

ORIGINAL

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

L. Casey Manning, Fifth Circuit Court Judge

Vista Investments, LLC

.....**Appellant,**

v.

Tompkins & McMaster, LLP and John Gregg McMaster, Jr.

.....**Respondents.**

RECORD ON APPEAL

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RECEIVED

FEB 20 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No. 2009 CP 40-8410

Vista Investments, LLC,)

Petitioner,)

vs.)

Tompkins & McMaster, LLP,)

Respondent.)

**RULE TO SHOW CAUSE AND ORDER
FOR SUPPLEMENTAL PROCEEDINGS**

2011 APR 25 PM 12:07
CLERK OF COURT
& G.S.

Counsel for the Petitioner has moved the Court pursuant to South Carolina Code Annotated §§15-39-310, *et seq.*, to issue an Order for Supplementary Proceedings against the Respondent, Tompkins & McMaster, LLP.

It appears to this Court that there is just cause for granting the motion.

IT IS THEREFORE ORDERED that the motion seeking proceedings supplementary to a judgment is Granted.

IT IS FURTHER ORDERED:

1. The Respondent Tompkins & McMaster, LLP is directed to appear before the Honorable Joseph M. Strickland, Master-in-Equity for Richland County, located at Richland County Judicial Center, 1701 Main Street, Room 212, Columbia, South Carolina on April 25, 2011 at 3:00 a.m.(p.m.), to answer questions under oath concerning Respondent Tompkins & McMaster, LLP's assets and to show cause why its property and/or assets should not be applied toward satisfaction of the judgment set out in the Petitioner's Petition, and to show cause why a Receiver of its

Courtroom 2-10

property should not be appointed, pursuant to the provisions of South Carolina Code §15-39-430.

2. Respondent Tompkins & McMaster, LLP is ordered to produce the following:

- (a) All records, titles, or deeds concerning any real property owned, or previously owned, by Tompkins & McMaster, LLP or in which Tompkins & McMaster, LLP possesses an ownership interest.
- (b) All records or titles concerning any personal property owned by Tompkins & McMaster, LLP.
- (c) All of Tompkins & McMaster, LLP's banking or brokerage records or such records of any business in which Tompkins & McMaster, LLP has an ownership interest, including but not limited to savings account books, check ledgers, bank statements, money market account statements, statements from brokerage firms, certificates of title, certificates of deposit, stock certificates and bonds from January 1, 2008 through the present date.
- (d) All of Tompkins & McMaster, LLP's financial records, or any such records for any business in which Tompkins & McMaster, LLP has an ownership interest, including but not limited to general ledgers, cash disbursement journals, balance sheets, income statements, and accounts receivable journals from January 1, 2008 through the present date.
- (e) All loan applications submitted by Tompkins & McMaster, LLP to any lending institution from January 1, 2008 through the present date.
- (f) Any financial statement prepared for Tompkins & McMaster, LLP by any bookkeeper or accountant from January 1, 2008 through the present date.
- (g) All records, titles, or invoices for equipment owned by Tompkins & McMaster, LLP and used in their day-to-day operations.
- (h) A copy of Tompkins & McMaster, LLP's state and federal income tax returns for the years 2008, 2009 and 2010.
- (i) List of all vehicles owned by Tompkins & McMaster, LLP and a list of all parties who have a security interest in same.

- (j) Any and all documents related to a financing statement filed on July 28, 2010 which lists John Gregg McMaster as a secured party.
- (k) Payment history for all payments made to John Gregg McMaster since July 2009.

3. The Richland County Sheriff's Department or any person over the age of 18 who is not a party to this action is hereby authorized to serve this Order on the Respondent Tompkins & McMaster, LLP.

4. The Respondent Tompkins & McMaster, LLP is restrained and enjoined from changing, altering, destroying or defacing any of the instruments, and from making any transfer or other disposition of property not exempt by law from execution, unless such transfer is approved by this Court.

IF YOU DO NOT APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.



