] [REDACTED]	0.50	112.50	RPP
Mar-28-10	Draft e-mail to tenant; Draft letter to same	0.30	67.50	RPP
Mar-29-10	Receipt and review memo from tenants; Draft memo to client [REDACTED]	0.40	90.00	RPP
Mar-30-10	Receipt and review memo from client [REDACTED] [REDACTED] Draft memo to tenant	0.30	67.50	RPP
Mar-31-10	Receipt and review memo from client [REDACTED] [REDACTED]	0.30	67.50	RPP
Totals		2.20	\$495.00	

**Total Fee & Disbursements**

Trust Transferred at Billing

**\$495.00**

495.00

**Balance Now Due**

**\$0.00**

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**PAYMENT DETAILS**

Apr-02-10	Payment for invoice: 927	495.00
	<b>Total Payments</b>	<hr/> <b>\$495.00</b>

**TRUST STATEMENT**

		<b>Disbursements</b>	<b>Receipts</b>
Mar-25-10	Received From: Bluffton Towne Center LLC Retainer - Paul Watson - Collection Gilleland Rent		1,000.00
Apr-02-10	Paid To: Russell P. Patterson, P.A. Payment for invoice: 927	495.00	
	<b>Total Trust</b>	<u>495.00</u>	<u>\$1,000.00</u>
	<b>Trust Balance</b>		<b>\$505.00</b>

**Russell P. Patterson, P.A.**

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Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

May 4, 2010

**Attention:**

File #: 0350

Inv #: 998

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-01-10	Telephone conference with David Bachelor; Draft memo to Gilleland; Draft memo to same; Contact David to pick up keys	0.40	90.00	RPP
	Totals	0.40	\$90.00	
	<b>Total Fee &amp; Disbursements</b>			<b>\$90.00</b>
	Trust Transferred at Billing			90.00
	<b>Balance Now Due</b>			<b>\$0.00</b>

TAX ID Number 26-4505804

**PAYMENT DETAILS**

May-04-10	Payment for invoice: 998			90.00
	<b>Total Payments</b>			<b>\$90.00</b>

**TRUST STATEMENT**

		<b>Disbursements</b>	<b>Receipts</b>
	Trust Balance Forward		505.00
May-04-10	Paid To: Russell P. Patterson, P.A. Payment for invoice: 998	90.00	
	Total Trust	<u>\$90.00</u>	<u>\$505.00</u>
	<b>Trust Balance</b>		<b>\$415.00</b>

**Russell P. Patterson, P.A.**  
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Paul Watson  
 2217 Princess Anne Street  
 Suite 325  
 Fredericksburg, VA  
 22401

April 4, 2012

**Attention:**

File #: 0350

Inv #: 3099

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-05-12	Telephone conference with client; Receipt and review two (2) memos from same	0.30	67.50	RPP
Mar-23-12	Receipt and review memo from client [REDACTED]	0.20	45.00	RPP
Mar-26-12	Receipt and review memo from client [REDACTED]	0.20	45.00	RPP
	Totals	0.70	\$157.50	
	<b>Total Fee &amp; Disbursements</b>			<b>\$157.50</b>
	Trust Transferred at Billing			157.50
	<b>Balance Now Due</b>			<b>\$0.00</b>

TAX ID Number 26-4505804

**PAYMENT DETAILS**

Apr-04-12	Payment for invoice: 3099		157.50
	<b>Total Payments</b>		<b>\$157.50</b>

**TRUST STATEMENT**

		<b>Disbursements</b>	<b>Receipts</b>
	Trust Balance Forward		415.00
Apr-04-12	Paid To: Russell P. Patterson, P.A. Payment for invoice: 3099	157.50	
	Total Trust	\$157.50	\$415.00
	<b>Trust Balance</b>		<b>\$257.50</b>

**Russell P. Patterson, P.A.**

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Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

May 4, 2012

Attention:

File #: 0350

Inv #: 3204

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-15-12	Review file; Draft Summons, Complaint, and letter to Clerk of Court; Review and revise damages summary; Draft memo to client	1.00	225.00	RPP
Apr-16-12	Receipt and review memo from client; Review and revise Complaint; Draft memo to client	0.30	67.50	RPP
Apr-20-12	Receipt and review pleadings from courthouse; Draft memo to Defendant, along with an Acknowledgment of Service form	0.30	67.50	RPP
Apr-23-12	Receipt and review e-mail response as to Prince e-mail; Arrange for personal service on Defendant	0.30	67.50	RPP
Apr-27-12	Receipt and review Affidavit of Service; File same	0.30	67.50	RPP
	Totals	2.20	\$495.00	

