

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Sep 30 2026

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836

App No.: 2024-001811

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased, Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC, PAC-
Summerville, LLC, Beach Investment Fund,
L.P., Beach Real Estate Funds, LLC, Beach
Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary
Does 1-3, Corporations XYZ 1-3, Defendants,

Of which, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

APPENDIX

WALL TEMPLETON & HALDRUP, P.A.

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Apr 30 2025

SC Court of Appeals

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L.P., Beach Real Estate Funds, LLC, Beach
Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary
Does 1-3, Corporations XYZ 1-3, Defendants,

Of which, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1800836

Devan Chokshi et al
PLAINTIFF(S)

Beach Co et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter is before the Court on a motion to strike the Plaintiffs demand for a jury trial. Dhruv Chokshi was not a party to the lease agreement upon which the motion is based. Accordingly, his personal representative, Vatsal Chokshi, cannot be deemed to have waived the right to a jury trial. While Freni Hazare did sign the lease agreement, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Frenzi Hazare. Therefore, Devan Choshi, as personal representative of Freni Hazare, is likewise not a party to the lease agreement. The motion to strike jury demand is hereby denied. See, North Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992)(holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/24/2024 .

Christopher J Gramiccioni for Devan Chokshi,Dhruv Chokshi Estate,Freni Hazare Estate,Dhruv Chokshi,Freni Hazare,Vatsal Chokshi,Devan Chokshi PR,Vatsal Chokshi PR
Harold L Lichten for Devan Chokshi,Dhruv Chokshi Estate,Freni Hazare Estate,Dhruv Chokshi,Freni Hazare,Vatsal Chokshi,Devan Chokshi PR,Vatsal Chokshi PR
Olena Savytska for Devan Chokshi,Vatsal Chokshi
Shannon Liss-Riordan for Devan Chokshi,Vatsal Chokshi
Corporations XYZ 1-3
Mary Does 1-3
John Does 1-3

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Dorchester Common Pleas

Case Caption: Devan Chokshi , plaintiff, et al VS Beach Co , defendant, et al

Case Number: 2023CP1800836

Type: Order/Electronic Form 4

IT IS SO ORDERED.

Heath P. Taylor

Electronically signed on 2024-05-24 12:00:53 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1800836

Devan Chokshi et al
PLAINTIFF(S)

Beach Co et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter is before the Court on Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC's motion to alter or amend the Court's May 28, 2024 order denying their motion to strike. The Court's prior order as to Dhruv Chokshi and Vatsal Chokshi remains unchanged. The Court's prior order with regard to Devan Chokshi and Freni Hazare is hereby amended as follows: While Freni Hazare did sign the lease agreement which contains a facially valid jury trial waiver, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Freni Hazare. Conversely, paragraph 1 of the lease agreement specifically provides that the lease agreement applies to the successors' in interest or assigns of the owners. Had the drafter of the agreement intended the agreement to survive the death of Ms. Hazare, it certainly could have included language to that effect.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2024 .

David Shook
Shook & Associates
Shook Associates Architects
JMG Realty LLC
Asset Living South East LLC
SRNG LLC
Corporations XYZ 1-3
Mary Does 1-3
John Does 1-3
Christopher J Gramiccioni for Devan Chokshi,Dhruv Chokshi Estate,Freni Hazare Estate,Dhruv Chokshi,Freni Hazare,Vatsal Chokshi,Devan Chokshi PR,Vatsal Chokshi PR
Harold L Lichten for Devan Chokshi,Dhruv Chokshi Estate,Freni Hazare Estate,Dhruv Chokshi,Freni Hazare,Vatsal Chokshi,Devan Chokshi PR,Vatsal Chokshi PR
Olena Savytka for Devan Chokshi,Vatsal Chokshi
Shannon Liss-Riordan for Devan Chokshi,Vatsal Chokshi

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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See, Kelly v. McCombs, 2019 WL 4052491 (S.C. Ct. App. 2019). Therefore, Devan Chokshi, as personal representative of Freni Hazare, is not a party to the lease agreement. The motion to strike jury demand remains denied. See, North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992)(holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).



Dorchester Common Pleas

Case Caption: Devan Chokshi , plaintiff, et al VS Beach Co , defendant, et al

Case Number: 2023CP1800836

Type: Order/Electronic Form 4

IT IS SO ORDERED.

Heath P. Taylor

Electronically signed on 2024-10-03 12:23:27 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2023-CP-18-0836

Devan Chokshi, Individually and as)
 Personal Representative of the Estate of)
 Freni Hazare, Deceased; Vatsal Chokshi,)
 Individually and as Personal Representative)
 Of the Estate of Dhruv Chokshi, Deceased,)

)
 Plaintiffs,)

v.)

)
 BIF- Summerville Station LLC;)
 PAC-Summerville, LLC; Lincoln BP)
 Management, Inc.; The Beach Co.; Beach)
 Company, Inc.; Beach Investment Fund, LP;)
 Beach Real Estate Funds, LLC; Lincoln)
 Property Company Commercial, Inc.;)
 Lincoln Property Company Commercial)
 Service Enterprises, Inc.; Lincoln Property)
 Company National, Inc.; Lincoln Property)
 Company National, LLC; Lincoln Property)
 Company No. 177, LTD. Partnership and)
 John/Mary Does XYZ Corporations,)

)
 Defendants.)

**DEFENDANTS' MOTION TO
DISMISS**

Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC, (hereinafter "Defendants") by and through their undersigned attorneys, hereby move to dismiss the Plaintiffs' Amended Complaint pursuant to Rule 12(b)(6), SCRCPP. This motion is based on the following separate and independent grounds:

- (1) The sole mechanism for alleging a tort claim against landlord under South Carolina law is the South Carolina Residential Landlord Tenant Act ("SCRLTA"), but the Plaintiffs have failed to allege compliance with the notice provisions of the SCRLTA;

- (2) The Plaintiffs cannot claim the negligent infliction of emotional distress because they were not bystanders to the events alleged in their Amended Complaint.

Background & Material Facts¹

Freni Hazare and her son, Dhruv Chokshi, (“Decedents”), tragically perished in a fire that occurred at the Summerville Station Apartments (the “Apartments”) in Summerville, South Carolina, on September 29, 2022. At that time, the Decedents were the occupants of Unit B-16, which is a second-floor unit within Building B at the Apartments. It is undisputed that the cause and origin of the fire are both unknown. (Am. Compl., filed June 19, 2023, at ¶ 37.) Despite the fact that no one knows how or where the fire started, the Decedents’ family now brings this action against BIF-Summerville Station, LLC and PAC-Summerville, LLC, who purchased the Apartments in 2020², and numerous other parties seeking compensation for negligence and negligent infliction of emotional distress. Their Amended Complaint, however, fails to sufficiently state valid causes of action under South Carolina law and should be dismissed. As alleged owners of the Apartments, the Defendants are landlords, and South Carolina law holds that negligence claims against a landlord can only be made under the SCRLTA. Further, the law is clear that the right to sue under the SCRLTA does not arise until the tenant has complied with the notice provisions of the Act and the landlord has failed to appropriately respond. The Plaintiffs do not allege that either of the Decedents gave any notice of any defects in the building or their unit to the Beach Defendants, or anyone else, nor do the Plaintiffs allege that any entity failed to respond

¹ Except where otherwise indicated, the facts asserted herein are taken from the Plaintiffs’ Amended Complaint and asserted as true solely for purposes of this motion. See Delaney v. First Financial of Charleston, Inc., 426 S.C. 607, 611, 829 S.E.2d 249, 250 (2019) (on review of a motion to dismiss all well-pled allegations are considered true).

² Despite the Plaintiffs’ allegations that the Defendants purchased the property “in conjunction with” other named defendants, the Defendants were the sole grantees of the property when they purchased it from PRG Churchill Commons Associates, LLC. This information is a matter of public record of which the Court can take judicial notice as the deed is on file with the Dorchester County Register of Deeds at Book 12985, Page 196. See Rule 201(b), SCRCE (a judicially noticed fact must be capable of accurate and ready determination by sources whose accuracy cannot be questioned); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”)

to a complaint by the Decedents. Additionally, the Plaintiffs were not bystanders to the fire or the deaths of the Decedents, and South Carolina does not recognize negligent infliction of emotional distress outside of the bystander context.

Legal Standards

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss an complaint based upon the failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on the allegations of the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts and inferences drawn from the facts alleged in the Amended Complaint, viewed in the light most favorable to the non-moving party, would entitle them to relief under any theory, then dismissal of the action for failure to state a claim is improper. Id.

Argument

I. Failure to State a Claim as to The South Carolina Residential Landlord Tenant Act.

The Plaintiffs allege that “Defendants’ failure to maintain a healthy and safe premises violates the South Carolina Residential Landlord and Tenant Act., S.C. Code Ann. §§ 27-40-220, 27-40-440, 27-40-610, 27-40-630, 27-40-660 and 27-40-910, and the codes incorporated therein by reference.” Under the SCRLTA, however, “a tenant’s rights ‘do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time.’” Robinson v. Code, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009). The Plaintiffs’ claims fail on their face because the Plaintiffs do not allege, nor can they prove at trial, the Defendants’ failure to timely respond to any written notice *from the Plaintiffs or Decedents* regarding any issues with the building. Since the SCRLTA is in derogation of the common law, its provisions must be strictly construed, and compliance with the written notice provision is a prerequisite that cannot be

overlooked by this Court. Watson v. Sellers, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989); Robinson, at 587-88, 682 S.E.2d at 497-98.

The Plaintiffs specifically allege that the Defendants had notice of three issues at the property: (a) malfunctioning smoke detectors, (b) “chronic problems” with windows becoming unusable, and (c) a lack of reliable fire extinguishers at the property. (Am. Compl., at ¶ 54.) The Plaintiffs allege the Defendants “chose not to hire additional staff, make necessary repairs or take any corrective action that would have saved the Decedents’ lives.” (Id., at ¶ 55.) The Plaintiffs do not allege, however, that either Freni Hazare or Dhruv Chokshi ever provided a complaint – written or otherwise – to the Defendants about any of these issues. Instead, the Amended Complaint makes vague references to other tenants in unknown apartment units in unknown apartment buildings complaining on unspecified dates about “myriad other complaints.” (Id., at ¶ 54.) The SCRLTA is clear that the tenant making the claim must allege “written notice specifying the acts and omissions constituting the breach and failure of the landlord to make the necessary repairs after notice.” Robinson v. Code, 384 S.C. 582, 588, 682 S.E.2d 495, 497–98 (Ct. App. 2009). This has not occurred here and the Amended Complaint must be dismissed.

Even assuming general notice would suffice, the Plaintiffs’ Amended Complaint fails because the Plaintiffs have not alleged a specific notice and failure of the Defendants that actually caused the Decedents’ deaths. The Plaintiffs’ allegations that issues existed in other areas of the apartments merely invokes the principle of *res ipsa loquitur*. This is best illustrated by the attempt to connect allegations that windows at the property are screwed shut to Dhruv Chokshi’s statement of “I can’t open my window” to the 911 operator. There is zero evidence to show that Dhruv Chokshi stated that his window was actually screwed shut nor is it even alleged that he did make such a statement. Plaintiffs’ assumption that Dhruv Chokshi’s inability to open the window is a

result of it being screwed shut is no different than assuming that the window was inoperable because it was already on fire or otherwise surrounded by flames.

II. The Plaintiffs' general negligence claim fails because they do not allege any undertaking outside of the scope of the SCRLTA.

The Plaintiffs further allege general negligence claims and allegations of *respondeat superior* liability in an effort to bypass the notice requirements of the SCRLTA. These claims fail because under the common law a landlord owes no duty to maintain leased premises in a safe condition. Young v. Morrissey, 285 S.C. 236, 239–40, 329 S.E.2d 426, 428 (1985). Prior to the SCRLTA a landlord could not be held liable for injury except where they assumed a duty in contract or undertaking; however, even then the only available remedies against a landlord were contractual damages. Id.; Timmons v. Williams Wood Prod. Corp., 164 S.C. 361, 162 S.E. 329, 334 (1932). In derogation of the common law, the SCRLTA “create[d] a right in tort for a breach of a duty owed to the tenant.” Watson v. Sellers 299 S.C. 426, 385 S.E.2d 369 (S.C. Ct. App. 1989). Prior to its enactment, a landlord had no general duty to its tenants and tenants could not sue their landlords for negligence. After its enactment, it remains the case that there is no common law duty or basis for a negligence against a landlord outside of the SCRLTA.

Importantly, the Plaintiffs do not allege any misfeasance and solely allege nonfeasance. Indeed, the overall thrust of the Plaintiffs' Amended Complaint is that the Defendants, as the landlord of the Apartments, failed to maintain the property. (See Am. Compl., at ¶ 3 (labeling Defendant's failure to maintain Apartments and ensure safety of residents as the “heart of this matter.”)) This is the specific duty and remedy contemplated by the SCRLTA, where a tenant can sue when “he has given notice to the landlord and the landlord fails to act within a reasonable time.” S.C. Code Ann. § 27-40-610(a). Without any allegations that the Defendants undertook to

repair the property and somehow did so negligently, there can be no independent ground of negligence outside of the SCRLTA.

III. Failure to State a Claim as to Plaintiffs' Negligent Infliction of Emotional Distress Claims.

Although the majority of the Plaintiffs' causes of action concern injuries that the Decedents sustained, the Plaintiffs also allege a claim of negligent infliction of emotional distress "on the Plaintiffs as a result of the Decedents. [sic]" (Compl., at ¶ 80.) This cause of action should be dismissed because South Carolina law has clear limitations on when a plaintiff can allege such claims and the Plaintiffs' Amended Complaint fails on its face to satisfactorily allege the supporting facts. Under South Carolina law, a plaintiff claiming negligent infliction of emotional distress must show that:

- (a) the negligence of the defendant caused death or serious physical injury to another;
- (b) the plaintiff bystander was in close proximity to the accident;
- (c) the plaintiff and the victim are closely related;
- (d) the plaintiff contemporaneously perceived the accident; and
- (e) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 67–68, 651 S.E.2d 305, 307 (2007) (citing Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582-83, 336 S.E.2d 465, 467 (1985)). This Court has not otherwise defined the parameters of a cause of action for the negligent infliction of emotional distress arising out of an injury to someone other than the plaintiff. Id.³

In this case, the Plaintiffs do not allege that they were bystanders in close proximity to the accident nor do they allege that they contemporaneously perceived it. They do not allege that they

³ To be sure, the Plaintiffs have not alleged any bodily injury of their own resulting from their emotional trauma. See, e.g., Strickland v. Madden, 323 S.C. 63, 67, 448 S.E.2d 581, 583 (Ct. App. 1994) ("[A] cause of action based solely on emotional trauma without proof of physical injury is limited to bystander recovery as announced in Kinard['].")

were bystanders at all and merely assert a claim for emotional trauma associated with the loss of a loved one. An order granting the Defendants' motion would "not diminish – in any way – the negative effects [Plaintiffs] undoubtedly experienced." K.S. by & through Seeger v. Richland Sch. Dist. Two, 2022 WL 2966388, at *3 (S.C. Ct. App. July 27, 2022). It would merely uphold the law as it is in South Carolina. This Court must dismiss the Plaintiffs' claims for failure to allege claims recognized by the law of this state.

Conclusion

WHEREFORE, for the foregoing reasons, Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC, respectfully request that the Court grant their motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure as to all causes of action asserted against it by Plaintiffs.

Dated this 4th day of August, 2023. WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
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**Attorneys for Defendants BIF-Summerville
Station, LLC and PAC-Summerville, LLC**

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

DEVAN CHOKSHI, individually and as
Personal Representative of the Estate of Freni
Hazare, Deceased, VATSAL CHOKSHI,
individually and as Personal Representative of
the Estate of Dhruv Chokshi, deceased,

Plaintiffs,

versus.

BIF-SUMMERVILLE STATION LLC, PAC-
SUMMERVILLE, LLC, THE BEACH CO.,
BEACH INVESTMENT FUND, L.P.,
BEACH REAL ESTATE FUNDS, LLC,
LINCOLN BP MANAGEMENT, INC.,
LINCOLN PROPERTY COMPANY
NATIONAL LLC, JOHN/MARY DOES 1-3
and CORPORATIONS XYZ 1-3,
Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C/A NO.: 2023-CP-18-00836

**DEFENDANTS' MOTION TO STRIKE
JURY DEMAND**

Defendants BIF-Summerville Station, LLC, and PAC-Summerville, LLC, (“Defendants”) by and through their undersigned counsel, hereby move for an order striking the jury demand of Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, and Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi. The basis for this motion is that the applicable lease agreement contains a jury waiver provision that states that “a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.” (See Exhibit A – Lease Agreement.)

Under South Carolina law, a party may waive the right to a jury trial by contract. Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 449, 814 S.E.2d 643, 652 (Ct. App. 2018). While jury waivers are strictly construed, “[a] person who signs a contract a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.” Id.

Further, courts must construe the terms of the waiver by using their plain, ordinary, and popular meaning. Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) abrogated on other grounds by Deutsche Bank Nat'l Tr. Co. v. Est. of Houck, 440 S.C. 409, 892 S.E.2d 280 (2023). In cases where the contract itself is valid, our courts will uphold jury waiver provisions contained within the contract.

In this case, Decedent Freni Hazare entered into a lease agreement with the Defendants for the use and occupancy of Unit B-16 of the Summerville Station Apartments. The Plaintiffs have admitted in discovery that Exhibit A is a true and accurate copy of the applicable lease agreement. Section 39 of the Lease Agreement states, in full:

Waiver of Jury Trial. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

(Ex. A, § 39.) The terms of this jury waiver are plain and indicate the intention of the parties to waive a jury trial. Further, the terms of the waiver apply to each and every claim that the Plaintiffs have asserted, which arise from statute, common law, and potentially the lease agreement itself. Simply put, the Decedents agreed to waive the right to a jury trial, and their representatives cannot go back on that.

The Plaintiffs might argue that the claims of Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, are not subject to this waiver because Dhruv Chokshi did not sign the lease agreement. This argument fails because the Plaintiffs have affirmatively sought to establish that Dhruv Chokshi is entitled to the benefits of the contract by asserting claims under the South Carolina Residential Landlord and Tenant Act. (See, e.g., Pls.' Third Am. Compl., filed Feb. 2, 2024, at ¶¶ 76-81.) Since the filing of this lawsuit, the Plaintiffs have consistently maintained that the Defendants owed Dhruv Chokshi a duty of care imposed by both the SCRLTA and the lease agreement. A party who affirmatively seeks to benefit from the

terms of a contract, even if a nonsignatory, cannot avoid the contract's burdens. Dixon v. Pattee, ___ S.C. ___, ___ S.E.2d ___, 2023 WL 8792809, at *10 (S.C. Ct. App. Dec. 20, 2023) (compelling arbitration).

Conclusion

For the reasons set forth above, the Defendants respectfully request that this Court issue an order granting the Defendants' motion and striking the Plaintiffs' demand.

Dated this 6th day of February, 2024.

WALL TEMPLETON & HALDRUP, P.A.

s/Ford H. Thrift

Morgan S. Templeton (SC Bar #15456)

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**Attorneys for Defendants BIF Summerville
Station, LLC, and PAC-Summerville, LLC.**

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

DEVAN CHOKSHI, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF FRENI HAZARE,
Deceased, VATSAL CHOKSHI,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
DHRUV CHOKSHI, Deceased,

Plaintiffs,

vs.

BIF-SUMMERVILLE STATION LLC, PAC-
SUMMERVILLE, LLC, BEACH
INVESTMENT FUND, L.P., BEACH REAL
ESTATE FUNDS, LLC, LINCOLN BP
MANAGEMENT, INC., LINCOLN
PROPERTY COMPANY NATIONAL LLC,
JOHN/MARY DOES 1-3 and
CORPORATIONS XYZ 1-3,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2023-CP-18-00836

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS BIF-SUMMERVILLE
STATION, LLC AND PAC-
SUMMERVILLE, LLC'S MOTION TO
STRIKE JURY DEMAND**

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AND PAC-SUMMERVILLE, LLC'S MOTION TO STRIKE JURY DEMAND**

I. INTRODUCTION

Plaintiffs Devan Chokshi and Vatsal Chokshi, by and through their undersigned attorneys, hereby submit their opposition to Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC's motion to strike Plaintiffs' jury demand. As the Court is aware, Plaintiffs Devan Chokshi and Vatsal Chokshi bring claims in this case under the South Carolina Residential Landlord-Tenant Act ("SCRLTA"), common law negligence, and negligent infliction of emotional distress, arising out of the tragic deaths of Freni Hazare and Dhruv Chokshi in an apartment fire at the Summerville Station apartment complex.

Defendants invoke a jury waiver provision contained in Ms. Hazare's lease agreement to argue that Plaintiffs' claims in this case cannot be heard by a jury. As an initial matter, Defendants' Motion to Strike Plaintiffs' jury demand in Plaintiffs' Complaint is untimely pursuant to SCRCP 12 and, therefore, should be denied before considering the motion on the merits. However, even *assuming, arguendo*, the Court were to disregard the requirements of SCRCP 12, Defendants' motion would nonetheless be defeated on the merits for several reasons given Defendants' bid to strike the jury demand must be considered against the backdrop of the presumption in favor of the right to a jury trial.¹

First, neither Plaintiffs Devan Chokshi and Vatsal Chokshi, nor Decedent Dhruv Chokshi are signatories to the lease agreement. Accordingly, in light of clear precedent under South Carolina law, they are not bound by the jury waiver provision contained in the agreement. *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 534 (1992).

Second, none of the other Defendants in this case are signatories to the lease agreement, and there is no argument that they are intended third-party beneficiaries of the lease agreement. *See Thompson v. Pruitt Corp.*, 784 S.E.2d 679, 687 (S.C. App. 2016) (quoting *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)) ("A third-party beneficiary is a party that the contracting parties intend to directly benefit."). Accordingly, these Defendants cannot invoke the jury waiver provision.

Third, Plaintiffs' claims in this action do not rely on the provisions of the lease agreement. Specifically, the SCRLTA contains a set of statutory protections for tenants which are independent

¹ "The South Carolina Constitution provides '[t]he right of trial by jury shall be preserved inviolate.'" *Wells Fargo Bank, NA v. Smith*, 2012 WL 10987189, at *2 (S.C. App. June 13, 2012) (quoting S.C. Const. art. I, § 14). "The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868." *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) (citation omitted).

of the lease agreement in this case. *Burbach v. Invs. Mgmt. Corp. Int'l*, 326 S.C. 492, 497 (Ct. App. 1997) (“[w]hile landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants”). Similarly, Plaintiffs’ common law claims for negligence and intentional infliction of emotional distress do not arise out of, or depend on, the lease agreement. *See Wilson v. Willis*, 827 S.E.2d 167, 176 (S.C. 2019)

Fourth, the scope of the jury waiver in lease agreement plainly does not encompass the wrongful death claims at issue in this case. *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495 (2003) (“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.”); *McGill v. Moore*, 381 S.C. 179, 185 (2009) (same).

While the lease – and its accompanying jury waiver provision – governs the day-to-day relationship of landlord (BIF and PAC Summerville) and tenant (Freni Hazare), it plainly was not intended to cover the tragic fire in which the Decedents perished, and which forms the basis of the claims in this case.

II. ARGUMENT

A. Defendants’ Motion to Strike is untimely under SCRCP 12(e), therefore, it should be denied

SCRCP 12 requires all defenses and, specifically, any motion to strike to be filed prior to any responsive pleading or contemporaneously with any motion to dismiss. Here, Defendants’ Motion to Strike is untimely and warrants the Court’s denial before any consideration is given to the motion’s merits. *SCRCP 12*. SCRCP 12(b) states: “Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required[.]” SCRCP 12(g) requires that “[i]f a party makes a motion under this rule but omits therefrom any defense or objection then available

to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted.”

In response to Plaintiffs’ initial Complaint filed on May 13, 2023, Defendants chose to file their 12(b)(6) motion in lieu of filing an Answer, as allowed by SCRCP 12(b). Defendants’ decision to file the 12(b)(6) motion, however, required Defendants to preserve other defenses available at the time by joining those motions in the same pleading. *SCRCP 12(b)*. Rather than file the Motion to Strike Plaintiff’s request for a jury demand at the same time they filed their 12(b)(6) motion in response to Plaintiffs’ initial Complaint, as required by SCRCP 12(g), Defendants waited until a day after filing their third motion to dismiss to raise the defense that was procedurally available in August of 2023. Defendants’ failure to make their Motion to Strike at the time of the filing of its third 12(b)(6) motion on February 5, 2024, instead of simultaneously filing this Motion with their first 12(b)(6) motion, which was procedurally available at the time, results in Defendants’ being statutorily precluded from making such motion as the Rule clearly indicates the objection is “omitted.” *SCRCP 12(g)*.

Furthermore, Plaintiffs’ amendments of their Complaint do not revive defenses that were available at the time Defendants filed their 12(b)(6) motion. Initially, SCRCP 12(g) is identical to the Federal Rule. See *Note to SCRCP 12(g)* “This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions.” Thus, amendments “will not revive the right to present by motion defenses that were available but were not asserted in timely fashion prior to the amended pleading.” 5C C. Wright, A. Miller, E. Cooper, & R. Freer, *Federal Practice and Procedure* § 1388 (3d ed.2008). Plaintiffs’ amendments in this case do not “revive” Defendants’ right to file a motion that was procedurally available at the time Defendants filed their 12(b)(6) motion.

B. Plaintiffs Vatsal Chokshi and Devan Chokshi and decedent Dhruv Chokshi were not signatories to the lease agreement relied upon by Defendants, and are therefore not bound by the jury waiver.

The general rule, under South Carolina law, is that non-signatories to a lease agreement are not bound by that agreement. In *N. Charleston Joint Venture*, 307 S.C. at 534, a landlord sued its tenant for past-due rent and joined the tenant’s guarantors. The guarantors counterclaimed and requested a jury trial. *Id.* The landlord moved to strike the jury demand on the grounds that the lease contained a jury waiver provision, which the guarantors conceded was valid and would have bound the tenant. *Id.* at 535. Nevertheless, the South Carolina Supreme Court held that “[g]uarantors, not being parties to the waiver clause, are entitled to a jury trial.” *Id.* The Court’s reasoning was straightforward:

Trial by jury is a substantial right and any waiver thereof must be strictly construed. Here, the waiver clause, by its express terms, is applicable only to Landlord and Tenant. Although the guaranty was incorporated by reference into the lease contract, Guarantors were not parties to the lease nor were they named in the waiver clause.

Id. The Court therefore adopted a clear rule: jury waivers are only enforceable against the actual parties to the lease.²

The South Carolina Supreme Court reaffirmed the central holding of *N. Charleston Joint Venture* in a decision issued three years later, *Broome v. Watts*, 319 S.C. 337 (1995). In *Broome*, two individuals who were in an automobile accident entered into a settlement agreement whereby the parties would conduct a trial solely for the purpose of ascertaining the liability of various triggered insurers. *Id.* at 338. As part of that agreement, the defendant waived her right to a jury

² See also *Anderson Bros. Bank v. Adams*, 305 S.C. 25, 28 (1991) (holding that waiver of right to appraisal contained in mortgage did not bind guarantors of the borrower because “boilerplate language, inserted by Bank, at the end of a mortgage signed only by Debtors, is not binding upon Guarantors”).

trial. *Id.* at 339. After the damages trial, the plaintiffs proceeded to file an action against an insurance company, USAA, to recover under their underinsured motorist coverage. *Id.* USAA, who was not a party to the settlement agreement, claimed that it was entitled to invoke the jury waiver because, as the UIM carrier, its contract with the original defendant allowed it “to defend ‘in the name of the underinsured motorist’” and “‘step[] into the shoes’ of the underinsured motorist.” *Id.* at 340. The court disagreed, explaining that in *N. Charleston Joint Venture*, it had held that “[b]ecause the tenant’s guarantors were not parties to the lease and were not named in the waiver clause, they were not bound by the tenant’s waiver.” *Id.* Extending this holding, the Court rejected the argument that USAA could invoke a jury waiver contained in an agreement it was not a party to because doing so would “blur[] the distinction between the named defendant (Watts),” who was a party to the agreement waiving her right to a jury trial, and “the actual defendant (USAA),” who was not. *Id.* The cases Defendants rely on in their motion to strike in no way call into question the basic premise of *N. Charleston Joint Venture*.³

Defendants argue that Plaintiffs are bound by the jury waiver because they have “affirmatively sought to establish that Dhruv Chokshi is entitled to the benefits of the contract” and “consistently maintained that the Defendants owed Dhruv Chokshi a duty of care imposed by both the SCRLTA and the lease agreement.” (Mot. to Strike at 2).⁴ They cite *Dixon v. Pattee*, 2023

³ *Beach Co v. Twillman, Ltd.*, 351 S.C. 56 (Ct. App. 2002) merely confirms that a party to a lease agreement containing a jury waiver will subsequently be bound by that waiver, and says nothing about non-signatories. In *Beach*, a landlord (Beach) sued its tenant (Twillman) for non-payment of rent under a lease agreement that contained a provision waiving the tenant’s right to a jury trial and the right to assert counterclaims in summary proceedings for nonpayment. *Id.* at 60. The trial court held that both aspects of the waiver were enforceable against the tenant. *Id.* The Court of Appeals reversed as to the provision waiving the tenant’s right to bring counterclaims on the grounds that it was violative of the express intent of South Carolina’s civil procedure laws and, thus, unenforceable. *Id.* at 63.³ But, citing *N. Charleston Joint Venture*, the court concluded that the jury trial waiver was enforceable because “[t]he waiver provision in the lease plainly provides that in any claim asserted by Twillman [a party to the lease agreement], ‘trial by jury shall be waived by both parties.’” *Id.* at 63–64.

⁴ As set out in more detail below, Plaintiffs’ claims under the SCRLTA, common-law negligence and emotional distress *do not* depend on the lease agreement, and this is an additional reason to deny Defendants’ Motion to Strike.

WL 8792809 (S.C. Ct. App. Dec. 20, 2023) for the proposition that “[a] party who affirmatively seeks to benefit from the terms of a contract, even if a nonsignatory, cannot avoid the contract’s burdens.” (Mot. to Strike at 2-3). While true as a general proposition, this estoppel theory does not apply in the jury waiver context.

In *Dixon*, the Court of Appeals held that an arbitration clause was enforceable against a non-signatory because the non-signatory’s “causes of action are dependent upon the agreements that require arbitration and are within the scope of the arbitration agreements.” *Id.* at *10. While acknowledging that contractual arbitration clauses are presumptively enforceable only against signatories, the court explained that South Carolina law “has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel.” *Id.* (quoting *Wilson*, 426 S.C. at 338). Under the estoppel theory, the non-parties in *Dixon* could be bound by the arbitration clause “because, while they are not parties or signatories to the relevant agreements, [they] expressly rely on the Agreement and Warranty in alleging their breach of warranty claim.” *Id.* at *11.

However, *Dixon* involved an arbitration clause, not a jury waiver provision. This distinction is salient for two reasons. First, whereas jury waiver provisions implicate substantial rights and are thus strictly construed, arbitration clauses are construed against the backdrop of “the exceptionally strong policy favoring arbitration.” *Id.* at *10 (quoting *Wilson v. Willis*, 426 S.C. 326, 337 (2019)). Second, whereas jury waiver provisions typically identify *the parties* whose disputes are subject to the waiver, “the presumption in favor of arbitration applies *to the scope of an arbitration agreement*; it does not apply to the existence of such an agreement or to the identity of the parties who may be bound to such an agreement.” *Id.* Nothing in *Dixon* suggests that its

analysis of arbitration clauses also applies to jury waiver provisions. Given the different rights public policy considerations at issue in the two contexts, there is a strong argument that the logic of *Dixon* does not extend to the jury waiver clause at issue here.⁵

The jury waiver provision at issue in this case provides that “**you and we** agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.” (Ex. A to Motion to Strike, § 39). The only names appearing on the lease are (1) Freni Hazare, (2) BIF-Summerville Station, LLC, and (3) PAC-Summerville LLC. Thus, the Plaintiffs in this case – Vatsal Chokshi and Devan Chokshi – are not signatories to the lease agreement, and are not bound by its jury waiver provision. This argument applies with especial force in the case of Plaintiff Vatsal Chokshi, who is the representative of Dhruv Chokshi in this case. Because Dhruv Chokshi was not a signatory to the lease agreement, and because the plain terms of the jury waiver provision do not identify him as a covered party,⁶ Vatsal Chokshi’s representative claim on Dhruv’s behalf is clearly not subject to the jury waiver provision under *N. Charleston Joint Venture*. See also *Johnston-Gebre v. IH4 Prop. Fla., L.P.*, 2023 WL 6443096, at *4 (S.D. Fla. Oct. 2, 2023) (“If the parties to the lease agreement intended for the jury waiver provision to cover claims brought by the ‘Resident Parties’ and not just a ‘Resident,’ the lease

⁵ Courts in other states have considered, and rejected, similar attempts to extend this estoppel non-signatory enforceability doctrine from the arbitration to the jury waiver context. See *In re Credit Suisse First Bos. Mortg. Cap., L.L.C.*, 257 S.W.3d 486, 492-3 (Tex. App. 2008) (“We are unaware of any court . . . that has applied direct-benefits estoppel to a jury waiver provision . . . These mechanisms cannot be treated interchangeably merely because they both lead to decisions by factfinders other than jurors. Jury waiver provisions and arbitration clauses implicate significantly different policies and principles.”); *Ex parte Carter*, 66 So. 3d 231, 239 (Ala. 2010) (declining to bind a non-signatory to the jury waiver provision contained in a loan agreement because doing so would “rewrite the loan documents to give the jury-waiver provisions a broader effect when our standard of review requires strict construction of such provisions in deference to the constitutional guarantee of the right to trial by jury.”).

⁶ The lease agreement contains no reference to Freni Hazare’s children, and no provisions addressing other potential residents of the apartment. A section asking the parties to “list all other occupants not signing the Lease Contract” is blank. Thus, even if Freni Hazare signed the lease agreement with the intent to reside there with Dhruv Chokshi, there is nothing in the lease agreement indicating that the jury waiver provision binds Dhruv.

should have so stated. Thus, the plain language of the contract does not extend the jury waiver [beyond the Resident].”).

C. The majority of the Defendants in this case are not third-party beneficiaries of the lease agreement, and thus cannot invoke the jury waiver provision.

The Motion to Strike in the instant case is brought by Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC. The remaining Defendants – The Beach Co., Beach Company, Inc., Beach Investment Fund, L.P., Beach Real Estate Funds, LLC (collectively, “Beach Defendants”), Lincoln BP Management, Inc., and Lincoln Property Company National, LLC (collectively, “Lincoln Defendants”) do not – and cannot – invoke the jury waiver provision in this case. “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *McGill*, 381 S.C. at 185. Here, it is undisputed that the Beach Defendants and the Lincoln Defendants are not parties to the lease agreement.⁷

⁷ See, e.g., *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1166 (9th Cir. 1996) (“The Investors again argue that the defendants cannot invoke the jury waiver clause because they were not parties to the Purchase Agreement. As with the choice-of-law clause, a jury waiver is a contractual right and generally may not be invoked by one who is not a party to the contract. And, as with the choice-of-law clause, ordinary contract and agency principles do not provide GE Capital or Burton with standing to invoke the jury waiver. . . . Therefore, we reverse the order waiving jury trial.”); *Barnello v. Bayview Loan Servicing, LLC*, 2016 WL 11565618, at *3 (M.D. Fla. Mar. 15, 2016) (“Defendant is not a party to the Mortgage, has not otherwise shown that it should stand in the shoes of the holder of the note and Mortgage, and has not, as noted above, established that it is an intended beneficiary of the Mortgage agreement. Thus, as a non-party to or beneficiary of the contract, Defendant has not established that it has a right to enforce the jury trial waiver, and the Motion to Strike will be denied.”); *Brown & Brown, Inc. v. Cola*, 2011 WL 4380445, at *5 (E.D. Pa. Sept. 20, 2011) (“None of the Defendants in this case was a signatory or party to the [agreement containing the jury waiver], and thus cannot invoke the jury waiver provision against Plaintiffs.”); *Bateman Litwin N.V. v. Swain*, 2009 WL 10688302, at *8 (E.D. Va. Mar. 18, 2009) (denying third-party defendants’ motion to strike because they “were not signatories to the documents” containing the jury waiver provision); *Sensoria, LLC v. Kaweske*, 2021 WL 103020, at *9 (D. Colo. Jan. 12, 2021) (“The Kaweske Defendants did not act as Clover Top Holdings, Inc.’s agents (or at least consistent with an agent’s fiduciary duties), and they did not act in concert with Clover Top Holdings, Inc. The Kaweske Defendants lack a sufficiently close relationship with Clover Top Holdings, Inc. to invoke any term of the Subscription Agreement against Plaintiffs.”); *Omega v. Deutsche Bank Tr. Co. Americas*, 920 F. Supp. 2d 1298, 1300 (S.D. Fla. 2013) (“Wells Fargo is a non-party to the Mortgage, but seeks to enforce the jury-trial waiver contained therein. Because the waiver is part of a contractual relationship between Plaintiffs and the owner of the Note, and not between Plaintiffs and Wells Fargo, the Court finds that Wells Fargo cannot enforce the waiver against Plaintiffs.”); *ExactLogix, Inc. v. JobProgress, LLC*, 2022 WL 1004423, at *1 (N.D. Ill. Apr. 4, 2022) (“[T]he Court holds that David Buzzelli and JobProgress are not able to invoke the contractual jury waiver because they are not parties to the contract[and] they are not successors or permitted assigns of a party to the contract.”); *Foxfield Villa Assocs., LLC v. Robben*, 2017 WL 3085780, at *2 (D. Kan. July 20, 2017) (“In light of the court’s policy of indulging every reasonable presumption against wa[iv]er, the court finds that defendants have not

Moreover, nothing in the lease agreement suggests it was intended to benefit the Beach Defendants or the Lincoln Defendants.⁸ See, e.g., *Pancakes of Hawaii, Inc. v. Pomare Properties Corp.*, 85 Haw. 300, 309 (Ct. App. 1997) (“[N]othing in the terms of the lease or in the record indicates Sofos or Carter would benefit in any way from the lease agreement. Thus, Sofos and Carter do not have any enforceable contract rights as third-party beneficiaries in the agreement between Pancakes and Pomare Properties.”); contrast *Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 429 S.C. 502, 512 (Ct. App. 2020), *aff’d*, 435 S.C. 594 (2022) (finding that members of health insurance network were third-party beneficiaries where “the Agreement’s language, structure, and purpose directly benefit Members” and noting out-of-state cases involving contracts that expressly referenced members and described benefits accruing to them as supporting third-party beneficiary status).

D. Plaintiffs’ claims in this action do not depend on the lease agreement.

Plaintiffs in this case have asserted claims under the SCRLTA and the common law, and it is the statute and the common law – rather than the provisions of the lease agreement invoked by Defendants – that provide the basis for Plaintiffs’ relief.⁹ Courts have repeatedly made clear, in analogous cases, that, where a statute (or the common law) provides the basis for a party’s

shown that they are entitled to enforce the waiver. Defendants' motion is therefore denied.”); *Nat’l Med. Imaging, LLC v. DVI Receivables XIV, LLC*, 2016 WL 4554692, at *5 (E.D. Pa. Sept. 1, 2016) (“Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX were not parties to the Settlement Agreement, and the Guaranty was not executed in favor of these Defendants. . . . These Defendants therefore may not invoke either jury trial waiver,³¹ and thus Plaintiffs have not waived their right to a jury trial as to Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX.”).

⁸ Under South Carolina law, “[a] third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340 (2005).

⁹ See *Quinn Const., Inc. v. Skanska USA Bldg., Inc.*, 2010 WL 4909587, at *7 (E.D. Pa. Nov. 30, 2010) (holding that TWBTA could not enforce the jury waiver provision even if the plain language might arguably encompass claims against TWBTA, because the plaintiff “need not rely, and indeed has not relied, on the terms of its written agreement with Skanska in asserting its claims against TWBTA.”). Analogously, here, the Plaintiffs claims do not arise from or depend upon the lease agreement, and its jury waiver provision should not be read to afford Defendants the opportunity to avoid a jury trial.

claims, those claims do not depend on the existence, or the terms, of any contract between the parties.¹⁰

The South Carolina legislature has, through the SCRLTA, imposed statutory duties on landlords and tenants that are distinct from any existing contractual or common law duties. *Burbach*, 326 S.C. at 497 (referencing the SCRLTA and explaining that “[w]hile landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants”). Statutes like the SCRLTA reflect the legislature’s acknowledgment that the nature of the relationship between landlords and tenants has implications for the broader public – these laws impose statutory duties that “protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves.” *Id.*

The SCRLTA places an affirmative duty on the landlord to “keep the premises in a fit and habitable condition”. See *Nedrow v. Pruitt*, 521 S.E.2d 755, 759 (S.C. App. 1999) (citing *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct.App.1989); S.C. Code Ann. § 27–40–440 (1991)) (“In adopting the RLTA, the General Assembly expressly provided

¹⁰ See, e.g., *Moon v. Breathless Inc.*, 868 F.3d 209, 218 (3d Cir. 2017) (quoting *Bell v. Southeastern Pennsylvania Transportation Authority*, 733 F.3d 490, 96 (3d Cir. 2013)) (“Moon’s claim here is that she should receive certain wages and benefits as an employee under the FLSA despite her agreement stating otherwise. Because she relies ‘solely on [her] statutory, rather than [her] contractual, rights to recovery, ... [she] may proceed on [her] FLSA claims without first seeking arbitration.’”); *Narayan v. EGL, Inc.*, 616 F.3d 895, 899 (9th Cir. 2010) (“Whether the Drivers are entitled to those benefits depends on whether they are employees of EGL . . . While the contracts will likely be used as evidence to prove or disprove the statutory claims, the claims do not arise out of the contract, involve the interpretation of any contract terms, or otherwise require there to be a contract.”); *Cullen v. Henry Haywood Meml. Hosp.*, 95 F. Supp. 3d 130, 137 (D. Mass. 2015) (quoting *Ralph v. Lucent Technologies, Inc.*, 135 F.3d 166, 171 (1st Cir.1998)) (“Claims under Chapter 151B are ‘independent, non-negotiable rights founded not only in state statute, but in a federal statute, the American With Disabilities Act.’ These rights exist independently of collective bargaining agreements and do not require any interpretation of those agreements.”); *Metro. Prop. and Cas. Ins. Co. v. Pest Dr. Sys., Inc.*, 2014 WL 2855003, at *4 (S.D. Ohio June 23, 2014) (“the fact that Plaintiff’s negligence claim grew out of Hendricks’ contractual relationship with Pest Doctors is not dispositive. Because Pest Doctors may have owed Hendricks a duty of care independent of the contract, Plaintiff’s negligence claim is not necessarily barred); *Wolfe*, 647 F.2d at 710 (citing *Battista v. Lebanon Trotting Ass’n*, 538 F.2d 111, 117 (6th Cir.1976)) (“[A] tort exists only if a party breaches a duty which he owes to another independently of the contract, that is, a duty which would exist even if no contract existed.”).

that the landlord has a duty to make all repairs and to do whatever is reasonably necessary to keep the premises in a fit and habitable condition.”); *Watson*, 385 S.E.2d at 374 (“the preamble to the Act expressly states that it was the intent of the Legislature to provide for the obligations and liabilities of the landlord”). The SCRLTA represents the South Carolina legislature’s intent to create a separate statutory scheme to hold landlords accountable, and to create rights and remedies for tenants that are independent of any lease agreement.¹¹ It is likewise clear that Plaintiffs’ negligence claims and their claims for negligent infliction of emotional distress are common-law claims which do not arise from, or depend on the terms of, the lease agreement. *See, e.g., Dixon*, 898 S.E.2d at 171 (quoting *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176) (“when the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law,’ direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen ‘but for’ the contract’s existence.*”).

¹¹ § 27–40–440 includes a number of specific requirements the landlord must meet, including the following:

- (a) A landlord shall:
 - (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
 - (3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;
 - (4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
 - (5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

E. The lease agreement and its jury waiver provision were clearly not intended to encompass the fire, and decedents' deaths, at issue in this case.

The jury waiver provision states that “a trial of any lawsuit based on statute common law, and/or *related to this Lease Contract* shall be to a judge and not a jury.” (Ex. A to Motion to Strike, § 39) (emphasis added). As set out above, “[t]he cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language” and courts are not to “rewrite or torture the meaning” of contracts. *Schulmeyer*, 353 S.C. at 495; *see also Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464–65 (Ct. App. 2010) (“The language alone will determine the contract’s force where such language is unambiguous”).¹² Here, the language of the jury waiver provision limits its scope to issues “related to this Lease Contract” – that is, issues like day-to-day maintenance and repairs, rent payments, etc... There is no suggestion, either in the language of the jury waiver provision or anywhere in the Lease Agreement, that it was intended to cover the aftermath of a tragic event like the fire in this case.

III. CONCLUSION

For the foregoing reasons, Defendants’ Motion to Strike should be denied.

Respectfully submitted,

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¹² Even where there is some ambiguity, courts have cautioned that jury waiver provisions should be construed narrowly, with an eye to preserving the right to trial by jury. *See Quinn Const., Inc. v. Skanska USA Bldg., Inc.*, 2010 WL 4909587, at *6.

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May 2, 2024

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

DEVAN CHOKSHI, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF FRENI HAZARE,
Deceased, VATSAL CHOKSHI,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
DHRUV CHOKSHI, Deceased,

Plaintiffs,

vs.

BIF-SUMMERVILLE STATION LLC, PAC-
SUMMERVILLE, LLC, THE BEACH CO.,
BEACH INVESTMENT FUND, L.P.,
BEACH REAL ESTATE FUNDS, LLC,
LINCOLN BP MANAGEMENT, INC.,
LINCOLN PROPERTY COMPANY
NATIONAL LLC, JOHN/MARY DOES 1-3
AND CORPORATIONS XYZ 1-3,

Defendants,

IN THE FAMILY COURT OF THE
FIRST JUDICIAL CIRCUIT
Civil Action No.: 2023-CP-18-00836

**DEFENDANTS BIF SUMMERVILLE
STATION, LLC, AND PAC-
SUMMERVILLE, LLC, MOTION TO
ALTER OR AMEND THE COURT'S
MAY 28, 2024, ORDER DENYING
DEFENDANTS' MOTION TO STRIKE**

Defendants BIF Summerville Station, LLC, and PAC-Summerville, LLC, by and through their undersigned attorneys, respectfully move before this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its Form 4 Order dated May 28, 2024, and issue an altered or amended Order granting Defendants' motion to strike the Plaintiffs' jury demand. This motion is made on the basis that (1) the Jury Waiver Provision is enforceable at least as to Decedent Freni Hazare; (2) Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, is bound by the Jury Waiver Provision; (3) the Jury Waiver Provision applies to the instant lawsuit in its entirety; and (4) Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, invoked the Jury Waiver Provision by alleging claims under the South Carolina Residential Landlord and Tenant Act.

Background & Procedural History

On February 6, 2024, Defendants filed a motion to strike the Plaintiffs' jury demand on the basis that the applicable lease agreement contained a jury waiver provision. (See Mot. to Strike, filed Feb. 6, 2024.) Specifically, the agreement states that "a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury." (See Exhibit A to Mot. to Strike ("Lease Agreement") at § 39 (the "Jury Waiver Provision").) The Plaintiffs opposed the motion on the basis that, *inter alia*, (1) the Plaintiffs were not signatories to the Lease Agreement; (2) Decedent Dhruv Chokshi was not a signatory to the Lease Agreement; and (3) the Plaintiffs' claims are not dependent upon the Lease Agreement and the Jury Waiver Provision is, therefore, inapplicable. (See Pls.' Memo. in Opp., filed May 2, 2024.) On May 28, 2024, the Court denied Defendants' motion to strike via Form 4 Order. In its ruling, the Court held that because "Dhruv Chokshi was not a party to the lease agreement upon which the motion is based [,]" "his personal representative, Vatsal Chokshi, cannot be deemed to have waived the right to a jury trial." (Order filed May 28, 2024.) The Court further ruled that "[w]hile Freni Hazare did sign the lease agreement, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Frenzi [sic] Hazare[.]" and "[t]herefore, Devan Choshi [sic], as personal representative of Freni Hazare, is likewise not a party to the lease agreement." (Id.) This motion follows.

Standard of Review

Rule 59(e) is the mechanism for a party to ask the court to issue a ruling on issues raised but not ruled upon, state findings of fact or conclusions of law underpinning the order, address possible misapprehension of an earlier argument, or revisit a previously raised argument. Elam

v. S.C. Dep't of Transp., 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A motion pursuant to Rule 59(e), SCRCPP, has long been viewed as a “motion for reconsideration” despite the absence of those words from the Rule. Id. Consequently, a party is generally permitted to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. Id.

Law & Argument

I. The Jury Waiver Provision itself is valid and enforceable.

As an initial matter, the Court’s Order held that neither Plaintiff was bound by the provisions of the Lease Agreement but did not make any ruling as to the validity and enforceability of the Jury Waiver Provision itself. The Defendants respectfully move for an Order holding that the Jury Waiver Provision of the Lease Agreement is valid and enforceable. See Elam, 361 S.C. at 23, 602 S.E.2d at 779-80 (“Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.”) South Carolina generally upholds Jury Waiver Provisions and there is no dispute as to validity of the Lease Agreement itself. The Plaintiffs dispute only the application of the Lease Agreement to this case. This Court should therefore issue an altered or amended order upholding the validity of the Jury Waiver Provision.