Honorable Alison Renee Lee
Chief Administrative Judge, Fifth Judicial
Circuit

February 28, 2011

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4006176

Vista Investments LLC

Tompkins And McMaster LLP

PLAINTIFF(S)

John Gregg McMaster Jr

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard; decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Voluntary Dismissal); ☐ 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 _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

Defendant's Motion for Summary Judgment is GRANTED.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form, addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and resellers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 2/7/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Michelle Alicia Clayton

Frank B McMaster

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP-40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AND
GRANTING DEFENDANTS MOTION FOR
SUMMARY JUDGMENT

2013 MAY 16 11:11
JEANETTE M. MCBRIDE
CLERK OF COURT

This matter comes before the Court pursuant to two motions: Plaintiff's Motion for Default Judgment and Defendants' Motion for Summary Judgment (collectively "the Motions"). A hearing on the Motions was held before me on March 12, 2012. Plaintiff and Defendants, by and through their attorneys, appeared and participated in the hearing. After carefully considering the pleadings, the legal memoranda submitted, the arguments of counsel, and the applicable law, for reasons more fully set forth below the Court hereby **DENIES** Plaintiff's Motion for Default Judgment and **GRANTS** Defendants' Motion for Summary Judgment.

BACKGROUND

Plaintiff, Vista Investments ("Vista Investments" or "Plaintiff"), is a judgment creditor of the Defendant, Tompkins & McMaster, LLP ("T&M"). On August 10, 2010, T&M confessed judgment in favor of Vista Investments in the amount of \$201,125.24.¹ The confession resulted from a 2009 lawsuit filed in the Richland County Court of Common Pleas, styled *Vista Investments, LLC v. Tompkins & McMaster, LLP*, Civil

¹ T&M has satisfied \$36,000 of the judgment as Vista Investments has accepted conveyance of certain real property.

Action Number 2009-CP-40-8410, which was filed after T&M vacated the property it was leasing from Vista Investments, where it operated its law practice. When T&M vacated, its lease had not yet expired, and it owed back rent.

Upon obtaining the judgment against T&M, Vista Investments started the process to collect its judgment. Supplemental proceedings were held before the Honorable Joseph M. Strickland, Master-in-Equity for Richland County, on April 25, 2011, at which a representative of T&M appeared and answered questions concerning T&M's assets. At the hearing, there was testimony that on or about July 28, 2010, T&M filed a UCC financing statement, purporting to give John Gregg McMaster, Jr. ("McMaster") a security interest in certain collateral ("the UCC").² The UCC covers most of T&M's assets, including its accounts receivables and its operating account at First Citizens Bank.

On September 19, 2011, Vista Investments filed this lawsuit against the Defendants to have the UCC declared null, void, and of no effect under the Statute of Elizabeth. As the Court understands it, the crux of the lawsuit is that T&M gave McMaster a security interest in T&M's property in order to defeat T&M's creditors, including Vista Investments.³ The Amended Complaint was served upon Frank McMaster, as counsel for the Defendants, on September 29, 2011. The Defendants were granted an extension of time until November 28, 2011 to respond. On November 28, 2011, the Defendants filed a Motion for Summary Judgment, asserting that the present action to set aside the UCC was barred by the principles of res judicata and/or collateral estoppel. On December 1, 2011, Vista Investments filed a Motion for Entry of

² A copy of the transcript was submitted to the Court.

³ The UCC stands in Plaintiff's way of collecting its judgment.

Default and Default Judgment, based on the Defendants failure to answer or otherwise respond to the Amended Complaint. On December 5, 2011, Entry of Default was entered against the Defendants. On December 28, 2011, the Defendants filed a Return and Memorandum to Plaintiffs' Motion for Default Judgment.

CONCLUSIONS OF LAW

I. Motion for Default Judgment

Plaintiff argues that Defendants have failed to answer or otherwise defend this lawsuit. The Court disagrees.

Under Rule 55(a) of the South Carolina Rules of Civil Procedure, if a party "has failed to plead or otherwise defend as provided as provided by these rules, . . . the clerk shall enter his default." Rule 55(a), SCRCP. Rule 12(a) of the South Carolina Rules of Civil Procedure states, "A defendant shall serve his answer within 30 days after the service of the complaint upon him." Rule 12(a), SCRCP. Plaintiff maintains that Defendants' motion for summary judgment is not a responsive pleading to the complaint, and therefore, the Defendants have been in default since November 28, 2011. Whereas, the Defendants argue their motion for summary judgment is based upon Rule 12(b) and Rule 8(e). In response, Plaintiff claims that Defendants' motion for summary judgment does not even reference Rule 12 and is not grounded in any of the eight defenses listed in Rule 12(b). More specifically, Plaintiff argues that the affirmative defenses of res judicata and collateral estoppel, which form the basis for Defendants' motion for summary judgment, are not Rule 12(b) defenses that can be made by motion, and thus the motion is truly a motion for summary judgment, and a motion for summary judgment is not an answer, nor is it a valid pleading or defense for

purposes of Rule 55(a). Plaintiff cites a Fourth Circuit case, *Educational Servs., Inc. v. Maryland State Bd. of Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983), for the proposition that a motion, other than a Rule 12(b) motion, is not deemed a responsive pleading for purposes of altering the time limits for filing an answer. While the Court has considered Plaintiff's arguments, I find them to be without merit and conclude that Defendants' Motion for Summary Judgment, which includes the affirmative defenses of res judicata and collateral estoppel, is sufficient under the South Carolina Rules of Civil Procedure to withstand the entry of default. Therefore, the Defendants cannot be held to be in default, and the Motion for Default Judgment is denied.