**DISBURSEMENTS**

	Postage	2.75
Apr-15-12	Copying 20 @ 0.15	3.00
Apr-17-12	Filing Fee-Initial Pleadings (Bluffton Towne Ctr v. Gilleland)	150.00
	Copying 28 @ 0.15	4.20
Apr-30-12	service of process charges inv 12-144	65.00

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Totals	<u>\$224.95</u>
<b>Total Fee &amp; Disbursements</b>	<b>\$719.95</b>
Trust Transferred at Billing	257.50
<b>Balance Now Due</b>	<b>\$462.45</b>

TAX ID Number 26-4505804

**PAYMENT DETAILS**

May-04-12	Payment for invoice: 3204	257.50
<b>Total Payments</b>		<b>\$257.50</b>

**TRUST STATEMENT**

		<b>Disbursements</b>	<b>Receipts</b>
	Trust Balance Forward		257.50
May-04-12	Paid To: Russell P. Patterson, P.A. Payment for invoice: 3204	257.50	
	Total Trust	<u>\$257.50</u>	<u>\$257.50</u>
	<b>Trust Balance</b>		<b>\$0.00</b>

**Russell P. Patterson, P.A.**  
 21 Office Park Road, Carolina Building, Ste. 104  
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Paul Watson  
 2217 Princess Anne Street  
 Suite 325  
 Fredericksburg, VA  
 22401

June 5, 2012

**Attention:**

File #: 0350

Inv #: 3275

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
May-24-12	Receipt and review Answer from defendant; Draft memo to client; Draft Order of Reference, memo to defendant; Receipt and review memo from client [REDACTED]	0.80	180.00	RPP
	Totals	0.80	\$180.00	
	<b>Total Fee &amp; Disbursements</b>			<b>\$180.00</b>
	Previous Balance			462.45
	Previous Payments			462.45
	<b>Balance Now Due</b>			<b>\$180.00</b>

TAX ID Number 26-4505804

**PAYMENT DETAILS**

May-24-12	For Services Rendered	462.45
	<b>Total Payments</b>	<b>\$462.45</b>

**Russell P. Patterson, P.A.**

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Hilton Head Island, SC 29938 USA

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Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

July 3, 2012

**Attention:**

File #: 0350

Inv #: 3436

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-07-12	Review and revise discovery requests, Consent Order of Reference	0.30	67.50	RPP
	Totals	0.30	\$67.50	

**DISBURSEMENTS**

Jun-08-12	Postage		1.30	
	Copying 10 @ 0.15		1.50	
	Totals		\$2.80	

**Total Fee & Disbursements**

**\$70.30**

Previous Balance

180.00

Previous Payments

180.00

**Balance Now Due**

**\$70.30**

TAX ID Number 26-4505804

**PAYMENT DETAILS**

Jul-02-12 For Services Rendered 180.00

**Total Payments**

---

**\$180.00**

**Russell P. Patterson, P.A.**

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P.O. Drawer 8047  
Hilton Head Island, SC 29938 USA

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Fax:(843) 341-9301

Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

August 2, 2012

**Attention:**

File #: 0350  
Inv #: 3542

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-17-12	Receipt and review memo from client [REDACTED], Draft response; Draft memo to defendant as to failure to respond to discovery	0.40	90.00	RPP
Jul-25-12	Receipt and review discovery responses from defendant; Draft memo to client; Draft letter to Clerk of Court regarding Order of Reference, request hearing date; Draft memo to Beth Prince	0.40	90.00	RPP
Jul-26-12	Receipt and review memo from client [REDACTED] Review and revise letter to Judge as to trial date	0.30	67.50	RPP
Jul-31-12	Receipt and review discovery responses filed by defendant, letter concerning payments; Draft memo to client; Draft responses to defendant's discovery requests, letter to same; Receipt and review memo from client [REDACTED]	0.80	180.00	RPP
	Totals	1.90	\$427.50	