South Carolina law permits the waiver of the right to a jury trial by contract. Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 449, 814 S.E.2d 643, 652 (Ct. App. 2018).¹ Such a waiver must be strictly construed, and a jury waiver must be made “knowingly and voluntarily.” Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014), abrogated by Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series

¹ The right to a jury is a constitutional right but our courts have held that even constitutional rights can be waived. State v. Shuck, 278 S.C. 441, 442, 298 S.E.2d 95, 96 (1982); Hodges Concrete Prod., Inc. v. Fletcher, 284 S.C. 191, 193, 324 S.E.2d 343, 344 (Ct. App. 1984).

2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck, 440 S.C. 409, 892 S.E.2d 280 (2023). The law also states, however, that “[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.” Id. Additionally, there is no duty to explain to an individual what could be learned from simply reading the contract. Citizens & S. Nat. Bank of S.C. v. Lanford, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). Therefore, so long as the contract itself is valid, then the waiver provision within the contract will be upheld. As such, the Court should find that any party who is bound by the Lease Agreement is likewise bound by the Jury Waiver Provision.

II. It is undisputed that Decedent Freni Hazare signed the Lease Agreement and her personal representative is bound by her signature.

The Court’s Order denying the Defendants’ motion held that Plaintiff Devan Chokshi is not a party to the Lease Agreement and that he is not bound by the signature of Decedent Freni Hazari. This lawsuit, however, does not concern the claims of Devan Chokshi; it concerns the claims of Devan Chokshi *as Personal Representative for the Estate of Freni Hazare*. It is the Estate which is bound by the Lease Agreement’s provisions and the Personal Representative cannot escape the Lease Agreement’s Jury Waiver Provision. “[T]he personal representative stands in the shoes of the decedent and may bring any cause of action the decedent could have brought in his life.” Carson v. CSX Transp., Inc., 400 S.C. 221, 242–43, 734 S.E.2d 148, 159 (2012). A personal representative may enforce the contracts of a decedent but does not have greater powers than the decedent when living. Duncan v. Little, 384 S.C. 420, 682 S.E.2d 788 (2009). Put another way, the rights of a personal representative are limited in the same manner as the Decedent’s rights would have been. Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P., 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010) (“[I]f the decedent had no claim at his death, the estate has no claim.”). Likewise, our courts have long recognized that “all

contracts which are capable of being enforced against a decedent in his lifetime may be enforced against his estate.” Thompson v. Hudgens, 161 S.C. 450, 159 S.E. 807, 817 (1931). Indeed, the word “claims” is defined by the South Carolina Probate Code as “include[ing] liabilities . . . in contract, in tort, or otherwise . . .” S.C. Code Ann. § 62-1-201. It is undisputed that Decedent Freni Hazare was a party to the Lease Agreement and, as the personal representative of her Estate, Plaintiff Devan Chokshi is as equally empowered and limited by the Lease Agreement as Freni Hazare was during her lifetime.

This court would not be the first to hold that a personal representative must be bound by waivers or other contracts signed by decedents. See, e.g., THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011); see also Cox v. Duke Energy, Inc., 176 F. Supp. 3d 530, 542 (D.S.C. 2016), aff’d, 876 F.3d 625 (4th Cir. 2017) (rejecting argument that a release executed by a decedent did not apply to the personal representative because it did not specify that it applied to heirs and assigns). In Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939, 942 (D.S.C. 1988), the Hon. Joseph Anderson examined historical case law of South Carolina and concluded, “anything that would have defeated the decedent's recovery had he survived the accident, ‘such as contributory negligence, a valid release, or similar acts on his part,’ would defeat the right of recovery in behalf of his family in case of his death.” Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939, 942 (D.S.C. 1988) (citing Reed v. Northeastern R. Co., 37 S.C. 42, 16 S.E. 289 (1892)). The South Carolina Supreme Court endorsed Judge Anderson’s ruling in Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P., 389 S.C. 343, 348, 699 S.E.2d 143, 145 (2010). There, the Supreme Court held that a personal representative’s claims against a decedent’s physicians were time-barred because the statute of limitations expired before the decedent’s death. “Our jurisprudence makes clear that if

the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate.” Id., at 347, 699 S.E.2d at 145. The same principle applies to jury waivers and a personal representative’s right to a jury trial cannot be greater than the rights of the decedent.

III. The facts of this case are fundamentally different from N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.

The Plaintiffs’ opposition and this Court’s ruling both rely upon N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992), for the premise that “nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement.”² To be sure, that is generally the case, but the holding in N. Charleston Joint Venture addressed an issue fundamentally different from the issue before this Court and its holding does not apply here. N. Charleston Joint Venture concerned the application of a jury waiver clause against the guarantor of a debt whereas this case concerns the personal representative of the estate of a party to the agreement in which the jury waiver provision is found. While both cases concern jury waiver clauses contained in lease agreements it is the relationship between guarantor-debtor and Personal Representative-Decedent that made the cases distinguishable from one another.

A guaranty is an obligation separate and distinct from the original note. Citizens & S. Nat. Bank of S.C. v. Lanford, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994). “The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation.” Id. “[T]he responsibilities imposed by the contract of guaranty differ from those created by the contract to which the guaranty is collateral.” F & D Elec. Contractors, Inc. v. Powder Coaters, Inc., 342

² In N. Charleston Joint Venture, a commercial landlord brought a lawsuit against its tenant and the tenant’s guarantor for past-due rent and moved to transfer the case to the non-jury docket based upon the applicable lease agreement’s jury waiver clause. The tenant conceded the validity and binding nature of the jury waiver clause, but the guarantor objected. In reversing the transfer of the claims against the guarantor, the Supreme Court ruled that the guarantor was not a party to the lease and that the waiver clause, by its express terms, is applicable only to Landlord and Tenant.” 307 S.C. at 535, 416 S.E.2d at 638.

S.C. 443, 449, 537 S.E.2d 285, 288 (Ct. App. 2000), aff'd as modified, 350 S.C. 454, 567 S.E.2d 842 (2002). Thus, a guarantor's rights arise from its own contractual agreements and a guarantor is not the same party as a debtor.

On the other hand, a personal representative's rights in wrongful death claims arise from the derivative nature of such claims. Jolly v. Gen. Elec. Co., 435 S.C. 607, 667, 869 S.E.2d 819, 851 (Ct. App. 2021). By "standing in the shoes" of the decedent whose interests the personal represents, the personal representative – for all relevant intents and purposes – becomes the decedent. See S.C. Code Ann. § 62-3-703 (providing a personal representative with "the same standing to sue and be sued . . . as his decedent had immediately prior to death.") Put another way, a personal representative is in privity with the decedent. Fabian v. Lindsay, 410 S.C. 475, 482, 765 S.E.2d 132, 136 (2014) ("South Carolina courts have equated privity with standing.") Because the personal representative's rights exist only by nature of being the representative of the decedent's estate, they must necessarily be limited in the same manner as the decedent would have been had they lived.

IV. The scope of the Jury Waiver Provision applies to the Plaintiffs' lawsuit.

Upon finding that the Jury Waiver Provision is valid and applies to the claims of the Estate of Freni Hazari, this Court should enter an amended order striking the Plaintiffs' jury demands in their entirety because the Jury Waiver Provision of the Lease Agreement applies to the instant lawsuit as a whole. The applicable provision states that "**any lawsuit** . . . shall be to a judge and not a jury." (Ex. A (emphasis added)). The Jury Waiver Provision is not limited to specific causes of action or to any parties, rather it plainly states that it applies to a lawsuit. "Courts do not have the authority to make new contracts for parties. Rather, their duty is limited to interpretation of the contract made by parties, regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." B.L.G. Enterprises, Inc. v. First Fin.

Ins. Co., 328 S.C. 374, 377, 491 S.E.2d 695, 697 (Ct. App. 1997) (internal citations and quotations omitted). In interpreting the language of a contract, when a contract is clear and unambiguous, the language alone determines the contract’s force and effect. Lewis v. Premium Inv. Corp., 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002). The Court may not rewrite the terms of the contract but rather it “must construe it according to its plain, ordinary, and popular meaning.” ERIE Ins. Co. v. Winter Const. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). The plain language of the Lease Agreement leaves no room for interpretation – the trial any lawsuit to which the Lease Agreement applies must be a nonjury trial.

Interpreting the plain language of the Jury Waiver Provision, it is clear that the use of the term “any lawsuit” in the Lease Agreement encompasses the entirety of the action and not individual claims or issues. The Plaintiffs’ memorandum in opposition utilizes the word “issues” in arguing that “the language of the jury waiver provision limits its scope to issues ‘related to this Lease Contract’ . . .” (Pls. Memo. in Opp., p. 13.)³ At the hearing on this motion, the undersigned utilized the word “claims” in making an argument that such words are more limited than what the Jury Waiver Provision contemplated. The terms “issues,” and “claims,” as they are used in our jurisprudence, are not synonymous with the word “lawsuit.” The word “lawsuit” may generally be used interchangeably with the terms “action” or “case.” See, e.g., Black’s Law Dictionary, 1663 (10th Ed.). But the words “issue” and “claims” are generally understood to be mere parts of a larger lawsuit, action, or case. See, e.g., Bennett v. Est. of King, 436 S.C. 614,

³ The argument that this lawsuit concerns claims unrelated to the Lease Agreement ignores the expansive language of the Jury Waiver Provision.” Even if the Plaintiffs’ claims are not related to, or based upon the Lease Agreement, they are nonetheless based on statute or common law and subject to the Jury Waiver Provision. The Jury Waiver Provision is not limited to claims arising only from the Lease Agreement and the “and/or” provision in the clause means that the waiver applies to any of the three categories, any combination of the three, or all of them together. See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, 125 (2012) (“When [and/or] is meant, careful drafters would say A or B or both or- if several items were to be listed, they would introduce the list with *any one or more of the following*”) (emphasis in original). So long as a party is subject to the Jury Waiver Provision, any lawsuit the party brings against the Defendants is subject to its terms.

621 n. 6, 875 S.E.2d 46, 50 n.6 (2022), (noting that petition raised “multiple issues” in a single appeal); James v. Kelly Trucking Co., 377 S.C. 628, 634, 661 S.E.2d 329, 332 (2008) (“A plaintiff may, in a single lawsuit, assert many causes of action against a defendant.”); Burnsed v. Greene, 291 S.C. 59, 60–61, 351 S.E.2d 910, 911–12 (Ct. App. 1986) (“[T]he parties are permitted to join as independent or alternate claims as many claims as they have against the opposing party in a single lawsuit.”). As such, the Jury Waiver Provision applies to “any lawsuit” in which it can properly be invoked and not mere portions of the lawsuit. To read any other meaning into the Jury Waiver Provision would be contrary to the rules of contractual interpretation and this Court should find that the Jury Waiver Provision applies to the instant lawsuit as a whole.

V. Decedent Dhruv Chokshi is bound by the terms of the Lease Agreement because he has invoked it to his benefit in this lawsuit.

The Defendants submit that the Jury Waiver Provision necessarily encompasses the entire lawsuit, including the claims of Plaintiff Vatsal Chokshi as the Personal Representative of the Estate of Dhruv Chokshi, but an additional independent basis exists for finding the Jury Waiver Provision applies to these claims. While Defendants acknowledge that Dhruv Chokshi did not execute the Lease Agreement, the Court should still find that he is bound by the terms of the Lease Agreement because his Personal Representative has invoked the Lease Agreement to his benefit in this lawsuit. A party who seeks the benefits of a contract cannot avoid its burdens. Kingman v. Nationwide Mut. Ins. Co., 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964). Notably, just last year our Court of Appeals dispossessed a non-signatory of its right to a jury trial and compelled it to attend arbitration where it had sought to enforce the contract to his benefit. See Dixon v. Pattee, 442 S.C. 233, 257, 898 S.E.2d 158, 170 (Ct. App. 2023).

In this case, the Plaintiffs have invoked the lease agreement because they have identified Dhruv

Chokshi as “tenant” and sought to hold the Defendants liable as the Plaintiffs’ landlord *inter alia* under the South Carolina Residential Landlord and Tenant Act. (Third Am. Compl., filed Feb. 2, 2024, ¶¶76-81.) The South Carolina Residential Landlord and Tenant Act defines a “tenant” as “a person entitled under a **rental agreement** to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15) (emphasis added). The Plaintiffs have not identified any other rental agreement by which Dhruv Chokshi could qualify as a “tenant” and, therefore, their claims under the SCRLTA must necessarily invoke the Lease Agreement at issue here. Because Plaintiff Vatsal Chokshi, as the Personal Representative of the Estate of Dhruv Chokshi, has asserted claims under the South Carolina Residential Landlord and Tenant Act, and because such claims are predicated upon a rental agreement establishing tenancy, his claims necessarily seek the benefit of the Lease Agreement on behalf of Dhruv Chokshi. This Court should therefore hold that the Estate of Dhruv Chokshi is bound to the burdens of the Lease Agreement and that his personal representative is bound by the Jury Waiver Provision.

Conclusion

WHEREFORE, for the foregoing reasons, Defendants BIF Summerville Station, LLC, and PAC-Summerville, LLC respectfully request this Court reconsider its May 28, 2024, Form 4 Order and GRANT Defendants’ Motion to Strike Plaintiffs’ Jury Demand.

Dated this 7th day of June, 2024.

WALL TEMPLETON & HALDRUP, P.A.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
DEVAN CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF FRENI HAZARE, Deceased,	)	CASE NO.: 2023-CP-18-00836
VATSAL CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF DHRUV CHOKSHI, Deceased,	)	
	)	
Plaintiffs,	)	
vs.	)	AMENDED SUMMONS
	)	
BIF-SUMMERVILLE STATION LLC,	)	
PAC-SUMMERVILLE, LLC,	)	
LINCOLN BP MANAGEMENT, INC.,	)	
THE BEACH CO., BEACH COMPANY, INC.,	)	
BEACH INVESTMENT FUND, L.P.,	)	
BEACH REAL ESTATE FUNDS, LLC,	)	
LINCOLN PROPERTY COMPANY	)	
COMMERCIAL, INC., LINCOLN PROPERTY	)	
COMPANY COMMERCIAL SERVICE	)	
ENTERPRISES, INC., LINCOLN PROPERTY	)	
COMPANY NATIONAL, INC., LINCOLN	)	
PROPERTY COMPANY NATIONAL, LLC,	)	
LINCOLN PROPERTY COMPANY NO. 177,	)	
LTD. PARTNERSHIP and JOHN/MARY	)	
DOES XYZ CORPORATIONS.	)	
	)	
Defendants.	)	
	)	

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jason S. Stevens, at his office at 215 East Bay Street, Suite 500-H, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURES ON FOLLOWING PAGE]

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June 19, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
DEVAN CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF FRENI HAZARE, Deceased,	)	CASE NO.: 2023-CP-18-00836
VATSAL CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF DHRUV CHOKSHI, Deceased,	)	
	)	
Plaintiffs,	)	
vs.	)	FIRST AMENDED COMPLAINT
	)	(Jury Trial Requested)
BIF-SUMMERVILLE STATION LLC,	)	
PAC-SUMMERVILLE, LLC,	)	
LINCOLN BP MANAGEMENT, INC.,	)	
THE BEACH CO., BEACH COMPANY, INC.,	)	
BEACH INVESTMENT FUND, L.P.	)	
BEACH REAL ESTATE FUNDS, LLC,	)	
LINCOLN PROPERTY COMPANY	)	
COMMERCIAL, INC., LINCOLN PROPERTY	)	
COMPANY COMMERCIAL SERVICE	)	
ENTERPRISES, INC., LINCOLN PROPERTY	)	
COMPANY NATIONAL, INC., LINCOLN	)	
PROPERTY COMPANY NATIONAL, LLC,	)	
LINCOLN PROPERTY COMPANY NO. 177,	)	
LTD. PARTNERSHIP and JOHN/MARY	)	
DOES XYZ CORPORATIONS.	)	
	)	
Defendants.	)	

TO THE ABOVE-NAMED DEFENDANTS:

Plaintiffs, DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENI HAZARE (hereinafter referred to as “Plaintiff Brother,” “Plaintiff Son,” and/or “Plaintiff PR of Estate Hazare”) and VATSAL CHOKSHI, individually and as the Personal Representative of the Estate of DHRUV CHOKSHI (hereinafter referred to as “Plaintiff Father” and/or “Plaintiff PR of Estate Chokshi”) (both hereinafter referred to collectively as “Plaintiffs”) by and through their undersigned counsel, hereby shows by way unto this Court as follows:

INTRODUCTION

1. On September 29, 2022, 48-year-old FRENI HAZARE and her son, 15-year-old DHRUV CHOKSHI (hereinafter, “the Decedent” or “Decedents” collectively), died tragically in a fire that engulfed SUMMERVILLE STATION apartment complex where they resided together, located in Summerville, South Carolina.
2. This is a multi-count wrongful death action filed against the above-captioned Defendants for negligence and other causes of action in their management, ownership and maintenance of the SUMMERVILLE STATION apartment complex.
3. At the heart of this matter is the Defendants’ individual and collective breach of their duties and responsibilities to properly manage and maintain SUMMERVILLE STATION, and their overall failure to ensure the safety and well-being of residents FRENI HAZARE, DHRUV CHOKSHI, and several other tenants residing in the SUMMERVILLE STATION complex.
4. As a direct and proximate result of the Defendants’ conduct, FRENI HAZARE and DHRUV CHOKSHI perished by burning alive and suffering gruesome and painful deaths while trapped in their apartment, as further described below.

THE PARTIES

5. The decedents FRENI HAZARE and DHRUV CHOKSHI were residents of Summerville, South Carolina, and all relevant events to this Complaint occurred in the County of Dorchester, South Carolina.
6. DEVAN CHOKSHI (hereinafter, “Plaintiff Son”) is the eldest son and only surviving heir of FRENI HAZARE and, therefore, Plaintiff Son has been appointed Personal Representative of the Estate of FRENI HAZARE by the Dorchester County Probate Court. Plaintiff Son brings this action in his individual capacity based on the damages suffered under the Wrongful Death Statute of South Carolina as to his loss of a devoted brother, as to the loss of his mother, including but not

limited to his loss of the love and affection of his brother, his mother, and all other damages recoverable by statute or otherwise; as well as under the Survival Statute of South Carolina as the Personal Representative of the Estate of FRENI HAZARE for damages she suffered prior to her demise; in addition to all other damages applicable arising out of the death of FRENI HAZARE.

7. VATSAL CHOKSHI (hereinafter, "Plaintiff Father") is the father of the deceased DHRUV CHOKSHI, and Plaintiff Father is the only surviving heir that would take property upon intestacy pursuant to the laws of the State of South Carolina. Therefore, Plaintiff Father has been appointed Personal Representative of the Estate of DHRUV CHOKSHI by the Dorchester County Probate Court. Plaintiff Father brings this action in his individual capacity based on the damages suffered under the Wrongful Death Statute of South Carolina as to his loss of his minor son, including in that loss the love and affection of his youngest son and all other damages recoverable by statute or otherwise; as well as under the Survival Statute of South Carolina as the Personal Representative of the Estate of DHRUV CHOKSHI for damages he suffered prior to his demise such as having to watch his mother burn alive, listening to her suffer as she burned alive, and then having to endure the pain of burning alive himself; in addition to all other damages applicable arising out of the death of DHRUV CHOKSHI.

8. The Plaintiffs are informed, believe, and on that basis allege that Defendant BIF-SUMMERVILLE STATION LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, Paracorp. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

9. The Plaintiffs are informed, believe, and on that basis allege that Defendant PAC-SUMMERVILLE, LLC, is now, and at all times mentioned herein was, a limited liability company

duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, Paracorp. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

10. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN BP MANAGEMENT, INC., is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Texas, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

11. The Plaintiffs are informed, believe, and on that basis allege that Defendant THE BEACH CO. is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina and registered agent there for service of process, John C. L. Darby. Said Defendant can be served through this agent at 320 Broad Street, Suite 600, Charleston, South Carolina 29401.

12. The Plaintiffs are informed, believe, and on that basis allege that Defendant BEACH COMPANY, INC., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina and registered agent there for service of process, John C. L. Darby. Said Defendant can be served through this agent at 320 Broad Street, Suite 600, Charleston, South Carolina 29401.

13. The Plaintiffs are informed, believe, and on that basis allege that Defendant BEACH INVESTMENT FUND, L.P., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina and registered agent there for service of process, John C. L. Darby. Said

Defendant can be served through this agent at 320 Broad Street, Suite 600, Charleston, South Carolina 29401.

14. The Plaintiffs are informed, believe, and on that basis allege that Defendant BEACH REAL ESTATE FUNDS LLC, is a limited liability company duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina with a registered agent for service of process of John C. L. Darby who can be served with process at that principal place of business of 320 Broad Street, Suite 600, Charleston, South Carolina 29401. Plaintiffs assert that any and all allegations against this Defendant include allegations against this Defendant as it was formerly known as BEACH REAL ESTATE INVESTMENTS, LLC before it was amended on or about June 19, 2020 from when it was formerly known as BEACH INVESTMENT MANAGEMENT, LLC as it was initially organized on or about August 9, 2017.

15. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN PROPERTY COMPANY COMMERCIAL, INC., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of Texas, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

16. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN PROPERTY COMPANY COMMERCIAL SERVICE ENTERPRISES, INC., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of Texas, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

17. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN PROPERTY COMPANY NATIONAL, INC., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of Texas, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

18. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN PROPERTY COMPANY NATIONAL, LLC, is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

19. The Plaintiffs are informed, believe, and on that basis allege that Defendant LINCOLN PROPERTY COMPANY NO. 177, LTD. PARTNERSHIP, is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina without having a registered agent for service of process published on the South Carolina Secretary of State website. Said Defendant can be served through the South Carolina Secretary of State of by publication if needed.

20. The Plaintiffs are informed, believe, and on that basis allege that Defendant JOHN/MARY DOES, XYZ CORPORATIONS, is now, and at all times mentioned herein was, a corporation duly organized under the laws of a State located within the United States and having its principal place of business in the United States having registered to do business in South Carolina.

JURISDICTION AND VENUE

21. All relevant events relating to this matter occurred in Dorchester County, South Carolina.

22. This Honorable Court has personal and subject matter jurisdiction over the Parties, and venue is proper in this Court.

STATEMENT OF FACTS

The Decedents

23. At all times relevant to this Complaint, Decedent FRENI HAZARE was a 48-year-old woman and mother of Decedent DHRUV CHOKSHI and Plaintiff DEVAN CHOKSHI. Decedent HAZARE resided with Decedent DHRUV CHOKSHI in unit B-16 of a 212-unit garden-style multi-family apartment complex known as SUMMERVILLE STATION, LLC, located at 1660 Old Trolley Road, Summerville, South Carolina 29485 (hereinafter, “the Property”), and was gainfully employed as a full-time pharmacy technician.

24. At all times relevant to this Complaint, Decedent DHRUV CHOKSHI was a 15-year-old minor who resided with his mother, Decedent FRENI HAZARE, at the Property and was a freshman high school honors student at Ashley Ridge High School in Summerville, South Carolina.

The Knowledge, Expertise and Experience of the Defendants

25. On or about December 15, 2020, Defendants THE BEACH CO. and BEACH REAL ESTATE FUNDS, LLC (hereinafter referred to as “the BEACH DEFENDANTS”) announced the purchase of the Property.

26. The BEACH DEFENDANTS, in conjunction with BIF-SUMMERVILLE STATION, LLC, and PAC-SUMMERVILLE, LLC, purchased the SUMMERVILLE STATION, LLC multi-family apartment complex, located at 1660 Old Trolley Rd, Summerville, SC 29485.¹

¹ BIF-SUMMERVILLE STATION, LLC, and PAC-SUMMERVILLE, LLC are listed as the owners of SUMMERVILLE STATION.

27. According to BEACH REAL ESTATE FUNDS, LLC's website, it is "[b]acked by the proven 77-year success of The Beach Company" and "source[s] direct investments in select existing multifamily apartment properties throughout the Southeastern United States."

28. Following the purchase of the Property by the BEACH DEFENDANTS, the BEACH DEFENDANTS stated in a December 15, 2020 media announcement that "[w]e look forward to beginning our renovation program and improving the asset to the betterment of both our tenants and investors."

29. The BEACH DEFENDANTS are highly knowledgeable of the industry and have vast experience in the area of purchasing and selling multi-family unit apartment complexes, condominiums, and other complexes such as the one at issue, and possessed knowledge and information relating to the condition of the Property at the time of purchase. To this end, the BEACH DEFENDANTS' online and social media publications further describes their said experience and knowledge as follows:

Founded in 1945, The Beach Company's diverse real estate interests include residential and resort properties, office buildings, shopping centers, industrial parks, land and marinas across the Southeast. This assorted portfolio has allowed The Beach Company to build landmark, award-winning properties, premier apartment communities and notable developments. The Beach Company is proud of its rich history of delivering exceptional customer service, which has been ingrained in the company's culture since the beginning. A dynamic group of development officers, property managers and professional agents round out The Beach Company team, each possessing unmatched market knowledge and a true passion for real estate. Influenced by both a deep reverence for tradition and a progressive vision, The Beach Company strives to create long-term economic vitality for the region and build enduring value in every property, ultimately improving the quality of life for our residents and neighbors. The Beach Company offers the widest range of real estate services in the region, and operates a successful organization with three unique departments serving the needs of the Southeast's property sector including: development, management and commercial brokerage."

30. As reflected in the BEACH DEFENDANTS' publicized portfolio, the BEACH DEFENDANTS own, operate and/or maintain residential and mixed-use luxury properties

throughout the Southeast including, but not limited to: (a) the Kiawah Island Club and the Kiawah River Project, both located in Kiawah, South Carolina; (b) the Jasper, the Charles, Stono Oaks, Longborough and Canon Place, all located in Charleston, South Carolina; (c) the Assembly, located in North Charleston, South Carolina; (d) Marais, Hobcaw Creek and the Riviera Apartments, both located in Mount Pleasant, South Carolina; (e) the Parks at Nexton in Summerville, South Carolina; (f) Providence Park, the Cardinal Apartments, Sola Station and Canalside Lofts, both located in Columbia, South Carolina; (g) Main + Stone, Canvas Lofts and South Ridge, all located in Greenville, South Carolina; (h) Seaside Grove in Myrtle Beach, South Carolina; and (i) several other areas in the region, including facilities in Georgia, Virginia, Alabama and Tennessee.

31. Plaintiffs are informed and believe that the BEACH DEFENDANTS, either through one or all of their entities, utilized the property management services of one or all of DEFENDANT LINCOLN BP MANAGEMENT, INC. ("LINCOLN") as their property managers of the Property.

32. Plaintiffs are informed and believe that LINCOLN possesses vast experience, both nationally and internationally, in property management for over 50 years on a scale it claims is one of the largest in the country, comprising property management of 403,000,0000 square feet, according to its published website. At the time of the filing of this Complaint, LINCOLN was ranked the 2nd second largest apartment property manager in the United States.

33. LINCOLN's own website boasts of its competence in the area of Property Management, stating:

With 50+ years' experience in developing, owning and managing one of the largest commercial real estate portfolios in the United States, LPC has developed a management approach that draws from all service capabilities and systems throughout the organization, and building value for our clients. With a singular focus on client and tenant satisfaction, our comprehensive management programs are tailored to each property's needs. We leverage our national experience

comprising over 403 MSF to each and every assignment. National Presence. Local Focus.

34. The BEACH DEFENDANTS and LINCOLN, both individually and collectively, possessed significant and undisputed experience, knowledge, skills and extensive means to bring the Property into a safe, habitable living space for Decedents FRENI HAZARE, DHRUV CHOKSHI and the residents of SUMMERVILLE STATION.

35. Shortly after opening the Property to tenants, the BEACH DEFENDANTS and LINCOLN failed to attend to, and/or outright ignored or disregarded, even minor tasks related to management upkeep and safety of the Property.

36. Beginning in or about at least 2020, multiple residents voiced numerous complaints about myriad issues they encountered at the Property. These tenant complaints included, but were not limited to, issues with:

- a. HVAC units not heating or cooling properly;
- b. the electrical system of the units, which would spark on occasion when plugging in appliances;
- c. the “patchwork” repairs to the wiring behind the walls revealing that prior repairs failed to adequately address the issue from its inception;
- d. lack of adequate fire extinguishers that were regularly missing from their cases due to inadvertence, theft or vandalism. Most specifically, one of the two fire extinguishers had been stolen out of the exact building on the Property where the Decedents resided prior to the fire, which could have potentially prevented the Decedents’ deaths had they been replaced in a timely manner; or had Defendants’ taken precautions to prevent the continuous theft of the fire extinguishers including extinguishers from the Decedents’ building;

e. lack of smoke detectors, incorrectly installed smoke detectors, malfunctioning smoke detectors that failed to work, were too old, were not placed in the right spots of the units, were not “hard wired” to the electrical system and/or were missing batteries, and other issues related to the smoke detectors. These numerous issues with the smoke detectors were memorialized in “work orders” lodged by the tenants, as well as the Defendants’ own admissions that the smoke detectors were a known issue by everyone including the Defendants prior to the night of the fatal fire;

f. repeated and consistent problems multiple residents encountered when attempting to open their windows, sliding glass doors or other means of egress from the units, many of them indicating that both the windows and the sliding doors were difficult or impossible to open due to their age; the fact they had been painted over so many times when new tenants moved in; window springs and doors being broken and/or non-functional; or other issues either that Defendants failed to remedy once they received a complaint or that Defendants caused through their actions or inactions;

g. It was the common practice of the Defendants to paint over windowsills whenever a new tenant moved into an apartment without taking common precautionary measures to prevent the paint from sealing windows and/or doors; without using obvious and necessary tools and measures to remediate such dangerous conditions; or otherwise failing to take any appropriate actions to ensure apartment units maintained necessary means of egress pursuant to the fire code;

h. It was a further common practice of the Defendants to drill windows shut using screws, brackets or otherwise, and failing to remediate such dangerous conditions; or otherwise failing to take any appropriate actions to ensure apartment units maintained necessary means of egress pursuant to fire code;

i. plumbing issues, including but not limited to, leaking through different areas of the apartment units such as the dishwasher, the washing machine, the roof and/or windows, or other unsealed areas resulting in wet, molded furniture, carpets, rugs or other flooring and sub-flooring;

j. issues with maintaining trash overflow and general litter throughout the Property that Defendants admit they could not properly maintain due to the Defendants' inadequate staffing. For most of the period wherein the BEACH DEFENDANTS owned the Property, staff was limited to a single maintenance employee to carry out all tenant maintenance, repairs and other needs of the Property; and

k. other issues with repairing, maintaining or simply meeting the basic needs of residents to provide a safe, healthy and habitable living residence that, in this case, directly resulted in the deaths of Decedents FRENI HAZARE and DHRUV CHOKSHI.

The Fatal Fire

37. In the early morning hours of September 29, 2022, a fire broke out at the Property, engulfing virtually all of Building B of the Property, as well as portions of Buildings A and C. The fire origin is believed to be at or near a Building B apartment storage unit near the building breezeway. The cause of the fire remains undetermined.

38. The first 911 call reporting the Property fire was received on September 29, 2022 at approximately 2:51 a.m. by a male caller² in Building B stating he was trapped due to the fire being at his front door. He was instructed by the operator to crawl on his hands and knees away from the front door.

39. Following the initial emergency call from this individual, the 911 dispatch center began to receive a barrage of calls from individuals located in multiple units at the Property.

² All statements recounted herein are reflected in substance and in part.

40. In one recorded 911 call, a male individual residing in Building B can be heard screaming, “[I] kicked out a window!” at approximately 2:56 a.m. Other tenants of the Property observed the man in Building B kick out the window or otherwise the window remove by force, then leap from his window to escape the fire.

41. Individuals in another Building B unit, the adjoining unit to the Decedents’ apartment, were unable to open their sliding glass door due to it being stuck and inoperable. In addition, individuals residing in Building B indicated that they initially tried to exit from window at the rear of the apartment but it was screwed shut. Consequently, they kicked out the other apartment window and leapt from the second floor to escape the fire.

42. Similarly, individuals residing in another Building B unit were unable to open their window, so they forcibly broke the window and leapt to safety.

43. Other individuals residing in Building B were forced to throw an object through their sliding glass door due to it being stuck and unable to be opened as it was their only means of egress to escape the fire.

44. Individuals residing in several apartments in Building B reported that apartment smoke detectors did not properly function or alert them to the fire.

The Decedents Perish in the Fire

45. In the early morning hours of September 29, 2022, Decedent FRENI HAZARE placed a 911 call from her apartment at the Property, Unit B-16, and can be heard wailing in pain while burning alive during her call to the police.

46. In a separate 911 call placed to the police from the same apartment unit at the Property, 15-year-old Decedent DHRUV CHOKSHI can be heard screaming “Mom! Mom!” while, upon information and belief, Decedent DHRUV CHOKSHI observed, witnessed and heard his mother burning to death.

47. Decedent DHRUV CHOKSHI, while repeatedly coughing and struggling to speak, pleaded with the 911 dispatcher, stating, *“Too much smoke in here – Please!”* The dispatcher directed Decedent DHRUV CHOKSHI to try to move towards the window in his bedroom.

48. Thereafter, Decedent DHRUV CHOKSHI can be heard in the 911 recording, screaming, *“I can’t open my window!”*

49. As a result, Decedent DHRUV CHOKSHI, upon information and belief, died burned to death due to his inability to egress from his apartment to escape the fire.

50. Despite the extensive resources both the BEACH DEFENDANTS and LINCOLN had at their disposal, including their media statements that they intended to make the necessary renovations to make the apartment complex “valuable” to its residents, LINCOLN, upon information and belief, employed only one (1) person who handled the maintenance for all 220 units of the Property.

51. LINCOLN’s on-site managers lodged their own numerous complaints to LINCOLN’s upper management including, but not limited to, complaining of their inability to maintain, repair or replace tenant air conditioners that were failing regularly, and their overall inability to maintain suitable living conditions for that number of units at the Property.

52. Certain employees of LINCOLN admitted that issues with the smoke detectors were a “known problem” to LINCOLN and the BEACH DEFENDANTS. Yet, neither party took any steps to ensure the health, safety and security of their tenants which could have prevented the Decedents’ demise, notwithstanding their collective knowledge, experience and expertise in the field.

53. Certain employees of LINCOLN and the BEACH DEFENDANTS have also indicated that window springs in apartment units at the Property routinely broke or became non-functional. Certain employees of the Defendants further indicated that it was a routine and common practice

to paint over windowsills prior to a new tenant moving into an apartment unit at the Property, causing windows to be difficult, if not impossible, to open.

54. LINCOLN and the BEACH DEFENDANTS had direct knowledge of the issues of: (a) malfunctioning smoke detectors; (b) the chronic problems with the windows and the practice of painting over windows causing them to seal and become unusable; (c) the lack of reliable fire extinguishers and myriad other complaints because they had been alerted to these issues countless times by multiple residents, as more fully set forth above.

55. The Defendants nonetheless chose not to hire additional staff, make necessary repairs or take any corrective action that would have saved the Decedents' lives.

56. Before and after the fire began, the Decedents did not receive adequate protection or security; did not received adequate warning from properly functioning fire alarms, heat detector alarms or smoke detectors; were not protected by any fire sprinkler system; were not able to egress their apartment through the front door or windows since the Defendants screwed the windows shut, painted windows causing windows to seal, and/or due to missing, broken or otherwise altered window balance springs thereby preventing the Decedents from escaping the fire to safety.

57. The Decedents' statutory beneficiaries have lost their care, support, comfort, society, aid, and companionship; have endured extreme mental shock and suffering, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of their deaths; and have suffered economic loss due to the loss of Decedents DHRUV CHOKSHI and FRENI HAZARE.

COUNT I
NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
SURVIVAL ACTION
DECEDENT DHRUV CHOKSHI

58. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

59. All Defendants owed duties to the Plaintiff Decedent, DHRUV CHOKSHI as Decedent CHOKSHI's landlord, owner and manager of the dwelling in which the Decedent CHOKSHI lived and perished. By and through the allegations made herein, the Defendants breached those duties and were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties, by, among other things:

a. Failing to supply, install and/or maintain smoke detectors at the Property which functioned properly;

b. Failing to provide smoke detectors that were of suitable age pursuant to manufacturer's instructions and applicable fire code;

c. Failing to install the smoke detectors in the proper areas of the residence as any reasonable person would given the floor plan of the Property, and as required by the fire code;

d. Failing to provide instructions on the use and maintenance of the smoke detectors at the time the tenants took possession of the apartments within the Property;

f. Failing to provide adequate points of ingress/egress including, but not limited to, the sealing of the sliding glass doors and windows by screwing them shut; painting over them so frequently which caused them to become sealed without taking any action to unseal them; failing to replace extremely aged windows that would not open because rails had bent and/or suffered other defects preventing them from opening; and otherwise failing to take action that the Defendants were required to take to ensure Decedent DHRUV CHOKSHI had a means of egress in the event of a fire as required by the fire code;

g. Failing to use sufficient fire-resistant construction materials;

h. Failing to maintain an adequate fire sprinkler system, fire extinguishers and/or other protective devices to protect residents in the event of a catastrophic fire;

i. Failing to comply with the requirements of applicable building codes materially affecting health and safety despite actual and constructive knowledge of many defects at the Property, which knowledge was gained through the Defendants' daily maintenance of the Property; performing repairs of the Property, inspection of the Property; and/or otherwise identifying the issues through the tenants, employees or other persons related to the matter;

k. Failing to take necessary actions, make all repairs or otherwise maintain the premises to ensure the Property was in, and remained in, a safe, fit, and habitable condition;

l. While actual or constructive knowledge is not required for the Plaintiffs to recover for the Defendants' negligence as set forth above, the Defendants were negligent *per se*, grossly negligent and are subject to punitive damages awards to the Plaintiffs based on the Defendants' direct and/or constructive knowledge of the issues with the smoke detectors, windows and sliding glass doors opening and closing, and flammable siding all which required repair, replacement or some mitigating action to ensure that Decedent DHRUV CHOKSHI and other residents of the Property were not living in a veritable tinderbox. Moreover, the Defendants' knowledge of the gaps in the storage units and similar areas that would facilitate fire to spread through to the attic without any barriers could have been remedied with the purchase and installation of five dollar (\$5.00) barrier material. As a consequence of the Defendants' failure, the fire spread swiftly, giving Decedent DHRUV CHOKSHI and other residents little time to escape. Given the sophistication, experience and collective knowledge possessed by the Defendants with their ownership and management of several other multi-family dwellings, the Defendants knew or should have known that the Property was an "accident waiting to happen," unless they made necessary repairs and improvements identified to them by multiple residents.

60. As a direct and proximate result of the negligent, negligent *per se*, grossly negligent, willful and wanton conduct of the Defendants, Decedent DHRUV CHOKSHI, suffered, among other

things, tremendous pain and suffering, incredible fear and helplessness as he watched his mother become engulfed in flames and listened to her cries while Decedent CHOKSHI screamed to his mother as she burned alive, only to then realize that he was trapped and unable to open the window to escape, causing his ultimate demise.

61. VATSAL CHOKSHI, individually and as Personal Representative of the Estate of DHRUV CHOKSHI, is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscious of the jury. The Personal Representative of the Estate of DHRUV CHOKSHI is entitled to recover the Decedent's statutory damages as a father who has lost the love and affection of his son, his son's care, support, comfort, society, aid, and companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of his son's death, as well as economic loss and loss as a result of his son's death.

COUNT II
 NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
 SURVIVAL ACTION
 DECEDENT FRENI HAZARE

62. The Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

63. All Defendants owed duties to the Plaintiff Decedent, FRENI HAZARE as Decedent HAZARE's landlord, owner and manager of the dwelling in which the Decedent HAZARE lived and perished. By and through the allegations made herein, the Defendants breached those duties and were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties, by, among other things:

a. Failing to supply, install and/or maintain smoke detectors at the Property which functioned properly;

- b. Failing to provide smoke detectors that were of suitable age pursuant to manufacturer's instructions and applicable fire code;
- c. Failing to install the smoke detectors in the proper areas of the residence as any reasonable person would given the floor plan of the Property, and as required by the fire code;
- d. Failing to provide instructions on the use and maintenance of the smoke detectors at the time the tenants took possession of the apartments within the Property;
- f. Failing to provide adequate points of ingress/egress including, but not limited to, the sealing of the sliding glass doors and windows by screwing them shut; painting over them so frequently which caused them to become sealed without taking any action to unseal them; failing to replace extremely aged windows that would not open because rails had bent and/or suffered other defects preventing them from opening; and otherwise failing to take action that the Defendants were required to take to ensure Decedent FRENI HAZARE had a means of egress in the event of a fire as required by the fire code;
- g. Failing to use sufficient fire-resistant construction materials;
- h. Failing to maintain an adequate fire sprinkler system, fire extinguishers and/or other protective devices to protect residents in the event of a catastrophic fire;
- i. Failing to comply with the requirements of applicable building codes materially affecting health and safety despite actual and constructive knowledge of many defects at the Property, which knowledge was gained through the Defendants' daily maintenance of the Property; performing repairs of the Property, inspection of the Property; and/or otherwise identifying the issues through the tenants, employees or other persons related to the matter;
- k. Failing to take necessary actions, make all repairs or otherwise maintain the premises to ensure the Property was in, and remained in, a safe, fit, and habitable condition;

1. While actual or constructive knowledge is not required for the Plaintiffs to recover for the Defendants' negligence as set forth above, the Defendants were negligent *per se*, grossly negligent and are subject to punitive damages awards to the Plaintiffs based on the Defendants' direct and/or constructive knowledge of the issues with the smoke detectors, windows and sliding glass doors opening and closing, and flammable siding all which required repair, replacement or some mitigating action to ensure that Decedent FRENİ HAZARE and other residents of the Property were not living in a veritable tinderbox. Moreover, the Defendants' knowledge of the gaps in the storage units and similar areas that would facilitate fire to spread through to the attic without any barriers could have been remedied with the purchase and installation of five dollar (\$5.00) barrier material. As a consequence of the Defendants' failure, the fire spread swiftly, giving Decedent FRENİ HAZARE and other residents little time to escape. Given the sophistication, experience and collective knowledge possessed by the Defendants with their ownership and management of several other multi-family dwellings, the Defendants knew or should have known that the Property was an "accident waiting to happen," unless they made necessary repairs and improvements identified to them by multiple residents.

64. As a direct and proximate result of the negligent, negligent *per se*, grossly negligent, willful and wanton conduct of the Defendants, Decedent FRENİ HARARE suffered, among other things, a tremendous amount of pain and suffering prior to her death, fear, and the helplessness of a mother burning alive while she can hear her son in the next room without any ability to save him or herself from their impending doom in the excruciating moments before her death.

65. DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENİ HAZARE, is entitled to actual compensatory damages from the Defendants in an amount to be determined by the enlightened conscience of the jury.

COUNT III
 NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
 WRONGFUL DEATH ACTION OF DHRUV CHOKSHI

66. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

67. All Defendants owed duties to the Plaintiff Decedent, DHRUV CHOKSHI, as the Decedent CHOKSHI's landlord, owner and manager of the dwelling in which Decedent CHOKSHI lived and perished. By and through the allegations made herein, Defendants breached those duties, were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties set forth in Paragraph 59 of Count I of the Complaint as if fully and completely set forth herein.

68. VATSAL CHOKSHI, individually and as Personal Representative of the Estate of DHRUV CHOKSHI is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscience of the jury. The Personal Representative of the Estate of DHRUV CHOKSHI is entitled to recover Decedent DHRUV CHOKSHI's statutory damages as a father who has lost the love and affection of his son, his son's care, support, comfort, society, aid, and companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of his son's death, as well as economic loss and loss as a result of his son's death.

COUNT IV
 NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
 WRONGFUL DEATH ACTION OF FRENI HAZARE

69. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

70. All Defendants owed duties to the Plaintiff Decedent, FRENI HAZARE as Decedent HAZARE's landlord, owner and manager of the dwelling in which Decedent HAZARE lived and

perished. By and through the allegations made herein, Defendants breached those duties, were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties set forth in Paragraph 63 of Count II of the Complaint as if fully and completely set forth herein.

71. DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENI HAZARE, is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscious of the jury. The Personal Representative of the Estate of FRENI HAZARE is entitled to recover Decedent HAZARE's statutory damages as a son who has lost the love and affection of his mother, his mother's care, her support, her comfort, her society, her aid, and her companionship; as well as the love and affection of his brother, Decedent DHRUV CHOKSHI's, support, his brother's comfort, his society, his aid, and his companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of suffering the loss of your mother and brother at the same time, as well as economic loss and loss as a result of his mother's death.

COUNT V

VIOLATION OF SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT

72. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

73. Defendants' failure to maintain a healthy and safe premises violates the South Carolina Residential Landlord and Tenant Act., S.C. Code Ann. §§ 27-40-220, 27-40-440, 27-40-610, 27-40-630, 27-40-660 and 27-40-910, and the codes incorporated therein by reference.

74. The Defendants' non-compliance was willful because they had actual and/or constructive knowledge of the numerous issues at the Property which predated but persisted until the onset of the fire on September 29, 2022.

75. Plaintiffs are informed and believed that pursuant to S.C. Code Ann. § 27-40-610(b), they are entitled to an award of actual damages and, because the breach was willful, an award of treble damages, punitive damages and attorney's fees from the Defendants.

76. Plaintiffs are entitled to injunctive relief and an Order of the Court pursuant to S.C. Code Ann. § 27-40-610(b) requiring the Defendants to immediately deliver, render and remediate the Property in fit and habitable conditions.

77. Upon information and belief, the Defendants have violated S.C. Code Ann. § 27-40-910, and the Plaintiffs have suffered actual damages, general damages, including extreme mental anguish, loss of love and affection, and are entitled to treble damages, punitive damages and reasonable attorney fees due to the Defendants' violations of South Carolina Residential Landlord and Tenant Act.

COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AS TO ALL DEFENDANTS

78. Plaintiffs adopt, reallege, and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

79. The Defendants' unreasonable, negligent, gross negligent, and other compensable conduct, as outlined herein, inflicted severe emotional distress on the Plaintiffs as a result of the Decedents.

80. As a further direct and proximate cause of the Defendants' failure to maintain reasonably safe conditions, and/or failing to exercise proper care to protect the Decedents from the conditions outlined herein that were the direct and proximate cause of the Decedents' demise, Plaintiffs suffered and continue to suffer severe emotional distress which they are entitled to an award to be determined by the enlightened conscience of the jury.

COUNT VII
RESPONDEAT SUPERIOR AS TO ALL DEFENDANTS

81. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

82. The BEACH DEFENDANTS are vicariously liable for the negligent actions of its agents, including but not limited to, LINCOLN, their employees, agents or other person or entities acting in furtherance of their business because, at all relevant times, agents of the BEACH DEFENDANTS, including LINCOLN or other servants, were acting within the scope of their employment and in furtherance of their business as the owners of the Property.

83. The BEACH DEFENDANTS are further vicariously liable for the negligent actions of LINCOLN, their employees, agents or other person or entities acting in furtherance of their business because, at all relevant times, the BEACH DEFENDANTS expressly authorized the agents' actions and/or ratified those actions.

84. The Plaintiffs are entitled to damages in an amount to be determined by the enlightened conscious of the jury as to the BEACH DEFENDANTS regardless of the joint and severability of the award against all Defendants.

COUNT VIII
PUNITIVE DAMAGES

85. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in Paragraphs 1-50 of the Complaint as if fully and completely set forth herein.

86. Plaintiffs are entitled to punitive damages from the Defendants in order to punish the Defendants for their reckless, wanton and unreasonable conduct, as well as to deter similar future conduct by said Defendants.

WHEREFORE, Plaintiffs pray:

- a. That judgment be entered against the Defendants jointly and severally for such actual, consequential and punitive damages as this Court and/or a jury deems appropriate;
- b. For a trial by jury;
- c. That judgment be entered against all Defendants for costs, prejudgment interest and attorney's fees to the fullest extent the law will allow; and
- d. For such other and further relief that this Court deems just and proper.