II. Motion for Summary Judgment

Defendants argue that the present case is barred by the affirmatives of res judicata and collateral estoppel. As explained below, the Court agrees.

a. Res Judicata

Res judicata "bars a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former lawsuit." *Pye v. Aycock*, 325 S.C. 426, 432, 480 S.E.2d 455, 458 (Ct. App. 1997). To establish res judicata, three elements must be proven: "(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Judy v. Judy*, 393 S.C. 160, 168, 712 S.E.2d 408, 412 (2011).⁴ The purpose of *res judicata* is to ensure

⁴ South Carolina our courts have utilized at least four tests in determining whether a claim should have been raised in a prior suit:

(1) when there is identity of the subject matter in both cases; (2) when the first and second cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; (3) when there is the same evidence in both cases; and recently, (4) when the claims arise out of the same transaction or occurrence that is the subject of the prior action.

Judy, 393 S.C. at 172, 712 S.E.2d at 414 (citing James F. Flanagan, South Carolina Civil Procedure 649-50 (2d ed. 1996)).

that “no one should be twice sued for the same cause of action.” *Id.* (quoting *First Nat’l Bank of Greenville v. U.S. Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)).

Plaintiff claims the aforementioned elements are not satisfied and therefore *res judicata* does not apply. Plaintiff argues that McMaster, who is named in this action to set aside the UCC, was not a party in the other action and could not have been because he was not a party to T&M’s lease. Plaintiff also disputes that the facts, claims, and damages are the same in both actions. Plaintiff maintains the first action focused on the terms of the lease and T&M’s breach and establishing a judgment against T&M; whereas, the present case centers on T&M’s grant of a security interest to McMaster and having that set aside as a fraudulent conveyance. Plaintiff argued that the evidence for the two actions is different, with the evidence for the first action consisting of the lease, T&M’s payment history, and the date T&M vacated contrasted to the evidence for this action, focusing on the circumstances surrounding the UCC. Plaintiff also contends that, while it sought to establish a money judgment against T&M for walking out on its lease, that is not the purpose of the present action, which instead seeks to have the UCC T&M gave McMaster set aside. Further, Plaintiff claims the narrow issue in this case —whether T&M gave McMaster a security interest to defraud T&M—has not previously been adjudicated.

The Court understands Plaintiff’s arguments but finds them to be without merit. This is Plaintiff’s third legal action. The first action was to recover for T&M’s breach of the lease agreement, and the second was Plaintiff’s attempt to collect through supplemental proceedings the judgment it obtained as a result of T&M’s breach. Now, the Plaintiff has brought this action to try to set aside the UCC that T&M gave to

McMaster. The Court agrees with Defendant that this is an impermissible second bite of the apple. Plaintiff should have tried to have the UCC set aside in either of the two previous legal actions — the action to obtain a judgment against T&M for its breach or the supplemental proceedings to collect the judgment. While John G. McMaster was not a party in either of the two previous actions, the Court nonetheless finds the same parties were involved in all of the actions since McMaster is one of the three partners of T&M and the sole equity partner. The Court also thinks the evidence is the same for both actions and there is nothing to differentiate what Plaintiff hopes to accomplish in this action, setting aside the UCC, from the judgment it obtained in the previous action. The Court is mindful of the purpose of *res judicata*— to ensure that “no one should be twice sued for the same cause of action.” *First Nat’l Bank of Greenville*, 207 S.C. at 24, 35 S.E.2d at 56. Plaintiff could have and should have raised the issue of setting aside the UCC given to McMaster earlier. Because Plaintiff did not, the doctrine *res judicata* now precludes Plaintiff from doing so.

b. Collateral Estoppel

Collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding. *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997). “Under the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Id.*