**DISBURSEMENTS**

Jul-27-12	Postage	1.55
	Motion Fee (2012-CP-07-1530)	25.00
	Hearing Fee (2012-CP-07-1530)	100.00

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Copying 8 @ 0.15

1.20

Totals

\$127.75

**Total Fee & Disbursements**

\$555.25

Retainers Applied

180.00

Previous Balance

70.30

Previous Payments

70.30

**Balance Now Due**

\$375.25

TAX ID Number 26-4505804

**PAYMENT DETAILS**

Jul-30-12

For Services Rendered

250.30

**Total Payments**

\$250.30

**Russell P. Patterson, P.A.**

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Hilton Head Island, SC 29938 USA

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Paul Watson  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA  
22401

September 7, 2012

**Attention:**

File #: 0350  
Inv #: 3640

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Aug-13-12	Review and revise discovery responses; Draft memo to client	0.30	67.50	RPP
Aug-14-12	Receipt and review memo and documents from client; [REDACTED] Review and revise answers to discovery request; Draft memo to client a [REDACTED]	0.40	90.00	RPP
Aug-21-12	Review and revise discovery responses; Submit same along with numbered documents to Defendant; Draft memo to client [REDACTED]	0.30	67.50	RPP
Aug-31-12	Receipt and review memo from client; Draft memo to defendant as to hearing date	0.30	67.50	RPP
	Totals	1.30	\$292.50	

**DISBURSEMENTS**

	Postage	4.90
Aug-14-12	Copying 20 @ 0.15	3.00
Aug-22-12	Copying 89 @ 0.15	13.35
	Totals	\$21.25

**Total Fee & Disbursements**

Previous Balance

\$313.75

Previous Payments

375.25

375.25

**Balance Now Due**

\$313.75

TAX ID Number 26-4505804

**PAYMENT DETAILS**

Sep-06-12 For Services Rendered

375.25

**Total Payments**

\$375.25

**Russell P. Patterson, P.A.**  
 21 Office Park Road, Carolina Building, Ste. 104  
 P.O. Drawer 8047  
 Hilton Head Island, SC 29938 USA

Ph:(843) 341-9300

Fax:(843) 341-9301


Paul Watson  
 2217 Princess Anne Street  
 Suite 325  
 Fredericksburg, VA  
 22401

October 1, 2012

**Attention:**

File #: 0350  
 Inv #: 3727

**RE:** Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-07-12	Receipt and review memo from client and from Defendant as to trial date; Draft memo to Master's office as to potential trial dates	0.40	90.00	RPP
Sep-10-12	Receipt and review memo from Clerk of Court; Draft Notice of Hearing, letter to Clerk of Court	0.40	90.00	RPP
Sep-12-12	Receipt and review memo from court as to status conference; Receipt and review memo from client; 	0.30	67.50	RPP
Totals		1.10	\$247.50	

**DISBURSEMENTS**

Sep-11-12	Postage		0.90	
	Copying 6 @ 0.15		0.90	
Totals			\$1.80	

<b>Total Fee &amp; Disbursements</b>	<b>\$249.30</b>
Previous Balance	313.75
<b>Balance Now Due</b>	<b>\$563.05</b>

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10-31-12

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

BLUFFTON TOWNE CENTER, LLC, )

Plaintiff, )

vs. )

BETH ANN GILLELAND-PRINCE d/b/a )

THE LAW OFFICE OF BETH ANN )

GILLELAND, LLC, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2012-CP-07-1530

**PLAINTIFF'S POST-TRIAL BRIEF**

The Plaintiff respectfully submits this Post-Trial Brief in connection with the trial of the above matter heard before your Honor on Thursday, October 25, 2012.

**A. FACTUAL BACKGROUND**

This is a standard, routine collection matter on a commercial lease in which no facts are in dispute. On or about January 1, 2009, the parties entered into a written three (3) year lease agreement at a rental rate of \$1,825 per month (Exhibit 1 - attached). The lease term commenced on January 1, 2009 and ended December 31, 2011. Approximately thirteen (13) months after the 3-year lease term started, the Defendant, Beth Ann Gilleland-Prince ("Prince"), notified the Plaintiff that she was vacating the property in January or February, 2012 and made arrangements to return the keys on or about April 1, 2010. The Plaintiff on April 18, 2012 filed suit for the remaining rental term, after giving credit for two (2) tenants he was able to find (Joe Wilson Re-Election Campaign; Downtown Deli Lease). As reflected on the damages summary submitted by the Plaintiff

(Exhibit 15) the total damages Plaintiff seeks is \$35,784, plus attorney fees and costs of \$3,843.55 (Exhibit 16), for a total judgment of \$39,627.55 (\$35,784 + \$3,843.55).