Law Office of Jason S. Stevens, LLC
Attorneys for the Plaintiffs

By: /s/ Jason S. Stevens
JASON S. STEVENS

Kingston Coventry LLC
Attorneys for the Plaintiffs

By: /s/ Christopher J. Gramiccioni
CHRISTOPHER J. GRAMICCIONI

June 19, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
DEVAN CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF FRENI HAZARE, Deceased,	)	CASE NO.: 2023-CP-18-00836
VATSAL CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF DHRUV CHOKSHI, Deceased,	)	
	)	
Plaintiffs,	)	
vs.	)	FOURTH AMENDED
	)	SUMMONS
BIF-SUMMERVILLE STATION LLC,	)	
PAC-SUMMERVILLE, LLC, THE BEACH CO.,	)	
BEACH INVESTMENT FUND, L.P.	)	
FUND, L.P., BEACH REAL ESTATE FUNDS, LLC,	)	
LINCOLN BP MANAGEMENT, INC., LINCOLN	)	
PROPERTY COMPANY NATIONAL LLC,	)	
JOHN/MARY DOES 1-3 and	)	
CORPORATIONS XYZ 1-3,	)	
SRNG LLC, ASSET LIVING SOUTHEAST, LLC,	)	
f/k/a JMG REALTY, LLC,	)	
SHOOK ASSOCIATES ARCHITECTS,	)	
F/K/A SHOOK & ASSOCIATES,	)	
AND DAVID SHOOK,	)	
	)	
Defendants.	)	

TO DOMINIC STARR, ATTORNEY FOR LINCOLN BP MANAGEMENT, INC., and LINCOLN PROPERTY COMPANY NATIONAL LLC, FORD THRIFT AND MORGAN TEMPLETON, ATTORNEYS FOR BIF-SUMMERVILLE STATION, LLC, PAC-SUMMERVILLE, LLC, BEACH CO., BEACH INVESTMENT FUND, L.P., BEACH REAL ESTATE FUNDS, LLC, SRNG LLC, ASSET LIVING SOUTHEAST, LLC, f/k/a JMG REALTY, LLC, SHOOK ASSOCIATES ARCHITECTS, f/k/a SHOOK & ASSOCIATES, DAVID SHOOK, JOHN AND MARY DOES 1-3 AND CORPORATIONS XYZ 1-3:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jason S. Stevens, at his office at 81 Vincent Drive, Mt. Pleasant, South Carolina 29464, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

Kingston Coventry, LLC

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 Christopher J. Gramiccioni
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The Stevens Law Firm

By: s/ Jason S. Stevens
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September 19, 2024
 Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
DEVAN CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF FRENI HAZARE, Deceased,	)	CASE NO.: 2023-CP-18-00836
VATSAL CHOKSHI, INDIVIDUALLY AND	)	
AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF DHRUV CHOKSHI, Deceased,	)	
	)	
Plaintiffs,	)	
vs.	)	FOURTH AMENDED
	)	COMPLAINT
BIF-SUMMERVILLE STATION LLC,	)	
PAC-SUMMERVILLE, LLC, THE BEACH CO.,	)	
BEACH INVESTMENT FUND, L.P., BEACH	)	
REAL ESTATE FUNDS, LLC, LINCOLN BP	)	
MANAGEMENT, INC., LINCOLN PROPERTY	)	
COMPANY NATIONAL LLC,	)	
JOHN/MARY DOES 1-3 and	)	
CORPORATIONS XYZ 1-3,	)	
SRNG LLC, ASSET LIVING SOUTHEAST, LLC,	)	
f/k/a JMG REALTY, LLC,	)	
SHOOK ASSOCIATES ARCHITECTS,	)	
F/K/A SHOOK & ASSOCIATES,	)	
AND DAVID SHOOK,	)	
	)	
	)	
Defendants.	)	

TO DOMINIC STARR, ATTORNEY FOR LINCOLN BP MANAGEMENT, INC., and LINCOLN PROPERTY COMPANY NATIONAL LLC, and FORD THRIFT AND MORGAN TEMPLETON, ATTORNEYS FOR BIF-SUMMERVILLE STATION, LLC, PAC-SUMMERVILLE, LLC, THE BEACH CO., BEACH INVESTMENT FUND, L.P., BEACH REAL ESTATE FUNDS, LLC, SRNG LLC, ASSET LIVING SOUTHEAST, LLC, f/k/a JMG REALTY, LLC, SHOOK ASSOCIATES ARCHITECTS, f/k/a SHOOK & ASSOCIATES, DAVID SHOOK, JOHN AND MARY DOES 1-3 AND CORPORATIONS XYZ 1-3:

Plaintiffs, DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENI HAZARE (hereinafter referred to as “Plaintiff Brother,” “Plaintiff Son,” and/or “Plaintiff PR of Estate Hazare”) and VATSAL CHOKSHI, individually and as the Personal Representative of the Estate of DHRUV CHOKSHI (hereinafter referred to as “Plaintiff Father” and/or “Plaintiff

PR of Estate Chokshi”) (both hereinafter referred to collectively as “Plaintiffs”) by and through their undersigned counsel, hereby shows by way unto this Court as follows:

INTRODUCTION

1. On September 29, 2022, 48-year-old FRENI HAZARE and her son, 15-year-old DHRUV CHOKSHI (hereinafter, “the Decedent” or “Decedents” collectively), died tragically in a fire that engulfed SUMMERVILLE STATION apartment complex where they resided together, located in Summerville, South Carolina.

2. This is a multi-count wrongful death action filed against the above-captioned Defendants for negligence and other causes of action in their management, ownership, maintenance of , and repairs to the SUMMERVILLE STATION apartment complex.

3. At the heart of this matter is the Defendants’ individual and collective breach of their duties and responsibilities to properly manage, maintain and repair the SUMMERVILLE STATION apartment complex, and their overall failure to ensure the safety and well-being of FRENI HAZARE, DHRUV CHOKSHI, and several other tenants residing in the SUMMERVILLE STATION complex.

4. As a direct and proximate result of the Defendants’ conduct, FRENI HAZARE and DHRUV CHOKSHI perished by burning alive and suffering gruesome and painful deaths while trapped in their apartment, as further described below.

THE PARTIES

5. The decedents FRENI HAZARE and DHRUV CHOKSHI were residents of Summerville, South Carolina, and all relevant events to this Complaint occurred in the County of Dorchester, South Carolina.

6. DEVAN CHOKSHI (hereinafter, “Plaintiff Son”) is the eldest son and only surviving heir of FRENI HAZARE and, therefore, Plaintiff Son has been appointed Personal Representative of

the Estate of FRENI HAZARE by the Dorchester County Probate Court. Plaintiff Son brings this action in his individual capacity based on the damages suffered under the Wrongful Death Statute of South Carolina as to his loss of a devoted brother, as to the loss of his mother, including but not limited to his loss of the love and affection of his brother, his mother, and all other damages recoverable by statute or otherwise; as well as under the Survival Statute of South Carolina as the Personal Representative of the Estate of FRENI HAZARE for damages she suffered prior to her demise; in addition to all other damages applicable arising out of the death of FRENI HAZARE.

7. VATSAL CHOKSHI (hereinafter, "Plaintiff Father") is the father of the deceased DHRUV CHOKSHI, and Plaintiff Father is the only surviving heir that would take property upon intestacy pursuant to the laws of the State of South Carolina. Therefore, Plaintiff Father has been appointed Personal Representative of the Estate of DHRUV CHOKSHI by the Dorchester County Probate Court. Plaintiff Father brings this action in his individual capacity based on the damages suffered under the Wrongful Death Statute of South Carolina as to his loss of his minor son, including in that loss the love and affection of his youngest son and all other damages recoverable by statute or otherwise; as well as under the Survival Statute of South Carolina as the Personal Representative of the Estate of DHRUV CHOKSHI for damages he suffered prior to his demise such as having to watch his mother burn alive, listening to her suffer as she burned alive, and then having to endure the pain of burning alive himself; in addition to all other damages applicable arising out of the death of DHRUV CHOKSHI.

8. The Plaintiffs allege that Defendant BIF-SUMMERVILLE STATION LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, Paracorp, Inc. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

9. The Plaintiffs allege that Defendant PAC-SUMMERVILLE, LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, Paracorp, Inc. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

10. The Plaintiffs allege that Defendant LINCOLN BP MANAGEMENT, INC., is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Texas, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court Suite 103, Columbia, South Carolina 29223.

11. The Plaintiffs allege that Defendant LINCOLN PROPERTY COMPANY NATIONAL LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Delaware, and having its principal place of business in South Carolina and registered agent there for service of process, C T CORPORATION SYSTEM. Said Defendant can be served through this agent at 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

12. The Plaintiffs allege that Defendant THE BEACH COMPANY is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina and registered agent there for service of process, John C. L. Darby. Said Defendant can be served through this agent at 320 Broad Street, Suite 600, Charleston, South Carolina 29401.

13. The Plaintiffs allege that Defendant BEACH INVESTMENT FUND, L.P., is now, and at all times mentioned herein was, a corporation duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina and registered agent there

for service of process, John C. L. Darby. Said Defendant can be served through this agent at 320 Broad Street, Suite 600, Charleston, South Carolina 29401.

14. The Plaintiffs are informed, believe, and on that basis allege that Defendant BEACH REAL ESTATE FUNDS LLC, is a limited liability company duly organized under the laws of the State of South Carolina, and having its principal place of business in South Carolina with a registered agent for service of process of John C. L. Darby who can be served with process at that principal place of business of 320 Broad Street, Suite 600, Charleston, South Carolina 29401. Plaintiffs assert that any and all allegations against this Defendant include allegations against this Defendant as it was formerly known as BEACH REAL ESTATE INVESTMENTS, LLC before it was amended on or about June 19, 2020 from when it was formerly known as BEACH INVESTMENT MANAGEMENT, LLC as it was initially organized on or about August 9, 2017.

15. The Plaintiffs allege that Defendant SRNG, LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Georgia, and having its principal place of business in Georgia. Said Defendant can be served through its registered agent at 1397 Carroll Drive, NW, Suite 200, Atlanta, GA, 30318.

16. The Plaintiffs allege that Defendant ASSET LIVING SOUTHEAST, LLC, f/k/a JMG REALTY, LLC, is now, and at all times mentioned herein was, a limited liability company duly organized under the laws of the State of Georgia, and having its registered agent there for service of process, Corporation Service Company. Said Defendant can be served through this agent at 2 Sun Court, Suite 400, Peachtree Corners, GA, 30092.

17. The Plaintiffs allege that Defendant SHOOK ASSOCIATES ARCHITECTS, f/k/a SHOOK & ASSOCIATES, is now, and at all times mentioned herein was, a company duly organized under the laws of the State of South Carolina, and having its principal place of business

in South Carolina. Said Defendant can be served through its principal, Defendant DAVID SHOOK.

18. The Plaintiffs allege that Defendant DAVID SHOOK, is now, and at all times mentioned herein was, a citizen of the state of South Carolina.

19. The Plaintiffs are informed, believe, and on that basis allege that Defendant JOHN/MARY DOES 1-3 and XYZ CORPORATIONS 1-3 are now, and at all times mentioned herein was, a corporation duly organized under the laws of a State located within the United States and having its principal place of business in the United States having registered to do business in South Carolina.

JURISDICTION AND VENUE

20. All relevant events relating to this matter occurred in Dorchester County, South Carolina.

21. This Honorable Court has personal and subject matter jurisdiction over the Parties, and venue is proper in this Court.

STATEMENT OF FACTS

The Decedents

22. At all times relevant to this Complaint, Decedent FRENI HAZARE was a 48-year-old woman and mother of Decedent DHRUV CHOKSHI and Plaintiff DEVAN CHOKSHI. Decedent HAZARE resided with Decedent DHRUV CHOKSHI in unit B-16 of a 212-unit garden-style multi-family apartment complex known as SUMMERVILLE STATION, LLC, located at 1660 Old Trolley Road, Summerville, South Carolina 29485 (hereinafter, “the Property”), and was gainfully employed as a full-time pharmacy technician.

23. At all times relevant to this Complaint, Decedent DHRUV CHOKSHI was a 15-year-old minor who resided with his mother, Decedent FRENI HAZARE, at the Property and was a

freshman high school honors student at Ashley Ridge High School in Summerville, South Carolina.

The Knowledge, Expertise and Experience of the Beach Defendants

24. On or about December 15, 2020, Defendants BEACH COMPANY, BEACH INVESTMENT FUND, L.P., BEACH REAL ESTATE FUNDS, LLC, their affiliates, subsidiaries or otherwise related entities (hereinafter, collectively referred to as “the BEACH DEFENDANTS”) in connection with John/Mary Does 1-3 and XYZ Corporations 1-3 announced the purchase of the Property.

25. The BEACH DEFENDANTS, in conjunction with John/Mary Does 1-3 and XYZ Corporations 1-3, purchased the SUMMERVILLE STATION, LLC multi-family apartment complex, located at 1660 Old Trolley Rd, Summerville, SC 29485, which then constituted the fourth purchase by Defendant the BEACH INVESTMENT FUND, L.P, a subsidiary of the BEACH DEFENDANTS.

26. According to the BEACH DEFENDANTS’ publicly available website, “Defendant Beach Investment Fund, L.P. is a discretionary fund that acquires and operates multi-family assets in the Southeast United States with the aim to implement a clear, discernible strategy to improve operations, increase cash flow and ultimately create significant value for both residents and investors.”

27. Following the purchase of the Property, the BEACH DEFENDANTS stated in a December 15, 2020 media announcement that “[w]e look forward to beginning our renovation program and improving the asset to the betterment of both our tenants and investors.”

28. The BEACH DEFENDANTS, in conjunction with BIF-SUMMERVILLE STATION, LLC, and PAC-SUMMERVILLE, LLC, purchased the SUMMERVILLE STATION, LLC multi-family apartment complex, located at 1660 Old Trolley Rd, Summerville, SC 29485.¹

29. BEACH DEFENDANTS utilized the entities of BIF-SUMMERVILLE STATION, LLC and PAC-SUMMERVILLE, LLC to act as owners of the property by naming them on title.

30. BIF-SUMMERVILLE STATION, LLC and PAC SUMMERVILLE, LLC did not exist prior to the purchase of the property, Plaintiffs are informed and believe that the entities only exist for to be the title holders in name alone to shield the other BEACH DEFENDANTS from liability, as evidenced by the operations, bookkeeping and other management of the companies which are administered by employees or agents of BEACH COMPANY, BEACH INVESTMENT FUND, L.P., and/or BEACH REAL ESTATE FUNDS, LLC.

31. According to BEACH REAL ESTATE FUNDS, LLC's website, it is "[b]acked by the proven 77-year success of The Beach Company" and "source[s] direct investments in select existing multifamily apartment properties throughout the Southeastern United States."

32. The BEACH DEFENDANTS are highly knowledgeable of the industry and have vast experience in the area of purchasing and selling multi-family unit apartment complexes, condominiums, and other complexes such as the one at issue, and possessed knowledge and information relating to the condition of the Property at the time of purchase. To this end, the BEACH DEFENDANTS' online and social media publications further describes their said experience and knowledge as follows:

Founded in 1945, The Beach Company's diverse real estate interests include residential and resort properties, office buildings, shopping centers, industrial parks, land and marinas across the Southeast. This assorted portfolio has allowed The Beach Company to build landmark, award-winning properties, premier apartment communities and notable developments. The Beach Company is proud

¹ In documents produced by Defendants, BIF-SUMMERVILLE STATION, LLC, and PAC-SUMMERVILLE, LLC are listed as the owners of SUMMERVILLE STATION.

of its rich history of delivering exceptional customer service, which has been ingrained in the company's culture since the beginning. A dynamic group of development officers, property managers and professional agents round out The Beach Company team, each possessing unmatched market knowledge and a true passion for real estate. Influenced by both a deep reverence for tradition and a progressive vision, The Beach Company strives to create long-term economic vitality for the region and build enduring value in every property, ultimately improving the quality of life for our residents and neighbors. The Beach Company offers the widest range of real estate services in the region, and operates a successful organization with three unique departments serving the needs of the Southeast's property sector including: development, management and commercial brokerage."

33. As reflected in the BEACH DEFENDANTS' publicized portfolio, the BEACH DEFENDANTS own, operate and/or maintain residential and mixed-use luxury properties throughout the Southeast including, but not limited to: (a) the Kiawah Island Club and the Kiawah River Project, both located in Kiawah, South Carolina; (b) the Jasper, the Charles, Stono Oaks, Longborough and Canon Place, all located in Charleston, South Carolina; (c) the Assembly, located in North Charleston, South Carolina; (d) Marais, Hobcaw Creek and the Riviera Apartments, both located in Mount Pleasant, South Carolina; (e) the Parks at Nexton in Summerville, South Carolina; (f) Providence Park, the Cardinal Apartments, Sola Station and Canalside Lofts, both located in Columbia, South Carolina; (g) Main + Stone, Canvas Lofts and South Ridge, all located in Greenville, South Carolina; (h) Seaside Grove in Myrtle Beach, South Carolina; and (i) several other areas in the region, including facilities in Georgia, Virginia, Alabama and Tennessee.

Maintenance of the Summerville Station Apartment Complex

34. THE BEACH DEFENDANTS, either through one or all of their entities, utilized the property management services of DEFENDANTS LINCOLN BP MANAGEMENT, INC. and LINCOLN PROPERTY COMPANY NATIONAL LLC ("hereinafter, collectively referred to as "LINCOLN") as their property managers of the Property.

35. Defendant LINCOLN PROPERTY COMPANY NATIONAL LLC created LINCOLN BP MANAGEMENT, INC. primarily, if not solely, for the use of the company title to shield LINCOLN PROPERTY COMPANY NATIONAL LLC from liability.

36. According to its published website, LINCOLN possesses vast experience, both nationally and internationally, in property management for over 50 years on a scale it claims is one of the largest in the country, comprising property management of 403,000,000 square feet. At the time of the filing of this Complaint, LINCOLN was ranked the 2nd second largest apartment property manager in the United States.

37. LINCOLN's own website boasts of its competence in the area of Property Management, stating:

With 50+ years' experience in developing, owning and managing one of the largest commercial real estate portfolios in the United States, LPC has developed a management approach that draws from all service capabilities and systems throughout the organization, and building value for our clients. With a singular focus on client and tenant satisfaction, our comprehensive management programs are tailored to each property's needs. We leverage our national experience comprising over 403 MSF to each and every assignment. National Presence. Local Focus.

38. The BEACH DEFENDANTS and LINCOLN, both individually and collectively, possessed significant and undisputed experience, knowledge, skills and extensive means to bring the Property into a safe, habitable living space for Decedents FRENÍ HAZARE, DHRUV CHOKSHI and the residents of SUMMERVILLE STATION.

39. Shortly after opening the Property to tenants, the BEACH DEFENDANTS and LINCOLN failed to attend to, and/or outright ignored or disregarded, even minor tasks related to management upkeep and safety of the Property.

40. Beginning in or about at least 2020, multiple residents voiced numerous complaints about myriad issues they encountered at the Property. These tenant complaints included, but were not limited to, issues with:

- a. HVAC units not heating or cooling properly;
- b. the electrical system of the units, which would spark on occasion when plugging in appliances;
- c. the “patchwork” repairs to the wiring behind the walls revealing that prior repairs failed to adequately address the issue from its inception;
- d. lack of adequate fire extinguishers that were regularly missing from their cases due to inadvertence, theft or vandalism. Most specifically, one of the two fire extinguishers had been stolen out of the exact building on the Property where the Decedents resided prior to the fire, which could have potentially prevented the Decedents’ deaths had they been replaced in a timely manner; or had Defendants’ taken precautions to prevent the continuous theft of the fire extinguishers including extinguishers from the Decedents’ building;
- e. lack of smoke detectors, incorrectly installed smoke detectors, malfunctioning smoke detectors that failed to work, were too old, were not placed in the right spots of the units, were not “hard wired” to the electrical system and/or were missing batteries, and other issues related to the smoke detectors. These numerous issues with the smoke detectors were memorialized in “work orders” lodged by the tenants, as well as the Defendants’ own admissions that the smoke detectors were a known issue by everyone including the Defendants prior to the night of the fatal fire;
- f. repeated and consistent problems multiple residents encountered when attempting to open their windows, sliding glass doors, or other means of ingress/egress from the units, many of them indicating that both the windows and the sliding doors were difficult or impossible to open

due to their age; the fact they had been painted over so many times when new tenants moved in; window springs and doors being broken and/or non-functional or other issues either that Defendants failed to remedy once they received a complaint or that Defendants caused through their actions or inactions;

g. erection, installation and/or modifications at the points of ingress and egress including but not limited to the wooden trellises that were erected at each entrance to the building breezeways in violation of applicable code or were otherwise negligent for, among other things, the Defendants' failure to obtain proper permitting for the modifications for these as well as the lights installed by Defendants, and Plaintiff is informed and believes the vinyl siding.

h. failing to erect, install, or otherwise ensure the proper fire barriers or other code requirements relating to the applicable building materials were used, failing to seal off "airways" or other open spaces such as the attic and roof or lack thereof in the interior stairwells, the openings into the individual units that were not properly sealed, and other passageways that were not sealed off or otherwise were violative of code.

i. It was the common practice of the Defendants as well as the prior owners, whom The Beach Defendants purchased the property from providing all Defendants with actual and/or constructive knowledge, to paint over windowsills whenever a new tenant moved into an apartment or moved out without taking common precautionary measures to prevent the paint from sealing windows and/or doors; failing to repair the windows, sliding glass doors, and other means of egress using obvious and necessary tools and measures to remediate such dangerous conditions; or otherwise failing to take any appropriate actions to ensure apartment units maintained necessary means of egress pursuant to the fire code;

j. It was a further common practice of the Defendants to drill windows shut using screws, brackets or otherwise, and failing to remediate such dangerous conditions; or otherwise

failing to take any appropriate actions to ensure apartment units maintained necessary means of egress pursuant to code;

k. plumbing issues, including but not limited to, leaking through different areas of the apartment units such as the dishwasher, the washing machine, the roof and/or windows, or other unsealed areas resulting in wet, molded furniture, carpets, rugs or other flooring and sub-flooring;

l. issues with maintaining trash overflow and general litter throughout the Property that Defendants admit they could not properly maintain due to the Defendants' inadequate staffing. For most of the period wherein the BEACH DEFENDANTS owned the Property, staff was limited to a single maintenance employee to carry out all tenant maintenance, repairs and other needs of the Property which is wholly inadequate for the 212-unit complex; and

m. other issues with repairing, maintaining or simply meeting the basic needs of residents to provide a safe, healthy and habitable living residence that, in this case, directly resulted in the deaths of Decedents FRENI HAZARE and DHRUV CHOKSHI.

41. After some initial documents were exchanged during the preliminary stages of the litigation, Plaintiffs learned of a contract between the owners and property manager that states Owner shall indemnify and hold harmless Property Manager from any liability related to Property Manager's duties and obligations under the contract, thereby all but alleviating Property Manager's responsibilities under the agreement as they would not be held liable even in the event that Property Manager's actions were the result of the loss.

Repairs and Renovations at the Summerville Station Apartment Complex

42. Shortly after acquiring the Summerville Station Apartment Complex, the Beach Defendants commissioned extensive exterior repairs and renovations at the Summerville Station Apartment Complex. These repairs took place between early 2021 and 2022, including in the months immediately before the fire. As relevant to this case, the repairs included adding wooden

trellises and caps to the breezeways of each apartment building; repainting the breezeways; and repairing the vinyl siding on each of the buildings.

43. The scope of these repairs and renovations included all the buildings at the Summerville Station Apartment Complex, including Building B, in which the decedents resided.

44. In order to complete this work, the Beach Defendants engaged SRNG, LLC, ASSET LIVING SOUTHEAST, LLC, formerly known as JMG REALTY, LLC, and DAVID SHOOK, the owner of SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES.

45. SRNG, LLC, ASSET LIVING SOUTHEAST, LLC, formerly known as JMG REALTY, LLC, and DAVID SHOOK, the owner of SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES performed the renovation and construction work in a grossly negligent manner, which was in violation of the building codes in place at the time of construction, and which caused the Summerville Station Apartment Complex to be significantly more susceptible to the fire which took place on September 29, 2022, and which caused the fire to be more deadly.

46. Specifically, SRNG, LLC and ASSET LIVING SOUTHEAST, LLC, formerly known as JMG REALTY, LLC failed to use the appropriate paint and/or coating for the breezeways, trellises, and wooden caps. Although they were required by the applicable regulations to use intumescent paint on the breezeways, they failed to do so. In addition, while they were required by regulation to use a fire-resistant coating on the trellises and wooden caps, they failed to do so.

47. DAVID SHOOK and SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES were grossly negligent in designing the trellises, which were made entirely of wood, and which were directly attached, adjacent to, or immediately abutting the breezeways, thus significantly increasing the fire load of each building. DAVID SHOOK and

SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES were also grossly negligent in failing to obtain a permit from the City of Summerville for the construction of the wooden trellises. Upon information and belief, had DAVID SHOOK and SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES applied for a permit for construction of the breezeways, it would have been denied as being in violation of city regulations and applicable building codes.

48. The BEACH DEFENDANTS supervised and approved all phases of the repairs and renovations set out in this section, and acted knowingly, or with reckless disregard of the consequences, in allowing the buildings at the Summerville Station Apartment Complex to be altered in violation of applicable building codes and in a manner which made them significantly less safe for residents, including the decedents.

The Fatal Fire

49. In the early morning hours of September 29, 2022, a fire broke out at the Property, engulfing virtually all of Building B of the Property, as well as portions of Buildings A and C. The fire origin is believed to be at or near a Building B apartment storage unit near the building breezeway.

50. The first 911 call reporting the Property fire was received on September 29, 2022 at approximately 2:51 a.m. by a male caller² in Building B stating he was trapped due to the fire being at his front door. He was instructed by the operator to crawl on his hands and knees away from the front door.

51. Following the initial emergency call from this individual, the 911 dispatch center began to receive a barrage of calls from individuals located in multiple units at the Property.

² All statements recounted herein are reflected in substance and in part.

52. In one recorded 911 call, a male individual residing in Building B can be heard screaming, “[I] kicked out a window!” at approximately 2:56 a.m. Other tenants of the Property observed the man in Building B kick out the window or otherwise the window remove by force, then leap from his window to escape the fire.

53. Individuals in another Building B unit, the adjoining unit to the Decedents’ apartment, were unable to open their sliding glass door due to it being stuck and inoperable. In addition, individuals residing in Building B indicated that they initially tried to exit from window at the rear of the apartment but it was screwed shut. Consequently, they kicked out the other apartment window and leapt from the second floor to escape the fire.

54. Similarly, individuals residing in another Building B unit were unable to open their window, so they forcibly broke the window and leapt to safety.

55. Other individuals residing in Building B were forced to throw an object through their sliding glass door due to it being stuck and unable to be opened as it was their only means of egress to escape the fire.

56. Individuals residing in several apartments in Building B reported that apartment smoke detectors did not properly function or alert them to the fire.

57. Since the fire in September of 2022, either through discovery in this matter or otherwise, Plaintiffs learned that prior to and after the referenced fatal fire, other tenants in other buildings smelled smoke or a burning scent, experienced smoke in their units, heard a loud “pop” or other loud noise, and then either fled their units before observing the fire, or firefighters were able to extinguish it prior to spreading throughout the building or buildings.

58. Specifically, in March of 2023, firefighters extinguished a fire where the tenant, as well as another neighbor across the breezeway, smelled a gas-like odor, then observed smoke filling the

unit experienced smoking in the unit, heard a “pop,” then escaped prior to the fire spreading quickly into the attic where the fire was ultimately extinguished by the fire department.

59. The Defendants’ records from the incident concluded that the fire occurred due to faulty electrical wiring.

The Decedents Perish in the Fire

60. In the early morning hours of September 29, 2022, Decedent FRENI HAZARE placed a 911 call from her apartment at the Property, Unit B-16, and can be heard wailing in pain while burning alive for several minutes during her call to the police.

61. In a separate 911 call placed to the police from the same apartment unit at the Property, 15-year-old Decedent DHRUV CHOKSHI can be heard screaming “*Mom! Mom!*” while, upon information and belief, Decedent DHRUV CHOKSHI observed, witnessed and heard his mother burning to death.

62. Decedent DHRUV CHOKSHI, while repeatedly coughing and struggling to speak, pleaded with the 911 dispatcher, stating, “*Too much smoke in here – Please!*” The dispatcher directed Decedent DHRUV CHOKSHI to try to move towards the window in his bedroom.

63. Thereafter, Decedent DHRUV CHOKSHI can be heard in the 911 recording, screaming “*I can’t open my window!*”

64. As a result, Decedent DHRUV CHOKSHI, upon information and belief, burned to death due to his inability to egress from his apartment to escape the fire.

65. Despite the extensive resources both the BEACH DEFENDANTS and LINCOLN had at their disposal, including their media statements that they intended to make the necessary renovations to make the apartment complex “valuable” to its residents, LINCOLN, upon information and belief, employed only one (1) person who handled the maintenance for all 212 units.

66. LINCOLN's on-site managers lodged their own numerous complaints to LINCOLN's upper management including, but not limited to, complaining of their inability to maintain, repair or replace tenant air conditioners that were failing regularly, and their overall inability to maintain suitable living conditions for that number of units at the Property.

67. Certain employees of LINCOLN admitted that issues with the smoke detectors were a "known problem" to LINCOLN and the BEACH DEFENDANTS. Yet, neither party took any steps to ensure the health, safety and security of their tenants which could have prevented the Decedents' demise, notwithstanding their collective knowledge, experience and expertise in the field.

68. Certain employees of LINCOLN and the BEACH DEFENDANTS have also indicated that window springs in apartment units at the Property routinely broke or became non-functional. Certain employees of the Defendants further indicated that it was a routine and common practice to paint over windowsills prior to a new tenant moving into an apartment unit at the Property, causing windows to be difficult, if not impossible, to open.

69. LINCOLN and the BEACH DEFENDANTS had direct knowledge of the issues of: (a) malfunctioning smoke detectors; (b) the chronic problems with the windows and the practice of painting over windows causing them to seal and become unusable; (c) the lack of reliable fire extinguishers and myriad other complaints because they had been alerted to these issues countless times by multiple residents, as more fully set forth above.

70. The Defendants nonetheless chose not to hire additional staff, make necessary repairs or take any corrective action that would have saved the Decedents' lives.

71. Before and after the fire began, the Decedents did not receive adequate protection or security; did not received adequate warning from properly functioning fire alarms, heat detector alarms or smoke detectors; were not protected by any fire sprinkler system; were not able to egress

their apartment through the front door or windows since the Defendants screwed the windows shut, painted windows causing windows to seal, and/or due to missing, broken or otherwise altered window balance springs thereby preventing the Decedents from escaping the fire to safety.

72. Moreover, the BEACH DEFENDANTS, together with SRNG, LLC, ASSET LIVING SOUTHEAST, LLC, formerly known as JMG REALTY, DAVID SHOOK and SHOOK ASSOCIATES ARCHITECTS, formerly known as SHOOK & ASSOCIATES undertook affirmative actions which rendered the Summerville Station Apartment Complex significantly more susceptible to fire. These Defendants conducted, over the span of many months, extensive exterior repairs, which included the repainting of the breezeways and vinyl siding of each building, and the addition of wooden trellises and caps. In making these renovations and repairs, the Defendants failed to use fire-resistant paint and coatings; failed to obtain permits necessary for construction; and made additions to the building – specifically, the wooden trellises attached to the side of each building – which made the buildings more susceptible to fire and which effectively eliminated a second means of egress for the residents of the Summerville Station Apartment Complex, including the Decedents.

73. The Decedents' statutory beneficiaries have lost their care, support, comfort, society, aid, and companionship; have endured extreme mental shock and suffering, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of their deaths; and have suffered economic loss due to the loss of Decedents DHRUV CHOKSHI and FRENI HAZARE.

COUNT I
NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
SURVIVAL ACTION
DECEDENT DHRUV CHOKSHI

74. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

75. All Defendants owed duties to the Plaintiff Decedent, DHRUV CHOKSHI as Decedent CHOKSHI's landlord, owner and manager of the dwelling in which the Decedent CHOKSHI lived and perished. By and through the allegations made herein, the Defendants breached those duties and were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties, by, among other things:

a. Failing to provide adequate points of ingress/egress including, but not limited to, the installation of the wooden trellises at all entrances and frontal means of egress, the sealing of the sliding glass doors and windows by screwing them shut; painting over them so frequently which caused them to become sealed without taking any action to unseal them; failing to replace extremely aged windows and doors that would not open because rails had bent and/or suffered other defects preventing them from opening; and otherwise failing to take action that the Defendants were required to take to ensure Decedent DHRUV CHOKSHI had a means of egress in the event of a fire as required by the fire code;

b. Failing to use sufficient fire-resistant construction materials, failing to erect or install other sufficient fire barriers, failing to seal any openings, airways, or other open areas that allowed the fire to spread so quickly in violation of applicable code;

c. Failing to maintain an adequate fire sprinkler system, fire extinguishers, fire alarm systems, or integrated fire systems and/or other protective devices to protect residents in the event of a catastrophic fire;

d. Failing to comply with the requirements of applicable building codes materially affecting health and safety despite actual and constructive knowledge of many defects at the Property, which knowledge was gained through the Defendants' daily maintenance of the Property; performing repairs of the Property, inspection of the Property; and/or otherwise identifying the issues through the tenants, employees or other persons related to the matter;

e. Failing to use sufficient fire-resistant construction materials, failing to erect or install other sufficient fire barriers, failing to seal any openings, airways, or other open areas that allowed the fire to spread so quickly in violation of applicable code;

f. Failing to take necessary actions, make all repairs or otherwise maintain the premises to ensure the Property was in, and remained in, a safe, fit, and habitable condition;

g. Failing to supply, install and/or maintain smoke detectors at the Property which functioned properly;

h. Failing to provide smoke detectors that were of suitable age pursuant to manufacturer's instructions and applicable fire code;

i. Failing to install the smoke detectors in the proper areas of the residence as any reasonable person would given the floor plan of the Property, by failing to hardwire the smoke detectors to an adequate power supply, and as otherwise required by the fire code;

j. Failing to provide instructions on the use and maintenance of the smoke detectors at the time the tenants took possession of the apartments within the Property;

k. Failing to apply or otherwise obtain necessary permits, approvals or other violations of municipal or other code in any modifications made to the Premises including but not limited to the wooden trellises, the lights installed by Defendants, and Plaintiffs are informed and believe the vinyl siding, as well as other modifications made by Defendants.

l. Failing to apply or otherwise obtain necessary permits, approvals or other violations of municipal or other code in any modifications made to the Premises including but not limited to the wooden trellises, the lights installed by Defendants, painting of the corridors, installing cedar railings, installation of large portions of vinyl siding, if not most of it, as well as other modifications made by Defendants.

m. While actual or constructive knowledge is not required for the Plaintiffs to recover for the Defendants' negligence as set forth above, the Defendants were negligent *per se*, grossly negligent and are subject to punitive damages awards to the Plaintiffs based on the Defendants' direct and/or constructive knowledge of the issues with the smoke detectors, windows and sliding glass doors opening and closing, and flammable siding all which required repair, replacement or some mitigating action to ensure that Decedent DHRUV CHOKSHI and other residents of the Property were not living in a veritable tinderbox. Moreover, the Defendants' knowledge of the gaps in the storage units and similar areas that would facilitate fire to spread through to the attic without any barriers could have been remedied with the purchase and installation of five dollar (\$5.00) barrier material. As a consequence of the Defendants' negligence, the fire spread swiftly through the spaces, gaps, and other areas that should have been either sealed or otherwise contained adequate fire-resistant barriers to prevent the fire from moving so quickly giving Decedent DHRUV CHOKSHI and other residents no time to escape. Given the sophistication, experience and collective knowledge possessed by the Defendants with their ownership and management of several other multi-family dwellings, the Defendants knew or should have known that the Property was an "accident waiting to happen," unless they made necessary repairs and improvements identified to them by multiple residents, their own employees, and through various parties such as their own contractors

76. As a direct and proximate result of the negligent, negligent *per se*, grossly negligent, willful and wanton conduct of the Defendants, Decedent DHRUV CHOKSHI, suffered, among other things, tremendous pain and suffering, incredible fear and helplessness as he watched his mother become engulfed in flames and listened to her cries while Decedent CHOKSHI screamed to his mother as she burned alive, only to then realize that he was trapped and unable to open the window to escape, causing his ultimate demise.

77. VATSAL CHOKSHI, individually and as Personal Representative of the Estate of DHRUV CHOKSHI, is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscious of the jury. The Personal Representative of the Estate of DHRUV CHOKSHI is entitled to recover the Decedent's statutory damages as a father who has lost the love and affection of his son, his son's care, support, comfort, society, aid, and companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of his son's death, as well as economic loss and loss as a result of his son's death.

COUNT II
NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
SURVIVAL ACTION
DECEDENT FRENI HAZARE

78. The Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

79. All Defendants owed duties to the Plaintiff Decedent, FRENI HAZARE as Decedent HAZARE's landlord, owner and manager of the dwelling in which the Decedent HAZARE lived and perished. By and through the allegations made herein, the Defendants breached those duties and were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties, by, among other things:

a. Failing to provide adequate points of ingress/egress including, but not limited to, the sealing of the sliding glass doors and windows by screwing them shut; painting over them so frequently which caused them to become sealed without taking any action to unseal them; failing to replace extremely aged windows and doors that would not open because rails had bent and/or suffered other defects due to the age of the premises preventing residents from opening; modifying the points of egress with the addition of the wooden trellises, painting, installing cedar railings, or

other modifications in violation of code, and otherwise failing to take action that the Defendants were required to take to ensure Decedent FREN I HAZARE had a means of egress in the event of a fire as required by the fire code;

b. Failing to use sufficient fire-resistant construction materials, failing to erect or install other sufficient fire barriers, failing to seal any openings, airways, or other open areas that allowed the fire to spread so quickly in violation of applicable code;

c. Failing to maintain an adequate fire sprinkler system, fire extinguishers, fire alarm systems, or integrated fire systems and/or other protective devices to protect residents in the event of a catastrophic fire;

d. Failing to comply with the requirements of applicable building codes materially affecting health and safety despite actual and constructive knowledge of many defects at the Property, which knowledge was gained through the Defendants' daily maintenance of the Property; performing repairs of the Property, inspection of the Property; and/or otherwise identifying the issues through the tenants, employees or other persons related to the matter;

e. Failing to use sufficient fire-resistant construction materials, failing to erect or install other sufficient fire barriers, failing to seal any openings, airways, or other open areas that allowed the fire to spread so quickly in violation of applicable code;

f. Failing to take necessary actions, make all repairs or otherwise maintain the premises to ensure the Property was in, and remained in, a safe, fit, and habitable condition;

g. Failing to supply, install and/or maintain smoke detectors at the Property which functioned properly;

h. Failing to provide smoke detectors that were of suitable age pursuant to manufacturer's instructions and applicable fire code;

i. Failing to install the smoke detectors in the proper areas of the residence as any reasonable person would given the floor plan of the Property, by failing to hardwire the smoke detectors to an adequate power supply, and as otherwise required by the fire code;

j. Failing to provide instructions on the use and maintenance of the smoke detectors at the time the tenants took possession of the apartments within the Property;

k. Failing to apply or otherwise obtain necessary permits, approvals or other violations of municipal or other code in any modifications made to the Premises including but not limited to the wooden trellises, the lights installed by Defendants, and Plaintiffs are informed and believe the vinyl siding, as well as other modifications made by Defendants.

l. Failing to apply or otherwise obtain necessary permits, approvals or other violations of municipal or other code in any modifications made to the Premises including but not limited to the wooden trellises, the lights installed by Defendants, painting of the corridors, installing cedar railings, installation of large portions of vinyl siding, if not most of it, as well as other modifications made by Defendants.

m. While actual or constructive knowledge is not required for the Plaintiffs to recover for the Defendants' negligence as set forth above, the Defendants were negligent *per se*, grossly negligent and are subject to punitive damages awards to the Plaintiffs based on the Defendants' direct and/or constructive knowledge of the issues with the smoke detectors, windows and sliding glass doors opening and closing, fire alarms, sprinklers, smoke detectors, interconnecting the fire notifications systems, installing flammable siding all which required repair, replacement or some mitigating action to ensure that Decedent FRENÍ HAZARE and other residents of the Property were not living in a veritable tinderbox. Moreover, the Defendants' knowledge of the gaps in the storage units and similar areas that would facilitate fire to spread through to the attic without any barriers could have been remedied with the purchase and installation of five dollar (\$5.00) barrier

material. As a consequence of the Defendants' failure, the fire spread swiftly, giving Decedent FRENI HAZARE and other residents little time to escape. Given the sophistication, experience and collective knowledge possessed by the Defendants with their ownership and management of several other multi-family dwellings, the Defendants knew or should have known that the Property was an "accident waiting to happen," unless they made necessary repairs and improvements identified to them by multiple residents.

80. As a direct and proximate result of the negligent, negligent *per se*, grossly negligent, willful and wanton conduct of the Defendants, Decedent FRENI HARARE suffered, among other things, a tremendous amount of pain and suffering prior to her death, fear, and the helplessness of a mother burning alive while she can hear her son in the next room without any ability to save him or herself from their impending doom in the excruciating moments before her death.

81. DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENI HAZARE, is entitled to actual compensatory damages from the Defendants in an amount to be determined by the enlightened conscience of the jury.

COUNT III
NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
WRONGFUL DEATH ACTION OF DHRUV CHOKSHI

82. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

83. All Defendants owed duties to the Plaintiff Decedent, DHRUV CHOKSHI, as the Decedent CHOKSHI's landlord, owner and manager of the dwelling in which Decedent CHOKSHI lived and perished. By and through the allegations made herein, Defendants breached those duties, were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties set forth in Paragraph 75 of Count I of the Complaint as if fully and completely set forth herein.

84. VATSAL CHOKSHI, individually and as Personal Representative of the Estate of DHRUV CHOKSHI is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscience of the jury. The Personal Representative of the Estate of DHRUV CHOKSHI is entitled to recover Decedent DHRUV CHOKSHI's statutory damages as a father who has lost the love and affection of his son, his son's care, support, comfort, society, aid, and companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of his son's death, as well as economic loss and loss as a result of his son's death.

COUNT IV
NEGLIGENCE/GROSS NEGLIGENCE/NEGLIGENCE PER SE
WRONGFUL DEATH ACTION OF FRENI HAZARE

85. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

86. All Defendants owed duties to the Plaintiff Decedent, FRENI HAZARE as Decedent HAZARE's landlord, owner and manager of the dwelling in which Decedent HAZARE lived and perished. By and through the allegations made herein, Defendants breached those duties, were negligent, negligent *per se*, grossly negligent, and/or reckless and wanton in violating the aforesaid duties set forth in Paragraph 79 of Count II of the Complaint as if fully and completely set forth herein.

87. DEVAN CHOKSHI, individually and as Personal Representative of the Estate of FRENI HAZARE, is entitled to actual, compensatory, punitive and other general damages from the Defendants in an amount to be determined by the enlightened conscious of the jury. The Personal Representative of the Estate of FRENI HAZARE is entitled to recover Decedent HAZARE's statutory damages as a son who has lost the love and affection of his mother, his mother's care, her support, her comfort, her society, her aid, and her companionship; as well as the love and

affection of his brother, Decedent DHRUV CHOKSHI's, support, his brother's comfort, his society, his aid, and his companionship, as well as extreme emotional mental shock, wounded feelings, anguish, grief, sorrow, distress and anxiety as a result of suffering the loss of your mother and brother at the same time, as well as economic loss and loss as a result of his mother's death.

COUNT V

VIOLATION OF SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT (against BEACH DEFENDANTS and LINCOLN DEFENDANTS)

88. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

89. Defendants' failure to maintain a healthy and safe premises violates the South Carolina Residential Landlord and Tenant Act., S.C. Code Ann. §§ 27-40-220, 27-40-440, 27-40-610, 27-40-630, 27-40-660 and 27-40-910, and the codes incorporated therein by reference.

90. The Defendants' non-compliance was willful because they had actual and/or constructive knowledge of the numerous issues at the Property which predated but persisted until the onset of the fire on September 29, 2022.

91. Plaintiffs are informed and believed that pursuant to S.C. Code Ann. § 27-40-610(b), they are entitled to an award of actual damages and, because the breach was willful, an award of punitive damages and attorney's fees from the Defendants.

92. Plaintiffs are entitled to injunctive relief and an Order of the Court pursuant to S.C. Code Ann. § 27-40-610(b) requiring the Defendants to immediately deliver, render and remediate the Property in fit and habitable conditions.

93. Upon information and belief, the Defendants have violated S.C. Code Ann. § 27-40-910, and the Plaintiffs have suffered actual damages, general damages, including extreme mental anguish, loss of love and affection, and are entitled to punitive damages and reasonable attorney fees due to the Defendants' violations of South Carolina Residential Landlord and Tenant Act.

COUNT VI**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AS TO ALL DEFENDANTS**

94. Plaintiffs adopt, reallege, and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

95. The Defendants' unreasonable, negligent, gross negligent, and other compensable conduct, as outlined herein, inflicted severe emotional distress on the Plaintiffs as a result of the Decedents.

96. As a further direct and proximate cause of the Defendants' failure to maintain reasonably safe conditions, undertaking renovations and repairs which rendered the Property unsafe, and/or failing to exercise proper care to protect the Decedents from the conditions outlined herein that were the direct and proximate cause of the Decedents' demise, Plaintiffs suffered and continue to suffer severe emotional distress which they are entitled to an award to be determined by the enlightened conscience of the jury.

COUNT VII**RESPONDEAT SUPERIOR**

(against BEACH DEFENDANTS and LINCOLN DEFENDANTS)

97. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

98. The BEACH DEFENDANTS are vicariously liable for the negligent actions of its agents, including but not limited to, LINCOLN, their employees, agents or other person or entities acting in furtherance of their business because, at all relevant times, agents of the BEACH DEFENDANTS, including LINCOLN or other servants, were acting within the scope of their employment and in furtherance of their business as the owners of the Property.

99. The BEACH DEFENDANTS are further vicariously liable for the negligent actions of LINCOLN, their employees, agents or other person or entities acting in furtherance of their

business because, at all relevant times, the BEACH DEFENDANTS expressly authorized the agents' actions and/or ratified those actions.

100. The Plaintiffs are entitled to damages in an amount to be determined by the enlightened conscious of the jury as to the BEACH DEFENDANTS regardless of the joint and severability of the award against all Defendants.

COUNT VIII
PUNITIVE DAMAGES

101. Plaintiffs adopt, reallege and incorporate herein by reference the allegations contained in the preceding Paragraphs as if fully and completely set forth herein.

102. Plaintiffs are entitled to punitive damages from the Defendants in order to punish the Defendants for their reckless, wanton and unreasonable conduct, as well as to deter similar future conduct by said Defendants

WHEREFORE, Plaintiffs pray:

- a. That judgment be entered against the Defendants jointly and severally for such actual, consequential, statutorily prescribed damages, and punitive damages as this Court and/or a jury deems appropriate regardless of any contractual agreement between themselves that may attempt to alter who is liable for damages through contract or otherwise;
- b. For a trial by jury;
- c. That judgment be entered against all Defendants for costs, prejudgment interest, and attorney's fees to the fullest extent the law will allow; and
- d. For such other and further relief that this Court deems just and proper.

Respectfully submitted,

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September 19, 2024
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

Devan Chokshi, et al.,)
) TRANSCRIPT OF RECORD
 Plaintiffs,) 2023-CP-18-00836
)
-vs-)
)
Beach Co, et al.,)
)

 Defendants.)

May 6, 2024

Dorchester, South Carolina

B E F O R E:

HONORABLE HEATH P. TAYLOR, JUDGE

A P P E A R A N C E S:

JASON S. STEVENS, ESQUIRE
Attorney for the Plaintiffs

FORD H. THRIFT, ESQUIRE
SUSAN CAMPBELL, ESQUIRE
Attorneys for the Defendants

Transcribed by Amy Pennica, from DCRP,
Digital Courtroom Recorder Project

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INDEX

(WHEREUPON, there were no exhibits marked or testimony taken
during this hearing.)

1 THE CLERK: This is number 5 on the roster. This is Case
2 Number 2023-CP-18-00836.

3 MR. THRIFT: I think there are two motions before Your Honor
4 today.

5 THE CLERK: There's a motion to compel and a motion to
6 strike.

7 THE COURT: All right. Which one do y'all want to hear
8 first?

9 MR. THRIFT: I believe the motion to compel is listed first,
10 but it was filed second. I have no preference, Your Honor.
11 Whatever is easiest for you.

12 THE COURT: Doesn't matter to me.

13 MR. THRIFT: Sure. Your Honor, I believe we'll start with
14 the motion to strike the jury demand.

15 MR. STEVENS: It's a little more substantive than the motion
16 to compel.

17 MR. THRIFT: Of course. May it please the Court.

18 THE COURT: Yes, sir.

19 MR. THRIFT: Good morning, Your Honor. My name is Ford
20 Thrift, and I represent several of the parties in this case. BIF
21 Summerville, PAC Summerville, The Beach Company, and Beach
22 Investment Fund, and Beach Real Estate Funds -- actually, I
23 believe they've been dismissed. But I essentially represent
24 everyone not named Lincoln or the plaintiffs. This motion is on
25 behalf of two of my clients, Your Honor, defendants BIF

1 Summerville Station, LLC, and PAC Summerville, LLC. They were
2 the landlords in this case. And, Your Honor, this is a tragic
3 case. About two years ago now, there was a fire at an apartment
4 complex off Old Trolley Road. That is the Summerville Station
5 Apartment Complex. Right around the time -- there was a
6 hurricane brewing up that night. Nobody really knows how the
7 fire started, but unfortunately there were two folks that were
8 unable to exit their apartment and perished in the fire. And
9 their personal representatives of their estate have brought a
10 multitude of claims against my clients as well as our property
11 manager, and that would be the Lincoln defendant, Your Honor.
12 Our motion to strike the jury demand is based on the plain
13 language of the lease agreement. One of the plaintiffs, Freni
14 Hazare, is the mother of the other decedent, Dhruv Chokshi.
15 Freni Hazare was the named tenant on that lease agreement -- and
16 I have a copy of it if you would like to see it, Your Honor --
17 but it essentially says "You and we agree any lawsuit based on
18 common-law statute and/or this lease agreement shall be to a
19 judge and not a jury." Your Honor, I think it's conceded by all
20 parties that you can waive a jury trial by contract. We had some
21 discovery with the plaintiff where --

22 THE COURT: Can you? Can you waive a constitutional right
23 by contract?

24 MR. THRIFT: I believe, Your Honor, the Supreme Court has
25 held up that jury waivers are valid. And I've cited several

1 cases in my motion. One from 2018 Skywaves Corp. versus BB&T.
2 And, Your Honor, I've not dove into the constitutional rights of
3 juries as of late, but I believe that's more of the right in a
4 criminal trial where there's an argument that can't be --

5 THE COURT: South Carolina constitution, I believe, affords
6 the right to a jury trial in civil cases as well.

7 MR. THRIFT: And in the Skywaves's case in 2018, they upheld
8 the jury waiver and said, as a matter of contract, you can waive
9 a right, and each party's free to contract as to their mode of --
10 preferred mode of trial. Your Honor, that has been upheld
11 before, and actually there was a couple of cases where -- I think
12 one of the arguments you're going to hear from the plaintiffs
13 today is that the motion is untimely because it wasn't filed
14 first, essentially. We have a motion to dismiss, which has been
15 heard by Judge Maddox but has not been yet ruled on. This is not
16 a Rule 12 motion to strike. This is, again, a motion as to the
17 mode of trial, which is within the general purview of trial
18 court, and can be granted essentially all the way up until the
19 eve of trial. And there's some Fourth Circuit law on that as
20 well as a couple of cases from the South Carolina Supreme Court
21 where they've had cases go all the way up on appeal on other
22 matters, come back down, and then they filed the motion to
23 strike, and the Court has ruled on it and not had any issue with
24 timeliness. So, Your Honor, as to that point, we think the
25 motion is proper and procedurally correct in front of you today.