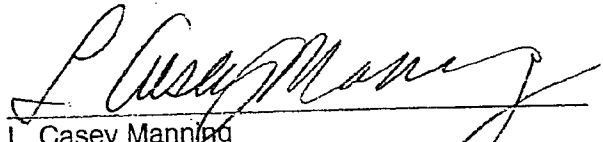
Plaintiff argues that whether T&M gave McMaster a security interest for the purpose of hindering or defrauding T&M was not actually litigated in the lease dispute

action (or the supplemental proceedings), nor was that issue necessary to the resolution of either, but it is to this lawsuit. Plaintiff maintains that the UCC was simply of no consequence until now. In the absence of such litigation and a consequent determination of the merits of whether T&M gave McMaster a security interest to put its assets beyond Plaintiff's reach, Plaintiff claims there is no collateral effect in this action. The Court disagrees. First, the Court finds that the confession of judgment and the supplemental hearings constitute final judgments. The Court also concludes that the issue of whether T&M gave McMaster a security interest in its collateral was finally determined by the confession of judgment and during the supplemental proceedings. Therefore, collateral estoppel bars Plaintiff from relitigating this issue.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Default Judgment is denied, and Defendants' Motion for Summary Judgment is granted.

AND IT IS SO ORDERED.


L. Casey Manning
Chief Administrative Judge for the Fifth Judicial
Circuit

Columbia, South Carolina

May 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.

**COMPLAINT
(NON-JURY)
(BREACH OF LEASE AGREEMENT)**

FILED
2009 NOV 30 PM 2:15
JEANETTE W. McBRIDE
C.C. JUDGE & G.S.

The above-named Plaintiff, complaining of the Defendant herein, would respectfully allege and show as follows:

1. Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.

2. Defendant Tompkins & McMaster, LLP ("Defendant") is a limited liability partnership organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

3. Jurisdiction, venue and subject matter of this Complaint are properly before this Court because Defendant's principal place of business is in Richland County, South Carolina.

4. On November 30, 2004, Defendant entered into a Lease Agreement with Plaintiff for the purpose of leasing 4,217 square feet located at 1333 Main Street in Columbia, South Carolina known as Suite 225.

5. On August 26, 2005, Defendant executed a First Amendment of Office Lease to include an additional 1,666 square feet located at 1333 Main Street in Columbia, South Carolina known as Suite 240. A copy of the Lease Agreement and First Amendment of Office Lease are

attached hereto and incorporated herein as Exhibit A and shall together be hereinafter referred to as the "Lease Agreement."

6. The Lease Agreement expires on April 30, 2011.

7. Pursuant to the terms of Lease Agreement, monthly Base Rent due from Defendant for the period May 1, 2009 until April 30, 2010 is \$7,353.75 per month. On May 1, 2010 until April 30, 2011 the monthly Base Rent increases to \$7,598.88 per month.

8. On July 31, 2009, Defendant vacated Suite 225 and Suite 240, and at that time Defendant had failed to make payments pursuant to the Lease Agreement and owed Plaintiff \$25,295.47 in back Base Rent and late charges.

9. Suite 225 and Suite 240 are presently vacant and have not been relet.

10. Defendant has also failed to make payments pursuant to the Lease Agreement for the months of August, September, and October 2009.

11. As of October 1, 2009, the total amount of due is \$50,630.14, which includes Base Rent and late charges.

12. Defendant is in default, as provided in Paragraph 20.1 by reason of its failure to comply with the terms of said Agreement. Specifically, Defendant abandoned Suite 225 and Suite 240 before the expiration of the lease term, and Defendant has failed to make monthly Base Rent payments in accordance with the terms of the Lease Agreement.

13. Despite demand, Defendant has failed to cure its default. Plaintiff has provided any and all required notices of default to Defendant.

14. The entire remaining balance of the full rental for the entire remaining term of the Lease Agreement from November 1, 2009 through April 30, 2011 is \$ 135,309.10.

15. As a result of the Defendant's default under the Lease Agreement, to include a failure to pay Base Rent, Plaintiff is informed and believes that it should recover from Defendant all damages incurred by reason of Defendant's default, including at least the following:

- a. \$50,630.14 for amounts due pursuant to the terms of the Lease Agreement through October 1, 2009;
- b. the remaining amounts due for the entire remaining term of the Lease Agreement through April 30, 2011;
- c. costs to repair;
- d. late charges/ interest;
- e. any Additional Rent due under the terms of the Lease Agreement;
- f. leasing brokers' commissions and other costs, which Plaintiff has incurred or might incur in leasing the Premises to a new tenant.