## **B. LEGAL DISCUSSION**

The Defendant presented no testimony at trial, but argued after the conclusion of the evidentiary portion of the case that since the Plaintiff had terminated the lease and re-took possession in order to mitigate his damages, under the 1927 decision of Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927), he was not entitled to any damages for the non-payment of the future rent. In Simon there was a three-year written lease in which the tenant, after signing the lease, never took possession of the property. The Court held that the landlord could recover the rent obligations up to the date of termination, but not future unpaid rents after termination, unless the lease provided the tenant is still liable for the future rents. Simon, id., p. 618. The lease in Simon had no such language.

It is the Plaintiff's position that the statement of law in Simon is no longer valid under prevailing South Carolina authorities. Assuming, arguendo, Simon is still valid, Plaintiff is clearly entitled to the full claimed damages for the entire term of the lease since the subject lease (Exhibit 1) specifically provided Prince remained liable for future rents in at least two separate provisions.

### **A. Simon is Not Valid Law**

It is clear that the 1927 decision in Simon does not state the modern law of damages for the breach of a lease in South Carolina today. That rule is clearly stated in a subsequent case, which cites Simon, United States Rubber Company v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). In that case, the landlord terminated the lease due to the failure of the tenant to pay rent (§ 27-35-140 of the South Carolina Code of Laws, formerly § 41-65 of the 1952 Code, and under § 27-35-150 (formerly § 41-66 of the 1952 Code)) for abandonment. These are the identical grounds that

the Plaintiff in the instant action also terminated the lease. The Court in White Tire, citing Simon, stated that upon the termination of the lease, the relationship of the parties as landlord and tenant came to an end. However, although the tenant no longer had an obligation to pay the landlord future rent, it did have an obligation for damages resulting from its breach of the contract. The measure of damages was stated as follows by the Court at p. 409:

“The measure of such damages is the amount that she (landlord) would have received as rent for the remainder of the term, had there been no default, less such amount as she (landlord) may receive from the new tenant, - for it was her duty (landlord) to minimize her damages. Burkhalter v. Townsend, 139 S.C. 324, 138 S.E. 34.”  
(parenthetical material added)

In Richman v. Joray Corp., 183 F.2d 667 (4<sup>th</sup> Cir. 1950), the Court dealt with a long-term bowling alley lease located in South Carolina. Again citing Simon, the Court adopted basically the same rule for damages at p. 671:

“It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and perspective, which were the necessary and direct result of the breach; and the measure of the damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may result from the breach.”

This same rule has been applied by subsequent courts on various occasions. See: Richman v. Joray Corp., 192 F.2d 660 (4<sup>th</sup> Cir. 1951); In re: Builders Transport, Inc., 471 F.3d 1178 (11<sup>th</sup> Cir. 2006 – applying South Carolina contract law).

#### **B. Prince Liable for Future Rents Even if Simon Valid Law**

Assuming, arguendo, that the rule announced in 1927 by the Court in Simon is still applicable today, the Plaintiff is entitled to the full damages it claims because it specifically reserved the right for all damages under the lease. On page 1 of the Lease, in the last section, captioned “DEFAULTS”, there is the following language:

**“DEFAULTS – \*\*\***. Subject to any governing provision of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), **and without prejudicing Landlord’s right to damages.** \*\*\* Tenant shall pay all costs, **damages**, and expenses (including reasonable attorneys fees and expenses) **suffered by Landlord by reason of Tenant’s defaults.**” (emphasis added)

A more clear intention to reserve all rights against the Tenant for the rents due during the full term is more difficult to imagine. Not only did the Plaintiff specifically reserve its right to damages (i.e., recovery of future rents in the event of termination), but the lease provided a specific damage formula by providing the Tenant must pay all costs, damages and expenses as a result of default. It is clear the most critical “damages” suffered by a Plaintiff under a commercial lease is the payment of rent, which is the primary monetary obligation of the Tenant. No other construction would provide full meaning to all of the terms of the lease.