1 The language of it says "any lawsuit," and so our position is
2 that all the claims should be moved to the nonjury roster. I
3 understand the plaintiffs are going to argue against that and say
4 that some of the jury -- some of the claims can't be waived.
5 They say that they are not the parties who signed this contract.
6 The decedents were the ones who signed the contract, and so
7 they're not bound by it; but, Your Honor, they are the
8 representatives of the estate of the decedent, and I think the
9 law on that is that you step into the shoes. You don't have
10 these claims except by way of being able to assert the rights the
11 decedent had. So I think they are bound by the language of the
12 contract; otherwise, they would have no claims whatsoever. Your
13 Honor, they're also going to make an argument today that Dhruv
14 Chokshi is not a party to the lease agreement because he didn't
15 sign it and so therefore he can't be bound by it. They are
16 certainly seeking the benefit of that contract, and we've cited
17 the case in our motion that you can't have the benefit unless you
18 have the burden. They are claiming he was a tenant. And the
19 parties on the lease agreement -- the tenants on the lease
20 agreement waive their rights to seek a jury trial against my
21 clients. And so I think, essentially, Your Honor, it's time to
22 pick a pony. Either he's not a tenant, or he is. And if he is,
23 Dhruv Chokshi's claims are not jury claims anymore. So, Your
24 Honor, I'm happy to answer any questions you have. We're asking
25 you to strike the jury demand in full on behalf of my clients.

1 THE COURT: Very good. Mr. Stevens.

2 MR. STEVENS: Thank you, Your Honor. May it please the
3 Court. Jason Stevens on behalf of plaintiff Dhruv Chokshi and
4 Freni Chokshi's estate. To answer your question, Your Honor,
5 it's a substantial right under the constitution. Case law has
6 found a right to a jury trial is a substantial right.

7 THE COURT: Yeah, it's pretty important.

8 MR. STEVENS: Yeah. And it can be waived with regard to
9 certain contracts if you enter into a contract -- certain
10 contractual provisions. The seminal case is a guarantor -- I
11 believe it was cited in Dixon, in our memorandum, in response to
12 defendant's memorandum where a guarantor who is named in the
13 contract as a third-party beneficiary is counterclaimed when the
14 landlord brought a suit against the tenant for lack of rent. The
15 guarantor counterclaimed, and they said that it did not apply to
16 the guarantor because the guarantor was not a party and therefore
17 they could not waive a substantial right against the guarantor
18 with regard to even the contents of that contract. So it goes
19 beyond just those contractual provisions. Going back to just the
20 procedural argument really briefly because it was kind of glazed
21 over, it is important to note that 12(b) requires all those
22 non-waiveable motions to be brought at the same time,
23 simultaneously. We filed this complaint back in May 13th of
24 2023. There is a motion to dismiss filed by these parties after
25 that. Eventually we amended the complaint. Finally the final

1 motion to dismiss was filed on February 5th. This was filed on
2 February 6th. We (inaudible) that 12(g) of the South Carolina
3 Rules of Civil Procedure adopted the federal rule of the Fourth
4 Circuit and McCoy, which adopts on the Seventh Circuit opinion.
5 Long story short, cites Moore's for the proposition that an
6 amendment doesn't revive a party's waived right to present a
7 motion defense that were available but not asserted at the time.
8 And, therefore, even giving the defendants the best benefit of
9 the doubt, going back to May 13th all the way forward to
10 February 5th, they still filed it a day late, even assuming that
11 you give them -- all the amendments that we've made trying to
12 nail down the right parties. As Mr. Thrift mentioned, there is
13 this motion to dismiss out there for these other parties. We
14 would argue that, on the same token that the defendants are
15 arguing against us that we have to pick a pony, they also need to
16 pick a pony because they're not asserting this motion -- this
17 jury strike -- this waiver of a jury demand on all the parties.
18 They're not waiving it on party of Lincoln. They're waiving it
19 on just these parties. Well, Lincoln is a party to this lawsuit,
20 and Lincoln, we would argue, is one and the same as them.
21 They've indemnified Lincoln. They've taken up the same --
22 basically a defense agreement. We're arguing mainly that they're
23 almost an agent of them. And they're arguing that they're not.
24 So, you know, at the same time, you can't have two different
25 parties, you know, one that's not named under the contract and

1 one that is arguing that they're all part of this waiver
2 provision and when they haven't even joined in the motion.

3 Going on to the second argument with regard to the case law
4 on the waiver provision. The seminal case is the North
5 Charleston Joint Venture case. I mentioned that one with regard
6 to the guarantors. That also cites Anderson Brothers Bank versus
7 Adams, which had to do with an appraisal contained in a mortgage
8 that did not bind guarantors of the borrower because of
9 boilerplate language inserted by the bank at the end of the
10 mortgage signed only by the debtors. We move, Your Honor -- Roe
11 v Watts is another case where it says that the third-party
12 beneficiaries -- actually, that one was a car accident where USAA
13 and the plaintiff entered into an agreement to have a trial on
14 liability only. They entered into a jury waiver provision.
15 They're doing a bench trial as to liability. And then after the
16 case was over, they filed an underinsured motor coverage against
17 USAA, and the Court said, "No." USAA argued, "But we're stepping
18 into the shoes of the insurer, and, therefore, under underinsured
19 motorist coverage, we're allowed to do that. We're the same
20 party." And the Court said, "No. You're taking it too far. It
21 doesn't extend to nonparties." They're allowed to have a jury
22 trial -- the plaintiffs were allowed to have a jury trial on the
23 underinsured motorist coverage just because they were stepping
24 into it. So that shows just how far they weren't willing to go
25 on that. The Dixon claim involved an arbitration clause. So

1 just to distinguish those, arbitration clauses are not a
2 substantial right. That was a contractual right under the Fair
3 Labor Standards Act. The Court found that, you know, you can
4 contract with regard to contractual provisions in that, but it
5 wasn't a substantial right, so it's not really applicable to
6 these facts. Where we're arguing that the right to a jury trial
7 arising out of this contract with regard to, you know,
8 potentially the greatest -- the greatest scope would be maybe
9 repairs -- even if you give them the benefit of the doubt on
10 that, it's not debts and fires and things of that nature. We
11 don't believe that the South Carolina legislature intended it and
12 nor does the common-law support that. So, Your Honor, I think --
13 we sent a courtesy copy this morning of the brief opposition to
14 the motion. It didn't make it into the file. But it does a
15 really good job of laying out these cases with the citations. To
16 the extent that it doesn't cite the McCoy case for the procedural
17 issue, that case is McCoy versus Trans Services (sic), and that's
18 a Maryland case out of the Fourth District.

19 Finally, the defendants argued that we only raised claims
20 out of the South Carolina Landlord Tenant Act. We actually
21 raised claims out of the common law as well as the South Carolina
22 Landlord Tenant Act. And based on the statute or the common-law,
23 the waiver of the landlord -- I'm sorry. The waiver of the jury
24 right provision would be outside of that contract. Finally, we
25 talk about, in our response, the language of the lease, and the

1 waiver provisions says "A trial of any lawsuit based on statute,
2 common law, and/or related to this lease contract shall be to a
3 judge and not a jury." Then we go into the contract
4 interpretation of that language and how it would not apply to
5 this. These parties -- the defendants made a comment about how
6 they step into the shoes of the deceased, but they don't all step
7 into the shoes. We have the wrongful death statute, then we also
8 have the survival action -- the injuries that -- the damages that
9 the PRs are making on behalf of themselves, those emotional
10 damages, the damages that they are personally receiving. They're
11 not stepping into the shoes and saying the pain and suffering
12 prior to the death. They're talking about damages -- emotional
13 damages, damages that they've lost. So those damages are
14 separate. So saying that they're parties to the contract -- it
15 doesn't even work that way because they're not stepping into the
16 shoes. So that's another distinguishable fact. However, Your
17 Honor, I've said enough. I'll leave it there. Thank you very
18 much. And I will be happy to take any questions from you.

19 THE COURT: Yeah. Tell me this how is this different -- I
20 guess, philosophically, have they (inaudible) contracting
21 (inaudible) to a jury trial but certainly (inaudible) what the
22 cases say. How is this different from, say, for instance, a
23 required arbitration clause? You're essentially contracting away
24 your right to a jury trial in that instance, right?

25 MR. STEVENS: Yeah. Because it's --

1 THE COURT: As much as we might -- again, philosophically,
2 like that, it's certainly an uphill --

3 MR. STEVENS: You're absolutely right, Your Honor. And
4 that's the Dixon case. And they say that the arbitration clause
5 is not a substantial right and that South Carolina favors
6 arbitration clauses, and that's the difference. They don't favor
7 waiving away substantial rights. The Court in Dixon
8 distinguishes it, I believe, and we do a good job of
9 distinguishing it in our brief as well. But they don't find the
10 arbitration clause a substantial right like the waiver for
11 (inaudible). I hope that answers the question.

12 THE COURT: Okay.

13 MR. THRIFT: Briefly, Your Honor.

14 THE COURT: Sure.

15 MR. THRIFT: I think the answer to your question is the
16 Skywaves case where it says "A party may waive a right to a jury
17 trial by contract." While they are strictly construed, the case
18 said a person who signs a contract or other written document
19 cannot avoid the effect of the document by claiming that he did
20 not read it. And so in other cases, the Beach case that we
21 cited -- and I believe the plaintiffs represent there's -- it was
22 not word-for-word verbatim what our lease agreement says, but it
23 was substantively identical or similar, and the Court said this
24 is a valid waiver of a jury right. And I'll read you the
25 language, Your Honor "To minimize legal expenses and to the

1 extent allowable by law, you and we agree that a trial of any
2 lawsuit based on statute, common law, and/or related to this
3 lease contract shall be to a judge and not a jury." And it's
4 bold in the contract, Your Honor. The law was that every person
5 who signs the contract is presumed to have read it and is bound
6 by its provisions. Your Honor, this case is one -- as the
7 plaintiffs have pointed out, they've alleged statutory claims;
8 they've alleged claims of common law negligence and, to a certain
9 extent, having evoked the terms of this lease agreement. Those
10 are all three different types of claims that are barred from a
11 jury trial based on language of the contract. So it doesn't
12 matter if they say they're not relying on the lease agreement,
13 that they just have common law claims, because those two were
14 contemplated by the waiver provision of our contract and are
15 waived as to a jury trial. Your Honor, I think -- briefly --
16 this is not a 12(b) motion. This, again, is a motion as to the
17 mode of trial, which the trial Court has great discretion
18 throughout the life of the case to enter orders on that, I
19 believe even sua sponte. As for whether this order would go to
20 all parties or not, I can't file a motion on behalf of Lincoln.
21 I can certainly join anything they file, but that's their
22 prerogative whether they would like to join in this or not. But
23 I believe just by the plain language of the contract, it says
24 what it means, it means what it says. "Any lawsuit" -- not just
25 any claim -- but "Any lawsuit that is based on a statute, common

1 law, or this contract shall be to a judge and not to a jury." So
2 I think the language of it does encompass everyone that would be
3 involved. Your Honor's certainly entitled to sever the claims or
4 bifurcate this in any manner that you see fit.

5 THE COURT: I think a concern that I would have is, you
6 know, what about the other defendants? Maybe they want a jury
7 trial.

8 MR. THRIFT: Certainly. They might, Your Honor. And, like
9 I said, I can't speak for Lincoln. As for my other three
10 clients, I can at least tell you the reason I haven't moved on
11 behalf of them. I'm not entirely sure the claim would be right
12 yet. Our position is that they are legally distinct entities.
13 They're all separate LLCs. The plaintiffs have obviously taken a
14 different position and are seeking to amalgamate them,
15 essentially. If they are one and the same, I would argue they'd
16 be in the same position as my moving clients, but if they're not,
17 then I don't think I'd be entitled to the provisions of this
18 lease agreement. So I've not moved today because I do think a
19 little bit of discovery is needed to flush that out, and
20 ultimately, if we move for summary judgment on that issue, it
21 might be a moot point anyway. But that's sort of the explanation
22 for why only two of my clients have moved on this position, Your
23 Honor. And I believe it was even in the Skywaves case -- and
24 that was the case, Your Honor, where they filed a motion to
25 dismiss, they filed an answer, they went up to the Supreme Court

1 on an appeal of the partial order dismissing some of the claims,
2 went all the way back down to trial court, then filed a motion
3 for summary judgment, and then filed a motion to strike the jury
4 demand. I think that's just a clear indication of there's no
5 timing required (inaudible). There's certainly nothing in Rule
6 39 or 38 requiring a motion on the jury strike to be made at the
7 start of the case.

8 And, Your Honor, the wrongful death statutory claims the
9 plaintiffs are making, again, those are all claims that the
10 plaintiffs have only by way of the events that led to the deaths
11 of these decedents whose estates they represent. They certainly
12 might have some emotional damages that are contemplated by the
13 statute there, but those are just damages for the benefits of
14 those folks. Those are not the basis of the claims. The claims
15 are the deaths of the decedents. Those are the parties in
16 interest here, and those are the parties that have waived their
17 rights to the jury trial (inaudible).

18 THE COURT: All right. And have y'all submitted a memo to
19 get a copy of the lease agreement?

20 MR. THRIFT: It was an exhibit to mine, Your Honor. But I
21 do have a copy if you'd like to see it today. And I'd be
22 certainly happy to submit a proposed order to any (inaudible).

23 MR. STEVENS: I just have a case if you wanted me to read it
24 out loud. I can read it out loud with regard to your question.

25 THE COURT: Go ahead.

1 MR. STEVENS: To answer your question with regard to why
2 they're different, the arbitration clause and the waiver
3 provision, we've cited in a footnote other jurisdictions that
4 have also addressed this. In Ex Parte Carter it's an Alabama
5 case, but it says "We are unaware of any Court that has applied
6 direct benefits estoppel to a jury waiver provision. These
7 mechanisms cannot be treated interchangeably merely because they
8 both lead to decisions by fact finders other than jurors. Jury
9 waiver provisions and arbitration clauses implicate significant
10 different policies and principles." So they are distinguishing
11 between the motion to strike jury demands and arbitration
12 clauses. And that's all we have, Your Honor. I think the rest
13 of the response --

14 MR. THRIFT: Your Honor, I would agree. I think some of the
15 policy language that's come out of the cases is one's going to be
16 more favored than the other. I do think the waiver of a jury
17 trial does sometimes lead to a more speedy resolution of course,
18 which I think is the point of the arbitration provisions. But
19 the point is the law says it's allowable. If the contract itself
20 is valid, the Courts will uphold the jury waiver submission.
21 That comes from Beach Co. versus Twillman 566 S.E.2d 863 2002
22 Court of Appeals case. That was abrogated but by other grounds
23 in the (inaudible) case, Your Honor. But the point being
24 sometimes the law allows for things that people might not like,
25 but the law, nonetheless, allows for it, and the law of our state

1 is that jury waivers are valid contract clauses, that if the
2 contract is valid, the waiver must be upheld.

3 MR. STEVENS: If it's a contract and it arises out of that
4 contract -- and, Your Honor, one thing I did not mention -- we're
5 still looking at adding other parties. We're still doing
6 discovery. We have a motion to compel after this. But we're
7 looking to add other parties, so to waive the jury demand right
8 now against these parties with regard to future parties would be
9 a miscarriage of justice, so these parties can bring a jury trial
10 against -- unless the Court's going to bifurcate the issue, and I
11 think that would be a mess. But, yeah, we have three contractors
12 right now that we're looking at that we're trying to get
13 discovery from to add them as other parties after a year and a
14 half of discovery, so that is some other consideration. Thank
15 you, Your Honor.

16 MR. THRIFT: So I guess, Your Honor, on the one hand, I have
17 to file this immediately under Rule 12 but on the other I have to
18 wait so that they can possibly amend their complaint and see what
19 happens then.

20 MR. STEVENS: Your Honor, we're not saying that they can't
21 ever bring up the issue. We're just saying as far as the motion
22 to strike it needs to be brought under 59 or one of the other
23 procedural rules at a later date.

24 THE COURT: I'll take it under advisement and let y'all know
25 something. What's next?

1 MS. CAMPBELL: Your Honor, I just wanted to say I'm here for
2 the Lincoln defendants. We don't object to the motion to strike,
3 and we're preserving the right to file our own motion to strike,
4 but right now we don't object to it. I think you had asked that
5 question. Thank you, Your Honor.

6 THE COURT: Very good. Thank you. All right. So there's a
7 motion to compel as well.

8 MR. STEVENS: Thank you, Your Honor. May it please the
9 Court. My name is Jason Stevens, again. I represent the
10 Chokshis, the plaintiffs in regards to the Summerville Station
11 fire. This is a general motion with regard to just, I think, a
12 general frustration with an inability to obtain documents. We're
13 sending out -- this is our second motion to compel. We've sent
14 out -- we worked with the defendants for a year. We filed in May
15 of 2023. Our first motion to compel was heard and granted in
16 January. The defendant's position is "We don't have the
17 documents." That's understandable except for the fact that we
18 keep getting subpoena responses from the companies -- the
19 contractors they work with -- other contracts with them -- we
20 keep getting the documents from, and they say, "We didn't have it
21 in our possession," but their names are on the contracts. So I
22 would say either there's some very terrible recordkeeping going
23 on over there, or, you know, these contracts are with them. Now
24 Lincoln is claiming that they're not parties to the contract.
25 So, for instance, the property condition assessment -- this is a

1 document that's attached to the appraisals when they bought the
2 property in 2020 of -- December 2020. And then the property
3 condition assessment is a document attached to the appraisal done
4 by CBRE, which is the lender in 2022 prior to the fire occurring.
5 Those pieces of the appraisal are missing in both. Maybe it's
6 possible -- Mr. Thrift is telling me they just don't have them --
7 it's just a coincidence. But this document which is so critical
8 to our case -- we can't get a response from CBRE, we can't get a
9 response -- every contractor that we've talked to has said
10 they've been contacted by Beach to provide a defense, and many of
11 them are being provided defenses by Beach as far as we
12 understand. Now we're doing our part and going after them
13 through subpoenas, by taking their depositions, talking to their
14 attorneys, doing what we can to get these documents, but we keep
15 having this issue, or we keep having the issue arise where we ask
16 for something, we're told they don't have it, and then the
17 document shows up. Lincoln's position -- and they're part of the
18 motion to compel as well -- is that they wouldn't be involved in
19 these major contracts for renovations. One of our theories of
20 the fire is that these wooden trusses were placed on the outside
21 of the breezeways. And so these wooden trusses, which were made
22 of cedar, made the fire spread through the breezeway, and all the
23 residents --

24 THE COURT: Let me -- what specifically are you looking for
25 that they have not produced? I've had this happen in criminal

1 cases, you know, "I don't know what I don't know, and I need them
2 to give me this because I don't know it's not there." I'm not
3 playing hypotheticals. If you can tell me something they've got
4 that they're not giving to you, I'll order they give it to you.
5 Or if the trial's in front of me, it won't come into evidence.
6 But let's don't create hypotheticals. I've got a lot to do.

7 MR. STEVENS: Fair enough. I'm sorry, Your Honor. I'll
8 keep it short and sync. We're asking for any and all
9 documents -- and it's in the motion -- related to these trusses.
10 Any and all documents related to any exterior repairs on the
11 building, any contracts related to that, and specifically the
12 property condition assessments from those two appraisals which
13 were, you know, attachments to the appraisals that were left out
14 of the appraisals. We got all the other documents. We got the
15 appraisals with regard to the foundations, which were separate
16 documents. But we didn't get the actual PCAs, which is the
17 property condition assessment, which is going to tell us exactly
18 the condition of the property. So we're asking for those
19 documents and any other documents with regard to the condition of
20 the trusses, the condition of the product, the exterior repairs.
21 And, again, we're getting those through third parties, and what
22 we've heard from Mr. Thrift is they don't have any of them. So I
23 have no evidence to show they have them until after we receive
24 them, so I guess that kind of answers your question. But it's
25 less of a hypothetical on the stuff that we've already gotten and

1 more of a hypothetical on the stuff that we haven't, right?
2 Because we can't show that they have it until after we get it
3 from the other parties. The property condition assessments, we
4 know are out there. They're just claiming they don't have them.

5 MS. CAMPBELL: Your Honor, Susan Campbell for the Lincoln
6 defendants. I have a big issue with something that Mr. Stevens
7 said when he first started his motion and that is the defendants
8 have said they don't have records then he sent subpoenas to
9 contractors and then he's discovered that records exist. That
10 absolutely is not accurate. I am not aware of any records that
11 Lincoln had that it didn't produce that Mr. Stevens then found
12 through a contractor by subpoena, therefore supporting his
13 assertion that the Lincoln defendants, you know, wrongfully or in
14 bad faith, withheld anything from him. That is absolutely not
15 accurate. And I hope you will correct that. I hope he'll
16 correct that. Your Honor, Lincoln was the property manager. It
17 had a property management agreement. That management agreement
18 says that Lincoln can only be in charge of repairs up to a few
19 thousand dollars. And anything over a few thousand dollars had
20 to be run through someone else, either the owner or the owner's
21 construction manager. The Lincoln defendants absolutely had no
22 construction rights, duties, or obligations through the property
23 management of this apartment complex. So to the extent that
24 Lincoln had any documents that mention trusses, vinyl siding, or
25 balconies, we provided it. But there were very few because of

1 what the property manager is allowed to do under the contract.
2 They're allowed to fix something that was a few hundred dollars,
3 maybe a vinyl siding got loose above an outside light fixture.
4 If that was present, we produced that. But we certainly don't
5 have permits. We don't have appraisals. We weren't in charge of
6 the construction. And when I say "the construction," I mean this
7 apartment complex was purchased by the Beach defendants, I
8 believe, in 2019 -- 2020, and then after that the Lincoln
9 defendants were hired as a property management defendant, and
10 some renovations happened, some minor renovations. They weren't
11 huge renovations. But Lincoln couldn't control that under the
12 contract. We only had a few thousand dollars worth of authority.
13 So to the extent he's looking for something that would be major
14 construction, major truss installation, a balcony on every
15 building of this apartment complex, we simply don't have it.
16 Thank you, Your Honor.

17 MR. STEVENS: And, Your Honor, just to restate what I said
18 because she's right. It was a little misstated. The things that
19 we have found were contracts with the Beach entities (inaudible)
20 didn't have insurance policies with the Beach entities named as
21 beneficiaries under those policies. They weren't with Lincoln.
22 They were actually with Beach themselves.

23 THE COURT: I guess I'm still back to where I started,
24 Mr. Stevens. What specifically are you asking me to compel them
25 to produce? I mean, we know most folks file an income tax

1 return, and defense lawyers are often filing a motion to compel
2 because the plaintiff doesn't want to turn over their tax
3 returns. I mean, I guess I'm sort of at a loss. You think
4 there's some stuff they haven't turned over to you, but I'm sort
5 of befuddled here because you haven't said, "I know there is a
6 document that was created on May 6th, 2024, that they are
7 withholding."

8 MR. STEVENS: I think the document --

9 THE COURT: I can't compel them to produce things that you
10 think are out there.

11 MR. STEVENS: The property condition assessment, we know is
12 out there. We know that document was produced. We've actually
13 talked to the people that -- and they've told us to go to Freddie
14 Mac or Fannie Mae, whatever the lender was. We can't get
15 documents from a federal agency. We sent out a subpoena, but you
16 know how that goes. Some of this stuff presumptuously -- or
17 presumptively will be with CBRE, the lender for the defendants,
18 and we're filing a Rule 45 motion to get those subpoenas and get
19 that stuff answered, and hopefully we will get that. But those
20 would be the main documents. It's funny you do say --

21 THE COURT: What about the property condition assessments?

22 MR. THRIFT: Thank you, Judge. That's actually not part of
23 the scope of their motion to compel. They're asking for vinyl
24 siding repairs, wooden truss repairs, balcony railings. Not to
25 mention the fact that the first time I heard about any of this

1 was this morning. The property condition report was mentioned to
2 me this morning. I am 90 percent certain it has been produced.
3 I think Mr. Stevens told me he just thinks what has been produced
4 is incomplete. But that's not even the scope of this motion. I
5 think the first question that gets asked in every motion to
6 compel is "Well, did you pick up the phone and call the other
7 side and try to talk it out?" Your Honor, there was no letter,
8 there was no email, there was no text message, there was no phone
9 call. They simply filed a motion and said, "Your discovery
10 responses are not good enough. Give us more." And this is not
11 the first time this has happened, Your Honor. As Mr. Stevens
12 alluded to, we were before Judge Goodstein on a motion to compel.
13 The problem with that one was we were trying to go through our
14 documents, get them organized, find the responsive materials,
15 Bates-stamp it. We ultimately produced 85,000 pages of materials
16 to the plaintiffs. I think, combined with Lincoln, it was over a
17 hundred thousand pages. It was a lot. I did it by myself, and I
18 just told Judge Goodstein, "I'm trying. I'm working as much as I
19 can to get to them. I just need a little more time." We
20 ultimately produced it. This is apparently the first time
21 they've ever taken issue with it. But in that motion they asked
22 Judge Goodstein to order that we give them access to our computer
23 systems so that they could essentially verify our discovery.
24 Judge Goodstein said, "That's never going to happen." But even
25 then they couldn't give Judge Goodstein a reason why they needed

1 it other than they just don't believe us. We have given them,
2 Your Honor -- the other thing that I'm glad that came up today
3 was contracts. So in response to their discovery this third time
4 around -- they had asked for all these repairs to the building.
5 I just went through my document production and hit "Control F"
6 and searched "Vinyl wooden trusses balcony railings," and in my
7 answer to them, I just cited the Bates numbers for the first 15
8 responsive documents I found. In my hand is a contract between
9 BIF Summerville Station and Superior Renovations of North
10 Georgia, and it's Bates-stamped Summerville Station 39458. We
11 have produced to them what we have. Either they haven't gone
12 through it all, or they just don't think it's good enough for
13 what they want. Your Honor, I can't prove the negative of "I
14 don't have what you're looking for, but I can certainly give you
15 everything I've got." And my clients have gone above and beyond
16 in this case. We've made no bones about it that this discovery
17 is overbroad, but we're going to give it to you. This is a
18 serious case, and we understand that. Your Honor, I think my
19 discovery responses are more than sufficient to point them back
20 to what we've already given them, and I don't know of any other
21 document I can go out and find. I'll certainly look into this
22 property condition assessment report, but I know that we've
23 produced documents from CBRE because that's one of the search
24 terms I looked for. And I actually cited the plaintiffs back to
25 other property condition reports. But that's not the scope of

1 their motion before Your Honor today anyways. I'm just simply
2 making that point that I don't know what they're looking for here
3 other than the proverbial smoking gun which ostensibly is not
4 already in my document production. Your Honor, I'd ask you to
5 deny their motion in full.

6 MR. STEVENS: Your Honor, just really briefly. That's
7 false. Mr. Thrift can tell you that we have talked extensively
8 over the last year and a half. I spent every day of my life
9 pretty much for the last year and a half going through documents,
10 staying up to 2:00 in the morning doing doc review. I'm a
11 one-man show. I have gone through all of the documents, and
12 we've talked extensively. We have hundreds of emails going back
13 and forth discussing these documents. He knows that I can
14 produce them. This particular motion -- we have associates in
15 Boston who filed this particular motion. There was some
16 discussion about going back and forth with them again. After
17 Judge Goodstein's motion, we did go back and forth with them for
18 months and months and months. We held off from -- I think we
19 initially threatened to file it in October 2023. We didn't file
20 until February. We gave them a 30-day extension, 30-day
21 extension, 30-day -- so to act like we haven't had any
22 conversations about this stuff is a little disingenuous.

23 MR. THRIFT: Your Honor, that's not what I'm implying. What
24 I'm saying is Rule 11 requires you to reach out to the opposing
25 counsel prior to filing a motion to compel. And plaintiffs'

1 counsel cannot say today that before filing this motion they ever
2 contacted me from the date we responded to their discovery to the
3 date they filed this motion to the date of this hearing. We've
4 only had one conversation about this motion, and it happened
5 45 minutes ago back there, Your Honor. I don't want to get into
6 it because I really don't want to -- it's not my pleasure to
7 bring up Rule 11 issues, but it's ironic that their motion asks
8 for sanctions when they're committing sanctionable conduct
9 themselves.

10 MR. STEVENS: Your Honor, (inaudible). We're just literally
11 asking for the property condition --

12 THE COURT: Did you file a Rule 11 -- did --

13 MR. STEVENS: No. We would not file a Rule --

14 THE COURT: Did you comply with your Rule 11 certification?

15 MR. STEVENS: If we did, it was because we didn't contact
16 them because there would be no useful purpose under Rule 11.

17 THE COURT: Did you make that certification with your
18 motion?

19 MR. STEVENS: I'm sure they did. Yes, Your Honor.

20 MR. THRIFT: No, Your Honor.

21 MR. STEVENS: And to the extent that -- you know what, Your
22 Honor, we'll withdraw the motion. How about that? We'll
23 withdraw the motion, and we'll discuss it with Mr. Thrift, and if
24 we can't resolve it, then we'll bring it back. Because if I
25 understand Your Honor correctly, you're asking for something

1 specific. I believe we have something specific, and after we
2 send out the subpoena, we may be in a better place to argue that
3 motion. And, frankly, I did not draft this motion. This was our
4 associates; however, that's not an excuse. I'm just saying let
5 us withdraw the motion; let us go back to Mr. Thrift; and let us
6 discuss what has been produced as far as the property condition
7 assessments. And we may have more information as far as whether
8 they exist or not -- because we know they do exist -- when we
9 come back, if we have to come back. Does that make sense, Your
10 Honor?

11 THE COURT: Yeah. I'll issue a Form 4.

12 MR. STEVENS: Thank you, Your Honor. And I apologize for
13 wasting your time on that.

14 MR. THRIFT: Thank you, Your Honor.

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CERTIFICATE OF REPORTER

I, Amy Pennica, Certified Verbatim Reporter in and for the State of South Carolina at Large, hereby certify that the foregoing is a true, accurate, and complete Transcript of Record to the best of my abilities to be heard and transcribed of the proceedings had and evidence introduced in the hearing of the captioned case, in The Court of Common Pleas, on the 6th day of May, 2024.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

16th day of December, 2024

Amy Pennica

Court Reporter



APARTMENT LEASE CONTRACT

THIS AGREEMENT IS SUBJECT TO A MANDATORY ARBITRATION CLAUSE TO THE EXTENT THE ARBITRATION AGREEMENT IS EXECUTED AS PART OF YOUR LEASE PACKAGE.



Date of Lease Contract: July 7, 2022 (when the lease contract is filled out)

This is a binding document. Read carefully before signing.

Moving In — General Information

1. PARTIES. This Lease Contract (sometimes referred to as the "lease") is between you the resident(s) (list all people signing the Lease Contract):

Freni Hazare

and us, the owner: BIF-Summerville Station, LLC and PAC-Summerville LLC

(name of apartment community or title holder). You've agreed to rent Apartment No. B16, at 1660 Old Trolley Road Summerville (city), South Carolina, 29485 (zip code) (the "apartment" or the "premises") for use as a private residence only. The terms "you" and "your" refer to all residents listed above. The terms "we," "us," and "our" refer to the owner listed above (or any of owner's successors' in interest or assigns). Written notice to or from our managers constitutes notice to or from us. If anyone else has guaranteed performance of this Lease Contract, a separate Lease Contract Guaranty for each guarantor is attached.

2. OCCUPANTS. The apartment will be occupied only by you and (list all other occupants not signing the Lease Contract):

No one else may occupy the apartment. Persons not listed above must not stay in the apartment for more than 7 consecutive days without our prior written consent, and no more than twice that many days in any one month. If the previous space isn't filled in, two days per month is the limit.

3. LEASE TERM. The initial term of the Lease Contract begins on the 23rd day of August, 2022, and ends at 11:59 p.m. the 22nd day of August, 2023.

Renewal. This Lease Contract will automatically renew month-to-month unless either party gives at least 60 days written notice of termination or intent to move-out as required by paragraph 45 (Move-Out Notice), which in all cases shall be a minimum of thirty (30) days. If the number of days isn't filled in, at least 30 days notice is required.

4. SECURITY DEPOSIT. Unless modified by addenda, the total security deposit at the time of execution of this Lease Contract for all residents in the apartment is \$ 250.00, due on or before the date this Lease Contract is signed.

5. KEYS. You will be provided 2 apartment key(s), 2 mailbox key(s), 1 FOB(s), and/or 0 other access device(s) for access to the building and amenities at no additional cost at move-in. If the key, FOB, or other access device is lost or becomes damaged during your tenancy or is not returned or is returned damaged when you move out, you will be responsible for the costs for the replacement and/or repair of the same.

6. RENT AND CHARGES. Unless modified by addenda, you will pay \$ 1265.00 per month for rent, payable in advance and without demand:

- at the on-site manager's office, or
- at our online payment site, or
- at None

Prorated rent of \$ 367.26 is due for the remainder of the [check one]: 1st month or 2nd month, on August 23, 2022.

Otherwise, you must pay your rent on or before the 1st day of each month (due date) with no grace period. Cash is unacceptable without our prior written permission. You must not withhold or offset rent unless authorized by statute. We may, at our option, require at any time that you pay all rent and other sums in cash, certified or cashier's check, money order, or one monthly check rather than multiple checks. At our discretion, we may convert any and all checks via the Automated Clearing House (ACH) system for the purposes of collecting payment. Rent is not considered accepted, if the payment/ACH is rejected, does not clear, or is stopped for any reason. If you don't pay all rent on or before the 5th day of the month, you'll pay a late charge. Your late charge will be \$ 126.50. You'll also pay a charge of \$ 50.00 for each returned check or rejected electronic payment, plus a late charge. The returned check charge shall not exceed \$30.00. If you don't pay rent on time, you'll be delinquent and all remedies under this Lease Contract will be authorized. We'll also have all other remedies for such violation.

IF YOU DO NOT PAY YOUR RENT ON TIME WHEN REQUIRED BY THIS LEASE CONTRACT: This is your notice. If you do not pay your rent within five days of the due date specified in this Lease Contract, we can start to have you evicted without further notice. You will not receive any further notice or warnings as long as you live in this rental unit, unless we decide to provide them to you as a gratuity, not as a right.

7. UTILITIES. We'll pay for the following items, if checked: water gas electricity master antenna wastewater trash cable TV other None

You'll pay for all other utilities, related deposits, and any charges, fees, or services on such utilities. You must not allow utilities to be disconnected—including disconnection for not paying your bills—until the lease term or renewal period ends. Cable channels that are provided may be changed during the lease term if the change applies to all residents. Utilities may be used only for normal household purposes and must not be wasted. If your electricity is ever interrupted, you must use only battery-operated lighting. If any utilities are submetered for the apartment, or prorated by an allocation formula, we will attach an addendum to this Lease Contract in compliance with state agency rules or city ordinance.

8. INSURANCE. We do not maintain insurance to cover your personal property or personal injury. We are not responsible to any resident, guest, or occupant for damage or loss of personal property or personal injury from (including but not limited to) fire, smoke, rain, flood, water and pipe leaks, hail, ice, snow, lightning, wind, explosions, earthquake, interruption of utilities, theft, hurricane, negligence of other residents, occupants, or invited/uninvited guests or vandalism unless otherwise required by law.

In addition, we urge all residents, and particularly those residing in coastal areas, areas near rivers, and areas prone to flooding, to obtain flood insurance. Renter's insurance may not cover damage to your property due to flooding. A flood insurance resource which may be available includes the National Flood Insurance Program managed by the Federal Emergency Management Agency (FEMA).

We require do not require you to get your own insurance for losses to your personal property or injuries due to theft, fire, water damage, pipe leaks and the like.

If renter's insurance is required, you shall maintain at all times during the Term of this Lease, at your sole expense, a renter's insurance policy, or its equivalent, issued by a licensed insurance company in

Freni Hazare Dafohn Brown

a minimum policy coverage amount of \$ **100000.00**, and you shall provide us with proof of such insurance to our satisfaction.

If no box is checked, renter’s insurance is not required.

Additionally, you are [check one] ☒ required to purchase personal liability insurance ☐ not required to purchase personal liability insurance. If no box is checked, personal liability insurance is not required. If required, failure to maintain personal liability insurance throughout your tenancy, including any renewal periods and/or lease extensions, may be an incurable breach of this Lease Contract and may result in the termination of tenancy and eviction and/or any other remedies as provided by this Lease Contract or state law.

You acknowledge that no portion of the rent paid by you under this agreement will be applied to the owner’s structural fire insurance and that you are in no way a co-insured under any such policy, and that, in order to reduce the cost of insurance, the Owner has chosen to purchase fire and extended coverage insurance for the property for which the above rental agreement applies, with a deductible in the amount of \$_____. If you or any member of your household, guest or invitee causes damages to the premises in an amount that is less than the amount of this insurance deductible, you agree to indemnify and reimburse the Owner for the amount

of such damages, and that you may be liable for costs in excess of the deductible under any subrogation clause of the said policy. It is recommended that you secure insurance to protect your interest in the event of such a loss.

9. LOCKS AND LATCHES. Keyed lock(s) will be rekeyed after the prior resident moves out. The rekeying will be done before you move into your apartment.

You may at any time ask us to change or rekey locks or latches during the Lease Term. We must comply with those requests, but you must pay for them, unless otherwise provided by law.

Payment for Rekeying, Repairs, Etc. You must pay for all repairs or replacements arising from misuse or damage to devices by you or your occupants, or guests during your occupancy. You may be required to pay in advance if we notify you within a reasonable time after your request that you are more than 30 days delinquent in reimbursing us for repairing or replacing a device which was misused or damaged by you, your guest or an occupant; or if you have requested that we repair or change or rekey the same device during the 30 days preceding your request and we have complied with your request. Otherwise, you must pay immediately after the work is completed.

Special Provisions and “What If” Clauses

10. SPECIAL PROVISIONS. The following special provisions and any addenda or written rules furnished to you at or before signing will become a part of this lease and will supersede any conflicting provisions of this printed lease form.

See Additional Special Provisions

See any additional special provisions.

11. EARLY MOVE-OUT. You’ll be liable to us for a reletting charge of \$ **1265.00** (not to exceed 100% of the highest monthly rent during the lease term) if you:

- (1) fail to give written move-out notice as required in paragraph 45 (Move-Out Notice) or any other applicable law; or
- (2) move out without paying rent in full for the entire lease term or renewal period; or
- (3) move out at our demand because of your default; or
- (4) are judicially evicted.

The reletting charge represents our estimated actual damages we anticipate to be incurred as a result of any of these occurrences and is not a cancellation fee and does not release you from your obligations under this Lease Contract. See the next paragraph.

Not a Release. The reletting charge is not a lease cancellation fee or buyout fee. It is an agreed-to liquidated amount covering only part of our actual damages that we anticipate to be incurred as a result of the occurrence of any of the foregoing (1) through (4), that is, our time, effort, and expense in finding and processing a replacement. These damages are uncertain and difficult to ascertain—particularly those relating to inconvenience, paperwork, advertising, showing apartments, utilities for showing, checking prospects, office overhead, marketing costs, and locator-service fees. You agree that the reletting charge is a reasonable estimate of such damages and that the charge is due whether or not our reletting attempts succeed. If no amount is stipulated, you must pay our actual reletting costs so far as they can be determined. The reletting charge does not release you from continued liability for: future or past-due rent; charges for cleaning, repairing, repainting, or unreturned keys; or other sums due.

12. REIMBURSEMENT. You must promptly reimburse us for loss, damage, government fines, or cost of repairs or service in the apartment community due to a violation of the Lease Contract or rules, improper use, or negligence by you or your guests or occupants. **Unless the damage or wastewater stoppage is due to our negligence, we’re not liable for --and you must pay for --repairs, replacement costs, and damage to the following that result from you or your invitees, guests, or occupants’ negligence or intentional acts: (1) damage to doors, windows, or screens; (2) damage from windows or doors left open; and (3) damage from wastewater stoppages caused by improper objects in lines exclusively serving your apartment.** We may require payment at any time, including advance payment of repairs for which you’re liable. Delay in demanding sums you owe is not a waiver.

13. FAILING TO PAY FIRST MONTH’S RENT. If you don’t pay the first month’s rent when or before the Lease Contract begins, we may end your right of occupancy and recover actual damages, future rent, reletting charges, attorney’s fees, court costs, and other lawful charges, to the extent provided by law. Our rights and remedies under paragraphs 11 (Early Move-Out) and 31 (Default by Resident) apply under this paragraph.

14. RENT INCREASES AND LEASE CONTRACT CHANGES. No rent increases or Lease Contract changes are allowed before the initial Lease Contract term ends, except for changes allowed by any special provisions in paragraph 10 (Special Provisions), by a written addendum or amendment signed by you and us, or by reasonable changes of apartment rules allowed under paragraph 17 (Community Policies or Rules). If, at least 5 days before the advance notice deadline referred to in paragraph 3 (Lease Term), we give you written notice of rent increases or lease changes effective when the lease term or renewal period ends, this lease will automatically continue month-to-month with the increased rent or lease changes. The new modified Lease Contract will begin on the date stated in the notice (without necessity of your signature) unless you give us written move-out notice under paragraph 45 (Move-Out Notice).

15. DELAY OF OCCUPANCY. If occupancy is or will be delayed for construction, repairs, cleaning, or a previous resident’s holding over, we’re not responsible for the delay unless otherwise required by law. The Lease Contract will remain in force subject to: (1) abatement of rent on a daily basis during delay; and (2) your right to terminate as set forth below. Notice of intent to terminate must be in writing and must be received by us at least five (5) days prior to your termination. After termination, you are entitled only to refund of deposit(s) and any rent paid. Rent abatement or lease termination does not apply if delay is for cleaning or repairs that don’t prevent you from occupying the apartment.

If there is a delay and we haven’t given notice of delay as set forth immediately below, you may terminate up to the date when the apartment is ready for occupancy, upon at least five (5) days prior written notice to us, but not later.

- (1) If we give written notice to any of you when or after the initial term as set forth in Paragraph 3 (Lease Term)—and the notice states that occupancy has been delayed because of construction or a previous resident’s holding over, and that the apartment will be ready on a specific date—you may submit to us a written notice to terminate the Lease Contract within 3 days of your receiving the notice, but not later.
- (2) If we give written notice to any of you before the initial term as set forth in Paragraph 3 (Lease Term) and the notice states that construction delay is expected and that the apartment will be ready for you to occupy on a specific date, you may submit to us written notice to terminate the Lease Contract within 7 days after any of you receives written notice, but not later. The readiness date is considered the new initial term as set forth in Paragraph 3 (Lease Term) for all purposes. This new date may not be moved to an earlier date unless we and you agree.

16. DISCLOSURE RIGHTS. If someone requests information on you or your rental history for law-enforcement, governmental, or business purposes, we may provide it.

² *Freni Hazare* ³⁶ *Dafohn Brown*

17.COMMUNITY POLICIES OR RULES. You and all guests and occupants must comply with any written apartment rules and community policies, including instructions for care of our property. Our rules are considered part of this Lease Contract. We may make reasonable changes to written rules, effective immediately, if they are distributed and applicable to all units in the apartment community and do not change dollar amounts on page 1 of this Lease Contract.

18.LIMITATIONS ON CONDUCT. The apartment and other areas reserved for your private use must be kept clean and free of trash, garbage, and other debris. Trash must be disposed of at least weekly in appropriate receptacles in accordance with local ordinances. Passageways may be used only for entry or exit. You agree to keep all passageways and common areas free of obstructions such as trash, storage items, and all forms of personal property. No person shall ride or allow bikes, skateboards, or other similar objects in the passageways. Any swimming pools, saunas, spas, tanning beds, exercise rooms, storerooms, laundry rooms, and similar areas must be used with care in accordance with apartment rules and posted signs. Glass containers are prohibited in all common areas. You, your occupants, or guests may not anywhere in the apartment community: use candles or use kerosene lamps or kerosene heaters without our prior written approval; cook on balconies or outside; or solicit business or contributions. Conducting any kind of business (including child care services) in your apartment or in the apartment community is prohibited—except that any lawful business conducted “at home” by computer, mail, or telephone is permissible if customers, clients, patients, or other business associates do not come to your apartment for business purposes. We may regulate: (1) the use of patios, balconies, and porches; (2) the conduct of furniture movers and delivery persons; and (3) recreational activities in common areas. You'll be liable to us for damage caused by you or any guests or occupants.

We may exclude from the apartment community guests or others who, in our judgment, have been violating the law, violating this Lease Contract or any apartment rules, or disturbing other residents, neighbors, visitors, or owner representatives. We may also exclude from any outside area or common area a person who refuses to show photo identification or refuses to identify himself or herself as a resident, occupant, or guest of a specific resident in the community.

You agree to notify us if you or any occupants are convicted of any felony, or misdemeanor involving a controlled substance, violence to another person or destruction of property. You also agree to notify us if you or any occupant registers as a sex offender in any state. Informing us of criminal convictions or sex offender registry does not waive our right to evict you.

19. PROHIBITED CONDUCT. You, your occupants or guests, or the guests of any occupants, may not engage in the following activities: behaving in a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the apartment community; disrupting our business operations; manufacturing, delivering, possessing with intent to deliver, or otherwise possessing a controlled substance or drug paraphernalia; engaging in or threatening violence; possessing a weapon prohibited by state law; discharging a firearm in the apartment community; displaying or possessing a gun, knife, or other weapon in the common area in a way that may alarm others; storing anything in closets having gas appliances; tampering with utilities or telecommunications; bringing hazardous materials into the apartment community; or injuring our reputation by making bad faith allegations against us to others.

20. PARKING. We may regulate the time, manner, and place of parking cars, trucks, motorcycles, bicycles, boats, trailers, and recreational vehicles by anyone. Motorcycles or motorized bikes may not be parked inside an apartment unit or on sidewalks, under stairwells, or in handicapped parking areas. We may have unauthorized or illegally parked vehicles towed from the apartment community at your expense under the terms of this Lease Contract or by an appropriate statute. A vehicle is unauthorized or illegally parked in the apartment community if it:

- (1) has a flat tire or other condition rendering it inoperable; or
- (2) is on jacks, blocks or has wheel(s) missing; or
- (3) has no current license plate or no current registration and/or inspection sticker; or
- (4) takes up more than one parking space; or
- (5) belongs to a resident or occupant who has surrendered or abandoned the apartment; or

- (6) is parked in a marked handicap space without the legally required handicap insignia; or
- (7) is parked in a space marked for manager, staff, or guest at the office; or
- (8) blocks another vehicle from exiting; or
- (9) is parked in a fire lane or designated “no parking” area; or
- (10) is parked in a space marked for other resident(s) or unit(s); or
- (11) is parked on the grass, sidewalk, or patio; or
- (12) blocks garbage trucks from access to a dumpster; or
- (13) belongs to a resident and is parked in a visitor or retail parking space.

21. RELEASE OF RESIDENT. Unless you're entitled to terminate your tenancy under paragraphs 10 (Special Provisions), 15 (Delay of Occupancy), 30 (Responsibilities of Owner), 45 (Move-Out Notice), or any other applicable law, you won't be released from this Lease Contract for any reason—including but not limited to voluntary or involuntary school withdrawal or transfer, voluntary or involuntary job transfer, marriage, separation, divorce, reconciliation, loss of co-residents, loss of employment, bad health, or death.

22. MILITARY PERSONNEL CLAUSE. All parties to this Lease Contract agree to comply with any federal law, including, but not limited to the Service Member's Civil Relief Act, or any applicable state law(s), if you are seeking to terminate this Lease Contract and/or subsequent renewals and/or Lease Contract extensions under the rights granted by such laws.

23. RESIDENT SAFETY AND PROPERTY LOSS. You and all occupants and guests must exercise due care for your own and others' safety and security, especially in the use of smoke and carbon monoxide detectors, keyed deadbolt locks, keyless bolting devices, window latches, and access control devices.