16. Plaintiff has placed this matter with the undersigned attorneys for collection. Plaintiff is informed and believes, that under the terms of the Lease Agreement, Plaintiff is entitled to collect all expenses and costs, including reasonable attorneys fees, incurred in the collection of the amounts due Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendant for the full amount found to be due the Plaintiff under the Lease Agreement, together with costs, interest, attorney's fees and for such other and further relief as this Court may deem just and proper.

TURNER PADGET GRAHAM & LANEY P.A.

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November 24, 2009

ATTORNEYS FOR VISTA INVESTMENTS, LLC

CBRE

CB RICHARD ELLIS
Columbia

P. O. Box 1837
Columbia, SC 29202
Phone: 803.779.7777
Fax: 803.931.8989

1333 MAIN STREET BUILDING

OFFICE LEASE AGREEMENT

TOMPKINS AND MCMASTER, LLP

SUITE 225

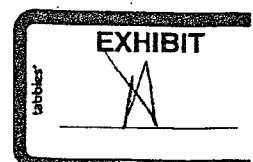


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**OFFICE LEASE AGREEMENT
1333 MAIN STREET BUILDING
COLUMBIA, SOUTH CAROLINA**

THIS LEASE AGREEMENT ("Lease") is entered into as of the Date, and by and between the Landlord and Tenant, identified in Section 1.1 below.

1. BASIC LEASE DEFINITIONS, EXHIBITS AND ADDITIONAL DEFINITIONS.

1.1 Basic Lease Definitions.

In this Lease, the following defined terms have the meanings indicated.

- a) "Date" means the date of full execution of this Lease, which is November 30, 2004.
- b) "Landlord" means Vista Investments, LLC.
- c) "Tenant" means Tompkins and McMaster, LLP.
- d) "Premises" means those premises known as Suite 225 located on the 2nd floor of the Building and identified on Exhibit A which is hereby deemed to be 4,217 rentable square feet.
- e) "Use" means general office and no other use.
- f) "Term" means the duration of this Lease, which will be approximately six (6) years and two months, beginning on the "Commencement Date" (as defined in Section 3.1 below) and ending on the "Expiration Date" (as defined below), unless terminated earlier or extended further as provided in this Lease. The "Expiration Date" means (i) if the Commencement Date is the first day of a month, the anniversary of the day immediately preceding the Commencement Date; or (ii) if the Commencement Date is not the first day of a month, the anniversary of the last day of the month in which the Commencement Date occurs.
- g) "Scheduled Commencement Date" means March 1, 2005.
- h) "Base Rent" means the rent payable according to Section 4.1, which will be in an amount per month applicable during each lease year as follows:

Period	Annual Base Rent per RSF	Annual Base Rent	Monthly Base Rent
Commencement Date - Expiration Date			
03/01/05-04/30/05	\$0.00/RSF	\$0.00	\$0.00
05/01/05-04/30/06	\$13.00/RSF	\$54,821.00	\$4,568.42
05/01/06-04/30/07	\$13.50/RSF	\$56,929.50	\$4,744.13
05/01/07-04/30/08	\$14.00/RSF	\$59,038.00	\$4,919.83
05/01/08-04/30/09	\$14.50/RSF	\$61,146.50	\$5,095.54
05/01/09-04/30/10	\$15.00/RSF	\$63,255.00	\$5,271.25
05/01/10-04/30/11	\$15.50/RSF	\$65,363.50	\$5,446.96

- i) ~~"Tenant's Share" means, with respect to the calculation of Additional Rent according to Section 4.2, 2.07696% (0.0207696). The Building is deemed to contain 203,037 rentable square feet.~~
- j) "Base Year" means Landlord's Fiscal Year ending December 31, 2005.
- k) "Security Deposit" means ****None****.
- l) "Landlord's Building Address" means:
Vista Investments, LLC
C/o CB Richard Ellis/Columbia
1441 Main Street, Ste 400
PO Box 1837
Columbia, SC 29202
Attn: Property Manager
- m) "Landlord's General Address" means:
Vista Investments, LLC
C/o CB Richard Ellis/Columbia
1441 Main Street, Ste 400
PO Box 1837

Columbia, SC 29202

- n) "Landlord's Billing Address" means:
Vista Investments, LLC
C/o CB Richard Ellis/Columbia
1441 Main Street, Ste 400
PO Box 1837
Columbia, SC 29202
- o) "Tenant's Notice Address" means,
Tompkins & McMaster, LLP
PO Box 7337
Columbia, SC 29202
- p) "Tenant's Invoice Address" means:
Tompkins & McMaster, LLP
PO Box 7337
Columbia, SC 29202
- q) "Brokers" means the following brokers who will be paid by Landlord in accordance with a separate agreement: CB Richard Ellis/Columbia, which will also pay the following broker: Edens & Avant Real Estate Services.
- r) "Liability Insurance Amount" means \$2,000,000.00.