The language in the Lease in paragraph 1 is consistent with the parties’ conduct when Prince announced she was not going to honor the lease and vacate early. The e-mail exchange between the parties of December 18, 2009 (Exhibit 2 – attached) is revealing as to this point.

a. Prince E-Mail to Plaintiff – “I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize the lease will not expire for another year.”

b. Plaintiff E-Mail in Response to Prince – “As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. . . . I am not willing to forgive the balance of the lease.”

Subsequently, on February 26, 2010, in the Plaintiff’s notice of default and right to cure letter to Prince (Exhibit 3), the third paragraph clearly provides Prince was liable for all future rents.

("... you will still be obligated and responsible for payment of money set forth below, together with additional costs, legal fees, expenses and rents that continue to accrue under the terms of the lease because of non-payment.")

Finally, Mr. Watson testified that Prince referenced at least one potential replacement tenant to reduce her obligations under the lease, although said prospective tenant never signed a lease. Thus, it is clear both Prince and the Plaintiff construed the lease as an obligation of Prince for all future rents.

The same result was reached by the Court in Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), which also cites Simon. Just as in this case, the tenant signed a long-term lease and advised the landlord it would not perform. Just as in this case, the landlord gave notice of the breach, that it would try to re-let the premises, but was holding the tenant responsible for future rents. The Court in Camden, citing Simon, held that future rents were clearly recoverable, holding at p. 307 the future rents were "... a proper element of damage for the breach of a lease contract."

The same result is found by the Court in Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (1992), which also cited Simon. In that case, the Court held that the landlord's claim for future rents was still valid since the existing lease provided that a termination would not release said future obligations. The language in said lease provided that the exercise of the right of termination shall "... not prejudice any other rights which a lessor may have against the lessee hereunder... including the obligation to pay rents." The subject Lease (Exhibit 1), as discussed above, contains very similar language, providing that a notice of termination and landlord taking possession will not prejudice landlord's right to damages. Thus, even if Simon is still good law, as interpreted and applied by the Court in Camden and Blumberg, the Plaintiff's claims survive.

**D. CONCLUSION**

It is the Plaintiff's position that the measure for damages for the breach of a lease is accurately described in the cases cited above as the difference between the rent that should have under the lease, less what was actually received, assuming the landlord managed to properly mitigate its damages. There is no dispute in this case that the Landlord did properly mitigate its damages and provide the appropriate credit.

Even if the Defendant's contention is correct and South Carolina follows the strict rules set forth in Simon, the subject lease expressly provides in at least two (2) places that the Plaintiff reserves all rights for damages, even if the lease is terminated, and thus is entitled to judgment for the full amount due.

Respectfully submitted,



Russell P. Patterson  
Russell P. Patterson, P.A.  
P.O. Drawer 8047  
Hilton Head Island, SC 29938  
(843) 341-9300  
[russell@russellpattersonlaw.com](mailto:russell@russellpattersonlaw.com)  
Attorney for the Plaintiff

Hilton Head Island, South Carolina  
October 24, 2012

PLAINTIFF'S  
EXHIBIT

1/1/09

**REAL ESTATE LEASE**

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

**PREMISES.** Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

**TERM.** The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

**LEASE PAYMENTS.** Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

**POSSESSION.** Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

**USE OF PREMISES.** Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

**PROPERTY INSURANCE.** Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

**DEFAULTS.** Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

X  
X

EXHIBIT

1

4  
Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

**NOTICE.** Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

**LANDLORD:**

Name: Bluffton Towne Center, LLC  
Address: 2217 Princess Anne St., Suite 325  
Fredericksburg, Virginia 22401

**TENANT:**

Name: Beth Ann Gilleland-Prince and Miguel Picco  
Address: 27 Dr. Mellichamp Dr., Suite 104  
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

**ENTIRE AGREEMENT/AMENDMENT.** This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**CUMULATIVE RIGHTS.** The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

**GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of South Carolina.

**SECURITY DEPOSIT.** At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

**LATE PAYMENTS.** Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

**HOLDOVER.** If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

**NON-SUFFICIENT FUNDS.** Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

**MAINTENANCE.** Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

**UTILITIES AND SERVICES.**

Tenant shall be responsible for all utilities and services in connection with the Premises.