Smoke Detectors and Carbon Monoxide Detectors. We'll furnish smoke detectors and carbon monoxide detectors only if required by statute, and we'll test them and provide working batteries when you first take possession. After that, you must test the smoke detectors and the carbon monoxide detectors on a regular basis, and you must pay for and replace batteries as needed, unless the law provides otherwise. We may replace dead or missing batteries at your expense, without prior notice to you. You must immediately report smoke-detector and carbon monoxide detector malfunctions to us. Neither you nor others may disable neither the smoke detectors nor the carbon monoxide detectors. If you damage or disable the smoke-detector or carbon monoxide detector or remove a battery without replacing it with a working battery, you may be liable to us under state statute for \$100 plus one month's rent, actual damages, and attorney's fees. If you disable or damage the smoke detector or carbon monoxide detector, or fail to replace a dead battery or report malfunctions to us, you will be liable to us and others for any loss, damage, or fines from fire, smoke, or water.

Casualty Loss. We're not liable to any resident, guest, or occupant for personal injury or damage or loss of personal property from any cause, including but not limited to: fire, smoke, rain, flood, water and pipe leaks, hail, ice, snow, lightning, wind, explosions, earthquake, interruption of utilities, theft, or vandalism unless otherwise required by law. We have no duty to remove any ice, sleet, or snow but may remove any amount with or without notice, except as may be required by law. During freezing weather, you must ensure that the temperature in the apartment is sufficient to make sure that the pipes do not freeze (the appropriate temperature will depend upon weather conditions and the size and layout of your unit). If the pipes freeze or any other damage is caused by your failure to properly maintain the heat in your apartment, you'll be liable for damage to our and other's property.

Crime or Emergency. Dial 911 or immediately call local medical emergency, fire, or police personnel in case of accident, fire, smoke, or suspected criminal activity or other emergency involving imminent harm. You should then contact our representative. Unless otherwise provided by law, we're not liable to you or any guests or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism, or other crimes. We're not obliged to furnish security personnel, security lighting, security gates or fences, or other forms of security. If we provide any access control devices or security measures upon the property, they are not a guarantee to prevent crime or to reduce the risk of crime on the property. You agree that no access control or security measures can eliminate all crime and that you will not rely upon any provided access control or security measures as a warranty or guarantee of any kind. We're not responsible for obtaining criminal-history checks on any

residents, occupants, guests, or contractors in the apartment community. If you or any occupant or guest is affected by a crime, you must make a written report to our representative and to the appropriate local law-enforcement agency. You must also furnish us with the law-enforcement agency's incident report number upon request.

24.CONDITION OF THE PREMISES AND ALTERATIONS. You accept the apartment, fixtures, and furniture as is, except for conditions materially affecting the health or safety of ordinary persons. **WE DISCLAIM ALL IMPLIED WARRANTIES.** You'll be given an Inventory and Condition form on or before move-in. You must note on the form all defects or damage and return it to our representative. Otherwise, everything will be considered to be in a clean, safe, and good working condition.

You must use customary diligence in maintaining the apartment and not damaging or littering the common areas. Unless authorized by statute or by us in writing, you must not perform any repairs, painting, wallpapering, carpeting, electrical changes, or otherwise alter our property. No holes or stickers are allowed inside or outside the apartment. But we'll permit a reasonable number of small nail holes for hanging pictures on sheetrock walls and in grooves of wood-paneled walls, unless our rules state otherwise. No water furniture, washing machines, additional phone or TV-cable outlets, alarm systems, or lock changes, additions, or rekeying is permitted unless statutorily allowed or we've consented in writing. You may install a satellite dish or antenna provided you sign our satellite dish or antenna lease addendum which complies with reasonable restrictions allowed by federal law. You agree not to alter, damage, or remove our property, including alarm systems, smoke detectors and carbon monoxide detectors, furniture, telephone and cable TV wiring, screens, locks, and access control devices. When you move in, we'll supply light bulbs for fixtures we furnish, including exterior fixtures operated from inside the apartment; after that, you'll replace them at your expense with bulbs of the same type and wattage. Your improvements to the apartment (whether or not we consent) become ours unless we agree otherwise in writing.

25.REQUESTS, REPAIRS, AND MALFUNCTIONS. IF YOU OR ANY OCCUPANT NEEDS TO SEND A NOTICE OR REQUEST—FOR EXAMPLE, FOR REPAIRS, INSTALLATIONS, SERVICES, OR SECURITY-RELATED MATTERS—IT MUST BE SUBMITTED THROUGH EITHER THE ONLINE TENANT/MAINTENANCE PORTAL, OR SIGNED AND IN WRITING AND DELIVERED TO OUR DESIGNATED REPRESENTATIVE (except in case of fire, smoke, gas, explosion, overflowing sewage, uncontrollable running water, electrical shorts, or crime in progress). Our written notes on your oral request do not constitute a written request from you.

Our complying with or responding to any oral request regarding security or non-security matters doesn't waive the strict requirement for written notices under this Lease Contract. You must promptly notify us in writing of: water leaks; electrical problems; malfunctioning lights; broken or missing locks or latches; and other conditions that pose a hazard to property, health, or safety. We may change or install utility lines or equipment serving the apartment if the work is done reasonably without substantially increasing your utility costs. We may turn off equipment and interrupt utilities as needed to avoid property damage or to perform work. If utilities malfunction or are damaged by fire, water, or similar cause, you must notify our representative immediately. Air conditioning problems are not emergencies. If air conditioning or other equipment malfunctions, you must notify our representative as soon as possible on a business day. We'll act with customary diligence to make repairs and reconnections. Rent will not abate in whole or in part.

If we believe that fire or catastrophic damage is substantial, or that performance of needed repairs poses a danger to you, we may terminate your tenancy within a reasonable time by giving you written notice. If your tenancy is so terminated, we'll refund prorated rent and all deposits, less lawful deductions.

26.ANIMALS. Unless otherwise provided under federal, state, or local law, no animals (including mammals, reptiles, birds, fish, rodents, and insects) are allowed, even temporarily, anywhere in the apartment or apartment community unless we've so authorized in writing. You must remove an illegal or unauthorized animal within 24 hours of notice from us, or you will be considered in default of this Lease Contract. If we allow an animal as a pet, you must execute a separate animal addendum which may require additional deposits, rents, fees or other charges. An animal deposit is considered a general security deposit. We will authorize an assistance animal for a disabled person. When allowed by applicable laws, before we

authorize an assistance animal, if the disability is not readily apparent, we may require a written statement from a qualified professional verifying the disability-related need for the assistance animal. If we authorize an assistance animal, we may require you to execute a separate animal and/or assistance animal addendum. Animal deposits, additional rents, fees or other charges will not be required for an assistance animal needed due to disability, including an emotional support or service animal, as authorized under federal, state, or local law. You must not feed stray or wild animals.

If you or any guest or occupant violates animal restrictions (with or without your knowledge), you'll be subject to charges, damages, eviction, and other remedies provided in this Lease Contract. If an animal has been in the apartment at any time during your term of occupancy (with or without our consent), we'll charge you for defleaing, deodorizing, and shampooing. Initial and daily animal-violation charges and animal-removal charges are liquidated damages for our time, inconvenience, and overhead (except for attorney's fees and litigation costs) in enforcing animal restrictions and rules. We may remove an unauthorized animal by (1) leaving, in a conspicuous place in the apartment, a 24-hour written notice of intent to remove the animal, and (2) following the procedures of paragraph 27 (When We May Enter). We may keep or kennel the animal or turn it over to a humane society or local authority. When keeping or kenneling an animal, we won't be liable for loss, harm, sickness, or death of the animal unless due to our negligence. We'll return the animal to you upon request if it has not already been turned over to a humane society or local authority. You must pay for the animal's reasonable care and kenneling charges. We have no lien on the animal for any purpose.

27.WHEN WE MAY ENTER. We (landlord and repairers, servicers, contractors, and other agents) must give you at least 24 hours notice of our intent to enter and may only enter at reasonable times, except in the event of the following:

- (1) at any time in case of emergency, including prospective changes in weather conditions which pose a likelihood of danger to the property;
- (2) between the hours of 9 AM to 6 PM for the purpose of providing regularly scheduled periodic services (provided that prior to entering, we announce our intent to enter), such services including: making repairs or replacements; estimating repair or refurbishing costs; performing pest control; doing preventive maintenance; changing filters; testing or replacing smoke-detector or carbon monoxide detector batteries; delivering, installing, reconnecting, or replacing appliances, furniture, equipment, or access control devices, and the like;
- (3) between the hours of 8 AM to 8 PM for the purpose of providing services you request (provided that, prior to entering, we announce our intent to enter to perform services);
- (4) pursuant to court order;
- (5) where you fail to maintain the premises in a condition materially affecting health and safety if such noncompliance can be remedied by repair and you fail to comply as promptly as conditions require in the case of emergency or within fourteen (14) days after written notice from us requesting you to remedy the breach within such time period;
- (6) when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings; or
- (7) you have abandoned or surrendered the premises.

28.JOINT AND SEVERAL RESPONSIBILITY. Each resident is jointly and severally liable for all lease obligations. If you or any guest or occupant violates the Lease Contract or rules, all residents are considered to have violated the Lease Contract. Our requests and notices (including sale notices) to any resident constitute notice to all residents and occupants. Notices and requests from any resident or occupant (including notices of tenancy termination, repair requests, and entry permissions) constitute notice from all residents. In eviction suits, each resident is considered the agent of all other residents in the apartment for service of process. Security-deposit refunds and any deduction itemizations of multiple residents will comply with paragraph 50 (Deposit Return, Surrender, and Abandonment).

Replacements

29.REPLACEMENTS AND SUBLETTING. Replacing a resident, subletting, assignment, or granting a right or license to occupy is allowed only when we expressly consent in writing. If departing or remaining residents find a replacement resident acceptable to us before moving out and we expressly, in writing, consent to the replacement, subletting, assignment, or granting a right or any license to occupy, then:

- (1) a reletting charge *will not* be due;
- (2) a reasonable administrative (paperwork) and/or transfer fee *will* be due, and a rekeying fee *will* be due if rekeying is requested or required; and
- (3) the departing and remaining residents will remain liable for all lease obligations for the rest of the original lease term.

Procedures for Replacement. If we approve a replacement resident, then, at our option: (1) the replacement resident must sign this Lease Contract with or without an increase in the total security deposit; or (2) the remaining and replacement residents must sign an entirely new Lease Contract. Unless we agree otherwise in writing, your security deposit will automatically transfer to the replacement resident as of the date we approve. The departing resident will no longer have a right to occupancy or a security deposit refund, but will remain liable for the remainder of the original lease term unless we agree otherwise in writing—even if a new Lease Contract is signed.

Responsibilities of Owner and Resident

30.RESPONSIBILITIES OF OWNER. We'll act with customary diligence to:

- (1) keep common areas reasonably clean, subject to paragraph 24 (Conditions of the Premises and Alterations);
- (2) maintain fixtures, furniture, hot water, heating and A/C equipment;
- (3) comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing; and
- (4) make all reasonable repairs, subject to your obligation to pay for damages for which you are liable.

If we violate any of the above, you may terminate your tenancy and exercise other remedies under state statute only as follows;

- (a) you must make a written request for repair or remedy of the condition, and all rent must be current at the time;
- (b) after receiving the request, we have a reasonable time to repair, considering the nature of the problem and the reasonable availability of materials, labor, and utilities;
- (c) if we haven't diligently tried to repair within a reasonable time, you must then give us written notice of intent to terminate your tenancy unless the repair is made within 7 days; and
- (d) if repair hasn't been made within 14 days, you may terminate your tenancy and exercise other statutory remedies. Security deposits and prorated rent will be refunded as required by law.

31.DEFAULT BY RESIDENT. You'll be in default if you or any guest or occupant violates any terms of this Lease Contract including but not limited to the following violations: (1) you don't pay rent or other amounts that you owe when due; (2) you or any guest or occupant violates the apartment rules, or fire, safety, health, or criminal laws, regardless of whether or where arrest or conviction occurs; (3) you abandon the apartment; (4) you give incorrect or false answers in a rental application; (5) you or any occupant is arrested, convicted, or given deferred adjudication for a felony offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, marijuana, or drug paraphernalia under state statute; (6) any illegal drugs or paraphernalia are found in your apartment; (7) you or any guest or occupant engages in any of the prohibited conduct described in Paragraph 19 (Prohibited Conduct); or (8) you or any occupant, in bad faith, makes an invalid complaint to an official or employee of a utility company or the government.

Lease Renewal When A Breach or Default Has Occurred. In the event that you enter into a subsequent Lease prior to the expiration of this Lease and you breach or otherwise commit a

default under this Lease, We may, at our sole and absolute discretion, terminate the subsequent Lease, even if the subsequent Lease term has yet to commence. We may terminate said subsequent Lease by sending you written notice of our desire to terminate said subsequent Lease as permitted by law.

Eviction. If you default, we have the right to seek ejectment in accordance with applicable law.

Holdover. You or any occupant, invitee, or guest must not hold over beyond the date contained in your move-out notice or our notice to vacate (or beyond a different move-out date agreed to by the parties in writing). If a holdover occurs, then: (1) holdover rent is due in advance on a daily basis and may become delinquent without notice or demand; (2) rent for the holdover period will be increased by 25% over the then-existing rent, without notice; (3) you'll be liable to us for all rent for the full term of the previously signed Lease Contract of a new resident who can't occupy because of the holdover; and (4) at our option, we may extend the lease term—for up to one month from the date of notice of lease extension—by delivering written notice to you or your apartment while you continue to hold over.

Remedies Cumulative. Any remedies set forth herein shall be cumulative, in addition to, and not in limitation of, any other remedies available to Landlord under any applicable law.

Other Remedies. If your rent is delinquent we may terminate your tenancy upon written notice to you of nonpayment and intent to terminate your tenancy. We may report unpaid amounts to credit agencies. If you default and move out early, you will pay us any amounts stated to be rental discounts in paragraph 10 (Special Provisions), in addition to other sums due. Upon your default, we have all other legal remedies, including termination of your tenancy and lockout fees, as provided under state statute, and attorneys' fees, to the extent allowable by law. Late charges are liquidated damages for our time, inconvenience, and overhead in collecting late rent (but are not for attorney's fees and litigation costs). You must pay all collection-agency fees if you fail to pay all sums due within 10 days after we mail you a letter demanding payment and stating that collection agency fees will be added if you don't pay all sums by that deadline

Mitigation of Damages. If you move out early, you'll be subject to paragraph 11 (Early Move-Out) and all other remedies. We'll exercise customary diligence to relet and mitigate damages. We'll credit all subsequent rent that we actually receive from subsequent residents against your liability for past-due and future rent and other sums due.

General Clauses

32.ENTIRE AGREEMENT. Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us.

33.NO AUTHORITY TO AMEND UNLESS IN WRITING. Our representatives (including management personnel, employees, and agents) have no authority to waive, amend, or terminate this Lease Contract or any part of it, unless in writing, and no authority to make promises, representations, or agreements that impose security duties or other obligations on us or our representatives unless in writing.

34.NO WAIVER. No action or omission of our representative will be considered a waiver of any subsequent violation, default, or time or place of performance. Our not enforcing or belatedly enforcing written-notice requirements, rental due dates, liens, or other rights

isn't a waiver under any circumstances. Except when notice or demand is required by statute, you waive any notice and demand for performance from us if you default.

35.NOTICE. Written notice to or from our managers constitutes notice to or from us. Any person giving a notice under this Lease Contract should retain a copy of the memo, letter or fax that was given. Fax signatures are binding. All notices must be signed.

36.CABLE. Although the property may currently be providing cable on a bulk basis to the resident, the property may, with 30 days notice to the resident, cease providing cable and the resident will contract directly with the cable provider for such services.

37.AFFIRMATION THAT YOU ARE NOT A CRIMINAL SEX OFFENDER. You affirmatively state that you are not a criminal sex offender.

⁵ Freni Hagare ³⁹ Dafohn Brown

- 38.MISCELLANEOUS.**
- A. Exercising one remedy won't constitute an election or waiver of other remedies.
 - B. Unless prohibited by law or the respective insurance policies, insurance subrogation is waived by all parties.
 - C. All remedies are cumulative. No employee, agent, or management company is personally liable for any of our contractual, statutory, or other obligations merely by virtue of acting on our behalf.
 - D. This Lease Contract binds subsequent owners.
 - E. Neither an invalid clause nor the omission of initials on any page invalidates this Lease Contract.
 - F. All provisions regarding our non-liability and non-duty apply to our employees, agents, and management companies.
 - G. This Lease Contract is subordinate or superior to existing and future recorded mortgages, at lender's option.
 - H. All lease obligations must be performed in the county where the apartment is located.
 - I. All discretionary rights reserved for us within this Lease Contract or any accompanying addenda are at our sole and absolute discretion.

39. WAIVER OF JURY TRIAL. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

40.CONTACTING YOU. By signing this lease, you are agreeing that we, our representative(s) or agent(s) may contact you. You agree that we may contact you using any contact information relating to your lease including any number (i) you have provided to us (ii) from which you called us, or (iii) which we obtained and through which we reasonably believe we can reach you. You agree we may use any means to contact you. This may include calls made to your cellular telephone using an automatic telephone dialing system, artificial or prerecorded voice messages, text messages, mail, e-mail, and calls to your phone or Voice over Internet Protocol (VoIP) service, or any other data or voice transmission technology. You agree to promptly notify us if you change any contact information you provide to us. You are responsible for any service provider charges as a result of us contacting you.

41.OBLIGATION TO VACATE. If we provide you with a notice to vacate, or if you provide us with a written notice to vacate or intent to move-out in accordance with the Lease Terms paragraph, and we accept such written notice, then you are required to vacate the Apartment and remove all of your personal property therefrom at the expiration of the Lease term, or by the date set forth in the notice to vacate, whichever date is earlier, without further notice or demand from us.

42.FORCE MAJEURE. If we are prevented from completing performances of any obligations hereunder by an act of God, strikes, epidemics, war, acts of terrorism, riots, flood, fire, hurricane, tornado, sabotage, or other occurrence which is beyond the control of the parties, then we shall be excused from any further performance of obligations and undertakings hereunder, to the full extent allowed under applicable law.

Furthermore, if such an event damages the property to materially affect its habitability by some or all residents, we reserve the right to vacate any and all leases and you agree to excuse us from any further performance of obligations and undertakings hereunder, to the full extent allowed under applicable law.

43.PAYMENTS. Payment of all sums is an independent covenant. At our option and without notice, we may apply money received (other than utility payments subject to governmental regulations) first to any of your unpaid obligations, then to current rent—regardless of notations on checks or money orders and regardless of when the obligations arose. All sums other than rent are due upon our demand. After the due date, we do not have to accept the rent or any other payments.

44.ASSOCIATION MEMBERSHIP. We represent that either: (1) we or; (2) the management company that represents us, is at the time of signing this Lease Contract or a renewal of this Lease Contract, a member of both the National Apartment Association and any affiliated state and local apartment (multi-housing) associations for the area where the apartment is located.

When Moving Out

45.MOVE-OUT NOTICE. Before moving out, either at the end of the lease term, any extension of the lease term, or prior to the end of the lease term, you must give our representative advance written notice of your intention to vacate as required by paragraph 3 (Lease Terms). If you move out prior to the end of the lease term, your notice does not act as a release of liability for the full term of the Lease Contract. Your move-out notice must not terminate the Lease Contract sooner than the end of the Lease Contract term or renewal period, and should you attempt to do so, you will still be liable for the entire Lease Contract term if you move out early under paragraph 21 (Release of Resident) except if you are able to terminate your tenancy under the statutory rights explained under paragraphs 11 (Early Move Out), 21 (Release of Resident), or any other applicable law. All notices to vacate must be in writing and must provide the date by which you intend to vacate. If the notice does not comply with the time requirements of paragraph 3 (Lease Term) even if you move by the last date in the lease term, you will be responsible for an additional month's rent. If you fail to vacate by the date set forth in your notice, you will automatically and immediately become a holdover tenant pursuant to state law, and we will have all remedies available under this Lease Contract and state law.

46.MOVE-OUT PROCEDURES. The move-out date can't be changed unless we and you both agree in writing. You won't move out before the lease term or renewal period ends unless all rent for the entire lease term or renewal period is paid in full. Early move-out may result in reletting charges under paragraphs 11 (Early Move-Out) and 31 (Default by Resident), to the extent provided by law. You're prohibited by law from applying any security deposit to rent. You won't stay beyond the date you are supposed to move out. All residents, guests, and occupants must vacate the apartment before the 30-day period for deposit refund begins. You must give us and the U.S. Postal Service, in writing, each resident's forwarding address.

47.CLEANING. You must thoroughly clean the apartment, including doors, windows, furniture, bathrooms, kitchen appliances, patios, balconies, garages, carports, and storage rooms. You must follow move-out cleaning instructions if they have been provided. If you don't clean adequately, you'll be liable for reasonable cleaning charges.

48.MOVE-OUT INSPECTION. You should meet with our representative for a move-out inspection. Our representative has no authority to bind or limit us regarding deductions for repairs, damages, or charges. Any statements or estimates by us or our representative are subject to our correction, modification, or disapproval before final refunding or accounting.

49.SECURITY DEPOSIT DEDUCTIONS AND OTHER CHARGES. You'll be liable for the following charges, including, but not limited to, and if applicable: unpaid rent; unpaid utilities; unreimbursed service charges; repairs or damages caused by negligence, carelessness, accident, or abuse, including stickers, scratches, tears, burns, stains, or unapproved holes; replacement cost of our property that was in or attached to the apartment and is missing; replacing dead or missing smoke-detector or carbon monoxide detector batteries; utilities for repairs or cleaning; trips to let in company representatives to remove your telephone or TV cable services or rental items (if you so request or have moved out); trips to open the apartment when you or any guest or occupant is missing a key; unreturned keys; missing or burned-out light bulbs; removing or rekeying unauthorized access control devices or alarm systems; agreed reletting charges; packing, removing, or storing property removed or stored; removing illegally parked vehicles; special trips for trash removal caused by parked vehicles blocking dumpsters; false security-alarm charges unless due to our negligence; animal-related charges under paragraphs 6 (Rent and Charges) and 26 (Animals); government fees or fines against us for violation (by you, your occupants, or guests) of local ordinances relating to smoke detectors and carbon monoxide, false alarms, recycling, or other matters; late-payment and returned-check charges; a charge (not to exceed \$100) for owner/manager's time and inconvenience in our lawful removal of an animal or in any valid eviction proceeding against you, plus attorney's fees, court costs, and filing fees actually paid; and other sums due under this Lease Contract.

You'll be liable to us, to the extent provided by law, for: (1) charges for replacing all keys and access devices referenced in paragraph 5 (Keys) if you fail to return them on or before your actual move-out date and (2) a reletting fee if you have violated paragraph 11 (Early Move-Out).

⁶ Freni Hagare ⁴⁰ Dajohn Brown

50.DEPOSIT RETURN, SURRENDER, AND ABANDONMENT.
Deposit Return and Forwarding Address. You are required to provide us written notice of your forwarding address, on or before termination of this Lease Contract. We'll mail you, to the forwarding address you provide, your security deposit refund (less lawful deductions) and an itemized accounting of any deductions within the time frames and parameters set forth under state law. If you fail to provide us with your forwarding address in writing, as required above, we will process the unclaimed security deposit in accordance with state law.

Surrender. You have surrendered the apartment when: (1) the move-out date has passed and no one is living in the apartment in our reasonable judgment; or (2) all apartment keys and access devices listed in paragraph 5 (Keys) have been turned in where rent is paid—whichever date occurs first.

Abandonment. You have abandoned the apartment when all of the following have occurred: (1) everyone appears to have moved out in our reasonable judgment; (2) clothes, furniture, and personal belongings have been substantially removed in our reasonable judgment; (3) you've been in default for non-payment of rent for 15 consecutive days or water, gas, or electric service for the apartment not connected in our name has been terminated; and (4) you've not responded for 2 days to our notice left on the inside of the main entry door, stating that we consider the apartment abandoned. An apartment is also "abandoned" 10 days after the death of a sole resident.

Surrender, abandonment and judicial eviction end your right of possession for all purposes and gives us the immediate right to: clean up, make repairs in, and relet the apartment; determine any security deposit deductions; and remove property left in the apartment, subject to and to the extent provided by law. Surrender, abandonment, and judicial eviction affect your rights to property left in the apartment, but do not affect our mitigation obligations (paragraph 31 (Default by Resident)).

Severability, Originals and Attachments, and Signatures

51.SEVERABILITY. If any provision of this Lease Contract is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this Lease Contract. The court shall interpret the lease and provisions herein in a manner such as to uphold the valid portions of this Lease Contract while preserving the intent of the parties.

52.ORIGINALS AND ATTACHMENTS. This Lease Contract has been executed in multiple originals, with original signatures. We will provide you with a copy of the Lease Contract. Your copy of the Lease Contract may be in paper format, in an electronic format at your request, or sent via e-mail if we have communicated by e-mail about this Lease. Our rules and community policies, if any, will be attached to the Lease Contract and provided to you at signing. When an Inventory and Condition form is completed, you should retain a copy, and we should retain a copy. Any addenda or amendments you sign as a part of executing this Lease Contract are binding and hereby incorporated into and made part of the Lease Contract between you and us. This lease is the entire agreement between you and us. You acknowledge that you are NOT relying on any oral representations. A copy or scan of this Lease Contract and related addenda, amendments, and agreements may be used for any purpose and shall be treated as an original.

You are legally bound by this document.
Read it carefully before signing.

Resident or Residents *(all sign below)*

Owner or Owner's Representative *(signing on behalf of owner)*

Address and phone number of owner's representative for notice purposes

1660 Old Trolley Road

Summerville, SC 29485

(843) 871-7410

Name and address of locator service *(if applicable)*

NA

Date form is filled out *(same as on top of page 1)*

07/07/2022

SPECIAL PROVISIONS (CONTINUED FROM PAGE 2). RPM Approval Date: MM/DD/YY or; YieldStar/LRO Report Date: MM/DD/YY or; WUTA Date: MM/DD/YY and/or; Approved Concession Date: MM/DD/YY \$\$\$ Admin fee charged. Any concession or special received must be reimbursed if the lease contract is not fulfilled.

⁷ *Areni Hagare* ⁴¹ *Dajohn Brown*



INVENTORY AND CONDITION FORM



DWELLING UNIT DESCRIPTION. Unit No. B16, 1660 Old Trolley Road
Summerville (city), South Carolina, 29485 (street address) in (zip code).
LEASE CONTRACT DESCRIPTION. Lease Contract date: July 7, 2022 Owner's name: BIF-Summerville Station, LLC and PAC-Summerville LLC

Residents (list all residents):
Freni Hazare

Within 48 hours after move-in, you must note on this form all defects, damage, or safety or pest-related concerns and return it to our representative. Otherwise, everything will be considered to be in a clean, safe, and good working condition. Please mark through items listed below or put "none" if the items don't exist. This form protects both you (the resident) and us (the owner). We'll use it in determining what should and should not be considered your responsibility upon move-out. You are entitled to a copy of this form after it is filled out and signed by you and us.

Resident's Name: Freni Hazare
Home Phone: () Work Phone: ()
Resident's Name: _____
Home Phone: () Work Phone: ()
Resident's Name: _____
Home Phone: () Work Phone: ()
Resident's Name: _____
Home Phone: () Work Phone: ()
Resident's Name: _____
Home Phone: () Work Phone: ()
Resident's Name: _____
Home Phone: () Work Phone: ()

☐ Move-In or ☐ Move-Out Condition (Check one)

Living Room
Walls _____
Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____
Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Closets, Rods, Shelves _____
Closet Lights, Fixtures _____
Lamps, Bulbs _____
Other _____
Kitchen
Walls _____
Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____
Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Cabinets, Drawers, Handles _____
Countertops _____
Stove/Oven, Trays, Pans, Shelves _____
Vent Hood _____
Refrigerator, Trays, Shelves _____
Refrigerator Light, Crisper _____
Dishwasher, Dispensers, Racks _____
Sink/Disposal _____
Microwave _____
Other _____

General Items
Thermostat _____
Cable TV or Master Antenna _____
A/C Filter _____
Washer/Dryer _____
Garage Door _____
Ceiling Fans _____
Exterior Doors, Screens/Screen Doors, Doorbell _____
Fireplace _____
Other _____
Dining Room
Walls _____
Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____
Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Closets, Rods, Shelves _____
Closet Lights, Fixtures _____
Other _____
Halls
Walls _____
Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____
Doors, Stops, Locks _____
Closets, Rods, Shelves _____

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Closet Lights, Fixtures _____
Other _____

Exterior (if applicable)
Patio/Yard _____
Fences/Gates/Gate Latches or Locks _____
Faucets _____
Balconies _____
Other _____

Bedroom (describe which one): _____
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Closets, Rods, Shelves _____
Closet Lights, Fixtures _____
Other _____

Bedroom (describe which one): _____
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Closets, Rods, Shelves _____
Closet Lights, Fixtures _____
Other _____

Bath (describe which one): _____
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Exhaust Fan/Heater _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Sink, Faucet, Handles, Stopper _____
Countertops _____
Mirror _____
Cabinets, Drawers, Handles _____
Toilet, Paper Holder _____
Bathtub, Enclosure, Stopper _____
Shower, Doors, Rods _____
Tile _____
Other _____

Half Bath
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Exhaust Fan/Heater _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Sink, Faucet, Handles, Stopper _____
Countertops _____
Mirror _____
Cabinets, Drawers, Handles _____
Toilet, Paper Holder _____
Tile _____
Other _____

Bedroom (describe which one): _____
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Closets, Rods, Shelves _____
Closet Lights, Fixtures _____
Other _____

Bath (describe which one): _____
Walls _____

Wallpaper _____
Plugs, Switches, A/C Vents _____
Woodwork/Baseboards _____
Ceiling _____
Light Fixtures, Bulbs _____
Exhaust Fan/Heater _____
Floor/Carpet _____

Doors, Stops, Locks _____
Windows, Latches, Screens _____
Window Coverings _____
Sink, Faucet, Handles, Stopper _____
Countertops _____
Mirror _____
Cabinets, Drawers, Handles _____
Toilet, Paper Holder _____
Bathtub, Enclosure, Stopper _____
Shower, Doors, Rods _____
Tile _____
Other _____

Safety-Related Items (Put “N/A” if not applicable)
Door Knob Locks _____
Keyed Deadbolt Locks _____

Keyless Deadbolts _____

Sliding Door Pin Locks _____
Sliding Door Latches _____
Sliding Door Security Bars _____
Doorviewers _____
Window Latches _____
Porch and Patio Lights _____
Smoke Detectors _____
Alarm System _____
Fire Extinguishers (look at charge level BUT DON’T TEST!) _____

Garage Door Opener _____
Gate Access Card(s) _____
Other _____

Date of Move-In: _____
or
Date of Move-Out: _____

None

In signing below, you accept this inventory as part of the Lease Contract and agree that it accurately reflects the condition of the premises for purposes of determining any refund due to you when you move out.

Owner or Owner's Representative: _____ Date of Signing: _____



ANIMAL ADDENDUM
Becomes part of Lease Contract



Date: July 7, 2022
(when this Addendum is filled out)

Please note: We consider animals a serious responsibility and a risk to each resident in the dwelling. If you do not properly control and care for your animal, you'll be held liable if it causes any damage or disturbs other residents.

In this document, the terms "you" and "your" refer to all residents listed below and all occupants or guests; and the terms "we," "us," and "our" refer to the owner named in the Lease Contract (not to the property manager or anyone else).

1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

(street address) in
Summerville
(city), South Carolina, 29485 (zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

- 3. A. ☐ NO APPROVED ANIMALS.** If this box is checked, you are not allowed to have animals (including mammals, reptiles, birds, fish, rodents, and insects), even temporarily, anywhere in the apartment or apartment community unless we've authorized so in writing. We will authorize support and/or service animals for you, your guests, and occupants pursuant to the parameters and guidelines established by the Fair Housing Act, HUD regulatory guidelines, and any applicable state and/or local laws.

B. ☐ CONDITIONAL AUTHORIZATION FOR ANIMAL. If this box is checked, you may keep the animal that is described below in the dwelling until the Lease Contract expires. But we may terminate this authorization sooner if your right of occupancy is lawfully terminated or if in our judgment you and your animal, your guests, or any occupant violate any of the rules in this Addendum.

- 4. SECURITY DEPOSIT.** An animal deposit of \$ 0.00 will be charged. We [check one] ☐ will consider, or ☒ will not consider this additional security deposit the general security deposit for all purposes. The security deposit amount in the Security Deposit paragraph of the Lease Contract [check one] ☐ does, or ☒ does not include this additional deposit amount. Refund of the animal deposit will be subject to the terms and conditions set forth in the Lease Contract regardless of whether it is considered part of the general security deposit.

- 5. MONTHLY ANIMAL RENT.** Your total monthly animal rent will be \$ 15.00. The monthly animal rent is due on the 1st day of each month with no grace period.

- 6. ADDITIONAL FEE.** You must also pay a one-time, non-refundable fee of \$ 300.00 for having the animal in the dwelling unit. It is our policy to not charge a deposit for support animals.

- 7. LIABILITY NOT LIMITED.** The additional monthly rent and additional security deposit under this Animal Addendum do not limit residents' liability for property damages, cleaning, deodorization, defleaing, replacements, or personal injuries.

- 8. DESCRIPTION OF ANIMAL(S).** You may keep only the animal(s) described below. You may not substitute any other animal(s). Neither you nor your guests or occupants may bring any other animal(s)—mammal, reptile, bird, amphibian, fish, rodent, arachnid, or insect—into the dwelling or apartment community.

Animal's name: _____
Type: _____
Breed: _____
Color: _____
Weight: _____ Age: _____
City of license: _____
License no.: _____
Date of last rabies shot: _____
Housebroken? _____
Animal owner's name: _____

Animal's name: _____
Type: _____
Breed: _____
Color: _____
Weight: _____ Age: _____
City of license: _____
License no.: _____
Date of last rabies shot: _____
Housebroken? _____
Animal owner's name: _____

- 9. SPECIAL PROVISIONS.** The following special provisions control over conflicting provisions of this printed form:

Maximum of 2 pets per apartment.
Aggressive breeds are not allowed,
including, but not limited to: Pit Bull
Terriers, Staffordshire Terriers,
Rottweilers, German Shepherds, Presa
Canarios, Chows Chows, Doberman, Akitas,
Wolf-hybrids, Mastiffs, Cane Corsos, Great
Danes, Alaskan Malamutes, Siberian
Huskies, Belgian Malinois, St. Bernard,
Breed list may change at the property
management's discretion. No mix of
restricted breeds will be accepted.

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10. **EMERGENCY.** In an emergency involving an accident or injury to your animal, we have the right, but not a duty, to take the animal to the following veterinarian for treatment, at your expense.

Doctor: NA
Address: _____
City/State/Zip: _____
Phone: _____

11. **ANIMAL RULES.** You are responsible for the animal's actions at all times. You agree to abide by these rules:

- The animal must not disturb the neighbors or other residents, regardless of whether the animal is inside or outside the dwelling.
- Dogs, cats, and support animals must be housebroken. All other animals must be caged at all times. No animal offspring are allowed.
- Inside, the animal may urinate or defecate *only* in these designated areas: Litter box with kitty litter cleaned regularly
- Outside, the animal may urinate or defecate *only* in these designated areas: Grass area at least 15 ft from any apt or walkway
- Animals may not be tied to any fixed object anywhere outside the dwelling units, except in fenced yards (if any) for your exclusive use.
- You must not let an animal other than support animals into swimming-pool areas, laundry rooms, offices, clubrooms, other recreational facilities, or other dwelling units.
- Your animal must be fed and watered inside the dwelling unit. Don't leave animal food or water outside the dwelling unit at any time, except in fenced yards (if any) for your exclusive use.
- You must keep the animal on a leash and under your supervision when outside the dwelling or any private fenced area. We or our representative may pick up unleashed animals and/or report them to the proper authorities. We may impose reasonable charges for picking up and/or keeping unleashed animals.
- Unless we have designated a particular area in your dwelling unit or on the grounds for animal defecation and urination, you are prohibited from letting an animal defecate or urinate *anywhere* on our property. You must take the animal off our property for that purpose. If we allow animal defecation inside the dwelling unit in this Addendum, you must ensure that it's done in a litter box with a kitty litter-type mix. If the animal defecates anywhere on our property (including in a fenced yard for your exclusive use), you'll be responsible for immediately removing the waste and repairing any damage. Despite anything this Addendum says, you must comply with all local ordinances regarding animal defecation.

12. **ADDITIONAL RULES.** We have the right to make reasonable changes to the animal rules from time to time if we distribute a written copy of any changes to every resident who is allowed to have animals.

13. **VIOLATION OF RULES.** If you, your guest, or any occupant violates any rule or provision of this Animal Addendum (based upon our judgment) and we give you written notice, you must permanently remove the animal from the premises within the time period specified in our notice. We also have all other rights and remedies set forth in the Lease Contract, including damages, eviction, and attorney's fees to the extent allowed by law.

14. **COMPLAINTS ABOUT ANIMAL.** You must immediately and permanently remove the animal from the premises if we receive a reasonable complaint from a neighbor or other resident or if we, in our sole discretion, determine that the animal has disturbed neighbors or other residents.

15. **LIABILITY FOR DAMAGES, INJURIES, CLEANING, ETC.** You and all co-residents will be jointly and severally liable for the entire amount of all damages caused by the animal, including all cleaning, defleaing, and deodorizing. This provision applies to all parts of the dwelling unit, including carpets, doors, walls, drapes, wallpaper, windows, screens, furniture, appliances, as well as landscaping and other outside improvements. If items cannot be satisfactorily cleaned or repaired, you must pay for us to replace them completely. Payment for damages, repairs, cleaning, replacements, etc. are due immediately upon demand.

As owner of the animal, you may be liable for the entire amount of any injury that the animal causes to a person or anyone's property. You'll indemnify us for all costs of litigation and attorney's fees resulting from any such damage, unless otherwise required by law.

16. **MOVE-OUT.** When you move out, you'll pay for defleaing, deodorizing, and shampooing to protect future residents from possible health hazards, regardless of how long the animal was there. We—not you—will arrange for these services.

17. **JOINT AND SEVERAL RESPONSIBILITY.** Each resident who signed the Lease Contract must sign this Animal Addendum. You, your guests, and any occupants must follow all animal rules. Each resident is jointly and severally liable for damages and all other obligations set forth in this Animal Addendum, even if the resident does not own the animal.

18. **GENERAL.** You acknowledge that no other oral or written agreement exists regarding animals. Except for written rule changes under paragraph 9 above, our representative has no authority to modify this Animal Addendum or the animal rules except in writing. This Animal Addendum and the animal rules are considered part of the Lease Contract described above. It has been executed in multiple originals, one for you and one or more for us.

This is a binding legal document. Read it carefully before signing.

Resident or Residents
(All residents must sign)

Owner or Owner's Representative
(Signs below)

^{1,2} Freni Hagare ⁴⁶ DaJohn Brown



UTILITY AND SERVICES ADDENDUM



This Utility Addendum is incorporated into the Lease Contract (referred to in this addendum as "Lease Contract" or "Lease") dated July 7, 2022 between BIF-Summerville Station, LLC and PAC-Summerville LLC

("We" and/or "we" and/or "us") and Freni Hazare

("You" and/or "you") of Unit No. B16 located at 1660 Old Trolley Road (street address) in Summerville, SC 29485

and is in addition to all terms and conditions in the Lease. This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

1. Responsibility for payment of utilities, and the method of metering or otherwise measuring the cost of the utility, will be as indicated below.

- a) **Water** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☒ water bills will be billed by the service provider to us and then allocated to you based on the following formula: 9
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☒ 3rd party billing company if applicable Conservice
- b) **Sewer** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☒ sewer bills will be billed by the service provider to us and then allocated to you based on the following formula: 9
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☒ 3rd party billing company if applicable Conservice
- c) **Gas** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☐ gas bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- d) **Trash** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☒ trash bills will be billed by the service provider to us and then allocated to you based on the following formula: 4
 - ☒ If flat rate is selected, the current flat rate is \$ 7.50 per month.
 - ☐ 3rd party billing company if applicable None
- e) **Electric** service to your dwelling will be paid by you either:
- ☒ directly to the utility service provider; or
 - ☐ electric bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- f) **Stormwater** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☒ stormwater bills will be billed by the service provider to us and then allocated to you based on the following formula: 10
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☒ 3rd party billing company if applicable Conservice
- g) **Cable TV** service to your dwelling will be paid by you either:
- ☒ directly to the utility service provider; or
 - ☐ cable TV bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- h) **Master Antenna** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☐ master antenna bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- i) **Internet** service to your dwelling will be paid by you either:
- ☒ directly to the utility service provider; or
 - ☐ internet bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- j) **Pest Control** service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☒ pest control bills will be billed by the service provider to us and then allocated to you based on the following formula: 4
 - ☒ If flat rate is selected, the current flat rate is \$ 5.00 per month.
 - ☐ 3rd party billing company if applicable N/A
- k) (Other) N/A service to your dwelling will be paid by you either:
- ☐ directly to the utility service provider; or
 - ☐ bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A
 - ☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.
 - ☐ 3rd party billing company if applicable N/A

¹³ *Freni Hazare* ⁴⁷ *Dajohn Brown*

l) (Other) N/A service to your dwelling will be paid by you either:

☐ directly to the utility service provider; or

☐ bills will be billed by the service provider to us and then allocated to you based on the following formula: N/A

☐ If flat rate is selected, the current flat rate is \$ 0.00 per month.

☐ 3rd party billing company if applicable N/A

METERING/ALLOCATION METHOD KEY

- "1" - Sub-metering of all of your water/gas/electric use
- "2" - Calculation of your total water use based on sub-metering of hot water
- "3" - Calculation of your total water use based on sub-metering of cold water
- "4" - Flat rate per month
- "5" - Allocation based on the number of persons residing in your dwelling unit
- "6" - Allocation based on the number of persons residing in your dwelling unit using a ratio occupancy formula
- "7" - Allocation based on square footage of your dwelling unit
- "8" - Allocation based on a combination of square footage of your dwelling unit and the number of persons residing in your dwelling unit
- "9" - Allocation based on the number of bedrooms in your dwelling unit
- "10" - Allocation based on a lawful formula not listed here

(Note: if method "10" is selected, a separate sheet will be attached describing the formula used)

2. If an allocation method is used, we or our billing company will calculate your allocated share of the utilities and services provided and all costs in accordance with state and local statutes. Under any allocation method, Resident may be paying for part of the utility usage in common areas or in other residential units as well as administrative fees. Both Resident and Owner agree that using a calculation or allocation formula as a basis for estimating total utility consumption is fair and reasonable, while recognizing that the allocation method may or may not accurately reflect actual total utility consumption for Resident. Where lawful, we may change the above methods of determining your allocated share of utilities and services and all other billing methods, in our sole discretion, and after providing written notice to you. More detailed descriptions of billing methods, calculations and allocation formulas will be provided upon request.

If a flat fee method for trash or other utility service is used, Resident and Owner agree that the charges indicated in this Agreement (as may be amended with written notice as specified above) represent a fair and reasonable amount for the service(s) provided and that the amount billed is not based on a monthly per unit cost.

3. When billed by us directly or through our billing company, you must pay utility bills within 5 days of the date when the utility bill is issued at the place indicated on your bill, or the payment will be late. If a payment is late, you will be responsible for a late fee as indicated below. The late payment of a bill or failure to pay any utility bill is a material and substantial breach of the Lease and we will exercise all remedies available under the Lease, up to and including eviction for nonpayment. To the extent there are any new account, monthly administrative, late or final bill fees, you shall pay such fees as indicated below.

New Account Fee:	\$ <u>10.00</u>	(not to exceed \$ <u>15.00</u>)
Monthly Administrative Billing Fee:	\$ <u>4.25</u>	(not to exceed \$ <u>6.25</u>)
Late Fee:	\$ <u>0.00</u>	(not to exceed \$ <u>0.00</u>)
Final Bill Fee:	\$ <u>10.00</u>	(not to exceed \$ <u>15.00</u>)

If allowed by state law, we at our sole discretion may amend these fees, with written notice to you.

4. You will be charged for the full period of time that you were living in, occupying, or responsible for payment of rent or utility charges on the dwelling. If you breach the Lease, you will be responsible for utility charges for the time period you were obliged to pay the charges under the Lease, subject to our mitigation of damages. In the event you fail to timely establish utility services, we may charge you for any utility service billed to us for your dwelling and may charge a reasonable administration fee for billing for the utility service in the amount of \$ 50.00.

5. When you move out, you will receive a final bill which may be estimated based on your prior utility usage. This bill must be paid at the time you move out or it will be deducted from the security deposit.

6. We are not liable for any losses or damages you incur as a result of outages, interruptions, or fluctuations in utility services provided to the dwelling unless such loss or damage was the direct result of negligence by us or our employees. You release us from any and all such claims and waive any claims for offset or reduction of rent or diminished rental value of the dwelling due to such outages, interruptions, or fluctuations.

7. You agree not to tamper with, adjust, or disconnect any utility sub-metering system or device. Violation of this provision is a material breach of your Lease and may subject you to eviction or other remedies available to us under your Lease, this Utility Addendum and at law.

8. Where lawful, all utilities, charges and fees of any kind under this lease shall be considered additional rent, and if partial payments are accepted by the Owner, they will be allocated first to non-rent charges and to rent last.

9. You represent that all occupants that will be residing in the Unit are accurately identified in the Lease. You agree to promptly notify Owner of any change in such number of occupants.

10. You agree that you may, upon thirty (30) days prior written notice from Owner to you, begin receiving a bill for additional utilities and services, at which time such additional utilities and services shall for all purposes be included in the term Utilities.

11. This Addendum is designed for use in multiple jurisdictions, and no billing method, charge, or fee mentioned herein will be used in any jurisdiction where such use would be unlawful. If any provision of this addendum or the Lease is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this addendum or the Lease. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control.

12. The following special provisions and any addenda or written rules furnished to you at or before signing will become a part of this Utility Addendum and will supersede any conflicting provisions of this printed Utility Addendum and/or the Lease Contract.

Residents will be charged \$50 per month in addition to usage if electricity is not entered in the resident's name.

[illegible]

Resident Signature _____	Date _____
Resident Signature _____	Date _____
Resident Signature _____	Date _____
Resident Signature _____	Date _____
Resident Signature _____	Date _____
Resident Signature _____	Date _____
Management _____	Date _____

¹⁵ *Freni Hagare* ⁴⁹ *DaJohn Brown*



BED BUG ADDENDUM

Date: July 7, 2022
(when this Addendum is filled out)



Please note: It is our goal to maintain a quality living environment for our residents. To help achieve this goal, it is important to work together to minimize the potential for any bed bugs in your dwelling or surrounding dwellings. This addendum contains important information that outlines your responsibility and potential liability with regard to bed bugs.

1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old Trolley Road
(street address) in
Summerville
(city), South Carolina, 29485 (zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. PURPOSE. This Addendum modifies the Lease Contract and addresses situations related to bed bugs (cimex lectularius) which may be discovered infesting the dwelling or personal property in the dwelling. You understand that we relied on your representations to us in this Addendum.

4. INSPECTION AND INFESTATIONS. BY SIGNING THIS ADDENDUM, YOU REPRESENT THAT:

- YOU HAVE INSPECTED THE DWELLING PRIOR TO MOVING IN, OR PRIOR TO SIGNING THIS ADDENDUM, AND YOU DID NOT FIND ANY EVIDENCE OF BED BUGS OR A BED BUG INFESTATION;

OR

- YOU WILL INSPECT THE DWELLING WITHIN 48 HOURS AFTER MOVING IN, OR WITHIN 48 HOURS AFTER SIGNING THIS ADDENDUM AND WILL NOTIFY US OF ANY BED BUGS OR BED BUG INFESTATIONS.

You agree that you have read the information provided in this Addendum and that you are not aware of any infestation or presence of bed bugs in your current or previous dwellings, furniture, clothing, personal property, or possessions. You also acknowledge that you have fully disclosed to us any previous bed bug infestations or bed bug issues that you have experienced.

If you disclose to us a previous experience with bed bug infestations or other bed bug related issues, we can review documentation of the previous treatment(s) and inspect your personal property and possession to confirm the absence of bed bugs.

5. ACCESS FOR INSPECTION AND PEST TREATMENT.

You must allow us and our pest control agents access to the dwelling at reasonable times to inspect for or treat bed bugs as allowed by law. You and your family members, occupants, guests, and invitees must cooperate and will not interfere with inspections or treatments. We have the right to select any licensed pest control professional to treat the dwelling and building. We can select the method of treating the dwelling, building and common areas for bed bugs. We can also inspect and treat adjacent or neighboring dwellings to the infestation even if those dwellings are not the source or cause of the known infestation. Unless otherwise prohibited by law, you are responsible for and must, at your own expense, have your own personal property, furniture, clothing and possessions treated according to accepted treatment methods established by a licensed pest control firm that we approve. You must do so as close as possible to the time we treated the dwelling. If you fail to do so, you will be in default, and we will have the right to terminate your right of occupancy and exercise all rights and remedies under the Lease Contract. You agree not to treat the dwelling for a bed bug infestation on your own.

6. NOTIFICATION. You must promptly notify us:

- of any known or suspected bed bug infestation or presence in the dwelling, or in any of your clothing, furniture or personal property.
- of any recurring or unexplained bites, stings, irritations, or sores of the skin or body which you believe is caused by bed bugs, or by any condition or pest you believe is in the dwelling.
- if you discover any condition or evidence that might indicate the presence or infestation of bed bugs, or of any confirmation of bed bug presence by a licensed pest control professional or other authoritative source.