1.2 Exhibits.

The Exhibits listed below are attached to and incorporated in this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Exhibits will control. The Exhibits to this Lease are:

- Exhibit A - Plan Delineating the Premises
- Exhibit B - Possession and Leasehold Improvements Agreement
- Exhibit C - Occupancy Estoppel Certificate
- Exhibit D - Rules and Regulations
- Exhibit E - Cleaning Standards
- Exhibit F - Parking

1.3 Additional Definitions.

In addition to those terms defined in Section 1.1 and other sections of this Lease, the following defined terms when used in this Lease have the meanings indicated:

- (a) "Additional Rent" means the Rent payable according to Section 4.2.
- (b) "Building" means the office and retail building commonly known as the 1333 Main Street Building, located on the Land and in which the Premises are located.
- (c) "Building Business Hours" means the hours from 8:00 a.m. to 6:00 p.m. on Monday through Friday and from 9:00 a.m. to 4:00 p.m. on Saturday, excluding statutory or legal holidays.
- (d) "Common Areas" means certain interior and exterior common and public areas located on the Land and in the Building as may be designated by Landlord for the non-exclusive use in common by Tenant, Landlord and other tenants, and their employees, guests, customers, agents and invitees. If the Building is connected to other buildings by underground tunnels or elevated bridges over public streets, Common Areas will include such bridges and tunnels; provided, however, that Landlord and owners of such other buildings will have the right in their sole discretion to adopt rules and regulations relating to bridge and tunnel use.
- (e) "Expenses" means the aggregate of any and all costs (other than those expressly excluded below) incurred or accrued during each Fiscal Year according to generally accepted accounting principles for operating, managing, administering, equipping, securing, protecting, repairing, replacing, renewing, cleaning, maintaining, decorating, inspecting, and providing water, sewer and other energy and utilities to the Land, Building and Common Areas; administrative fees in an amount equal to 4% of the gross revenue of the Building (provided that if Landlord elects to use the services of a managing agent, Expenses will include, instead of administrative fees, management fees calculated in the same manner as administrative fee); fees and expenses (including reasonable attorney's fees) incurred in contesting the validity of any Laws that would cause an increase in Expenses; depreciation on personal property and moveable equipment which is or should be capitalized on Landlord's books; occupancy costs associated with the Building management office, consisting of Base Rent costs plus the proportionate share of Expenses and Taxes attributable to such office; Capital expenses made by reason of insurance requirements and costs (whether capital or not) that are incurred in order to conform to changes

subsequent to the Date in any Laws, or that are made by reason of insurance requirements, or that are intended to reduce Expenses or the rate of increase in Expenses (such costs will not be included in Expenses for the Base Year and will otherwise be charged to Expenses in annual installments over the useful life of the items for which such costs are incurred [in the case of items required by changes in Laws or insurance requirements] or over the period Landlord reasonably estimates that it will take for the savings in Expenses achieved by such items to equal their cost [in the case of items intended to reduce Expenses or their rate of increase], and in either case together with interest, each Fiscal Year such costs are charged to Expenses, on the unamortized balance at an interest rate of 1% in excess of the average Prime Rate in effect during such Fiscal Year). Expenses will not include (1) mortgage principal or interest; (2) ground lease payments; (3) leasing commissions; (4) costs of advertising space for lease in the Building; (5) costs for which Landlord is reimbursed by insurance proceeds or from tenants of the Building (other than such tenants' regular contributions to Expenses); (6) any depreciation or capital expenditures (except as expressly provided above); (7) legal fees incurred for negotiating leases or collecting rents; (8) costs directly and solely related to the maintenance and operation of the entity that constitutes the Landlord, such as accounting fees incurred solely for the purpose of reporting Landlord's financial condition; and (9) costs of operating, repairing or maintaining the underground parking facilities serving the Building so long as Landlord charges separately for parking therein. For each Fiscal Year during the Term that less than one hundred percent (100%) of the Building is occupied, the amount by which those Expenses that vary with occupancy (such as cleaning costs and utilities) would have increased had the Building been 100% occupied and operational and had all Building services been provided to all tenants will be reasonably determined and the amount of such increase will be included in Expenses for such Fiscal Year.