**LIABILITY INSURANCE.** Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

**TAXES.** Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

**REAL ESTATE TAXES.** Landlord shall pay all real estate taxes and assessments for the Premises.

**PERSONAL TAXES.** Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

**DESTRUCTION OR CONDEMNATION OF PREMISES.** If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

**ACCESS BY LANDLORD TO PREMISES.** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

**DANGEROUS MATERIALS.** Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

**SUBORDINATION OF LEASE.** This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

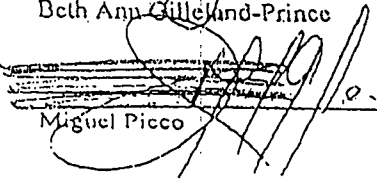
**LANDLORD:**

Bluffton Towne Center, LLC

By: \_\_\_\_\_  


**TENANT:**

  
Beth Ann Gilleland-Prince

  
Miguel Picco

PLAINTIFF'S EXHIBIT

2

Date: Friday, December 18, 2009 9:31 AM  
From: pcwatson@cox.net  
To: bethanngil@aol.com  
Subject: Re: Lease

Thanks for the notice. As you know, office space is very difficult to rent now. As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. I have not pressed you for the full rent since Miguel moved, but I am not willing to forgive the balance of the lease. Ideally, you can sub-lease the space. If not, perhaps we can negotiate some kind of buy-out for the balance of the lease.

----- bethanngil@aol.com wrote:

Hi Paul. I was appointed as a magistrate court judge a few weeks ago. I have very recently committed to taking the position full-time, which means that I am required close my practice. All full-time judges are prohibited from engaging in private practice. As such, I am in the process of getting cases finished and trying to wrap things up. I know that I will be needing to stay through the end of January, and possibly some of February. I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize that the lease will not expire for another year. However, this judicial appointment is a great honor, and obviously, I could not pass that up.

I will also keep my eyes and ears open for anyone who may want the space.

Thanks.

Beth Ann Gilleland-Prince, Esquire  
The Law Office of Beth Ann Gilleland, LLC  
27 Dr. Mellichamp Drive, Suite 104  
Bluffton, SC 29910  
(843) 757-7261  
Fax (843) 757-7361

--  
Paul Watson, CBA, CMEA, CCIM, CBI  
IFI Companies / Capital Business Appraisers  
2217 Princess Anne Street  
Suite 325  
Fredericksburg, VA 22401  
Tel. 540-373-9500  
FAX 540-373-9527  
Cell 540-207-4064  
pcwatson@cox.net

EXHIBIT 2

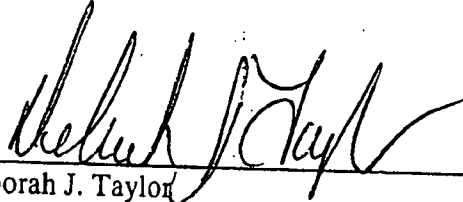
STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
BLUFFTON TOWNE CENTER, LLC, )  
Plaintiff, )  
vs. )  
BETH ANN GILLELAND-PRINCE d/b/a )  
THE LAW OFFICE OF BETH ANN )  
GILLELAND, LLC, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2012-CP-07-1530

**CERTIFICATE OF SERVICE BY MAIL**

This is to certify that I, the undersigned, of the Law Firm of Russell P. Patterson, P.A., have this date served a true and accurate copy of the Notice of Final Hearing upon the Defendant by mailing a copy of the same via United States Mail, postage prepaid to:

Beth Ann Prince  
P.O. Box 2797  
Bluffton, SC 29910



Deborah J. Taylor  
RUSSELL P. PATTERSON, P.A.  
P.O. Box 8047  
Hilton Head Island, SC, 29938  
(843) 341-9300  
Attorney for the Plaintiff

Hilton Head Island, South Carolina  
September 4, 2012

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
2012-CP-07-1530

BLUFFTON TOWNE CENTER, LLC, )  
Plaintiff, )

vs. )

BETH ANN GILLELAND-PRINCE )  
d/b/a THE LAW OFFICE OF BETH )  
ANN GILLELAND, LLC, )

DEFENDANT'S POST-TRIAL  
MEMORANDUM OF LAW  
(IN REPLY)

Defendant. )

**TO: THE HONORABLE MARVIN DUKES, III, AND RUSSELL PATTERSON,  
ATTORNEY FOR THE PLAINTIFF**

This Memorandum of Law is submitted in Reply to the Plaintiff's Post-Trial Brief submitted to the Court, dated October 21, 2012. In compliance with the Defendant's understanding of the Court's instructions regarding submission of any post-trial material, this Memorandum shall not reiterate the Defendant's closing argument, but shall specifically respond to those matters raised in the Plaintiff's Post-Trial Brief.