7. COOPERATION. If we confirm the presence or infestation of bed bugs, you must cooperate and coordinate with us and our pest control agents to treat and eliminate the bed bugs. You must follow all directions from us or our agents to clean and treat the dwelling and building that are infested. You must remove or destroy personal property that cannot be treated or cleaned as close as possible to the time we treated the dwelling. Any items you remove from the dwelling must be disposed of off-site and not in the property's trash receptacles. If we confirm the presence or infestation of bed bugs in your dwelling, we have the right to require you to temporarily vacate the dwelling and remove all furniture, clothing and personal belongings in order for us to perform pest control services. If you fail to cooperate with us, you will be in default, and we will have the right to terminate your right of occupancy and exercise all rights and remedies under the Lease Contract.

8. RESPONSIBILITIES. You may be required to pay all reasonable costs of cleaning and pest control treatments incurred by us to treat your dwelling unit for bed bugs. If we confirm the presence or infestation of bed bugs after you vacate your dwelling, you may be responsible for the cost of cleaning and pest control treatments. If we must move other residents in order to treat adjoining or neighboring dwellings to your dwelling unit, you may be liable for payment of any lost rental income and other expenses incurred by us to relocate the neighboring residents and to clean and perform pest control treatments to eradicate infestations in other dwellings. If you fail to pay us for any costs you are liable for, you will be in default, and we will have the right to terminate your right of occupancy and exercise all rights and remedies under the Lease Contract, and obtain immediate possession of the dwelling. If you fail to move out after your right of occupancy has been terminated, you will be liable for holdover rent under the Lease Contract.

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9. TRANSFERS. If we allow you to transfer to another dwelling in the community because of the presence of bed bugs, you must have your personal property and possessions treated according to accepted treatment methods or procedures established by a licensed pest control professional. You must provide proof of such cleaning and treatment to our satisfaction.

10. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None

You are legally bound by this document. Please read it carefully.

Resident or Residents
(All residents must sign)

Owner or Owner's Representative
(Signs below)

Date of Signing Addendum

You are entitled to receive an original of this Addendum after it is fully signed. Keep it in a safe place.

Bed bugs, with a typical lifespan of 6 to 12 months, are wingless, flat, broadly oval-shaped insects. Capable of reaching the size of an apple seed at full growth, bed bugs are distinguishable by their reddish-brown color, although after feeding on the blood of humans and warm-blooded animals—their sole food source—the bugs assume a distinctly blood-red hue until digestion is complete.

Bed bugs don’t discriminate

Bed bugs increased presence across the United States in recent decades can be attributed largely to a surge in international travel and trade. It’s no surprise then that bed bugs have been found time and time again to have taken up residence in some of the fanciest hotels and apartment buildings in some of the nation’s most expensive neighborhoods.

Nonetheless, false claims that associate bed bugs presence with poor hygiene and uncleanliness have caused rental housing residents, out of shame, to avoid notifying owners of their presence. This serves only to enable the spread of bed bugs.

While bed bugs are, by their very nature, more attracted to clutter, they’re certainly not discouraged by cleanliness.

Bottom line: bed bugs know no social and economic bounds; claims to the contrary are false.

Bed bugs don’t transmit disease

There exists no scientific evidence that bed bugs transmit disease. In fact, federal agencies tasked with addressing pest of public health concern, namely the U.S. Environmental Protection Agency and the Centers for Disease Control and Prevention, have refused to elevate bed bugs to the threat level posed by disease transmitting pests. Again, claims associating bed bugs with disease are false.

Identifying bed bugs

Bed bugs can often be found in, around and between:

- Bedding
- Bed frames
- Mattress seams
- Upholstered furniture, especially under cushions and along seams
- Around, behind and under wood furniture, especially along areas where drawers slide
- Curtains and draperies
- Along window and door frames
- Ceiling and wall junctions
- Crown moldings
- Behind and around wall hangings and loose wallpaper
- Between carpeting and walls (carpet can be pulled away from the wall and tack strip)
- Cracks and crevices in walls and floors
- Inside electronic devices, such as smoke and carbon monoxide detectors

- Because bed bugs leave some persons with itchy welts strikingly similar to those caused by fleas and mosquitoes, the origination of such markings often go misdiagnosed. However, welts caused by bed bugs often times appear in succession and on exposed areas of skin, such as the face, neck and arms. In some cases, an individual may not experience any visible reaction resulting from direct contact with bed bugs.
- While bed bugs typically prefer to act at night, they often do not succeed in returning to their hiding spots without leaving traces of their presence through fecal markings of a red to dark brown color, visible on or near beds. Blood stains tend also to appear when the bugs have been squashed, usually by an unsuspecting host in their sleep. And, because they shed, it’s not uncommon for skin casts to be left behind in areas typically frequented by bed bugs.

Preventing bed bug encounters when traveling

Because humans serve as bed bugs’ main mode of transportation, it is extremely important to be mindful of bed bugs when away from home. Experts agree that the spread of bed bugs across all regions of the United States is largely attributed to an increase in international travel and trade. Travelers are therefore encouraged to take a few minutes upon arriving to their temporary destination to thoroughly inspect their accommodations, so as to ensure that any uninvited guests are detected before the decision is made to unpack.

Because bed bugs can easily travel from one room to another, it is also recommended that travelers thoroughly inspect their luggage and belongings for bed bugs before departing for home.

Bed bug do’s and don’ts

- **Do not bring used furniture from unknown sources into your dwelling.** Countless bed bug infestations have stemmed directly from the introduction into a resident’s unit of second-hand and abandoned furniture. Unless the determination can be made with absolute certainty that a piece of second-hand furniture is bed bug-free, residents should assume that the reason a seemingly nice looking leather couch, for example, is sitting curbside, waiting to be hauled off to the landfill, may very well be due to the fact that it’s teeming with bed bugs.
- **Do address bed bug sightings immediately.** Rental housing residents who suspect the presence of bed bugs in their unit must immediately notify the owner.
- **Do not attempt to treat bed bug infestations.** Under no circumstance should you attempt to eradicate bed bugs. Health hazards associated with the misapplication of traditional and non-traditional, chemical-based insecticides and pesticides poses too great a risk to you and your neighbors.
- **Do comply with eradication protocol.** If the determination is made that your unit is indeed playing host to bed bugs, you must comply with the bed bug eradication protocol set forth by both your owner and their designated pest management company.





Please note: It is our goal to maintain a quality living environment for our residents. To help achieve this goal, it is important to work together to minimize any mold growth in your dwelling. That is why this addendum contains important information for you, and responsibilities for both you and us.

1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

Summerville

(city), South Carolina, 29485
(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. ABOUT MOLD. Mold is found virtually everywhere in our environment—both indoors and outdoors and in both new and old structures. Molds are naturally occurring microscopic organisms which reproduce by spores and have existed practically from the beginning of time. All of us have lived with mold spores all our lives. Without molds we would all be struggling with large amounts of dead organic matter.

Mold breaks down organic matter in the environment and uses the end product for its food. Mold spores (like plant pollen) spread through the air and are commonly transported by shoes, clothing and other materials. When excess moisture is present inside a dwelling, mold can grow. A 2004 Federal Centers for Disease Control and Prevention study found that there is currently no scientific evidence that the accumulation of mold causes any significant health risks for person with normally functioning immune systems. Nonetheless, appropriate precautions need to be taken.

4. PREVENTING MOLD BEGINS WITH YOU. In order to minimize the potential for mold growth in your dwelling, you must do the following:

- Keep your dwelling clean—particularly the kitchen, the bathroom(s), carpets and floors. Regular vacuuming, mopping and using a household cleaner to clean hard surfaces is important to remove the household dirt and debris that harbor mold or food for mold. Immediately throw away moldy food.
- Remove visible moisture accumulation on windows, walls, ceilings, floors and other surfaces as soon as reasonably possible. Look for leaks in washing machine hoses and discharge lines—especially if the leak is large enough for water to infiltrate nearby walls. Turn on any exhaust fans

in the bathroom and kitchen *before* you start showering or cooking with open pots. When showering, be sure to keep the shower curtain *inside* the tub or fully close the shower doors. Also, the experts recommend that after taking a shower or bath, you: (1) wipe moisture off of shower walls, shower doors, the bathtub and the bathroom floor; (2) leave the bathroom door open until all moisture on the mirrors and bathroom walls and tile surfaces has dissipated; and (3) hang up your towels and bath mats so they will completely dry out.

- Promptly notify us in writing about any air conditioning or heating system problems you discover. Follow our rules, if any, regarding replacement of air filters. Also, it is recommended that you periodically open windows and doors on days when the outdoor weather is dry (i.e., humidity is below 50 percent) to help humid areas of your dwelling dry out.
- Promptly notify us in writing about any signs of water leaks, water infiltration or mold. We will respond in accordance with state law and the Lease Contract to repair or remedy the situation, as necessary.
- Keep the thermostat set to automatically circulate air in the event temperatures rise to or above 80 degrees Fahrenheit.

5. IN ORDER TO AVOID MOLD GROWTH, it is important to prevent excessive moisture buildup in your dwelling. Failure to promptly pay attention to leaks and moisture that might accumulate on dwelling surfaces or that might get inside walls or ceilings can encourage mold growth. Prolonged moisture can result from a wide variety of sources, such as:

- rainwater leaking from roofs, windows, doors and outside walls, as well as flood waters rising above floor level;
- overflows from showers, bathtubs, toilets, lavatories, sinks, washing machines, dehumidifiers, refrigerator or A/C drip pans or clogged up A/C condensation lines;
- leaks from plumbing lines or fixtures, and leaks into walls from bad or missing grouting/caulking around showers, tubs or sinks;
- washing machine hose leaks, plant watering overflows, pet urine, cooking spills, beverage spills and steam from excessive open-pot cooking;
- leaks from clothes dryer discharge vents (which can put lots of moisture into the air); and
- insufficient drying of carpets, carpet pads, shower walls and bathroom floors.

6. IF SMALL AREAS OF MOLD HAVE ALREADY OCCURRED ON NON-POROUS SURFACES (such as ceramic tile, formica, vinyl flooring, metal, wood or plastic), the federal Environmental Protection Agency (EPA) recommends that you first clean the areas with soap (or detergent) and water, let the surface dry, and then within 24 hours apply a pre-mixed, spray-on-type household biocide, such as Lysol Disinfectant®, Pine-Sol Disinfectant® (original pine-scented), Tilex Mildew Remover® or Clorox Cleanup®. (Note: Only a few of the common household cleaners will actually kill mold). Tilex® and Clorox® contain bleach which can discolor or stain. **Be sure to follow the instructions on the container.** Applying biocides without first cleaning away the dirt and oils from the surface is like painting over old paint without first cleaning and preparing the surface.

Always clean and apply a biocide to an area 5 or 6 times larger than any visible mold because mold may be adjacent in quantities not yet visible to the naked eye. A vacuum cleaner

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with a high-efficiency particulate air (HEPA) filter can be used to help remove non-visible mold products from *porous* items, such as fibers in sofas, chairs, drapes and carpets—provided the fibers are completely dry. Machine washing or dry cleaning will remove mold from clothes.

7. DO NOT CLEAN OR APPLY BIOCIDES TO: (1) visible mold on *porous* surfaces, such as sheetrock walls or ceilings, or (2) *large areas* of visible mold on *non-porous* surfaces. Instead, notify us in writing, and we will take appropriate action.

8. COMPLIANCE. Complying with this addendum will help prevent mold growth in your dwelling, and both you and we will be able to respond correctly if problems develop that could lead to mold growth. If you have questions regarding this addendum, please contact us at the management office or at the phone number shown in your Lease Contract.

If you fail to comply with this Addendum, you can be held responsible for property damage to the dwelling and any health problems that may result. We can't fix problems in your dwelling unless we know about them.

9. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None

Resident or Residents
(All residents must sign here)

Owner or Owner's Representative
(signs here)

Date of Lease Contract

July 7, 2022

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LEASE CONTRACT BUY-OUT AGREEMENT



1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

Summerville (street address) in

(city), South Carolina, 29485

(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. PURPOSE OF ADDENDUM. The purpose of this Buy-Out Agreement is to give you the right to buy out of your Lease Contract early—subject to any special provisions in paragraph 9 below. In order to buy out early, your notice must be signed by all residents listed in paragraph 1 of the Lease Contract and you must comply with all provisions of this Buy-Out Agreement.

4. BUY-OUT PROCEDURES. You may buy out of the Lease Contract prior to the end of the lease term and cut off all liability for paying rent for the remainder of the lease term if all of the following occur:

- (a) you give us written notice of buy-out at least 60 days prior to the new termination date (i.e., your new move-out date), which (check one) ☐ must be the last day of a month or ☒ may be during a month;
- (b) you specify the new termination date in the notice, i.e., the date by which you'll move out;
- (c) you are not in default under the Lease Contract on the date you give us the notice of buy-out;
- (d) you are not in default under the Lease Contract on the new termination date (move-out date);
- (e) you move out on or before the new termination date and do not hold over;
- (f) you pay us a buy-out fee (consideration) of \$ 1265.00
- (g) you pay us the amount of any concessions you received when signing the Lease Contract; and
- (h) you comply with any special provisions in paragraph 9 below.

5. WHEN PAYABLE. The buy-out fee in paragraph 4(f) is due and payable no later than 60 days after you give us

your buy-out notice. The total dollar amount of any concessions regarding rent or other monetary lease obligations for the entire lease term is \$ 0.00 and is due on the same day as the buy-out fee, subject to any special provisions in paragraph 9 regarding the amount, calculation method, or payment date.

6. SHOWING UNIT TO PROSPECTIVE RESIDENTS. After you give us notice of buy-out, the Lease Contract gives us the right to begin showing your unit to prospective residents and telling them it will be available immediately after your new termination date.

7. COMPLIANCE ESSENTIAL. Our deposit of all amounts due under paragraphs 4(f) and 4(g) constitutes our approval of the new termination date stated in your notice of buy-out. If you fail to comply with any of the procedures or requirements in this agreement after we deposit such monies, your buy-out right and this agreement will be voided automatically; and (1) any amounts you have paid under this agreement will become part of your security deposit, and (2) the lease will continue without buy-out. Then, if you move out early, you are subject to all lease remedies, including reletting fees and liability for all rents for the remainder of the original lease term.

8. MISCELLANEOUS. If moving out by the new termination date becomes a problem for you, contact us. An extension may be possible if we have not already relet the dwelling unit to a successor resident. We and any successor residents who may be leasing your unit will be relying on your moving out on or before the new termination date. Therefore, you may not hold over beyond such date without our written consent—even if it means you have to make plans for temporary lodging elsewhere. "Default" as used in paragraphs 4(c) and 4(d) of this agreement means default as defined in the Lease Contract. You will continue to be liable for any damages and any sums accruing and unpaid prior to the new termination date.

9. SPECIAL PROVISIONS. Your right of buy-out (check one) ☐ is or ☒ is not limited to a particular fact situation. If limited, buy-out may be exercised only if the following facts (see below) occur and any described documents are furnished to us. Any special provisions below will supersede any conflicting provision of this printed agreement. Any false statements or documents presented to us regarding buy-out will automatically void your right to buy-out of the Lease Contract. The special provisions are:

Any concession or special received must be
reimbursed if the lease contract is not
fulfilled.

Resident or Residents
(All residents must sign)

Owner or Owner's Representative
(signs below)

Date of Lease Contract

July 7, 2022



COMMUNITY POLICIES, RULES AND REGULATIONS
ADDENDUM



This addendum is incorporated into the Lease Contract (the "Lease") identified below and is in addition to all the terms and conditions contained in the Lease. If any terms of this Addendum conflict with the Lease, the terms of this Addendum shall be controlling:

Property Owner: BIF-Summerville Station, LLC and PAC-Summerville LLC

Resident(s): Freni Hazare

Unit No./Address: #B16, 1660 Old Trolley Road, Summerville, SC 29485

Lease Date: 07/07/2022

- I. GENERAL CONDITIONS FOR USE OF DWELLING PROPERTY AND RECREATIONAL FACILITIES.**
Resident(s) permission for use of all common areas, Resident amenities, and recreational facilities (together, "Amenities") located at the Dwelling Community is a privilege and license granted by Owner, and not a contractual right except as otherwise provided for in the Lease. Such permission is expressly conditioned upon Resident's adherence to the terms of the Lease, this Addendum, and the Community rules and regulations ("Rules") in effect at any given time, and such permission may be revoked by Owner at any time for any lawful reason. In all cases, the most strict terms of either the Lease, this Addendum, or the Community Rules shall control. Owner reserves the right to set the days and hours of use for all Amenities and to change the character of or close any Amenity based upon the needs of Owner and in Owner's sole and absolute discretion, without notice, obligation or recompense of any nature to Resident. Owner and management may make changes to the Rules for use of any Amenity at any time.
- Additionally, Resident(s) expressly agrees to assume all risks of every type, including but not limited to risks of personal injury or property damage, of whatever nature or severity, related to Resident's use of the amenities at the Community. Resident(s) agrees to hold Owner harmless and release and waive any and all claims, allegations, actions, damages, losses, or liabilities of every type, whether or not foreseeable, that Resident(s) may have against Owner and that are in any way related to or arise from such use. This provision shall be enforceable as permitted by law.**
- THE TERMS OF THIS ADDENDUM SHALL ALSO APPLY TO RESIDENT(S)' OCCUPANTS, AGENTS AND INVITEES, TOGETHER WITH THE HEIRS, ASSIGNS, ESTATES AND LEGAL REPRESENTATIVES OF THEM ALL, AND RESIDENT(S) SHALL BE SOLELY RESPONSIBLE FOR THE COMPLIANCE OF SUCH PERSONS WITH THE LEASE, THIS ADDENDUM, AND COMMUNITY RULES AND REGULATIONS, AND RESIDENT(S) INTEND TO AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ALL CLAIMS OF SUCH PERSONS AS DESCRIBED IN THE PRECEDING PARAGRAPH. The term "Owner" shall include the Management, officers, partners, employees, agents, assigns, Owners, subsidiaries and affiliates of Owner.**
- II. POOL.** This Community ☒ **DOES;** ☐ **DOES NOT** have a pool. When using the pool, Resident(s) agrees to the following:
- Residents and guests will adhere to the rules and regulations posted in the pool area and Management policies.
 - All Swimmers swim at their own risk. Owner is not responsible for accidents or injuries.
 - For their safety, Residents should not swim alone.
 - Pool hours are posted at the pool.
 - No glass, pets, or alcoholic beverages are permitted in the pool area. Use paper or plastic containers only.
 - Proper swimming attire is required at all times and a swimsuit "cover up" should be worn to and from the pool.
 - No running or rough activities are allowed in the pool area. Respect others by minimizing noise, covering pool furniture with a towel when using suntan oils, leaving pool furniture in pool areas, disposing of trash, and keeping pool gates closed.
 - Resident(s) must accompany their guests.
 - Resident(s) must notify Owner any time there is a problem or safety hazard at the pool.

IN CASE OF EMERGENCY DIAL 911

- III. FITNESS CENTER.** This Community ☒ **DOES;** ☐ **DOES NOT** have a fitness center. When using the fitness center, Resident agrees to the following:
- Residents and guests will adhere to the rules and regulations posted in the fitness center and Management policies.
 - The Fitness Center is not supervised. Resident(s) are solely responsible for their own appropriate use of equipment.
 - Resident(s) shall carefully inspect each piece of equipment prior to Resident's use and shall refrain from using any equipment that may be functioning improperly or that may be damaged or dangerous.
 - Resident(s) shall immediately report to Management any equipment that is not functioning properly, is damaged or appears dangerous, as well as any other person's use that appears to be dangerous or in violation of Management Rules and Policies.
 - Resident(s) shall consult a physician before using any equipment in the Fitness Center and before participating in any aerobics or exercise class, and will refrain from such use or participation unless approved by Resident's physician.
 - Resident(s) will keep Fitness Center locked at all times during Resident's visit to the Fitness Center.
 - Resident(s) will not admit any person to the Fitness Center who has not registered with the Management Office.
 - Resident(s) must accompany guests, and no glass, smoking, eating, alcoholic beverages, pets, or black sole shoes are permitted in the Fitness Center.

Card # issued: (1) None (3) None (5) None
(2) None (4) None (6) None

- IV. PACKAGE RELEASE.** This Community ☒ **DOES;** ☐ **DOES NOT** accept packages on behalf of Residents.
- For communities that do accept packages on behalf of its Residents:**
Resident(s) gives Owner permission to sign and accept any parcels or letters sent to Resident(s) through UPS, Federal Express, Airborne, United States Postal Service or the like. Resident agrees that Owner does not accept responsibility or liability for any lost, damaged, or unordered deliveries, and agrees to hold Owner harmless for the same.

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- V. **BUSINESS CENTER.** This Community ☐ DOES; ☒ DOES NOT have a business center. Resident(s) agrees to use the business center at Resident(s) sole risk and according to the Rules and Regulations posted in the business center and Management policies. Owner is not responsible for data, files, programs or any other information lost or damaged on Business Center computers or in the Business Center for any reason. No software may be loaded on Business Center computers without the written approval of Community Management. No inappropriate, offensive, or pornographic images or files (in the sole judgment of Owner) will be viewed or loaded onto the Business Center computers at any time. Residents will limit time on computers to 0 minutes if others are waiting to use them. Smoking, eating, alcoholic beverages, pets, and any disturbing behavior are prohibited in the business center.
- VI. **AUTOMOBILES/BOATS/RECREATIONAL VEHICLES.** The following policies are in addition to those in the Lease, and may be modified by the additional rules in effect at the Community at any given time:
- Only 1 vehicle per licensed Resident is allowed.
 - All vehicles must be registered at the Management office.
 - Any vehicle(s) not registered, considered abandoned, or violating the Lease, this Addendum, or the Community Rules, in the sole judgment of Management, will be towed at the vehicle owner's expense after a 24 hour notice is placed on the vehicle.
 - Notwithstanding this, any vehicle illegally parked in a fire lane, designated no parking space or handicapped space, or blocking an entrance, exit, driveway, dumpster, or parked illegally in a designated parking space, will immediately be towed, without notice, at the vehicle owner's expense.
 - The washing of vehicles is not permitted on the property unless specifically allowed in designated area.
 - Any on property repairs and/or maintenance of any vehicle must be with the prior written permission of the Management.
 - Recreational vehicles, boats or trailers may only be parked on the property with Management's permission (in Management's sole discretion), and must be registered with the Management Office and parked in the area(s) designated by Management.
- VII. **FIRE HAZARDS.** In order to minimize fire hazards and comply with city ordinances, Resident shall comply with the following:
- Residents and guests will adhere to the Community rules and regulations other Management policies concerning fire hazards, which may be revised from time to time.
 - No person shall knowingly maintain a fire hazard.
 - **Grills, Barbeques, and any other outdoor cooking or open flame devices will be used only on the ground level and will be placed a minimum of 10 feet from any building.** Such devices will not be used close to combustible materials, tall grass or weeds, on exterior walls or on roofs, indoors, on balconies or patios, or in other locations which may cause fires.
 - **Fireplaces:** Only firewood is permitted in the fireplace. No artificial substances, such as Duraflame® logs are permitted. Ashes must be disposed of in metal containers, after ensuring the ashes are cold.
 - Flammable or combustible liquids and fuels shall not be used or stored (including stock for sale) in dwellings, near exits, stairways breezeways, or areas normally used for the ingress and egress of people. This includes motorcycles and any apparatus or engine using flammable or combustible liquid as fuel.
 - No person shall block or obstruct any exit, aisle, passageway, hallway or stairway leading to or from any structure.
 - Resident(s) are solely responsible for fines or penalties caused by their actions in violation of local fire protection codes.
- VIII. **EXTERMINATING.** Unless prohibited by statute or otherwise stated in the Lease, Owner may conduct extermination operations in Residents' dwelling several times a year and as needed to prevent insect infestation. Owner will notify Residents in advance of extermination in Residents' Dwelling, and give Resident instructions for the preparation of the Dwelling and safe contact with insecticides. Residents will be responsible to prepare the Dwelling for extermination in accordance with Owner's instructions. If Residents are unprepared for a scheduled treatment date Owner will prepare Residents' dwelling and charge Residents accordingly. Residents must request extermination treatments in addition to those regularly provided by Owner in writing. **Residents agree to perform the tasks required by Owner on the day of interior extermination to ensure the safety and effectiveness of the extermination. These tasks will include, but are not limited to, the following:**
- Clean in all cabinets, drawers and closets in kitchen and pantry.
 - If roaches have been seen in closets, remove contents from shelves and floor.
 - Remove infants and young children from the dwelling.
 - Remove pets or place them in bedrooms, and notify Owner of such placement.
 - Remove chain locks or other types of obstruction on day of service.
 - Cover fish tanks and turn off their air pumps.
 - Do not wipe out cabinets after treatment.
- In the case of suspected or confirmed bed bug infestation, resident will agree to the following:
- Resident will wash all clothing, bed sheets, draperies, towels, etc. in extremely hot water.
 - Resident will thoroughly clean, off premises, all luggage, handbags, shoes and clothes hanging containers.
 - Resident will cooperate with Owner's cleaning efforts for all mattresses and seat cushions or other upholstered furniture, and will dispose of same if requested.
- RESIDENTS ARE SOLELY RESPONSIBLE TO NOTIFY OWNER IN WRITING PRIOR TO EXTERMINATION OF ANY ANTICIPATED HEALTH OR SAFETY CONCERNS RELATED TO EXTERMINATION AND THE USE OF INSECTICIDES**
- IX. **DRAPES AND SHADES.** Drapes or shades installed by Resident, when allowed, must be lined in white and present a uniform exterior appearance.
- X. **WATER BEDS.** Resident shall not have water beds or other water furniture in the dwelling without prior written permission of Owner.
- XI. **BALCONY or PATIO.** Balconies and patios shall be kept neat and clean at all times. No rugs, towels, laundry, clothing, appliances or other items shall be stored, hung or draped on railings or other portions of balconies or patios. No misuse of the space is permitted, including but not limited to, throwing, spilling or pouring liquids or other items, whether intentionally or negligently, over the balconies or patios.
- XII. **SIGNS.** Resident shall not display any signs, exterior lights or markings on dwelling. No awnings or other projections shall be attached to the outside of the building of which dwelling is a part.

- XIII. SATELLITE DISHES/ANTENNAS.** You must complete a satellite addendum and abide by its terms prior to installation or use.
- XIV. WAIVER/SEVERABILITY CLAUSE.** No waiver of any provision herein, or in any Community rules and regulations, shall be effective unless granted by the Owner in a signed and dated writing. If any court of competent jurisdiction finds that any clause, phrase, or provision of this Part is invalid for any reason whatsoever, this finding shall not effect the validity of the remaining portions of this addendum, the Lease Contract or any other addenda to the Lease Contract.
- XV. SPECIAL PROVISIONS.** The following special provisions control over conflicting provisions of this printed form:

Residents are responsible for placing all trash into the dumpster. Residents will be
charged a disposal fee of \$25.00 per trash bag/item improperly disposed of or left
outside of their home or in their courtyard.

I have read, understand and agree to comply with the preceding provisions.

_____ Resident	_____ Date	_____ Resident	_____ Date
_____ Resident	_____ Date	_____ Resident	_____ Date
_____ Resident	_____ Date	_____ Resident	_____ Date
_____ Owner Representative		_____ Date	

1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

Summerville
(city), South Carolina, 29485
(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
 Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (*list all residents*):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. ACKNOWLEDGMENT CONCERNING INSURANCE OR DAMAGE WAIVER. You acknowledge that we do not

DAMAGE WAIVER. You acknowledge that we do not maintain insurance to protect you against personal injury, loss or damage to your personal property or belongings, or to cover your own liability for injury, loss or damage you (or your occupants or guests) may cause others. You also acknowledge that by not maintaining your own policy of personal liability insurance, you may be responsible to others (including us) for the full cost of any injury, loss or damage caused by your actions or the actions of your occupants or guests. You understand that the Insurance paragraph of the Lease Contract requires you to maintain a liability insurance policy, which provides limits of liability to third parties in an amount not less than \$ 100000.00 per occurrence. You understand and agree to maintain at all times during the Term of the Lease Contract and any renewal periods a policy of personal liability insurance satisfying the requirements listed below, at your sole expense.

4. REQUIRED POLICY. You are required to purchase and maintain personal liability insurance covering you, your occupants and guests, for personal injury and property damage any of you cause to third parties (including damage to our property), in a minimum policy coverage amount of

\$ 100000.00 , from a carrier with an AM Best rating of A-VII or better, licensed to do business in South Carolina. The carrier is required to provide notice to us within 30 days of any cancellation, non-renewal, or material change in your coverage. We retain the right to hold you responsible for any loss in excess of your insurance coverage.

5. We may provide you with information of an insurance program that we make available to residents, which provides you with an opportunity to buy renter's insurance from a preferred company. However, you are free to contract for the required insurance with a provider of your choosing.

6. SUBROGATION ALLOWED. You and we agree that subrogation is allowed by all parties and that this agreement supersedes any language to the contrary in the Lease Contract.

7. YOUR INSURANCE COVERAGE. You have purchased the required personal liability insurance from the insurance company of your choosing listed below that is licensed to do business in this state, and have provided us with written proof of this insurance prior to the execution and commencement of the Lease Contract. You will provide additional proof of insurance in the future at our request.

Insurance Company: **American bankers**

8. DEFAULT. Any default under the terms of this Addendum shall be deemed an immediate, material and incurable default under the terms of the Lease Contract, and we shall be entitled to exercise all rights and remedies under the law.

9. MISCELLANEOUS. Except as specifically stated in this Addendum, all other terms and conditions of the Lease Contract shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease Contract, the terms of this Addendum shall control.

10. SPECIAL PROVISIONS. Summerville Station
must be listed as an additional
interested party on all renter's
liability insurance policies.

I have read, understand and agree to comply with the preceding provisions.

Resident or Residents
(All residents must sign here)

Owner or Owner's Representative
(signs here)

Date of Lease Contract

July 7, 2022



LEASE ADDENDUM
FOR REMOTE CONTROL, CARD, OR CODE ACCESS GATE



1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

Summerville

(city), South Carolina, 29485

(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

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3. REMOTE CONTROL/CARDS/CODE FOR GATE ACCESS.

- ☐ Remote control for gate access. Each person who is listed as a resident on the lease will be given a remote control at no cost to use during his or her residency. Each additional remote control for you or other occupants will require a \$ 0.00 non-refundable fee.
- ☐ Cards for gate access. Each person who is listed as a resident on the lease will be given a card at no cost to use during his or her residency. Each additional card for you or other occupants will require a \$ 0.00 non-refundable fee.
- ☒ Code for gate access. Each resident will be given, at no cost, an access code (keypad number) for the pedestrian or vehicular access gates. It is to be used only during your residency. We may change the access code at any time and will notify you of any such changes.

4. DAMAGED, LOST OR UNRETURNED REMOTE CONTROLS, CARDS OR CODE CHANGES.

- ☒ If a remote control is lost, stolen or damaged, a \$ 75.00 fee will be charged for a replacement. If a remote control is not returned or is returned damaged when you move out, there will be a \$ 75.00 deduction from the security deposit.
- ☐ If a card is lost, stolen or damaged, a \$ 75.00 fee will be charged for a replacement card. If a card is not returned or is returned damaged when you move out, there will be a \$ 75.00 deduction from the security deposit.
- ☒ We may change the code(s) at any time and notify you accordingly.

5. REPORT DAMAGE OR MALFUNCTIONS. Please immediately report to the office any malfunction or damage to gates, fencing, locks or related equipment.

6. FOLLOW WRITTEN INSTRUCTIONS. We ask that you and all other occupants read the written instructions that have been furnished to you regarding the access gates. This is important because if the gates are damaged by you or other occupants, guests or invitees through negligence or misuse, you are liable for the damages under your lease, and collection of damage amounts will be pursued.

7. PERSONAL INJURY AND/OR PERSONAL PROPERTY DAMAGE. Except as specifically required by law, we have no duty to maintain the gates and cannot guaranty against gate malfunctions. We make no representations or guarantees to you concerning security of the community. Any measures, devices, or activities taken by us are solely for the benefit of us and for the protection of our property and interests, and any benefit to you of the same is purely incidental. Anything mechanical or electronic is subject to malfunction. Fencing, gates or other devices will not prevent all crime. No security system or device is foolproof or 100 percent successful in deterring crime. Crime can still occur. Protecting residents, their families, occupants, guests and invitees from crime is the sole responsibility of residents, occupants and law enforcement agencies. You should first call 911 or other appropriate emergency police numbers if a crime occurs or is suspected. We may not be liable to any resident, family member, guest, occupant or invitee for personal injury, death or damage/loss of personal property from incidents related to perimeter fencing, automobile access gates and/or pedestrian access gates. We reserve the right to modify or eliminate security systems other than those statutorily required. You will be held responsible for the actions of any persons to whom you provide access to the community.

8. RULES IN USING VEHICLE GATES.

- Always approach entry and exit gates with caution and at a very slow rate of speed.
- Never stop your car where the gate can hit your vehicle as the gate opens or closes.
- Never follow another vehicle into an open gate. Always use your card to gain entry.
- Report to management the vehicle license plate number of any vehicle that piggybacks through the gate.
- Never force the gate open with your car.
- Never get out of your vehicle while the gates are opening or closing.
- If you are using the gates with a boat or trailer, please contact management for assistance. The length and width of the trailer may cause recognition problems with the safety loop detector and could cause damage.
- Do not operate the gate if there are small children nearby who might get caught in it as it opens or closes.
- If you lose your card, please contact the management office immediately.
- Do not give your card or code to anyone else.
- Do not tamper with gate or allow your occupants to tamper or play with gates.

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9. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None

Resident or Residents
(All residents must sign here)

Owner or Owner's Representative
(signs here)

Date of Lease Contract

July 7, 2022



1. DWELLING UNIT DESCRIPTION.

Unit No. _____ B16 _____, 1660 Old
Trolley Road _____
_____ (street address) in
Summerville _____
(city), South Carolina, _____ 29485
(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
 Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (*list all residents*):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. ADDENDUM APPLICABILITY. In the event any provision in this Addendum is inconsistent with any provision(s) contained in other portions of, or attachments to, the above-mentioned Lease Contract, then the provisions of this Addendum shall control. For purposes of this Addendum, the term "Premises" shall include the dwelling unit, all common areas, all other dwelling units on the property or any common areas or other dwelling units on or about other property owned by or managed by the Owner. The parties hereby amend and supplement the Lease Contract as follows:

4. CRIME/DRUG FREE HOUSING. Resident, members of the Resident's household, Resident's guests, and all other persons affiliated with the Resident:

A. Shall not engage in any illegal or criminal activity on or about the premises. The phrase, “illegal or criminal activity” shall include, but is not limited to, the following:

1. Engaging in any act intended to facilitate any type of criminal activity.
2. Permitting the Premises to be used for, or facilitating any type of criminal activity or drug related activity, regardless of whether the individual engaging such activity is a member of the household, or a guest.
3. The unlawful manufacturing, selling, using, storing, keeping, purchasing or giving of an illegal or controlled substance or paraphernalia as defined in city, county, state or federal laws, including but not limited to the State of South Carolina and/or the Federal Controlled Substances Act.

Resident or Residents *(sign here)*

Date of Signing Addendum

Owner or Owner's Representative *(signs here)*

Date of Signing Addendum

4. Violation of any federal drug laws governing the use, possession, sale, manufacturing and distribution of marijuana, regardless of state or local laws. (So long as the use, possession, sale, manufacturing and distribution of marijuana remains a violation of federal law, violation of any such federal law shall constitute a material violation of this rental agreement.)
5. Engaging in, or allowing, any behavior that is associated with drug activity, including but not limited to having excessive vehicle or foot traffic associated with his or her unit.
6. Any breach of the Lease Contract that otherwise jeopardizes the health, safety, and welfare of the Owner, Owner's agents, or other Residents, or involving imminent, actual or substantial property damage.
7. Engaging in or committing any act that would be a violation of the Owner's screening criteria for criminal conduct or which would have provided Owner with a basis for denying Resident's application due to criminal conduct.
8. Engaging in any activity that constitutes waste, nuisance, or unlawful use.

B. AGREE THAT ANY VIOLATION OF THE ABOVE PROVISIONS CONSTITUTES A MATERIAL VIOLATION OF THE PARTIES' LEASE CONTRACT AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of any of the provisions of this Addendum shall be deemed a serious violation, and a material default, of the parties' Lease Contract. It is understood that a single violation shall be good cause for termination of the Lease Contract. Notwithstanding the foregoing comments, Owner may terminate Resident's tenancy for any lawful reason, and by any lawful method, with or without good cause.

5. CRIMINAL CONVICTION NOT REQUIRED. Unless otherwise provided by law, proof of violation of any criminal law shall not require a criminal conviction.

6. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None





ADDENDUM PROHIBITING
SHORT-TERM SUBLETTING OR RENTAL



1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road
_____ (street address) in
Summerville

(city), South Carolina, 29485

(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):

Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. SHORT TERM SUBLEASE OR RENTING PROHIBITED.

Without limiting the prohibition in the Lease on subletting, assignment, and licensing, and without limiting any of our rights or remedies, this Addendum to the Lease further supplements and defines the requirements and prohibitions contained in the Lease Contract between you and us. You are hereby strictly prohibited from subletting, licensing, or renting to any third party, or allowing occupancy by any third party, of all or any portion of the dwelling, whether for an overnight use or duration of any length, without our prior written consent in each instance. This prohibition applies to overnight stays or any other stays arranged on Airbnb.com or other similar internet sites.

4. PROHIBITION ON LISTING OR ADVERTISING DWELLING ON OVERNIGHT SUBLETTING OR RENTING WEBSITES.

You agree not to list or advertise the dwelling as being available for short term subletting or rental or occupancy by others on Airbnb.com or similar internet websites. You agree that listing or advertising the dwelling on Airbnb.com or similar internet websites shall be a violation of this Addendum and a breach of your Lease Contract.

5. VIOLATION OF LEASE AGREEMENT. Your Lease Contract allows for use of your dwelling as a private residence only and strictly prohibits conducting any kind of business in, from, or involving your dwelling unless expressly permitted by law. Separately, your Lease Contract prohibits subletting

Resident or Residents
(All residents must sign)

or occupancy by others of the dwelling for any period of time without our prior written consent. Permitting your dwelling to be used for any subletting or rental or occupancy by others (including, without limitation, for a short term), regardless of the value of consideration received or if no consideration is received, is a violation and breach of this Addendum and your Lease Contract.

6. REMEDY FOR VIOLATION. Any violation of this Addendum constitutes a material violation of the Lease Contract, and as such we may exercise any default remedies permitted in the Lease Contract, including termination of your tenancy, in accordance with local law. This clause shall not be interpreted to restrict our rights to terminate your tenancy for any lawful reason, or by any lawful method.

7. RESIDENT LIABILITY. You are responsible for and shall be held liable for any and all losses, damages, and/or fines that we incur as a result of your violations of the terms of this Addendum or the Lease Contract. Further, you agree you are responsible for and shall be held liable for any and all actions of any person(s) who occupy your dwelling in violation of the terms of this Addendum or the Lease Contract, including, but not limited to, property damage, disturbance of other residents, and violence or attempted violence to another person. In accordance with applicable law, without limiting your liability you agree we shall have the right to collect against any renter's or liability insurance policy maintained by you for any losses or damages that we incur as the result of any violation of the terms of this Addendum.

8. SEVERABILITY. If any provision of this Addendum or the Lease Contract is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this Addendum or the Lease Contract. The court shall interpret the lease and provisions herein in a manner such as to uphold the valid portions of this Addendum while preserving the intent of the parties.

9. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None

Owner or Owner's Representative
(Signs below)

Date of Signing Addendum



²⁹ Freni Hazare ⁶³ Dajohn Brown



PACKAGE ACCEPTANCE ADDENDUM



1. DWELLING UNIT DESCRIPTION.
Unit No. B16, 1660 Old
Trolley Road
_____ (street address) in
_____ Summerville
(city), South Carolina, _____ 29485
(zip code).

2. LEASE CONTRACT DESCRIPTION.
Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):
Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. PURPOSE OF ADDENDUM. By signing this Addendum, you wish for us to sign for, and to accept, U.S. mail and privately-delivered packages or other items on your behalf, subject to the terms and conditions set forth herein.

4. PACKAGE ACCEPTANCE.

A. Generally. You hereby authorize us and our agent to accept, on your behalf, any package or item delivered to our on-site management office during disclosed business hours, including but not limited to any package delivered by the U.S. Postal Service or by any private courier service or individual. You also specifically authorize us to sign on your behalf if the person or entity delivering said package or item requires an adult signature prior to delivery, including but not limited to the delivery of certified or registered mail. A photo I.D. is required before any packages will be released. Packages will only be released to verified Residents or approved representatives.

B. Limitations. You understand and agree that we may refuse to accept any package for any reason or no reason at all.

5. TIME LIMITATION. Due to limited storage space, we must ask that you pick up your package as soon as possible. You also agree that we shall have no duty whatsoever to hold or store any package for more than 5 days after receipt (accordingly, you should notify the management office if you are going to be away from the apartment home and expect to be receiving a package(s)). After said time, you agree that any such package is deemed abandoned and you authorize us to return the package to its original sender.

6. DUTY OF CARE, INDEMNIFICATION, ASSUMPTION OF RISKS AND WAIVER. As to any package for which we sign and/or receive on your behalf, you understand and agree that we have no duty to notify you of our receipt of such package, nor do we have any duty to maintain, protect, or deliver said package to you, nor do we have any duty to make said package available to you outside disclosed business hours. Any packages or personal property delivered to us or stored by us shall be at your sole risk, and you assume all risks whatsoever associated with any loss or damage to your packages and personal property. To the maximum extent permitted by law, you, your guests, family, invitees, and agents hereby waive any and all claims against us or our agents of any nature regarding or relating to any package or item received by us, including but not limited to, claims for theft, misplacing or damaging any such package, except in the event of our or our agent's gross negligence or willful misconduct. To the maximum extent permitted by law, you also agree to defend and indemnify us and our agents and hold us both harmless from any and all claims that may be brought by any third party relating to any injury sustained relating to or arising from any package that we received on your behalf. To the maximum extent permitted by law, you also agree to indemnify us and our agents and hold us harmless from any damage caused to us or our agents by any package received by us for you. You also authorize us to throw away or otherwise dispose of any package that we, in our sole discretion, deem to be dangerous, noxious, or in the case of packaged food, spoiled, and waive any claim whatsoever resulting from such disposal.

7. SEVERABILITY. If any provision of this Addendum or the Lease Contract is illegal, invalid or unenforceable under any applicable law, then it is the intention of the parties that (a) such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this Addendum or the Lease, (b) the remainder of this Addendum shall not be affected thereby, and (c) it is also the intention of the parties to this Addendum that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Addendum a clause or provision similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

8. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

None

Resident or Residents
(All residents must sign)

Owner or Owner's Representative
(Signs below)

Date of Signing Addendum



30 Freni Hazare 64 DaJohn Brown

1. DWELLING UNIT DESCRIPTION.

Unit No. B16, 1660 Old
Trolley Road

Summerville
(city), South Carolina, 29485
(zip code).

2. LEASE CONTRACT DESCRIPTION.

Lease Contract Date: July 7, 2022
Owner's name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (*list all residents*):

Freni Hazare

Occupants (list all occupants):

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. PURPOSE OF ADDENDUM. By signing this Addendum, you, without payment or other consideration, agree to grant us permission to use your likeness in photographs, videos and/or other electronic and/or digital reproductions, including voice, in any and all of our publications, including, without limitation, any website entries, advertising websites, social media websites, and any other marketing materials. For purposes of this addendum, photographs, videos, written comments, statements, and other digital reproductions will hereinafter be collectively referred to as “media.”

A. Consent For Minor Occupants. By signing this Addendum, if any minor occupants are named above, you further certify that you are the parent, or legal guardian of the minor occupant(s) named above, and you, without payment or other consideration, agree to grant us permission to use their likeness in photographs, videos and/ or other electronic and/or digital reproductions, including voice, in any and all of our publications, including, without limitation, any website entries, advertising websites, social media websites, and any other marketing materials. For purposes of this addendum, photographs, videos, written comments, statements, and other digital reproductions will hereinafter be collectively referred to as "media."

4. PHOTO AND VIDEO RELEASE. You hereby grant us and our agents and affiliates (collectively, the “Released Parties”) permission and a license to take, use, reuse, and publish the likeness of you and any minor occupants in all photographs or other electronic and/or digital media in any and all of our publications, including, without limitation, any website entries, advertising websites, and any other marketing materials. You understand and agree that these materials will become the property of the Released Parties and will not be returned. You agree to irrevocably authorize the Released Parties to edit, alter, copy, exhibit, publish, or distribute this media for any lawful purpose whatsoever including, without limitation, promotional and advertising uses. You waive the right to inspect or approve the finished product, including any written or electronic copy, wherein your likeness appears now or in the future. In addition, you waive any right to payment, royalties, or any other compensation arising or related to the use of the media.

5. CONSENT TO USE YOUR NAME, LIKENESS, WRITTEN COMMENTS, AND STATEMENTS. You are expressly agreeing to allow us to post your name, picture, written comments, and statements, and/or the names, pictures, written comments, and statements of any minor occupants in any and all of our publications, including, without limitation, any website entries, advertising websites, social media websites, and any other marketing materials. You hereby grant the Released Parties permission and a license to use, reproduce, and publish any media on its website, social media platforms, or in other marketing-related materials, whether in electronic or print form.

6. RELEASE OF LIABILITY. To the extent provided by law, you hereby release, hold harmless, and forever discharge us from any claims or causes of actions including, without limitation, any and all claims for libel or violation of any right of publicity or privacy, related to our use of the media in any and all of our publications, including any website entries, advertising websites, social media websites, and any other marketing material so long as the claim or cause of action does not result from our intentional misconduct or gross negligence. This consent and release shall be binding upon you and your heirs, legal representatives and assigns.

7. REVOCATION. You have the right to revoke your consent to our use of your name, picture, video, voice, written comments, or statement, and/or the name, picture, video, voice, written comments, or statement of any minor occupants, by written notice to us.

8. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

[illegible]

Resident or Residents
(All residents must sign)

Owner or Owner’s Representative
(signs below)

Date of Signing Addendum



³² *Areni Hazare* ⁶⁶ *Dajohn Brown*



CONSTRUCTION ADDENDUM



1. DWELLING UNIT DESCRIPTION.
Unit No. B16, 1660 Old
Trolley Road
_____ (street address) in
Summerville
(city), South Carolina, 29485 (zip code).

2. LEASE CONTRACT DESCRIPTION.
Lease Contract Date: July 7, 2022
Owner’s name: BIF-Summerville Station, LLC
and PAC-Summerville LLC

Residents (list all residents):
Freni Hazare

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

3. PURPOSE OF ADDENDUM. By signing this Addendum, Resident acknowledges that existing, on-going, or future construction on the property may affect your use, view, and enjoyment of such property.
4. RESIDENT ACKNOWLEDGMENT OF CONSTRUCTION ON PROPERTY. Resident acknowledges that the property, including its common areas and apartments, may currently or in the future, be under repair, renovation, improvement, or construction. Owner does not guarantee that the repair, renovation, improvement, or construction will be completed on a set date or time and therefore, is not under any obligation to have said repair, renovation, improvement, or construction completed by a set date or time. Resident also acknowledges that the repair, renovation, improvement, or construction does not represent a breach of Owner’s obligations under the Lease Contract.
5. USE OF AMENITIES AND SERVICES. Repair, renovation, improvement, or construction at the property may create conditions where Resident’s use of the property’s amenities and services may be limited or not available.
6. NOISE AND OTHER DISTURBANCES. Repair, renovation, improvement, or construction at or near the property may create noise or other disturbances, and the property itself, or portions thereof, may be unfinished for some time with respect to landscaping, building exteriors, interiors, amenities, walkways, lighting and the like. Resident acknowledges that these conditions may create inconveniences that may be beyond the control of the Owner. Resident agrees that despite these inconveniences, the obligations of the Resident, including payment of rent, as set forth in the Lease Contract will still be in effect.

7. RELEASE OF LIABILITY. To the extent allowed by state law or local ordinance, by signing this Addendum, Resident agrees to waive all claims related to Resident’s inability to access, use, and enjoy the amenities, services, and facilities affected by existing, on-going, or future repair, renovation, improvement, or construction on the property.

The existing, on-going, or future construction at the property includes:

Title/Description: 0

Anticipated Start Date: _____
Anticipated End Date: _____

To the extent allowed by state law or local ordinance, Resident further agrees that any inconvenience associated with the repair, renovation, improvement, or construction, such as, but not limited to, those disclosed herein, will not be deemed to give Resident any offset to rent obligations, or other compensation, nor will they be the basis for a complaint(s) or defense(s) against Owner for rent relief, constructive eviction, fitness and habitability, peaceful and quiet enjoyment, nuisance, or any other claim, right or remedy.

8. DELAY OF OCCUPANCY. Resident acknowledges that occupancy of the apartment may be delayed due to repair, renovation, improvement, or construction of the property, including common areas and apartments. Such repair, renovation, improvement, or construction may cause unforeseen delays due to scheduling conflicts, delay in permit issuance, acts of God, and other things beyond the control of Owner. The Lease Contract will remain in effect subject to: (1) the start date of the term of the lease contract shall be changed to the first day that Owner provides Resident the apartment for occupancy, and rent shall be abated until occupancy is provided; and (2) your right to terminate as set forth in your Lease Contract under DELAY OF OCCUPANCY, and in accordance with applicable state law or local ordinance.