- (f) "Fiscal Year" means Landlord's fiscal year, which ends on December 31st of each calendar year and may be changed at Landlord's discretion.
- (g) "Force Majeure" means any acts of God, governmental restriction, strikes, labor disturbances, shortages of materials or supplies, or any other cause or event beyond the parties' reasonable control (but not because of insolvency, lack of funds or other financial cause), by which either party is hindered or prevented from performance of any act under this Lease, then performance of such act shall be excused for the period during which such performance is rendered impossible; and time for performance shall be extended accordingly. However, except as otherwise provided herein, Force Majeure shall not relieve either party from any obligation under this Lease. No such delay shall constitute an actual or constructive eviction in whole or in part, or entitle Tenant to any abatement or diminution of rents or other charges due, except as otherwise provided herein, or impose any liability upon Landlord or its agents because of inconvenience to Tenant or injury to or interruption of Tenant's business.
- (h) "Land" means the real property located at 1333 Main Street, Richland County, Columbia, South Carolina, described on Schedule 1 attached hereto, less any portions that may be conveyed separately from the Building by Landlord from time to time, plus any additional real property located proximate to the Land that may be operated by Landlord from time to time in conjunction with the Land.
- (i) "Laws" means any and all present or future federal, state or local laws, statutes, ordinances, rules, regulations or orders of any and all governmental or quasi-governmental authorities having jurisdiction.
- (j) "Lease Year" means each successive period of 12 calendar months during the Term, ending on the same day and month (but not year, except in the case of the last Lease Year) as the day and month on which the Expiration Date will occur. If the Commencement Date is not the first day of a month, the first Lease Year will be greater than 12 months by the number of days from the Commencement Date to the last day of the month in which the Commencement Date occurs.
- (k) "Prime Rate" means the rate of interest announced from time to time by Citibank, N.A., or any successor to it, as its prime rate. If Citibank, N.A. or any successor to it ceases to announce a prime rate, Landlord will designate a reasonably comparable financial institution for purposes of determining the Prime Rate. If more than one Prime Rate is announced by Citibank, N.A. or its successor, then Landlord shall designate the applicable Prime Rate.
- (l) "Rent" means the Base Rent, Additional Rent and all other amounts required to be paid by Tenant under this Lease.
- (m) "Taxes" means the amount incurred or accrued during each Fiscal Year according to generally accepted accounting principles for that portion of the following items that is allocable to the Land and Building: all ad valorem real and personal property taxes and assessments, special or otherwise, levied upon or with respect to the Land or Building, the personal property used in operating the Building, and the rents and additional charges payable by tenants of the Building, and imposed by any taxing authority having jurisdiction; all taxes, levies and charges which may be assessed, levied or imposed in replacement of, or in addition to, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or calculated by or based upon the Land or Building, the leasehold estate of Landlord or the tenants of the Building, or the rents and other charges payable by such tenants (only if replacing ad valorem real and personal property taxes); capital and place-of-business taxes, and other similar taxes assessed relating to the Building; and any reasonable expenses incurred by Landlord in attempting to reduce or avoid an increase in Taxes, including, without limitation, reasonable legal fees and costs. Taxes will not include any estate, franchise, business, sales, transit, profit, corporate, inheritance, gift, excise, real property transfer, gains, recording or income taxes of Landlord. Tenant acknowledges that Taxes may increase during the Term and that if the Building or Land, or both, are

currently subject to a Taxes abatement program and such program ceases to benefit the Building or Land, or both, during the Term, Taxes will increase.

2. GRANT OF LEASE.

2.1 Demise.

Subject to the terms, covenants, conditions and provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises, together with access thereto through the Common Areas and a non-exclusive right to use the Common Areas, for the Term.

2.2 Quiet Enjoyment.

Landlord covenants that during the Term Tenant will have quiet and peaceable possession of the Premises, subject to the terms, covenants, conditions and provisions of this Lease, and Landlord will not disturb such possession except as expressly provided in this Lease.

2.3 Landlord and Tenant Covenants.

Landlord covenants to observe and perform all of the terms, covenants and conditions applicable to Landlord in this Lease. Tenant covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Tenant in this Lease.

3. TERM.

3.1 Commencement Date.

"Commencement Date" means the first day of the Term, which will be the earlier of (i) the first day on which Tenant occupies the Premises for the regular conduct of its business; or (ii) the Scheduled Commencement Date (as the same may be extended according to Section 3.3 below).