It would appear based upon the Plaintiff's arguments set forth in the Plaintiff's Post-Trial Brief, that there is a fundamental misunderstanding of the case law on the issues modes and methods of termination of commercial leases, and the corresponding obligations (or lack thereof) of the parties dependent thereon. In Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927), the South Carolina Supreme Court set forth a detailed analysis of what happens when a lease is terminated and what that means for the tenant thereafter. The facts of Simon are very similar to those of the case at bar. In both instances, upon the tenant's breach of lease by failure to pay rent, the landlord specifically chose to notify the tenant it was terminating the lease, and that the tenant would no longer have any rights thereunder.<sup>1</sup>

The Court in Simon found that such a notice undoubtedly terminated the landlord/tenant relationship, and thus, extinguished any obligation by the tenant for future rent.<sup>2</sup> Moreover, the Court then goes on to discuss the various other options that had been

<sup>1</sup> In the case at bar, the landlord mailed a notice to the defendant shortly after rent was not paid for the month of February, and informed the Defendant she must vacate immediately, or else the landlord would file an action for ejectment. Upon cross examination, the landlord testified that as of the date of the February notice, the Defendant no longer had any rights under the lease.

<sup>2</sup> Despite the fact the Court determined that the relationship between the parties was mischaracterized as "landlord/tenant" due to

available to the landlord, which would have necessarily resulted in different outcomes. For example, had the landlord not opted to affirmatively terminate the lease he may have done the following:

He might have awaited the expiration of the term, and, upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed upon rental less rental which he had in the meantime received or with proper effort should have received. Id. at 617.

The Plaintiff has argued that Simon is no longer good law, and that it misstates the modern rule of contract or lease damages. However, there is simply no support whatsoever for this position. Not only has Simon not been overruled, or even modified in any way, it has been repeatedly cited for its holdings. Moreover, the Plaintiff urges this Court to dismiss the holding and logic set forth in Simon in favor of the damages analysis referred to above (agreed upon rental less rental received with duty to mitigate damages), when in fact Simon stands for the very same proposition. Whether or not a tenant shall remain obligated for future rent depends on a number of things. If the landlord has chosen to terminate the lease by demanding the tenant to vacate or by ejectment, the landlord cannot collect future rent, *unless* the lease specifically provides for future rent in the event of default or termination. Merely referencing "damages" is not sufficient to include an obligation for "future rent." *Only* if the landlord retakes possession after abandonment or default and re-lets for the tenant's account, may he pursue damages in the form of the difference between rent agreed upon and rent collected after mitigation. Id.

Plaintiff fails to take into account or even mention the singlemost significant event in the history between the parties in the case at bar. It is indisputable, that the landlord did not under any interpretation of the facts repossess after abandonment or re-let for the Defendant's account. After failing to receive February 2010 rent by the due date (Defendant was current up to that point), the Plaintiff mailed a notice to the Defendant demanding she immediately vacate the premises and that failure to do so within 10 days would result in the filing of an ejectment action with the magistrate court. Further, the Plaintiff testified that he would have filed the ejectment action had the tenant not vacated after receipt of the notice, and that he understood the notice to effectively terminate the lease and preclude the Defendant from any rights under the lease as a result of the termination. These circumstances are nearly identical to the facts of Simon, and the court therefore, should adopt the reasoning set forth in Simon: that the

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the fact the tenant in Simon did not ever actually take possession, the Court nonetheless offers that the "error in the particulars...has absolutely nothing to do with the main issue, whether the notice terminated the relation of the parties." Id. at 617.

Defendant is not obligated for any rent after the termination of the lease.

The Plaintiff urges the Court to dismiss Simon, and claims that the "modern" law the Court should follow is set forth in U.S. Rubber Co. v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). A careful look at U.S. Rubber indicates that the law is restated nearly verbatim from Simon. Id. at 95. Despite the Plaintiff's claim that the facts of U.S. Rubber are "identical" to those of the case at bar, that simply is incorrect. U.S. Rubber is specific to the proper application or return or a deposit after a tenant's default and does not actually address any issues of future rent, and therefore, there is no analysis useful to the case at bar contained in the opinion.