Resident hereby knowingly and voluntarily accepts the risks of delays and the apartment not being ready for occupancy on the date set forth in the Lease Contract. Resident agrees that Owner’s failure to have the apartment ready on the set date in the Lease Contract due to a repair, renovation, improvement, or construction delay does not constitute a willful failure to deliver possession of the apartment. Resident hereby waives and relinquishes any rights, claims, or causes of action against Owner related to delays in delivering the apartment, including, but not limited to, any holdover rent, or other penalties imposed at Resident’s current place of residence, provided however, that Owner agrees that rent will not commence under the Lease Contract until possession is delivered to Resident.

9. DISPLACEMENT. In the event Resident must be displaced from the apartment that is the subject of the Lease Contract due to repair, renovation, improvement, or construction in or around the apartment, Owner, at Owner’s sole option, shall transfer Resident to another apartment within the apartment community that is not affected by the repair, renovation, improvement, or construction or shall provide appropriate comparable accommodations for Resident. However, in the event of Resident’s displacement and subsequent re-location, the terms of the Lease Contract, including but not limited to the payment of rent shall remain in full force and effect.

10. SEVERABILITY. If any provision of this Lease Contract is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this Lease Contract. The court shall interpret the lease contract and provisions herein in a manner such as to uphold the valid portions of this Lease Contract while preserving the intent of the parties.

33 Freni Hazare 67 Dafohn Brown

11. SPECIAL PROVISIONS. The following special provisions control over conflicting provisions of this printed form:

[illegible]

Resident or Residents
(All residents must sign)

Owner or Owner's Representative
(signs below)

Date of Signing Addendum



Summerville Station

Signature Details

	Signer	IP Address	Date Signed
	Summerville Station		
1	Freni Hazare Primary (15822547)	2603:6081:5442:3988:458	07/07/2022 04:49:20 PM
2	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:17:17 PM
3	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:17:54 PM
4	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:18:23 PM
5	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:18:50 PM
6	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:19:09 PM
7	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:19:47 PM
8	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:20:34 PM
9	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:20:55 PM
10	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:21:21 PM
11	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:21:58 PM
12	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:22:21 PM
13	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:22:49 PM
14	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:23:16 PM
15	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:23:35 PM
16	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:24:24 PM
17	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:25:00 PM
18	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:25:21 PM
19	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:25:40 PM
20	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:25:58 PM
21	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:26:17 PM
22	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:26:44 PM
23	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:27:11 PM
24	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:27:35 PM

25	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:27:57 PM
26	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:28:17 PM
27	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:28:35 PM
28	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:29:14 PM
29	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:29:34 PM
30	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:29:52 PM
31	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:30:12 PM
32	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:30:34 PM
33	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:30:54 PM
34	Freni Hazare Primary (15822547)	2603:6081:5442:3988:f5e	07/07/2022 05:31:16 PM
35	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
36	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
37	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
38	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
39	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
40	DaJohn Brown Owner/Manager	99.164.44.114	07/15/2022 01:24:02 PM
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Apr 30 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased; Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased

Respondents,

v.

BIF Summerville Station, LLC; PAC-
Summerville, LLC; The Beach Co.,; Beach
Investment Fund, L.P.; Beach Real Estate
Funds, LLC; Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 103; and Corporations XYZ
103; SRNG, LLC; Asset Living Southeast,
LLC, F/K/A/ JMG Realty, LLC; Shook
Associates Architects, F/K/A/ Shook &
Associates, and David Shook,

Defendants.

Of whom, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

CERTIFICATE OF SERVICE

I certify that on this 30th day of April, 2025, I have served the Record on Appeal by
electronic mail, on April 30, 2025, addressed to their attorneys of record and upon all other counsel
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836
App No.: 2024-001811

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May 15 2025
SC Court of Appeals

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased, Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC, PAC-
Summerville, LLC, Beach Investment Fund,
L.P., Beach Real Estate Funds, LLC, Beach
Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary
Does 1-3, Corporations XYZ 1-3, Defendants,

Of which, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court erred in finding that the valid Jury Waiver Provision within the Lease Agreement did not apply to the claims of Devan Chokshi as Personal Representative of the Estate of Freni Hazare where a Personal Representative asserts the claims of the deceased rather than individual claims of their own.
2. Whether the Circuit Court erred in finding that the valid Jury Waiver Provision did not apply to the Underlying Lawsuit in its entirety despite its plain language stating that it applies to “any lawsuit” involving the parties to the Lease Agreement.
3. Whether the Circuit Court erred in finding that the valid Jury Waiver Provision did not apply to the claims of Decedent Dhruv Chokshi where Appellant invoked the benefits of the Lease Agreement by alleging causes of action based upon the Lease Agreement.

STATEMENT OF THE CASE

This appeal arises from a wrongful death case initially filed by the Personal Representatives of the Estate of Freni Hazare and Dhruv Chokshi (“Respondents”) in May 2023. Respondents allege claims based upon a September 29, 2022, fire at the Summerville Station Apartments in Summerville, South Carolina, that claimed the lives of Hazare and Chokshi (“Decedents”). As amended, Respondents allege *inter alia* a cause of action against BIF-Summerville Station, LLC, and PAC-Summerville, LLC (“Appellants”) for violations of the South Carolina Residential Landlord Tenant Act (“SCRLTA”) (*See* R. at pp. 70-100); (R. at pp. 17, 26-28). On February 6, 2024, Appellants filed a motion to strike Respondents’ jury demand based upon a lease agreement signed by Hazare that contained a jury waiver provision. On May 28, 2024, the Circuit Court denied the motion and entered a Form 4 Order which provided the following:

This matter is before the Court on a motion to strike the Plaintiffs demand for a jury trial. Dhruv Chokshi was not a party to the lease agreement upon which the motion is based. Accordingly, his personal representative, Vatsal Chokshi, cannot be deemed to have waived the right to a jury trial. While Freni Hazare did sign the lease agreement, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Frenzi Hazare. Therefore, Devan Choshi, as personal representative of Freni Hazare, is likewise not a party to the lease agreement. The motion to strike jury demand is hereby denied. *See, North Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992) (holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

(R. at p. 1)

On June 7, 2024, Appellants filed a Motion to Alter or Amend the Court’s May 28, 2024, Order Denying Appellants’ Motion to Strike. (R. at pp. 31-40). Appellants sought reconsideration on the grounds that “(1) the Jury Waiver Provision is enforceable at least as to Decedent Freni Hazare; (2) Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, is bound by the Jury Waiver Provision; (3) the Jury Waiver Provision applies to the instant lawsuit

in its entirety; and (4) Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, invoked the Jury Waiver Provision by alleging claims under the South Carolina Residential Landlord and Tenant Act.” (R. at p. 1). On October 4, 2024, the Circuit Court filed a Form 4 Order which provided the following:

This matter is before the Court on Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC’s motion to alter or amend the Court’s May 28, 2024 order denying their motion to strike. The Court’s prior order as to Dhruv Chokshi and Vatsal Chokshi remains unchanged. The Court’s prior order with regard to Devan Chokshi and Freni Hazare is hereby amended as follows: While Freni Hazare did sign the lease agreement which contains a facially valid jury trial waiver, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Freni Hazare. Conversely, paragraph 1 of the lease agreement specifically provides that the lease agreement applies to the successors’ in interest or assigns of the owners. Had the drafter of the agreement intended the agreement to survive the death of Ms. Hazare, it certainly could have included language to that effect.

See, *Kelly v. McCombs*, 2019 WL 4052491 (S.C. Ct. App. 2019). Therefore, Devan Chokshi, as personal representative of Freni Hazare, is not a party to the lease agreement. The motion to strike jury demand remains denied. See, *North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992) (holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

(R. at pp. 4-5).

On October 24, 2024, Appellants timely filed its Notice of Appeal of the Circuit Court’s Order. Appellants received a copy of the transcript for the May 6, 2024 hearing on December 16, 2024. On January 16, 2025, Appellants timely filed its Initial Brief.

STATEMENT OF FACTS

As Hurricane Ian approached South Carolina’s Lowcountry on September 29, 2022, a fire broke out at the Summerville Station Apartment Complex (“Summerville Station”) in Summerville, South Carolina. (R. at pp. 70-100). The cause of the fire is unknown but it is believed to have started somewhere at or within Building B. (R. at p. 37). Decedents Freni Hazare and Dhruv Chokshi resided in Unit B-16, which was a second-floor unit in Building B. (R. at p. 75). Tragically, both Hazare and Chokshi perished in the fire. Respondents are the Personal Representatives of the Estates of the Decedents and filed a lawsuit against Appellants - who are the owners and operators of Summerville Station – as well as several other defendants alleging *inter alia* that “[a]t the heart of this matter is the Defendants’ . . . [failure] to properly manage, maintain and repair the SUMMERVILLE STATION apartment complex . . .” (R. at p.71 (capitalization in original)).

It is not entirely clear how long Decedents had resided at Summerville Station prior to the fire, but it is understood that Decedents were already residents of Summerville Station when Appellants purchased the property in December 2020. Hazare renewed her lease annually and had most recently renewed her lease in July 2022. (R. at pp. 130-166). Hazare’s agreement with Appellants dated July 7, 2022 (“Lease Agreement”) was in effect at the time of the subject fire. (R. at pp. 130-166). Dhruv Chokshi, who was a minor at the time, is not listed on the Lease Agreement as a tenant, resident, occupant, or guest. The Lease Agreement contained a “jury waiver” provision that states:

Waiver of Jury Trial. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

(R. at p. 135) (“Jury Waiver Provision”).

Appellants filed a motion to strike the Plaintiff’s jury demand based upon the language of the Lease Agreement and its jury waiver provision. It is undisputed that Hazare signed the Lease Agreement and was, therefore, bound by its terms. (R. at p. 4) (*See* R. at p. 24). Respondents disputed, however, that Hazare’s Personal Representative was bound by the Lease Agreement because he did not sign it himself. Chokshi’s Personal Representative likewise argued that neither Chokshi nor his Personal Representative were signatories to the Lease Agreement. The Circuit Court correctly noted that the jury waiver provision was facially valid but did not enforce it against Respondents despite that finding. This appeal follows.

STANDARD OF REVIEW

“Whether a party is entitled to a jury trial is a question of law.” *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010) (citing *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 345–46 (2005)) (See also Rule 38, SCRCF; *Zurich Am. Ins. Co. of Illinois v. Palmetto Cont. Servs., Inc.*, 434 S.C. 104, 109, 862 S.E.2d 714, 716 (Ct. App. 2021)). Likewise, “[w]hether a contract is ... unenforceable is generally a question of law for the court.” *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 629, 799 S.E.2d 318, 322 (Ct. App. 2017) (quoting *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012)). The Court of Appeals “reviews questions of law de novo.” *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 569–70, 776 S.E.2d 397, 402 (Ct. App. 2015) (quoting *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012)). “In other words, a reviewing court is free to decide questions of law with no particular deference to the trial court.” *Id.* (quoting *Proctor*, 398 S.C. at 573, 730 S.E.2d at 363).

ARGUMENT

I. The Circuit Court Erred by Finding that Devan Chokshi Was Not Bound by the Lease Agreement as the Personal Representative of Freni Hazari Because a Personal Representative Stands in the Shoes of Decedent.

A personal representative of an estate is “[s]omeone who manages the legal affairs of another because of incapacity or death, such as the executor of an estate.” Personal Representative, Black's Law Dictionary (12th ed. 2024). Under South Carolina law, a personal representative “stands in the shoes” of the decedent whose estate they represent. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 242–43, 734 S.E.2d 148, 159 (2012); *see also* S.C. Code Ann. § 62-3-703(c). Under this framework, South Carolina law permits a representative of a deceased person to litigate claims that a decedent would have had the right to assert had they not passed away. *See gen. Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 123, 898 S.E.2d 102, 107 (2024). A personal representative is not a mere heir, successor, or an assignee of the decedent; the personal representative, for purposes of standing, *is* the decedent. The Circuit Court committed an error of law by ignoring this principle and holding that Respondents were not bound by the contracts of the Decedents.

It is undisputed that Decedent Freni Hazare was a party to the Lease Agreement and that Lease Agreement contained “a facially valid jury waiver.” (R. at p. 4); (*See* R. at p. 24). Therefore, had she lived, it cannot be argued that Decedent Freni Hazare would be able to seek a jury trial against Appellants. Respondents instead argued, and the Circuit Court agreed, that Respondent Devan Chokshi is not a party to the Lease Agreement because he himself did not sign it and the Lease Agreement does not state that it is not binding upon Decedent Hazare’s personal representatives, heirs, successors, or assigns. (R. at pp. 4-5). In so holding, the Circuit Court disregarded the legal distinctions afforded to personal representatives and conflates Respondents’

status with that of a mere heir or successor.

By asserting claims as the Personal Representative of the Estate of Freni Hazare, Respondent Devan Chokshi assumed all rights and limitations that Hazare would have had if she had filed the lawsuit herself. This assumption is statutorily defined and encompasses the longstanding framework of estate claims. S.C. Code Ann. § 62-3-703(c) (“a personal representative . . . has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.”). The rights of the personal representative are the same as the decedent’s – not less and not more. Indeed, the scope of a personal representative’s rights are defined by more than a century of South Carolina case law. In *Reed v. Northeastern R. Co.*, 37 S.C. 42, 16 S.E. 289 (1892), the South Carolina Supreme Court addressed the issue of survivor’s claims under the Wrongful Death Act and held “[a]nything that would have defeated his recovery would defeat that in behalf of his family in case he failed to survive.” The Hon. Joseph Anderson then affirmed this principle and held “[o]ur jurisprudence makes clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent’s estate.” *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988). The South Carolina Supreme Court more recently upheld this principle in *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, where it favorably cited Judge Anderson’s ruling. 389 S.C. 343, 348, 699 S.E.2d 143, 145 (2010). Citing *Quattlebaum*, our Supreme Court noted that “anything that would have defeated the decedent’s recovery,” including limitations “such as contributory negligence, a valid release, or similar acts on his part.” *Id.*, at 349, 699 S.E.2d 146. Applying these holdings, South Carolina law does not allow a personal representative to have greater rights to a jury trial than the decedent would have had.

On the other hand, Respondents and the Circuit Court relied upon *North Charleston Joint*

Venture v. Kitchen of Island Fudge Shoppe, Inc., 307 S.C. 533, 416 S.E.2d 637 (1992) for the prospect that only signatories to a lease agreement may be bound by jury waivers. (*See gen. R.* at pp. 4-5); (*See gen. R.* at pp. 17-30). Their reliance upon *North Charleston Joint Venture* is out of place, however, because it does not address personal representatives or their standing to sue. In that case, the Supreme Court held that guarantors of a lease agreement could not be bound by the agreement's jury waiver provision because they were not parties to the agreement itself. Whereas personal representatives derive their right to sue from the decedent themselves, a guarantor's relationship arises from separate but related contracts with the debtor. *Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994) (a guaranty of payment is an obligation separate and distinct from the original note). This contrasts with the law governing personal representatives, where claims are asserted on behalf of the estate itself. *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018). Respondent is not a guarantor of Decedent Hazare, he has asserted the claims in this lawsuit through his status as the personal representative of Hazare's estate and must therefore be held to the same standards that Hazare would be held if she asserted them herself. Since Hazare would be barred from seeking a jury trial in a lawsuit against Appellants, her personal representative must also be barred.

As an additional basis for binding Respondent, our courts have long recognized that "all contracts which are capable of being enforced against a decedent in his lifetime may be enforced against his estate." *Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807, 817 (1931); *see also* S.C. Code Ann. § 62-1-201 (defining "claims" with respect to estates as including contracts).¹ Similarly, the notion that a waiver must specify that it is binding upon personal representatives has been rejected by multiple courts in this state as well. *See, e.g., THI of S.C. at Columbia, LLC*,

¹ It should be noted that contract-based causes of action survived death even at common law. *Hughes*, 442 S.C. at 123, 898 S.E.2d at 107 (citing *Page v. Lewis*, 203 S.C. 190, 193, 26 S.E.2d 569, 570 (1943)).

2011 WL 4089435 (2011) (Currie, J.); *Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017). The Lease Agreement need not spell out that it is binding upon personal representatives in order to have that effect. In *Cox*, Judge Bruce Hendricks rejected this very argument and held that a personal representative “is bound in [his] capacity as personal representative if [Decedent] would have been bound immediately prior to his death.” 176 F. Supp. 3d at 542.

It is well established that “South Carolina law allows parties to contractually waive the right to jury trial.” *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 447, 814 S.E.2d 643, 651 (Ct. App. 2018) (*See also Banks v. Frith*, 97 S.C. 362, 81 S.E. 677 (1914); *Hodges Concrete Prods., Inc. v. Fletcher*, 284 S.C. 191, 193, 324 S.E.2d 343, 344 (Ct. App. 1984); *Southern Railway Company v. Surety Insurance Company of Greenville*, 249 S.C. 407, 154 S.E.2d 561 (1967)). It is equally well established that a personal representative’s right to sue is measured by the rights of the decedent. Because Decedent Hazare was bound by the terms of the Lease Agreement to its terms, including the Jury Waiver Provision, so too is her personal representative who asserts claims on behalf of her estate.

II. The Scope of the Jury Waiver Provision Applies to the “Case” in its Entirety.

The Circuit Court erred by declining to enforce the Jury Waiver Provision not only to the claims of Decedent Hazare but also to the underlying lawsuit in full. The Jury Waiver Provision states that “**any lawsuit** . . . shall be to a judge and not a jury.” (R. at pp. 135 (emphasis added)). The Jury Waiver Provision is not limited to specific causes of action or to any parties and instead states plainly that it governs the lawsuit between the parties. While courts will strictly construe the terms of waivers and limitations of liability provisions, courts will nonetheless uphold valid contracts by the plain language of their terms. *E.g. Maybank v. BB&T Corp.*, 416 S.C. 541, 576,

787 S.E.2d 498, 516 (2016). As noted above, the Circuit Court found that the Jury Waiver Provision itself is valid. The plain language of the provision leaves no room for interpretation – the trial any lawsuit to which the Lease Agreement applies must be a nonjury trial.

The use of the term “any lawsuit” in the Lease Agreement encompasses the entirety of the action and not individual claims or issues. The word “lawsuit” may generally be used interchangeably with the terms “action” or “case.” *See* Lawsuit, Black’s Law Dictionary (12th ed. 2024). On the other hand, words such as “issue” and “claims” are generally understood to be mere parts of a larger lawsuit, action, or case. *See, e.g., Bennett v. Est. of King*, 436 S.C. 614, 621 n. 6, 875 S.E.2d 46, 50 n.6 (2022), (noting that petition raised “multiple issues” in a single appeal); *James v. Kelly Trucking Co.*, 377 S.C. 628, 634, 661 S.E.2d 329, 332 (2008) (“A plaintiff may, in a single lawsuit, assert many causes of action against a defendant.”); *Burnsed v. Greene*, 291 S.C. 59, 60–61, 351 S.E.2d 910, 911–12 (Ct. App. 1986) (“[T]he parties are permitted to join as independent or alternate claims as many claims as they have against the opposing party in a single lawsuit.”). Because the Jury Waiver Provision applies to “any lawsuit” in which it can properly be invoked and not mere portions of the lawsuit, it must necessarily be enforced to the underlying lawsuit as a whole and not merely individual parties or claims.²

III. The Circuit Court Committed an Error of Law by Finding Decedent Dhruv Chokshi Was Not Bound by the Terms of the Lease Agreement Because He Invoked the Lease Agreement’s Benefits by Landlord-Tenant Claims.

Decedent Dhruv Chokshi was not identified as a tenant in the Lease Agreement, but “a party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.” *Dixon v. Pattee*, 442 S.C. 233, 258, 898 S.E.2d 158, 171 (Ct. App. 2023) (citation omitted). The Circuit Court erred by allowing Respondent Vatsal Chokshi to circumvent

² Appellants also note that no other parties have opposed or objected to Appellants’ position.

the Lease Agreement's Jury Waiver Provision while simultaneously claiming status as a tenant and asserting claims under the SCRLTA. A party does not have standing to sue under the SCRLTA absent a rental agreement. S.C. Code Ann. § 27-4-210; *see also Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989) (holding the SCRLTA creates a cause of action for duties owed by the landlord to the tenant).³ While Decedent Chokshi was a nonsignatory to the Lease Agreement, Respondent Vastal Chokshi affirmatively invoked the Lease Agreement by filing the underlying lawsuit against Appellants and claiming Decedent Chokshi had status as a tenant under the SCRLTA.⁴

This Court routinely applies the doctrine of equitable estoppel to bind nonsignatories to contracts that waive the right to a jury trial. *See e.g., Bennett v. ACS Primary Care Physicians-Se. P.C.*, 444 S.C. 458, 469, 908 S.E.2d 110, 116 (Ct. App. 2024) (reversing order denying motion to compel arbitration). While the majority of South Carolina's caselaw concerns the enforcement of arbitration agreements, those agreements are directly relevant because "the decision to enter into an arbitration agreement primarily concerns the signatory's decision to waive his or her right of access to the courts and right to a trial by jury." *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566–67, 813 S.E.2d 292, 304 (Ct. App. 2018) (citations omitted). Under the principle of equitable estoppel a nonsignatory may be bound to a contract if "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability." *Id.* (citations omitted).

³ Respondents do not, nor have they ever, alleged that an oral contract existed between the parties.

⁴ As outlined in Section I, *supra*, Respondent's standing to sue is based upon his status as a personal representative and not as an individual. Thus, it is immaterial as to whether or not Respondent Vatsal Choksi is a signatory to the Lease Agreement or not.

As noted above, Respondents' claims for violation of the SCRLA directly invoke the Lease Agreement. Respondents seek in the underlying lawsuit to reap the benefits of the Lease Agreement by accessing the statutory protections of the SCRLTA – protections which are afforded only to tenants in landlord-tenant relationships governed by the SCRLA. Under the SCRLTA, a “tenant” is “a person entitled under a **rental agreement** to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15) (emphasis added). It is undisputed that a written rental agreement existed for the occupancy of the Decedents' unit and it is undisputed that that rental agreement contains a valid and enforceable Jury Waiver Provision. In the operative complaint in the underlying action, Respondent Vatsal Chokshi directly alleges that Appellants were Decedent Chokshi's landlord and asserts claims for violations of the SCRLTA against Appellants. In making these allegations, Respondent Vatsal Chokshi brings the Lease Agreement to the forefront of his claims and invokes the provisions of the Lease Agreement in their entirety. This Court should reverse the holding of the Circuit Court in order to prevent Respondent from obtaining the benefits of the Lease Agreement by asserting claims under the SCRLTA while avoiding the burdens of the Lease Agreement's Jury Waiver Provision.

Respondents have not identified any other rental agreement by which Dhruv Chokshi could qualify as a “tenant” and, therefore, their claims under the SCRLTA must necessarily invoke the lease agreement at issue here. Because Plaintiff Vatsal Chokshi, as the Personal Representative of the Estate of Dhruv Chokshi, has asserted claims under the South Carolina Residential Landlord and Tenant Act, and because such claims are predicated upon a rental agreement establishing tenancy, his claims necessarily seek the benefit of the Lease Agreement. As such, the Circuit Court erred in holding that Decedent Dhruv Chokshi and Respondent Vatsal Chokshi were not bound by the jury waiver provision.

CONCLUSION

South Carolina law is clear that a Personal Representative stands in the shoes of the decedent and is bound in his capacity as personal representative if Decedent would have been bound immediately prior to his death. As such, the Circuit Court committed an error of law by finding that Devan Chokshi was not bound by the Lease Agreement as the Personal Representative of Freni Hazari. Further, Decedent Dhruv Chokshi has invoked the benefits of the Lease Agreement and therefore cannot avoid its burdens, including the Jury Waiver Provision. Moreover, the valid Jury Waiver Provision applies to the case in its entirety and should apply to all of Responses Claims. Based on the foregoing arguments, this Court should reverse the Circuit Court's denial of Appellants' Motion to Strike Respondents' Jury Demand.

Dated this 15th day of May 2025.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor
Circuit Court Judge

Appellate Case No. 2024-001811

Devan Chokshi, Individually and
as Personal Representative of the
Estate of Freni Hazare, Deceased;
Vatsal Chokshi, Individually and
as Personal Representative of the
Estate of Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC;
PAC-Summerville, LLC;
Beach Investment Fund, L.P.;
Beach Real Estate Funds, LLC;
Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 1-3; Corporation XYZ 1-3, Defendants,
of which BIF-Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court correctly held the Jury Waiver Provision contained in the Lease Agreement could not apply to Respondents Devan Chokshi and Vatsal Chokshi because they are not signatories to the Lease Agreement, thus not bound by the waiver.
- II. Whether the Circuit Court correctly held the Jury Waiver Provision cannot feasibly apply to the entirety of the “case” because the majority of the Defendants are not third-party beneficiaries, thus they cannot invoke the waiver, and because the wrongful deaths at issue in this case are outside scope of the Provision.
- III. Whether the Circuit Court correctly determined that Decedent Dhruv Chokshi, a minor and non-signatory to the Lease Agreement, did not “invoke the benefits of the lease agreement” and is, therefore, not bound by Jury Waiver Provision.

STATEMENT OF THE CASE

In the early morning hours of September 29, 2022, a massive fire engulfed much of the Summerville Station Apartment Complex, resulting in the deaths of residents Freni Hazare and her teenage son, Dhruv Chokshi. (Fourth Am. Compl., filed Sept. 24, 2024, R. p. 68). Devan Chokshi, Personal Representative of the Estate of Freni Hazare, and Vatsal Chokshi, Personal Representative of the Estate of Dhruv Chokshi, (“Respondents”) have brought this lawsuit against BIF-Summerville Station, LLC, and PAC-Summerville, LLC, (“Appellants”), which alleges, among other causes of actions, negligence in survival and wrongful death. *Id.*

On February 6, 2024, Appellants filed a motion to strike Respondents’ jury demand arguing that Respondents were bound by a Jury Waiver Provision in the lease agreement signed by Freni Hazare. (Def.’s Mot. Strike, filed Feb. 6, 2024, R. p. 14). On May 2, 2024, Respondents filed a Memorandum in Opposition to the Motion to Strike. (Memo in Opp., R. p. 17). A hearing on the motion was held on May 6, 2024. (Transcript, R. p. 101). On May 28, 2024, the Circuit Court denied Appellants’ motion. (Form 4 Order, filed May 28, 2024, R. p. 01).

On June 7, 2024, Appellants filed a subsequent motion to alter or amend the May 28, 2024 Order. (Def's. Mot. Alter or Amend, filed June 7, 2024, R. p. 31). Appellants argued "(1) the Jury Waiver Provision is enforceable at least to Decedent Freni Hazare; (2) Plaintiff Devan Chokshi, as Personal Representative of the Estate of Freni Hazare, is bound by the Jury Waiver Provision; (3) the Jury Waiver Provision applies to the instant lawsuit in its entirety; and (4) Plaintiff Vatsal Chokshi, as Personal Representative of the Estate of Dhruv Chokshi, invoked the Jury Waiver Provision by alleging claims under the South Carolina Residential Landlord Tenant Act." (*Id.* at p. 1, R. p. 31). On October 4, 2024, the Circuit Court denied this motion. (Form 4 Order, filed October 4, 2024, R. p. 04). In that order, the Circuit Court stated:

This matter is before the Court on Defendants BIF-Summerville Station, LLC and PAC-Summerville, LLC's motion to alter or amend the Court's May 28, 2024 order denying their motion to strike. The Court's prior order as to Dhruv Chokshi and Vatsal Chokshi remains unchanged. The Court's prior order with regard to Devan Chokshi and Freni Hazare is hereby amended as follows: While Freni Hazare did sign the lease agreement which contains a facially valid jury trial waiver, the lease agreement is devoid of any language indicating the document is binding on the personal representative, heirs, successors or assigns of Freni Hazare. Conversely, paragraph 1 of the lease agreement specifically provides that the lease agreement applies to the successors' in interest or assigns of the owners. Had the drafter of the agreement intended the agreement to survive the death of Ms. Hazare, it certainly could have included language to that effect.

See, *Kelly v. McCombs*, 2019 WL 4052491 (S.C. Ct. App. 2019). Therefore, Devan Chokshi, as personal representative of Freni Hazare, is not a party to the lease agreement. The motion to strike jury demand remains denied. See, *North Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992) (holding nonparties to a lease agreement were not subject to jury waiver provisions in the lease agreement).

Id. (Emphasis added).

On October 24, 2024, Appellants filed a Notice of Appeal of the Circuit Court's Order. Appellants filed their Initial Brief on January 16, 2024.

STATEMENT OF THE FACTS

On September 29, 2022, a fire broke out, ravaging several apartments in the Summerville Station Apartment Complex (“Summerville Station”) in Summerville, South Carolina. (Fourth Am. Compl., filed Sep. 24, 2024, R. p. 68). Freni Hazare and Dhruv Chokshi tragically perished in the fire. (*Id.*, at ¶¶ 60-64, R. pp. 86-87). 911 recordings reveal Ms. Hazare crying out in pain as she is burning alive. The 911 recordings of Ms. Hazare’s son, Dhruv, reveal him repeatedly calling for help while he hears his mother dying. Dhruv frantically attempts to find a means to escape the apartment, but he is unsuccessful, and ultimately succumbs to the fire. (*Id.* ¶¶ 60-63, R. p. 86). In this matter, Respondents are the Personal Representatives of the Estates of Hazare and Chokshi who filed a lawsuit against the owners and operators of Summerville Station, Appellants, as well as other Defendants. (*Id.*, R. p. 68). Respondents assert that the Appellants’ negligence was a proximate cause of the deaths of their loved ones.

Decedent Hazare had recently renewed her lease at Summerville Station in July 2022, after previously living in the building for an unknown period of time. (Exhibit A to Mot. Strike, Lease Agreement, R. p. 130). Decedent Chokshi, her 15-year-old son, was not a signatory to the lease, and is not listed on the lease as a tenant, resident, occupant or guest. (*Id.*, R. p. 130). Central to this appeal is a Jury Waiver Provision included within the Lease Agreement that Decedent Hazare signed on July 7, 2022 (hereinafter, the “Lease Agreement”). (Lease Agreement, § 39, R. p. 135). The Jury Waiver Provision reads:

Waiver of Jury Trial. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

(*Id.*, § 39) (“Jury Waiver Provision”).

During Circuit Court proceedings, the Appellants filed a motion to strike the jury demand on account of this language, which the Circuit Court correctly denied. (Mot. Strike, R. p. 14). The Circuit Court also denied the Appellants' motion for reconsideration. (Form 4 Order; filed Oct. 4, 2024), R. p. 04). Now, Appellants appeal the denial of the motion to strike the jury demand.

STANDARD OF REVIEW

“Whether a party is entitled to a jury trial is a question of law.” *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). “Whether a contract [provision] is . . . unenforceable is generally a question of law.” *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 629, 799 S.E.2d 318, 322 (Ct. App. 2017) (quoting *Milliken & Co. v. Morin*, 399 S.C. 23, 30, 731 S.E.2d 288, 291 (2012)). When reviewing questions of law, the Court of Appeals reviews de novo. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 569-70, 776 S.E.2d 397, 402 (Ct. App. 2015).

ARGUMENT

“The South Carolina Constitution provides that ‘[t]he right of trial by jury shall be preserved inviolate.’” *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 493, 730 S.E.2d 328, 331 (Ct. App. 2012) (quoting S.C. Const. art. I, § 14). “The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.” *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) (citation omitted).

This Court should AFFIRM the Circuit Court's ruling preserving the right to a jury trial because (I) Devan Chokshi and Vatsal Chokshi, as non-parties and non-signatories, are not bound by the Lease Agreement; (II) The scope of the Jury Waiver Provision cannot apply to the “case” in its entirety because the majority of Defendants are neither signatories nor third-party beneficiaries to the Lease Agreement; (III) Decedent Dhruv Chokshi, a deceased minor who never signed the

Lease, is not bound by its terms, and Respondents did not “invoke the Lease Agreement's benefits” by asserting claims against the Landlord. As an additional sustaining ground, the Circuit Court's decision should be affirmed because Defendants failed to timely file their Motion to Strike under Rule 12, SCRCP, having waived this defense by not raising it with their initial responsive pleading.

I. Devan Chokshi and Vatsal Chokshi are Not Bound by the Lease Agreement as they are Not Signatories of the Lease Agreement.

Under well-established South Carolina law, non-signatories to a lease agreement are not bound by that agreement. In *N. Charleston Joint Venture*, a landlord sued its tenant for past-due rent and joined tenant’s guarantors to the lawsuit. *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 534, 416 S.E.2d 637, 638 (1992). The guarantors counterclaimed and requested a jury trial. *Id.* As was the case here, the landlord moved to strike the jury demand on the grounds that the lease contained a jury waiver provision. *Id.* Nevertheless, the South Carolina Supreme Court held that the “[g]uarantors, not being parties to the waiver clause, are entitled to a jury trial.” *Id.* The Court stated:

Trial by jury is a substantial right and any waiver thereof must be *strictly construed*. Here, the waiver clause, by its express terms, is applicable *only* to Landlord and Tenant. Although the guaranty was incorporated by reference into the lease contract, Guarantors were not parties to the lease nor were they named in the waiver clause.

Id. (emphasis added). The rule set forth by the Supreme Court is clear – jury waivers are only enforceable against the actual parties to the lease. *See also Anderson Bros. Bank v. Adams*, 305 S.C. 25, 28, 406 S.E.2d 173, 175 (1991) (holding that waiver of right to appraisal contained in mortgage did not bind guarantors of the borrower because “boilerplate language, inserted by Bank, at the end of a mortgage signed only by Debtors, is not binding upon Guarantors”). Appellants’ argument that *North Charleston Joint Venture* is inapplicable because it addresses guarantors rather than personal representatives is misplaced. The fundamental principle established by the South

Carolina Supreme Court is that jury waivers must be “strictly construed” and are enforceable only against the actual parties to the agreement.

This central holding of *N. Charleston Joint Venture* has since been reaffirmed by the South Carolina Supreme Court. In *Broome v. Watts*, two individuals involved in an automobile accident entered into a settlement agreement where the parties would conduct a trial for the sole purpose of determining the liability of various insurers. *Broome v. Watts*, 319 S.C. 337, 338, 461 S.E.2d 46, 47 (1995). As part of the settlement, the defendant waived her right to a jury trial. *Id.*, 319 S.C. at 338, 461 S.E.2d at 47. After the trial, the plaintiffs filed suit against an insurance company, USAA, to recover on their underinsured motorist coverage. *Id.* USAA, who was not party to the agreement, claimed that it was entitled to invoke the Jury waiver provision because, as the UIM carrier, its contract with the original defendant allowed it “to defend ‘in the name of the underinsured motorist’” and “step[] into the shoes’ of the underinsured motorist.” *Id.*, 319 S.C. at 340, 461 S.E.2d at 48. **The Supreme Court expressly rejected USAA’s argument**, and extended *N. Charleston Joint Venture*’s holding, by saying USAA could not invoke the jury waiver as doing so would “blur[] the distinction between the named defendant (Watts),” who was a party to the agreement thus waiving her right to a jury trial, and “the actual defendant (USAA),” who was not. *Id.*

Here, the Circuit Court correctly determined Freni Hazare alone was a signatory to this Lease Agreement. (Order, R. p. 01; Lease, R. p. 130). Section 1 of the Lease Agreement clearly defines the parties bound by the agreement, stating that “The terms ‘**you**’ and ‘**your**’ refer to all residents listed above” – which only includes Freni Hazare. (R. p. 130). However, Ms. Hazare is now deceased and is not a party to this lawsuit. Ms. Hazare’s adult son, Devan Chokshi, who *is* a party/plaintiff to this lawsuit, *never* signed the Lease Agreement containing the Jury Waiver

Provision. As *N. Charleston Joint Venture* holds, Devan Chokshi, a non-signatory to this Lease Agreement, cannot be bound by the Jury Waiver Provision as “[t]rial by jury is a substantial right and any waiver thereof must be strictly construed.” *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.¹

Significantly, the Lease Agreement demonstrates through its asymmetrical language that the drafters knew precisely how to bind non-signatories when they intended to do so. While Section 1 of the Lease Agreement explicitly extends to “owner’s successors in interest or assigns,” it contains no similar provision extending the agreement to the tenant’s heirs, representatives, or estate. (R. p. 130). This deliberate asymmetry in the contract language cannot be dismissed as accidental in what is clearly a thoroughly drafted form contract. The principle of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of other) compels the conclusion that this omission was deliberate—the drafters knew how to bind successors but chose not to do so for tenant’s representatives. “[T]he maxim ‘Expressio unius est exclusio alterius’ is defined as: ‘When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.’” *Evins v. Richland Cty. Historic Pres.*

¹ *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011), cited by Appellants (Appellants’ Br. at p. 4), is distinguishable both because it involved an arbitration provision and because the personal representative in that case *had in fact* signed the contract as a “Fiduciary Party”. Other cases cited by Appellants focus on whether the personal representative can bring certain claims, and not whether the representative is entitled to a specific procedural right, such as a jury trial. *See Est. of Stokes ex rel. Spell v. Pee Dee Family Physicians, LLP*, 699 S.E.2d 143, 145–46, 389 S.C. 343, 348–49 (2010) (holding personal representative cannot recover under a wrongful death action because the claim was barred by statute of limitations); *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988) (holding personal representative cannot recover under wrongful death action because the claim was barred by statute of limitations); *Cox v. Duke Energy, Inc.*, 176 F. Supp.3d 530, 542 (D.S.C. 2016), *aff’d*, 876 F.3d 625 (4th Cir. 2017) (barring personal representative from suing police department in connection with decedent’s arrest because decedent had signed release that he would not sue the department).

Comm’n, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) (quoting *Little v. Town of Conway*, 171 S.C. 27, 31, 171 S.E. 447, 448 (1933)); *See also Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C. 113, 119, 463 S.E.2d 600, 604 (1995) (stating the rule “expressio unius est exclusio alterius” means the “enumeration of particular things excludes [the] idea of something else not mentioned.”).

Further, the jury waiver at issue in Section 39 provides that “**you and we** agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.” (R. p. 135). The terms “you and we” are explicitly defined in Section 1 as referring only to the named resident (Freni Hazare) and the property owner, reinforcing that the waiver was intended to bind only the actual signatories to the agreement. (R. p. 130). Had the drafters intended this provision to bind representatives or heirs, they would have included explicit language to that effect, as they did elsewhere in the agreement for the owner’s successors.

Additionally, Section 32 of the Lease Contract explicitly states: “Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us.” (R. p. 134). This provision reinforces that the agreement is strictly between the named parties. When read together with the definitions in Section 1, this language establishes that the contract – including the jury waiver – was personal to the signatories and not intended to bind the non-signatory personal representatives of a deceased tenant. Further, under *N. Charleston Joint Venture* and the progeny of cases affirming its holding, it is likewise indisputable that the Lease Agreement cannot be held to bind neither the decedent Dhruv Chokshi (who was a minor that did not – and legally could not – sign the Lease Agreement), nor his personal representative, Vatsal Chokshi.

Appellants nevertheless argue that “South Carolina law allows parties to contractually waive the right to jury trial.” (App. Br. at p. 4). However, each of the cases relied upon by Appellants are wholly distinguishable because they involve situations where the party against whom the motion to strike the jury demand is levied is *a signatory* of the agreement with the waiver provision, or is *a party* agreeing to forgo trial by jury. See *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 440, 814 S.E.2d 643, 647 (Ct. App. 2018) (“Skywaves entered into a factoring agreement . . . The agreement stated in bold writing, immediately prior to the signature page, Skywaves waived its right to trial by jury” (quotation omitted)); see also *Banks v. Frith*, 97 S.C. 362, 81 S.E. 677, 680 (1914) (Gage, J. dissenting) (“The *parties* waive trial by jury, as *they* have a right to do so.” (emphasis added)); *Southern Ry. Co. v. Surety Ins. Co. of Greenville*, 249 S.C. 407, 413, 154 S.E.2d 561, 564 (1967) (“*Both parties* having assented to the discharge of the jury, neither has standing here to complain that issues of fact were not submitted to it.” (emphasis added)). Here, Respondents are neither a signatory nor a party agreeing to forgo the right to a trial by jury.

The only names on the lease are (1) Freni Hazare, (2) BIF-Summerville Station, LLC, and (3) PAC-Summerville, LLC. Thus, the Respondents in this case – Vatsal Chokshi and Devan Chokshi – are not signatories to the Lease Agreement and are not bound by its jury waiver provision. This argument applies with particular force in the case of Respondent Vatsal Chokshi, the personal representative and father of Dhruv Chokshi. Dhruv Chokshi was not a signatory to the lease, and because the plain terms of the jury waiver provision do not identify him as a covered

party,² Vatsal Chokshi’s representative claim on Dhruv’s behalf is plainly not subject to the jury waiver provision under *N. Charleston Joint Venture*. See also *Johnston-Gebre v. IH4 Prop. Fla., L.P.*, 2023 WL 6443096, at *4 (S.D. Fla. Oct. 2, 2023) (“If the parties to the lease agreement intended for the jury waiver provision to cover claims brought by the ‘Resident Parties’ and not just a ‘Resident,’ the lease should have so stated. Thus, the plain language of the contract does not extend the jury waiver [beyond the Resident]).

Therefore, the jury demand must stand in accordance with the South Carolina Supreme Court’s previous decisions in *N. Charleston Joint Venture* and its progeny, as Respondents are entitled to the “substantial right” of trial by jury because (1) “any waiver thereof must be strictly construed,” (2) the Respondents are not signatories to the Lease Agreement containing the Jury Waiver Provision, and (3) “you and we” cannot be construed to incorporate either Respondent as non-parties to the lease. See *N. Charleston Join Venture*, 307 S.C. at 535, 416 S.E.2d at 638; see also *Anderson Bros. Bank*, 305 S.C. at 28, 406 S.E.2d at 175.

II. The Scope of the Jury Waiver Cannot Apply to the “Case” in its Entirety.

The Jury Waiver Provision cannot apply to the “Case” in its entirety because (A) a majority of the Defendants are neither signatories to the Lease Agreement nor third-party beneficiaries and

² The lease agreement contains no reference to Freni Hazare’s children, and no provision addressing other potential residents of the apartment. A section asking the parties to “list all other occupants not signing the Lease Contract” is blank. (R. p. 130). Thus, even if Freni Hazare signed the lease agreement with the intent to reside there with Dhruv Chokshi, there is nothing in the lease agreement indicating the jury waiver provision binds Dhruv. See, generally, *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951) (“The contract, so far as the plaintiff was concerned, since he was a minor, was *voidable* at his election, although it was fully binding upon the defendants . . .”).

(B) the Jury Waiver Provision clearly was not intended to encompass the tragic fire, and decedents' deaths, at issue in this case.

A. A Majority of the Defendants are Neither Signatories Nor Third-Party Beneficiaries of the Lease Agreement, thus the Jury Waiver Provision Cannot Apply.

The request to strike the jury demand in this case is brought by Appellants BIF-Summerville Station, LLC and PAC-Summerville, LLC. The remaining Defendants in this case – The Beach Co., Beach Company, Inc., Beach Investment Fund, L.P., Beach Real Estate Funds, LLC (collectively, “Beach Defendants”), Lincoln BP Management, Inc., and Lincoln Property Company National, LLC (collectively, “Lincoln Defendants”) – do not, and cannot, invoke the Jury Waiver Provision in this case.³

“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Here, it is undisputed that the Beach Defendants and the Lincoln Defendants and other recently added Defendants are not parties to the Lease Agreement.⁴

³ Four additional Defendants have since been added to the case. (R. p. 68; 4th Am. Compl.).

⁴ *See, e.g., Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1166 (9th Cir. 1996) (“The Investors again argue that the defendants cannot invoke the jury waiver clause because they were not parties to the Purchase Agreement. As with the choice-of-law clause, a jury waiver is a contractual right and generally may not be invoked by one who is not a party to the contract. And, as with the choice-of-law clause, ordinary contract and agency principles do not provide GE Capital or Burton with standing to invoke the jury waiver. . . . Therefore, we reverse the order waiving jury trial.”); *Barnello v. Bayview Loan Servicing, LLC*, 2016 WL 11565618, at *3 (M.D. Fla. Mar. 15, 2016) (“Defendant is not a party to the Mortgage, has not otherwise shown that it should stand in the shoes of the holder of the note and Mortgage, and has not, as noted above, established that it is an intended beneficiary of the Mortgage agreement. Thus, as a non-party to or beneficiary of the contract, Defendant has not established that it has a right to enforce the jury trial waiver, and the Motion to Strike will be denied.”); *Brown & Brown, Inc. v. Cola*, 2011 WL

Moreover, under South Carolina law, “[a] third-party beneficiary is a party that the contracting parties intend to directly benefit.” *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). Nothing in the Lease Agreement suggests it was intended to any of these non-signatory defendants.⁵ (Lease Agreement, § 39, R. p. 135) (specifically noting “**you and we agree**” without indicating any third-party beneficiaries).

4380445, at *5 (E.D. Pa. Sept. 20, 2011) (“None of the Defendants in this case was a signatory or party to the [agreement containing the jury waiver], and thus cannot invoke the jury waiver provision against Plaintiffs.”); *Bateman Litwin N.V. v. Swain*, 2009 WL 10688302, at *8 (E.D. Va. Mar. 18, 2009) (denying third-party defendants’ motion to strike because they “were not signatories to the documents” containing the jury waiver provision); *Sensoria, LLC v. Kaweske*, 2021 WL 103020, at *9 (D. Colo. Jan. 12, 2021) (“The Kaweske Defendants did not act as Clover Top Holdings, Inc.’s agents (or at least consistent with an agent’s fiduciary duties), and they did not act in concert with Clover Top Holdings, Inc. The Kaweske Defendants lack a sufficiently close relationship with Clover Top Holdings, Inc. to invoke any term of the Subscription Agreement against Plaintiffs.”); *Omega v. Deutsche Bank Tr. Co. Americas*, 920 F. Supp. 2d 1298, 1300 (S.D. Fla. 2013) (“Wells Fargo is a non-party to the Mortgage, but seeks to enforce the jury-trial waiver contained therein. Because the waiver is part of a contractual relationship between Plaintiffs and the owner of the Note, and not between Plaintiffs and Wells Fargo, the Court finds that Wells Fargo cannot enforce the waiver against Plaintiffs.”); *ExactLogix, Inc. v. JobProgress, LLC*, 2022 WL 1004423, at *1 (N.D. Ill. Apr. 4, 2022) (“[T]he Court holds that David Buzzelli and JobProgress are not able to invoke the contractual jury waiver because they are not parties to the contract[and] they are not successors or permitted assigns of a party to the contract.”); *Foxfield Villa Assocs., LLC v. Robben*, 2017 WL 3085780, at *2 (D. Kan. July 20, 2017) (“In light of the court’s policy of indulging every reasonable presumption against wa[iv]er, the court finds that defendants have not shown that they are entitled to enforce the waiver. Defendants’ motion is therefore denied.”); *Nat’l Med. Imaging, LLC v. DVI Receivables XIV, LLC*, 2016 WL 4554692, at *5 (E.D. Pa. Sept. 1, 2016) (“Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX were not parties to the Settlement Agreement, and the Guaranty was not executed in favor of these Defendants. . . . These Defendants therefore may not invoke either jury trial waiver,³¹ and thus Plaintiffs have not waived their right to a jury trial as to Defendants Ashland Funding, DVI Funding, and DVI Receivables XIV, XVI, XVII, XVIII, and XIX.”).

⁵ See, e.g., *Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 429 S.C. 502, 512, 839 S.E.2d 468, 473 (Ct. App. 2020), *aff’d*, 435 S.C. 594, 869 S.E.2d 812 (2022) (finding that members of health insurance network were third-party beneficiaries where “the Agreement’s language, structure, and purpose directly benefit Members” and noting out-of-state cases involving contracts that expressly referenced members and described benefits accruing to them as supporting third-party beneficiary

The Jury Waiver Provision specifically notes that “you and we agree” to waive the right to a jury trial without indicating any third-party beneficiaries. (Lease Agreement, § 39, R. p. 135). The pronouns “you and we” plainly refer to the contracting parties – Freni Hazare and the owner entities – not to any third parties such as the numerous defendants named in this lawsuit.

Even if this Court were to find that Devan Chokshi, as personal representative of Freni Hazare’s estate, is somehow bound to the Jury Waiver Provision (which Respondents dispute for multiple reasons set forth herein), that finding would not extend to claims brought against defendants who were not parties to the lease agreement. The Jury Waiver provision applies only to disputes between “you and we” – Freni Hazare and the owner entities. It cannot reasonably be interpreted to waive the right to a jury trial in claims against entirely separate entities that have no connection to the lease agreement.⁶

This case illustrates precisely why jury waivers are strictly construed and limited to the actual parties who agree to them. If Appellants’ position were accepted, a tenant signing a form lease with a jury waiver provision would unknowingly surrender their constitutional right to a jury trial not only against their landlord but against any number of third parties who might later be joined in litigation arising from the tenant’s residency. Such an expansive reading of jury waiver

status); *contrast Pancakes of Hawaii, Inc. v. Pomare Properties Corp.*, 85 Haw. 300, 309 (Ct. App. 1997) (“[N]othing in the terms of the lease or in the record indicates Sofos or Carter would benefit in any way from the lease agreement. Thus, Sofos and Carter do not have any enforceable contract rights as third-party beneficiaries in the agreement between Pancakes and Pomare Properties.”)

⁶ See *Lapkass v. Wells Fargo Clearing Services*, No. C099944, p. 8 (Cal. Ct. App. 3d. Mar. 11, 2025) (“there is no evidence Ulrike designated Paul as her agent with authority to enter into arbitration agreements on her behalf, or that some conduct by Ulrike reasonably caused Wells Fargo and Schoenike to believe that Paul was authorized to enter into arbitration agreements for Ulrike . . . Paul did not bind Ulrike to the arbitration clauses.”).

provisions would render them unreasonably overbroad and contrary to the fundamental principle that “[t]rial by jury is a substantial right and any waiver thereof must be strictly construed.” *N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638.

B. The Jury Waiver Provision was Clearly Not Intended to Encompass the Fire at Issue and the Death of the Decedents.

Even if the Jury Waiver Provision is found to apply, it cannot be properly construed to apply to a *wrongful death* case brought by the *personal representative* of the signatory. As a threshold principle, any waiver of a jury trial should be narrowly construed as the right to a jury is a substantial right. *See N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638.⁷

The Jury Waiver Provision states that “a trial of any lawsuit based on statute common law, *and/or related to this Lease Contract* shall be to a judge and not a jury.” (Ex. A. to Mot. Strike, § 39) (emphasis added). As the rules of contract interpretation are to “ascertain and give legal effect to the parties’ intentions *as determined by the contract language*” and courts are not to “rewrite or torture the meaning” of contracts, the Court must consider the limiting language “related to this Lease Contract.” *See Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134 (emphasis added); *see also Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464-65, 688 S.E.2d 597, 600 (Ct. App. 2010) (“The language alone will determine the contract’s force where such language is unambiguous.”).⁸

⁷ Courts “should indulge every reasonable presumption against waiver.” *Zaklit v. Glob. Linguist Sols., LLC*, 53 Supp. 3d 835, 855 (E.D. Va. 2014). This proposition is consistent with the South Carolina Constitution and existing case law arguing for the narrow interpretation of jury waiver provisions. *See* S.C. Const. art. I, § 14; *N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638.

⁸ Even where there is some ambiguity, courts have cautioned that jury waiver provisions should be construed narrowly, with an eye to preserving the right to trial by jury. *See N. Charleston Joint Venture*, 307 S.C. at 534, 416 S.E.2d at 638; *Quinn Const., Inc. v. Skanska USA Bldg., Inc.*, 2010 WL 4909587, at *6 (E.D. Pa. Nov. 30, 2010).

Appellant’s argument that “any lawsuit” should be given its possible broadest meaning ignores the qualifying phrase “related to this Lease Contract.” (Lease Agreement, § 39, R. p. 135). This language clearly limits the scope of the waiver to disputes arising directly from the landlord-tenant relationship governed by the contract – such as disputes over rent, maintenance, or security deposits. A catastrophic fire resulting in death involves matters far beyond routine landlord-tenant disputes contemplated by the lease agreement. The horrific circumstances of this case – where recordings capture Ms. Hazare crying out in pain while burning alive and her son frantically attempting to escape – could not reasonably have been contemplated as falling within the scope of a boilerplate jury waiver in a form lease agreement.

Under the doctrine of *ejusdem generis*,⁹ the proper interpretation of the clause is that it encompasses any lawsuit or claim “related to this Lease Contract”.¹⁰ Indeed, a contrary reading, which applies the provision to *any lawsuit* between the Parties would render the clause “related to

⁹ *U.S. v. Migi*, 329 F.3d 1085, 1088 (9th Cir. 2003) (quoting Black's Law Dictionary 535 (7th ed. 1999)) (“*Ejusdem generis* requires that ‘when a general word or phrase follows a list of specific ... things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.’”).

¹⁰ *See, e.g., Matador Drilling Co., Inc. v. Post*, 662 F.2d 1190, 1198 (5th Cir. 1981) (“Matador was required to show that the cessation of operations during this period resulted from a cause beyond its control, of the same general character as ‘strikes, actions of the elements, water conditions, inability to obtain fuel or other critical materials.’ . . . The damages to the derrick occurred during normal operations . . . and [are] not the kind of calamitous and unanticipated event that the force majeure clause contemplates.”); *United We Stand Am., Inc. v. United We Stand Am., New York, Inc.*, 941 F. Supp. 39, 40 (S.D.N.Y. 1996), *aff’d*, 128 F.3d 86 (2d Cir. 1997) (“The Lanham Act in several places confines its application to persons who are engaged in offering for sale or distribution ‘goods or services.’ Defendants persuasively argue that, under the doctrine of *eusdem generis*, the meaning of ‘services’ should be colored by its constant association with the word “goods.”) (internal citation omitted).

this Lease Contract” surplusage.¹¹ See, e.g., *Fontius Shoe Co. v. Indus. W., Inc.*, 596 P.2d 1209, 1210 (Colo. App. 1979) “Had the landlord intended that the first clause be as general as it now contends, instead of the qualified phrase it did use, it could have provided merely that ‘the tenant shall be liable for any changes required by any governmental entity.’ This suggests the parties intended a meaning different than a general phrase would have accomplished.”

Thus, the limiting language “related to this Lease Contract” makes it clear that the Jury Waiver Provision is intended to encompass issues like day-to-day maintenance and repairs, nonpayment of rent, and so on. There is no suggestion, either in the language of the Jury Waiver Provision or anywhere in the Lease Agreement, that it was intended to cover the aftermath of a tragic event like a fire. Moreover, Freni Hazare, as the sole signatory, could not possibly have contemplated that the Jury Waiver Provision would be invoked in a lawsuit following her death.¹²

III. Decedent Dhruv Chokshi, a Deceased Minor and Non-Signatory to the Lease, is Not Bound by the Terms of the Lease. Respondents Did Not “Invoke the Lease Agreement’s Benefits” by Asserting Claims Against the Landlord.

¹¹ “A construction which renders meaningless a provision expressed in the contract or results in surplusage should be avoided if possible.” *Lauterbach v. Brown*, 96 N.W.2d 605, 606 (Wis. 1959) (citing *Knuth v. Fidelity & Casualty Company*, 1956, 275 Wis. 603, 83 N.W.2d 126; *Bank of Cashton v. LaCrosse County S. T. M. I. Co.*, 1934, 216 Wis. 513, 257 N.W. 451; 3 Williston on Contracts, par. 619, p. 1781); see also *Hill v. Stanolind Oil & Gas Co.*, 205 P.2d 643, 648 (Colo. 1949) (“It is a cardinal rule that a contract must be construed as a whole and effect given, if possible, to its every provision[.]”).

¹² This contrasts with *Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530, 542 (D.S.C. 2016), *aff’d*, 876 F.3d 625 (4th Cir. 2017). In *Cox*, the personal representative was barred from suing the police department in connection to the decedent’s arrest as the decedent had signed a release of all claims connected to the police department’s conduct. *Id.* This is distinguishable from the present case as in *Cox*, the decedent could plausibly assume that the release would extinguish claims made after his death in connection with the events covered by the release, whereas here, that plausibility is not necessarily reasonable to presume.

Contrary to Appellants' contention, Respondents' claims in this case arise from wrongful death and survival actions, not from the Lease Agreement.

Appellant's reliance on the doctrine of equitable estoppel to bind Dhruv Chokshi to the Lease Agreement because his representative brought SCRLTA claims misconstrues both the nature of the South Carolina Residential Landlord and Tenant Act and the doctrine itself. Tenancy can be established without a written lease agreement, and SCRLTA duties exist independent of any lease. As discussed below, the statute imposes duties that cannot be waived by agreement, as they are matters of public policy. More importantly, equitable doctrines cannot be used to deprive parties of constitutional rights, particularly when those rights belong to a deceased minor who never signed or agreed to any waiver.

The South Carolina legislature has, through the SCRLTA, imposed duties on landlords and tenants that are distinct from any existing contractual duties. *See Burbach v. Invs. Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (referencing the SCRLTA and explaining that "[w]hile landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants"). Laws like the SCRLTA reflect the legislature's acknowledgment that the nature of the relationship between landlords and tenants has implications for the broader public – these laws impose duties that "protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves." *Id.*

The SCRLTA places an affirmative duty on the landlord to "keep the premises in a fit and habitable condition". *See Nedrow v. Pruitt*, 336 S.C. 668, 675-76, 521 S.E.2d 755, 759 (S.C. App. 1999) (citing *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct.App.1989) and S.C. Code Ann. § 27-40-440 (1991)) ("In adopting the RLTA, the General Assembly expressly provided that the

landlord has a duty to make all repairs and to do whatever is reasonably necessary to keep the premises in a fit and habitable condition.”); *Watson*, 385 S.E.2d at 374, 385 S.E.2d at 373 (“the preamble to the Act expressly states that it was the intent of the Legislature to provide for the obligations and liabilities of the landlord”). The SCRLTA represents the South Carolina legislature’s intent to create a separate scheme to hold landlords accountable, and to create rights and remedies for tenants that are independent of any lease agreement.

Under S.C. Code Ann. § 15-51-10, “[w]henver the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages.” The statute further provides that “the action shall be brought by or in the name of the executor or administrator of such person.” S.C. Code Ann. § 15-51-20. Moreover, damages recovered in such actions “to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate.” S.C. Code Ann. § 15-51-40. This scheme creates a completely separate cause of action that exists independently from any lease agreement.

Similarly, Respondents have alleged survival claims under S.C. Code Ann. § 15-5-90, which provides that “[c]auses of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive” the death of the person entitled to bring such actions. These claims are also independent of the Lease Agreement and arise from Appellants’ broader legal duties.

Unlike arbitration clauses, which are enforced against non-signatories under principles like direct-benefits estoppel, jury waivers implicate constitutional rights and must be strictly construed. Courts have recognized this critical distinction. In *Dixon v. Pattee*, this Court held that an arbitration clause was enforceable against a non-signatory because the non-signatory’s “causes of action are dependent upon the agreements that require arbitration and are within the scope of the arbitration agreements.” *Dixon v. Pattee*, 442 S.C. 233, 256, 898 S.E.2d 158, 170 (Ct. App. 2023). Numerous other courts have recognized that estoppel theory does not apply in the jury waiver context.

Specifically, courts in other states have considered, and rejected, similar attempts to extend this estoppel non-signatory enforceability doctrine from the arbitration to the jury waiver context. See *In re Credit Suisse First Bos. Mortg. Cap., L.L.C.*, 257 S.W.3d 486, 492-3 (Tex. App. 2008) (“We are unaware of any court . . . that has applied direct-benefits estoppel to a jury waiver provision . . . These mechanisms cannot be treated interchangeably merely because they both lead to decisions by factfinders other than jurors. Jury waiver provisions and arbitration clauses implicate significantly different policies and principles.”); *Ex Parte Carter*, 66 So. 3d 231, 239 (Ala. 2010) (declining to bind a non-signatory to the jury waiver provision contained in a loan agreement because doing so would “rewrite the loan documents to give the jury-waiver provisions a broader effect when our standard of review requires strict construction of such provisions in deference to the constitutional guarantee of the right to trial by jury.”).

Respondents have also alleged negligence claims based on duties of care that arise independently from the SCRLTA. S.C. Code Ann. § 27-40-440 provides that landlords shall “(1) comply with the requirements of applicable building and housing codes materially affecting health and safety,” “(2) make all repairs and do whatever is reasonably necessary to put and keep the

premises in a fit and habitable condition,” and “(3) keep all common areas of the premises in a clean and safe condition.” These duties exist regardless of any contractual relationship and cannot be abrogated by a jury waiver provision in a form lease agreement.

While Appellant argues that by bringing SCRLTA claims, Dhruv Chokshi has “invoked the benefits” of the lease agreement, this argument fundamentally misunderstands the nature of SCRLTA. The statute creates duties that exist independently of any written lease—they are obligations imposed as a matter of public policy. Dhruv Chokshi’s status as an occupant of the property, not his connection to any written lease, is what brings him within the protections of the SCRLTA. See Section 27-40-210, defining “building and housing codes”, discussed above, to “include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, **occupancy**, use, or appearance of any premise, or dwelling unit.” (Emphasis added). Furthermore, the doctrine of equitable estoppel raised by Appellant is inapplicable here, as it cannot be used to circumvent the constitutional right to a jury trial, particularly for a minor who never personally agreed to any waiver. “It is well known that equity follows the law.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254, 715 S.E.2d 348, 355 (2011). “When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent.” *Id.* (quoting *Lonchar v. Thomas*, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996)).

Courts have consistently recognized the distinction between claims that arise from a contract and claims that arise from independent legal duties. “Contract law seeks to protect the expectancy interests of the parties. Tort law, on the other hand, seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property.” *Sapp v. Ford*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009).

The tragic fire that caused the deaths of Freni Hazare and Dhruv Chokshi implicates Appellants' broader duties as property owners and managers, not merely their contractual duties as landlords. These independent duties include: (1) The duty to maintain the premises in compliance with applicable fire safety codes; (2) The duty to ensure proper functioning of fire detection and suppression systems; (3) The duty to provide and maintain adequate fire exits and escape routes; (4) The duty to warn residents of known fire hazards; and (5) The duty to exercise reasonable care in the ownership and management of multi-family residential properties.

These duties exist regardless of any contractual relationship between the parties. They are imposed by legislation, regulation, and judicial precedent, and they would apply equally to any person lawfully present on the property, whether a tenant, guest, or visitor. The sources of these duties include not only the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-440, but also state and local building and fire codes that establish minimum safety standards for residential properties.

Furthermore, public policy strongly supports preserving the right to a jury trial in cases involving wrongful death claims. Residential lease agreements are typically presented to tenants on a take-it-or-leave-it basis, with little or no opportunity for negotiation. Allowing landlords to use such agreements to secure blanket waivers of the constitutional right to a jury trial for all claims that might conceivably relate to a tenant's occupancy, including claims brought by personal representatives after the tenant's death, would create a significant imbalance of power and undermine the protections afforded by S.C. Const. art. I, § 14.

The facts of this case vividly illustrate why the jury waiver provision should not apply to Respondents' claims. This is not a routine landlord-tenant dispute over unpaid rent or a security deposit. It involves the tragic deaths of two people in a catastrophic fire—precisely the kind of

case where the community's judgment, as expressed through a jury verdict, is most important. Appellants' attempt to avoid a jury trial for these claims is inconsistent with both the language of the Jury Waiver Provision and the fundamental principles of justice that underlie our civil justice system.

Therefore, because Respondents' claims arise from legal duties that exist independently from any contractual obligations in the Lease Agreement, this Court should AFFIRM the Circuit Court's denial of Appellants' motion to strike the jury demand.

IV. As an Additional Sustaining Ground, the Circuit Court's Decision Should Be Affirmed Because Defendants Failed to Timely File Their Motion to Strike Under Rule 12, SCRCP

Rule 12, SCRCP requires all defenses and, specifically, any motion to strike to be filed prior to any responsive pleading or contemporaneously with any motion to dismiss. Here, Defendants' Motion to Strike is untimely and warrants the Court's denial before any consideration is given to the motion's merits. Rule 12, SCRCP. Rule 12(b), SCRCP states, in relevant part, "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required[.]" Rule 12(g), SCRCP requires that "[i]f a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted [...]."

In response to Plaintiffs' initial Complaint filed on May 13, 2023, Defendants chose to file their Rule 12(b)(6), SCRCP motion in lieu of filing an Answer, as allowed by Rule 12(b), SCRCP (Motion to Dismiss, filed 08/04/23, R. p. 07). Defendants' decision to file the Rule 12(b)(6), SCRCP motion, however, required Defendants to preserve other defenses available at the time by joining those motions in the same pleading. Rule 12(b), SCRCP. Rather than file the Motion to

Strike Plaintiff's request for a jury demand at the same time they filed their Rule 12(b)(6), SCRCPP motion in response to Plaintiffs' initial Complaint, as required by Rule 12(g), SCRCPP, Defendants waited until a day after filing their third motion to dismiss to raise the defense that was procedurally available in August of 2023. Defendants' failure to make their Motion to Strike at the time of the filing of its third Rule 12(b)(6), SCRCPP motion on February 5, 2024, instead of simultaneously filing this Motion with their first Rule 12(b)(6), SCRCPP motion, which was procedurally available at the time, results in Defendants' being precluded from making such motion as the Rule clearly indicates the objection is "omitted." Rule 12(g), SCRCPP.

Furthermore, Plaintiffs' amendments of their Complaint do not revive defenses that were available at the time Defendants filed their Rule 12(b)(6), SCRCPP motion. Initially, Rule 12(g), SCRCPP is identical to the Federal Rule. See Note to Rule 12(g), SCRCPP "This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions." Thus, amendments "will not revive the right to present by motion defenses that were available but were not asserted in timely fashion prior to the amended pleading." C. Wright, A. Miller, E. Cooper, & R. Freer, Federal Practice and Procedure § 1388 (3d ed.2008). Plaintiffs' amendments in this case do not "revive" Defendants' right to file a motion that was procedurally available at the time Defendants filed their Rule 12(b)(6), SCRCPP motion.

Accordingly, the Circuit Court's denial of Appellants' motion to strike should be affirmed on this procedural ground alone, without the need to reach the substantive arguments regarding the applicability of the jury waiver provision.

CONCLUSION

For the foregoing reasons, the Circuit Court's denial of Appellants' motion to strike the jury demand should be AFFIRMED. First, Respondents Devan Chokshi and Vatsal Chokshi, as non-signatories to the Lease Agreement, cannot be bound by its Jury Waiver Provision under well-established South Carolina Supreme Court precedent requiring strict construction of jury trial waivers. Second, the Jury Waiver Provision cannot apply to this lawsuit in its entirety because most defendants are neither signatories nor third-party beneficiaries of the Lease Agreement. Third, the scope of the Jury Waiver Provision was clearly not intended to encompass claims arising from the catastrophic fire that caused the deaths of Freni Hazare and Dhruv Chokshi, particularly since Dhruv Chokshi was a minor who never signed the agreement. Finally, as an additional sustaining ground, the Circuit Court's decision should be affirmed because Appellants failed to timely file their motion to strike under Rule 12, SCRCp, having omitted this defense in their earlier motions.

South Carolina law has consistently protected the constitutional right to a jury trial, particularly for non-signatories to an agreement. The tragic circumstances of this case – involving the deaths of two people in a fire – represent precisely the type of situation where the community's judgment through a jury is most appropriate and where the constitutional right to a jury trial should be preserved. The Circuit Court's denial of Appellants' motion to strike the jury demand should be AFFIRMED.

Respectfully submitted,

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May 20, 2025
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor
Circuit Court Judge

Appellate Case No. 2024-001811

Devan Chokshi, Individually and
as Personal Representative of the
Estate of Freni Hazare, Deceased;
Vatsal Chokshi, Individually and
as Personal Representative of the
Estate of Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC;
PAC-Summerville, LLC;
Beach Investment Fund, L.P.;
Beach Real Estate Funds, LLC;
Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 1-3; Corporation XYZ 1-3, Defendants,
of which BIF-Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

CERTIFICATION OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

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May 20, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836
App No.: 2024-001811

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May 15 2025

SC Court of Appeals

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased, Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC, PAC-
Summerville, LLC, Beach Investment Fund,
L.P., Beach Real Estate Funds, LLC, Beach
Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary
Does 1-3, Corporations XYZ 1-3, Defendants,

Of which, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

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ARGUMENT

I. Devan Chokshi Is Bound by the Lease Agreement as the Personal Representative of Freni Hazari Because a Personal Representative Stands in the Shoes of Decedent.

Respondents seek to avoid the Jury Waiver Provision of the Lease Agreement by emphasizing the fact that Devan Chokshi himself did not sign the Lease Agreement. (Resp't Initial Br. at p. 5, filed March 20, 2025). This argument ignores the legal status afforded to a personal representative and conflates it with that of a mere heir or successor. (*Id.* at 1-2). Respondent Devan Chokshi asserts causes of action in his capacity as the Personal Representative of the Estate of Freni Hazare; by doing so, he has assumed all rights and limitations that Hazare would have had if she had filed the underlying lawsuit herself. South Carolina law is clear that these claims are owned not by the personal representative as an individual but by the estate of the decedent, and the personal representative is bound to the same degree as the estate is bound.

Respondents rely on distinguishable cases related to guarantors and UIM carriers rather than ones that involve a personal representative. (*Id.* at 5-10). Respondents argue that *Broome v. Watts* is instructive because in that case the Supreme Court rejected the UIM carrier's attempts to enforce a waiver provision. That case is inapposite, though, because the relationship between a UIM carrier and a defendant in a lawsuit is a fundamentally different relationship than an estate and its personal representative. *Broome* aptly notes that "[a]lthough the UIM carrier 'steps into the shoes' of the underinsured motorist, it has rights separate and distinct from those of the underinsured motorist." *Broome v. Watts*, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995); *see also Crawford v. Henderson*, 356 S.C. 389, 398, 589 S.E.2d 204, 209 (Ct. App. 2003) ("[T]here is no direct relationship between the UIM carrier's attorney and the named defendant.") Cases governing other types of relationships have no bearing on Respondents' standing to sue and should be disregarded. *See Farmer v. Monsanto Corp.*, 353 S.C. 553, 558 n.2, 579 S.E.2d 325, 328 n.2

(2003) (finding cases governing capacity to bring wrongful death claims inapposite in a class action due to the fundamentally distinct nature of the representative's capacity). Unlike a personal representative, who owes a fiduciary duty to advance the interests of the estate, a UIM carrier who participates in litigation does so "for its own benefit." *Hood v. United Servs. Auto Ass'n*, 445 S.C. 1, 16, 910 S.E.2d 767, 775 (2025), *reh'g denied* (Jan. 24, 2025) (citing S.C. Code Ann. § 38-77-160); *compare Turpin v. Lowther*, 404 S.C. 581, 590, 745 S.E.2d 397, 401 (Ct. App. 2013) (citing S.C. Code Ann. § 62-3-703(a) (2009)).

Respondents go as far as outright denying their representational role in this matter by rejecting the application of the terms "you" and "your" in the Lease Agreement. (Resp't Initial Br. pp. 5-10). Respondents plainly misstate the structure of this litigation when they state that "Ms. Hazare is now deceased and not a party to this lawsuit." (*Id.* at 6). Respondents misunderstand that, for purposes of standing, a personal representative is not a mere heir, successor, or an assignee of the decedent; the personal representative is the decedent. In South Carolina, an action for wrongful death "inheres in the personal representative, and the statutory beneficiaries cannot proceed in their own names." *Lester v. McFaddon*, 415 F.2d 1101, 1103 (4th Cir. 1969); *In Re: Dickey*, 395 S.C. 336, 345 n. 4, 718 S.E.2d 739, 743 n.4 (2011) (noting that the Court of Appeals affirmed the dismissal of a plaintiff's individual claims for wrongful death for lack of capacity). Said differently, a person has no right to bring a claim for wrongful death unless they are duly appointed as the personal representative of the estate and mere heirs do not have legal capacity to assert wrongful death claims. *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970); *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018).

Here, Respondents did not suffer individual harms of their own and have no standing to assert claims personally. Rather, they assert the harms of the Decedents as the basis for their negligence claims. While it is true that they did not sign the Lease Agreement themselves, it is not their claims that are at issue but the claims of the Estates of the Decedents. The Circuit Court committed an error of law by ignoring this principle and holding that Respondent Devan Chokshi is not bound by the jury waiver provision as the Personal Representative of the Estate of Freni Hazare.

II. The Scope of the Jury Waiver Provision Applies to the “Case” in its Entirety.

The incredibly tragic nature of this case does not change the plain language of the Lease Agreement, yet Respondents seek to avoid its binding effect by asserting that this case should receive a special exception. Respondents ask this Court to ignore the inclusion of the words “any lawsuit,” and instead limit the valid jury waiver provision to “issues like day-to-day maintenance and repairs, nonpayment of rent, and so on.” (Resp’t Initial Br. at p. 16). However, “[t]here is no suggestion, either in the language of the Jury Waiver Provision or anywhere in the Lease Agreement, that” the jury waiver provision was intended to be limited to “issues like day-to-day maintenance and repairs, nonpayment of rent, and so on.” (*Id.*). Rather, the valid jury waiver provision provides that “**any lawsuit** . . . shall be to a judge and not a jury.” (R. at p. 135) (emphasis added). Respondents argue that this phrasing amounts to “surplusage” that should be ignored rather than enforced in accordance with its meaning. Yet, this argument asks the Court to do that which it cannot do – pick and choose favorable portions of the Lease Agreement at the expense of less favorable portions.

The only thing specified in the Jury Waiver Provision is that “any lawsuit” shall be tried as a non-jury trial. While Respondents argue that Appellants’ interpretation of this is the “broadest”

interpretation possible, spades should be called spades and the word “any” is by definition broad. It is worth noting that the inclusion of “and/or” in combination with the terms “statute, common law, and/or related to this Lease Contract” in the jury waiver provision supports the position that the waiver applies to any lawsuit based on any of the three categories, any combination of the three, or all of them together. *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 125 (2012) (“When [and/or] is meant, careful drafters would say A or B or both or- if several items were to be listed, they would introduce the list with any one or more of the following.”). In sum, while the underlying facts of this matter are certainly tragic, this does not justify any limitation of the plain language of the Jury Waiver Provision that expressly applies to “any lawsuit.”

III. Decedent Dhruv Chokshi is Bound by the Terms of the Lease Agreement Because He Invoked the Lease Agreement’s Benefits by Landlord-Tenant Claims.

Next, Respondents describe various causes of actions, legal doctrines, statutes, constitutional principles, and legal duties in an attempt to refute that Decedent Chokshi is not bound by the terms of the Lease Agreement. These arguments ignore one important fact – that Respondent Vastal Chokshi affirmatively invoked the Lease Agreement by filing the underlying lawsuit against Appellants and claiming Decedent Chokshi had status as a tenant under the South Carolina Landlord Tenant Act (“SCRLTA”). By invoking the protections of the SCRLTA, and regardless of whatever claims may be asserted, Respondent Vatsal Chokshi necessarily inherits the burdens that come from the Lease Agreement upon which he bases his SCRLTA claims.

The existence of a rental agreement is a prerequisite to have standing to sue under the SCRLTA. S.C. Code Ann. § 27-4-210; *see also Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989). Through their assertion of claims pursuant to the SCRLTA, Respondents allege that it applies and, therefore, necessarily invoke the Lease Agreement. Respondents cannot seek

to reap the benefits of the Lease Agreement by accessing the statutory protection of the SCRLTA while simultaneously taking the position that they are not bound by the valid jury waiver provision of the Lease Agreement. *See Dixon v. Pattee*, 442 S.C. 233, 258, 898 S.E.2d 158, 171 (Ct. App. 2023). Further, at no point have Respondents attempted to deny that the Lease Agreement is the governing document by and between Decedents and Appellants for Decedents' tenancy. Rather, they merely assert that the SCRLTA can somehow apply without consideration of the Lease Agreement. As such, the Circuit Court erred in holding that Decedent Dhruv Chokshi and Respondent Vatsal Chokshi were not bound by the jury waiver provision.

IV. Appellants' Motion to Strike was Timely as Motions to Strike Jury Demands are governed by Rules 38 and 39, SCRCP.

Respondents argue that the Circuit Court's decision should be affirmed because Appellants failed to timely file their Motion to Strike under Rule 12, *SCRCP*. (Resp't Initial Br. at p. 22). Respondents have misconstrued the use of the phrase "motion to strike" and mistakenly interpreted it as a motion governed by Rule 12, *SCRCP*. Motions to strike jury demands are made pursuant to Rules 38 and 39, *SCRCP*. *See, e.g.*, Rule 39(a)(2), *SCRCP* (permitting the court to make a finding as to right of trial by jury "upon motion or its own initiative.") Conversely, motions under Rule 12(f), *SCRCP*, concern "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." *See, e.g.*, Rule 12(f), *SCRCP*. During the May 6, 2024, hearing for Appellants' Motion to Strike, undersigned counsel expressly stated the following:

"This is not a Rule 12[, *SCRCP*] motion to strike. This is, again, a motion as to the mode of trial, which is within the general purview of [the] trial court, and can be granted essentially all the way up until the eve of trial. And there's some Fourth Circuit law on that as well as a couple of cases from the South Carolina Supreme Court where they've had cases go all the way up on appeal on other matters, come back down, and then they filed the motion to strike, and the Court has rules on it and not had any issues with timeliness."

(R. at p. 105). Motions to strike a jury demand may be made at any time prior to trial. *See e.g. Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 447, 814 S.E.2d 643, 651 (Ct. App. 2018) (detailing procedural history in which defendants moved to strike plaintiff's jury demand after 5 years of litigation and after filing motions to dismiss and answers). Federal courts interpreting the substantially similar federal rule agree. *Mowbray v. Zumot*, 536 F. Supp. 2d 617, 621 (D. Md. 2008) (citing *Moore's Federal Practice*, § 39.13[2][c] (3d ed.2007)). As such, Appellants motion was timely.

CONCLUSION

For the reasons set forth herein and in Appellants' Initial Brief, this Court should reverse the Circuit Court's denial of Appellants' Motion to Strike Respondents' Jury Demand.

Dated this 15th day of May 2025.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare, Deceased,
Vatsal Chokshi, Individually and as Personal
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BIF-Summerville Station, LLC, PAC-Summerville, LLC,
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LLC, Beach Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary Does 1-3,
Corporations XYZ 1-3, Defendants,

of which BIF-Summerville Station, LLC, and PAC-
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Appellate Case No. 2024-001811

Appeal From Dorchester County
Heath P. Taylor, Circuit Court Judge

Unpublished Opinion No. 2026-UP-364
Submitted March 2, 2026 – Filed July 15, 2026

AFFIRMED

Morgan S. Templeton and Ford Hamby Thrift, both of

Wall Templeton & Haldrup, PA, of Charleston, for Appellants.

Jason Scott Stevens, of Jason S. Stevens, LLC; Jesse Sanchez, of The Law Office of Jesse Sanchez, LLC; and Christopher J. Gramiccioni, of Kingston Coventry LLC; all of Mount Pleasant, for Respondents.

PER CURIAM: BIF-Summerville Station, LLC (BIF) and PAC-Summerville, LLC (PAC) (collectively, Appellants) appeal the circuit court's order denying their motion to strike Respondents' jury trial demand. We affirm.

"Whether a party is entitled to a jury trial is a question of law." *Pearson v. Richland County*, 445 S.C. 246, 249, 912 S.E.2d 286, 288 (Ct. App. 2025) (quoting *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010)). "As to questions of law, this court's standard of review is de novo." *Id.* (quoting *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019)). "An appellate court may decide questions of law with no particular deference to the trial court." *Id.* (quoting *Verenes*, 387 S.C. at 15, 690 S.E.2d at 772–73).

"Trial by jury is a substantial right and any waiver thereof must be strictly construed." *Broome v. Watts*, 319 S.C. 337, 340, 461 S.E.2d 46, 48 (1995) (quoting *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)). In South Carolina, "[a] party may waive the right to a jury trial by contract." *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 449, 814 S.E.2d 643, 652 (Ct. App. 2018) (alteration in original) (quoting *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014)). However, "[t]he right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication." *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). While jury trial waivers are strictly construed, they are nevertheless construed according to their "plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002), *aff'd as modified on other grounds by Deutsche Bank Nat'l Tr. Co. v. Est. of Houck*, 440 S.C. 409, 892 S.E.2d 280 (2023).

Here, the only parties to the Lease Agreement were Freni Hazare as the tenant and BIF and PAC as the landlords, as they were the only parties listed in section one of the Lease Agreement. It stated,

This Lease Contract (sometimes referred to as the "lease") is between *you* the resident(s) (list all people signing the Lease Contract) . . . and *us*, the owner The terms "you" and "your" refer to all residents listed above. The terms "we," "us," and "our" refer to the owner listed above (or any of owner's successor in interest or assigns).

Reading the plain language of the Lease Agreement, we find the jury trial waiver did not apply to Respondents. By its own express terms, the waiver provision provides that "you" and "we" agree to a bench trial. Reading the Lease Agreement as a whole, it is apparent that "you" refers solely to Hazare and "we" refers to BIF, PAC, or any of their successors or assigns. The contract notably excludes any binding language for the heirs, successors, or assigns of the tenant. Thus, the circuit court properly denied Appellants' motion to strike. *See N. Charleston Joint Venture*, 307 S.C. at 535, 416 S.E.2d at 638 (holding a jury trial waiver clause contained within a lease agreement did not bind tenant's guarantors because "the waiver clause, by its express terms, is applicable only to Landlord and Tenant" and the guarantors were not parties to the lease contract); *see also Penland Auto., LLC v. Dealer Fin. Holdings, LLC*, No. 2023-001053, 2026 WL 191737 (S.C. Ct. App. Jan. 21, 2026) (holding the jury waiver provision from an initial 2016 financing agreement did not apply in a 2020 agreement between the parties when the subsequent agreement lacked express intent to incorporate all of the prior terms of the 2016 agreement); *Keels*, 315 S.C. at 342, 433 S.E.2d at 904 ("The right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication.").

AFFIRMED.¹

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836
App No.: 2024-001811

RECEIVED

Jul 30 2026

SC Court of Appeals

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased, Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased, Respondents,

v.

BIF-Summerville Station, LLC, PAC-
Summerville, LLC, Beach Investment Fund,
L.P., Beach Real Estate Funds, LLC, Beach
Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary
Does 1-3, Corporations XYZ 1-3, Defendants,

Of which, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

APPELLANTS' PETITION FOR REHEARING

Appellants hereby petition this Honorable Court for rehearing pursuant to Rule 221 of the South Carolina Appellate Court Rules. In its Unpublished Opinion, filed on July 15, 2026, the Court affirmed the Circuit Court's order denying Appellants' motion to strike Respondents' jury

demand. Appellants respectfully submit that the Court overlooked or misapprehended the following points:

I. A PERSONAL REPRESENTATIVE IS BOUND BY THE CONTRACTS OF THE DECEDENT INCLUDING WAIVERS.

The Court found that the Lease Agreement did not apply to Respondent Devan Chokshi because the Lease Agreement excludes “any binding language for the heirs, successors, or assigns of [Hazare].” The Court misapprehended Respondent Devan Chokshi’s status. It is immaterial whether Respondent Devan Chokshi is an heir, successor, or assign of Hazare. Respondent Devan Chokshi asserted these claims as the personal representative of the Estate of Decedent Freni Hazare and the Court’s ruling conflated the two concepts. South Carolina law makes clear that “a personal representative of a decedent . . . has the same standing to sue and be sued . . . as his decedent had immediately prior to death.” S.C. Code Ann. § 62-3-703(c). Thus, because Respondent Devan Chokshi sues in a representative capacity, he assumes the same capacity that Decedent Freni Hazare had immediately prior to her death and must be bound by the same limitations that Hazare would have had in bringing suit against Appellants.

a. THE COURT’S HOLDING MISAPPREHENDS THE FUNDAMENTAL DIFFERENCE BETWEEN A PERSONAL REPRESENTATIVE AND A GUARANTOR.

Like the Circuit Court, the Court based its ruling on a case concerning guarantors of a party to a commercial lease agreement. *See N. Charleston Joint Venture v. Kitchen of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 416 S.E.2d 637 (1992). In *N. Charleston Joint Venture*, the Supreme Court held that a guarantor was not bound by a lease because the lease’s terms were applicable only to the landlord and tenant. That case is wholly inapposite because the comparison of a personal representative to a guarantor is the same as comparing apples to oranges. Whereas a personal representative stands in the shoes of the decedent, a guarantor is “separate and distinct”

from the original debtor. *See Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994); *see also CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014). Both the Supreme Court and this Court have recognized:

The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral. The fact that both contracts are written on the same paper or instrument does not affect the independence or separateness of one from the other.

Id. (citing 38 AM.Jur.2d, *Guaranty*, § 4). Importantly, because a guarantor’s obligation is separate from the debtor’s obligation, a guarantor is not entitled to assert the same defenses that are available to the debtor. *CoastalStates Bank*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014). This is, of course, not the case for a personal representative.

Unlike a guarantor, the personal representative of an estate is not separate and distinct from the decedent. Rather, the personal representative inherits the full capacity of the decedent as that person had immediately prior to death. S.C. Code Ann. § 62-3-703. The personal representative is empowered to “prosecute or defend claims,” on behalf of the estate. S.C. Code Ann. § 62-3-715(20). In so doing, the personal representative necessarily is entitled to any claims or defenses to claims that were available to the decedent. Nearly 100 years ago, our Supreme Court explained the role of a personal representative in *Thomason v. Hudgens*, stating, “[a]s the personal ‘representative of the deceased in regard to his personal estate, he (the administrator) has the same property in the goods of the intestate as the intestate himself had when living, **and the same remedies to recover them’ or to prevent their unlawful appropriation by others.**” 161 S.C. 450, 159 S.E. 807, 813 (1931) (emphasis added).

The overarching point that the Court has overlooked is that Respondents have sued in a representative capacity on behalf of the estates of two decedents. They did not inherit their claims as heirs, assigns, or beneficiaries of the Decedents. They are statutorily one and the same with the Decedents. Indeed, Respondents have alleged survival claims under S.C. Code Ann. § 15-5-90. Survival claims belong to the estate, and a personal representative brings such claims not for themselves but “on behalf of an estate.” *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018) (emphasis added). Respondents seek to avoid the obligations of the Decedents while simultaneously claiming their rights in contradiction of South Carolina law.

b. THE COURT OVERLOOKED SOUTH CAROLINA AUTHORITY HOLDING THAT A BAR TO RECOVERY PASSES TO THE ESTATE

The Court’s ruling overlooks longstanding South Carolina caselaw holding that any bar to the decedent’s recovery passes to the decedent’s estate. Favorably citing *Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988), the Supreme Court has confirmed that a personal representative’s right to assert claims against a third party is measured by the rights that the decedent possessed at death. *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 349, 699 S.E.2d 143, 146 (2010). Specifically, the Supreme Court affirmed Judge Anderson’s holding that “a valid release, or other similar acts on [the decedent’s part]” *Id.*, at 349, 699 S.E.2d 146. The terms “waiver” and “release” both mean the act of giving up a right. *State v. Tucker*, 376 S.C. 412 n. 3, 418, 656 S.E.2d 403, 406 n.3 (Ct. App. 2008) (defining waiver); *Brannon v. Palmetto Bank*, 371 S.C. 357, 363, 638 S.E.2d 105, 108 (Ct. App. 2006) (defining release). It cannot be said that a waiver of one’s right to trial by jury does not fall within the scope of those acts that pass to one’s estate when South Carolina law already holds that a complete release of all claims whatsoever passes to the estate at death.

c. THE COURT OVERLOOKED THE PERSUASIVE AUTHORITY OF *COX V. DUKE ENERGY, INC.*

While the Court based its ruling on *N. Charleston Joint Venture*, it overlooked the persuasive authority of *Cox v. Duke Energy, Inc.*, which is substantially more similar to the facts of this matter and further supports the principles already recognized by South Carolina case law. *See Cox v. Duke Energy, Inc.*, 176 F. Supp. 3d 530 (D.S.C. 2016), *aff'd*, 876 F.3d 625 (4th Cir. 2017). In *Cox*, a pilot was arrested after flying over a nuclear power facility and subsequently brought claims against the facility and the arresting officers. The pilot passed away during litigation, and a personal representative was substituted in to maintain the claims. The defendants moved for summary judgment on the basis that the pilot had signed a release agreement stating that he would take no action against law enforcement officials. The personal representative sought to avoid summary judgment based on this agreement by arguing that the personal representative did not sign the agreement, and it did not specify that it applied to the pilot's heirs and assigns. Rejecting this argument, Judge Bruce Hendricks held that "personal representatives are bound by various waivers signed by or attributable to their decedents." *Cox*, at 542 (citing *THI of S.C. at Columbia, LLC v. Wiggins*, 2011 WL 4089435, at *5 (D.S.C. Sept. 13, 2011)). In granting summary judgment, Judge Hendricks correctly held the personal representative to the same standard as the pilot would have been held had he not passed away. This is exactly what the Probate Code instructs and what the Court overlooked in issuing its ruling.

d. THE COURT'S HOLDING GIVES THE PERSONAL REPRESENTATIVE RIGHTS GREATER THAN THE DECEDENT.

The Court further misapprehended the practical impact of affirming the Circuit Court's denial. In holding that Respondents have a right to trial by jury, the Court granted Respondents rights as personal representatives greater than those the Decedents would have had in life. Our Supreme Court has previously held that "while a personal representative stands in the shoes of the

decedent, the personal representative's shoes are no bigger than the decedent's." *Duncan v. Little*, 384 S.C. 420, 427, 682 S.E.2d 788, 791 (2009). In *Duncan*, the Supreme Court held that a bank breached its lease agreement for a safe deposit box when it allowed a personal representative to access a decedent's safe deposit box by drilling the lock. The decedent co-leased the safe deposit box with a third party and the lease agreement required that drilling be performed in the presence of all co-lessees. Because the decedent would not have had the right to drill the lock outside the presence of his co-lessee, the Supreme Court held that the personal representative did not have that right either.

Here, the Court's ruling runs directly in contradiction to the Supreme Court's holding in *Duncan*. In *Duncan*, a non-signatory to a lease agreement for a safe deposit box was bound by its restrictions, but the Court here has freed Respondent from the restrictions that would have applied to Decedent. To better illustrate this issue, the Court should consider the following question: If this were not a case involving a death and instead it were a personal injury claim by a living Freni Hazare against Appellants, would the Court enforce the Jury Waiver Provision? The Circuit Court held that the Jury Waiver Provision was valid and the Court did not disturb that ruling in its Opinion. The Court agrees that Hazare was bound by the Lease Agreement as a tenant and the fact that the tenant is now deceased and it is the Personal Representative of her estate who seeks to enforce her claims and rights should not alter the Court's ruling.

II. A PERSON WHO INVOKES A CONTRACT TO THEIR BENEFIT IS BOUND BY ITS BURDEN.

The Court further found that the Lease Agreement applied only to Decedent Freni Hazare and Appellants and, therefore, held that neither the Estate of Dhruv Chokshi nor Personal Representative Vatsal Chokshi were bound by the Lease Agreement. In so holding, the Court overlooked the nature of Respondent Vatsal Chokshi's claims and the fact that he **invoked** the

Lease Agreement to his benefit in his pleadings. Respondents filed the underlying action claiming violations of the South Carolina Residential Landlord and Tenant Act. Because such claims exist only between landlords and tenants, and because they cannot survive in the absence of a landlord-tenant relationship, Respondent Vatsal Chokshi must be estopped from avoiding the Jury Waiver Provision.

Respondents have alleged violations of the South Carolina Residential Landlord and Tenant Act. This Court has previously held that the Act “creates a cause of action for a tenant of residential property against the landlord . . .” *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009) (citing *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct.App.1989)). Given that the Act creates rights in derogation of common law, this Court is required to strictly construe the statutes contained within the Act. *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). Under the Act, a “tenant” is “a person entitled under a rental agreement to occupy a unit to the exclusion of others.” S.C. Code Ann. § 27-40-210. A person may be a “tenant” in other contexts even without a lease agreement, but for purposes of claims brought under the Act, a person must establish tenancy pursuant to a rental agreement. S.C. Code Ann. § 27-40-110 (“This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement . . .”)

This implication is exemplified by Respondents’ specific allegations that Appellants willfully violated the Act and Respondents’ claim for attorney’s fees pursuant to S.C. Code Ann. § 27-40-610(b). Respondents may only recover on these claims if they establish a tenancy relationship through a lease agreement. *See Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997) (“Attorney’s fees are not recoverable unless authorized by contract or statute.”) Without such a relationship, Respondents’ claims would fail as a matter of law. *See Wilson v.*

Willis, 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019) (estoppel may apply when a claim cannot stand independently of the contract). Respondents, therefore, have directly and specifically invoked the benefit of the Lease Agreement. South Carolina law is clear that with the benefit comes the burden of a contract and Respondent Vatsal Chokshi must be bound by the Lease Agreement and its terms, including the Jury Waiver Provision.

III. THE COURT’S OPINION DOES NOT ADDRESS APPELLANTS’ ARGUMENT THAT THE JURY WAIVER PROVISION APPLIES TO THE ENTIRE CASE.

Appellants raised in their appeal an argument that the Jury Waiver Provision applies to the case in its entirety, but the Court did not address this issue in its Opinion. The plain language of the Lease Agreement and the Jury Waiver Provision states that “a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.” (R., p. 135). It has long been held that “when a contract is clear and unambiguous, the language alone determines its force and effect.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016). The court’s function is to enforce a contract as written, and the court cannot rewrite the contract or substitute its own construction. *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 294 S.C. 158, 160, 363 S.E.2d 235, 236 (Ct. App. 1987). The Court must enforce the plain language of the Lease Agreement and apply the Jury Waiver Provision to the lawsuit as a whole.

CONCLUSION

The Court’s Opinion misapprehends the fundamental nature of a personal representative and prior case law governing the capacity of a personal representative to sue. A personal representative cannot have any rights greater than those the Decedents would have had in life. Further, because Respondents’ claims directly invoke and rely upon the South Carolina Residential

Landlord and Tenant Act, Respondents cannot avoid the burden of the Lease Agreement and must be bound by its terms, including the Jury Waiver Provision.

Dated this 30th day of July, 2026.

WALL TEMPLETON & HALDRUP, P.A.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jul 30 2026
SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Heath P. Taylor, Circuit Court Judge

Case No.: 2023-CP-18-00836
App No. 2024-001811

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare,
Deceased; Vatsal Chokshi, Individually and
as Personal Representative of the Estate of
Dhruv Chokshi, Deceased

Respondents,

v.

BIF Summerville Station, LLC; PAC-
Summerville, LLC; The Beach Co.,; Beach
Investment Fund, L.P.; Beach Real Estate
Funds, LLC; Lincoln BP Management, Inc.;
Lincoln Property Company National, LLC;
John/Mary Does 103; and Corporations XYZ
103; SRNG, LLC; Asset Living Southeast,
LLC, F/K/A/ JMG Realty, LLC; Shook
Associates Architects, F/K/A/ Shook &
Associates, and David Shook,

Defendants.

Of whom, BIF Summerville Station, LLC, and PAC-Summerville, LLC are the Appellants.

CERTIFICATE OF SERVICE

I certify that on this 30th day of July, 2026, I have served the **Appellant's Petition for Rehearing** upon Counsel via electronic mail only, on July 30, 2026, addressed to their attorneys of record, Jason S. Stevens, 81 Vincent Drive Mt. Pleasant, South Carolina 29464, Christopher J.

Gramiccioni, Kingston Coventry Law, 825 Lowcountry Blvd., Suite 106, Mount Pleasant, SC 29464, Harold L. Lichten (Pro Hac Vice) Shannon Liss-Riordan (Pro Hac Vice), Olena Savytska (Pro Hac Vice), Lichten & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston, Massachusetts 02116, Attorneys for Devan Chokshi, individually and as personal representative of the estate of Freni Hazare, deceased, Vatsal Chokshi, individually and as personal representative of the estate of Dhruv Chokshi, deceased and upon all other counsel of record at the addresses listed below.

Dated this 30th day of July, 2026.

WALL TEMPLETON & HALDRUP, P.A.

s/ Ford H. Thrift

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July 30, 2026

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Jul 30 2026

SC Court of Appeals

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Devan Chokshi v. BIF Summerville Station, LLC, et al*
Case No: 2023-CP-18-00836
App No.: 2024-001811

Dear Ms. Kitchings:

Enclosed herewith please find the original and one (1) copy of the Appellant's Petition for Rehearing. Also enclosed herewith is one (1) copy of the Certificate of Service of Appellant's Petition for Rehearing on all counsel of record with the enclosed.

Please file the original and return the filed-stamped copy. Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.



Ford H. Thrift

FHT/sjs

enclosures

cc: All Counsel of Record (w/ *enclosures, via electronic mail only*)

The South Carolina Court of Appeals

Devan Chokshi, Individually and as Personal
Representative of the Estate of Freni Hazare, Deceased,
Vatsal Chokshi, Individually and as Personal
Representative of the Estate of Dhruv Chokshi,
Deceased, Respondents,

v.

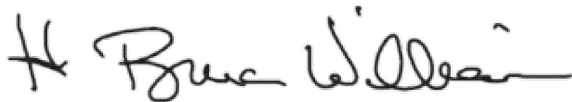
BIF-Summerville Station, LLC, PAC-Summerville, LLC,
Beach Investment Fund, L.P., Beach Real Estate Funds,
LLC, Beach Co., Lincoln BP Management, Inc., Lincoln
Property Company National LLC, John/Mary Does 1-3,
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of which BIF-Summerville Station, LLC, and PAC-
Summerville, LLC are the Appellants.

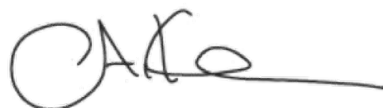
Appellate Case No. 2024-001811

ORDER

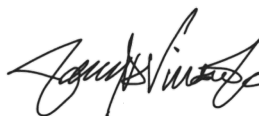
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

Christopher J. Gramiccioni, Esquire

Jason Scott Stevens, Esquire

Ford Hamby Thrift, Esquire

Morgan S. Templeton, Esquire

Jesse Sanchez, Esquire

The Honorable Heath P. Taylor