The Plaintiff offers Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944) as additional support for his position. However, Camden Inv. Co. actually strongly supports the Defendant's position. In Camden Inv. Co. the tenant informed the landlord he was not going to honor the lease, and thereafter went into default. The landlord then notified him he was in breach of the lease and that he would attempt to re-let *for the tenant's account*. The landlord did not, as in the case at bar, demand the tenant vacate immediately, thereby terminating the lease. Further, the landlord does not attempt to collect any "future rent." He simply was asking for recompense for his losses the few months the premises were vacant and the fee involved in finding a new tenant, which he was rightly awarded.

Finally, the Plaintiff also offers Blumberg v. Nealco, 307 S.C. 537, 416 S.E. 2d 211 (Ct. App. 1992) as supportive of his position. Again, Blumberg provides much stronger support for the Defendant's position, by affirming the lower Court's ruling as follows:

The judge dismissed Blumberg's claim for future payments without prejudice. Ordinarily, the termination of a lease will terminate a lessor's right to future payments. United States Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E. 2d 403 (1956). However, if the lease agreement provides for payment of future rents, termination will not release the lessee of such future obligations. Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927).

The lease provides as follows:

Section 20.01. Termination. In the event lessee shall fail to pay any monthly installment of rental promptly as the same shall become due....lessor shall have the right, at its sole option...to terminate this lease...but the exercise or non-exercise of such right of termination shall not prejudice any other rights which the lessor may have against the lessee hereunder and *shall not operate to relieve the lessee of its obligation to pay rental* or of its obligations under any other covenants and agreements herein contained. Emphasis added.

Based upon the foregoing, the Blumberg court affirmed the trial court inasmuch as it was not

error to dismiss the claim for future rent *without* prejudice due to the fact the lease specifically provided for future rents, and thus, it may be appropriate for the claim to be filed at a later date.<sup>3</sup>

Finally, Blumberg should also make clear that the Plaintiff's argument regarding any language in the lease in the case at bar regarding damages should be interpreted as meaning "future rent." The language contained in the lease in Blumberg is very specific to "rent." "Damages" and "rent" are not interchangeable, and further, any ambiguity should be resolved against the drafter of the document, which in this case, was the Plaintiff.

Therefore, based upon the foregoing, the Defendant again would respectfully request the Court to adopt the reasoning and analysis set forth in Simon, *supra*, and find for the Defendant in the above-captioned case.



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**Beth Ann Prince**  
*Pro Se Defendant*  
PO Box 2797  
Bluffton, SC 29910  
(843) 706-2797

Bluffton, SC  
November 30, 2012

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<sup>3</sup> The reason for the dismissal is not clear; however, it would be fair speculation that the lease term in question had not yet expired.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530  
2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince  
d/b/a The Law Office of Beth  
Ann Gilleland, LLC,

Appellant.

CERTIFICATION OF COUNSEL  
PURSUANT TO SCACR RULE 210 (g)

I, Beth Ann Prince, the undersigned, certify that the Record on Appeal contains all material proposed to be included by any and all parties and not any other material.



Beth Ann Prince  
Post Office Box 2797  
Bluffton, South Carolina 29910  
(843)473-0745  
SC Bar #68834  
*Pro Se* Appellant

December 23, 2013  
Bluffton, SC

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**RECEIVED**

DEC 27 2013

**SC Court of Appeals**

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530  
Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

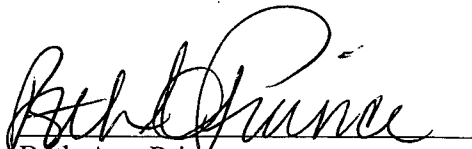
Beth Ann Gilleland-Prince  
d/b/a The Law Office of Beth  
Ann Gilleland, LLC,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Record on Appeal on the Respondent, Bluffton Towne Center, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2013, addressed to its attorney of record, Russell P. Patterson, Post Office Box 8047, Hilton Head, South Carolina 29938.

December 23, 2013



Beth Ann Prince  
Post Office Box 2797  
Bluffton, South Carolina 29910  
(843)473-0745  
SC Bar #68834  
*Pro Se* Appellant