3.2 Early Occupancy.

Tenant has no right to enter the Premises until Landlord tenders possession. With Landlord's express written consent, Tenant may occupy the Premises for regular conduct of Tenant's business prior to the Scheduled Commencement Date. If Tenant takes possession of any part of the Premises for business purposes prior to the Scheduled Commencement Date with Landlord's prior written consent, all of the covenants and conditions of the Lease will bind both parties with respect to such portion of the Premises, and Tenant will pay Landlord Rent for the period of such occupancy according to Section 4 of the Lease at the rates applicable to the first Lease Year (excluding any periods of excused or free rent, if any), prorated for the time and portion of the Premises so occupied. No early occupancy under this Section 3.2 will change the Commencement Date or the Expiration Date.

3.3 Delayed Occupancy.

If, due to the holdover of a prior occupant or other reason beyond Landlord's control, Landlord fails to tender possession of the Premises to Tenant on or before the Scheduled Commencement Date, Landlord will not be in default or liable in damages to Tenant, nor will the obligations of Tenant be affected, provided, however, that:

- (a) the Commencement Date will be extended automatically by one day for each day of the period after the Scheduled Commencement Date to the day on which Landlord tenders possession of the Premises to Tenant less any portion of that period attributable to Tenant's Delays as more particularly described in Exhibit B; and
- (b) if Landlord does not tender possession of the full Premises to Tenant on or before the date 30 days after the Scheduled Commencement Date (plus any period of delay caused by Force Majeure and/or Tenant's Delays as described in Exhibit B), Tenant will have the right to terminate the Lease by delivering written notice of the termination to Landlord not more than 30 days after such tender deadline date.

Upon a termination under Section 3.3(b) above, each party will, upon the other's request, execute and deliver an agreement in recordable form containing a release and surrender of all right, title and interest in and to the Lease; neither Landlord nor Tenant will have any further obligations to each other; and Landlord will refund to Tenant any sums paid to Landlord by Tenant in connection with the Lease. Such postponement of the commencement of the Term and such termination and refund right will be in full settlement of all claims that Tenant might otherwise have against Landlord by reason of Landlord's failure to tender the Premises by the Scheduled Commencement Date.

3.4 Surrender.

Upon the expiration or other termination of the Term, Tenant will immediately vacate and surrender possession of the Premises in good order, repair and conditions, except for ordinary wear and tear. Upon the expiration or other termination of the Term, Tenant agrees to remove (a) all changes, additions and improvements to the Premises the removal of which Landlord requested or approved according to Section 9.1 at the time Landlord consented to their installation, and (b) all of Tenant's trade fixtures, office furniture, office equipment and other personal property. Tenant will pay Landlord within 30 days of receipt of invoice the cost of repairing any damage to the Premises or Building caused by the installation or removal of any such items. Any of Tenant's property remaining in the Premises (except computers, software, and files ("Tenant's Remaining Equipment")) which shall be moved out and placed in storage at

Tenant's expense for no more than 30 days (after which the same shall be deemed abandoned), both parties agreeing that Landlord shall not be held liable for and is not an insurer of any damage caused by the moving, storage, or condition of Tenant's Remaining Equipment and Landlord does not guarantee the safety and/or confidentiality of Tenant's Remaining Equipment) will be conclusively deemed to have been abandoned by Tenant and may be appropriated, stored, sold, destroyed or otherwise disposed of by Landlord without notice or obligation to account to or compensate Tenant, and Tenant will pay Landlord on demand all costs incurred by Landlord relating to such abandoned property.

3.5 Holding Over.

Tenant understands that it does not have the right to hold over at any time and Landlord may exercise any and all remedies at law or in equity to recover possession of the premises, as well as any damages incurred by Landlord, due to Tenant's failure to vacate the Premises and deliver possession to Landlord as required by this Lease. If Tenant holds over after the Expiration Date with Landlord's prior written consent, Tenant will be deemed to be a tenant from month to month, at a monthly Base Rent, payable in advance, equal to 100% of monthly Base Rent payable during the last year of the Term, and Tenant will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy. If Tenant holds over after the Expiration Date without Landlord's prior written consent, Tenant will be deemed a tenant at sufferance, at a daily Base Rent, payable in advance, equal to 150% of the Base Rent per day payable during the last year of the Term, and Tenant will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a tenancy at sufferance.

3.6 Option to Renew.

Landlord grants Tenant one option to renew lease for an additional five (5) year term at the then market rate. In order to exercise this option, Tenant must give Landlord written notice no less than one hundred and eighty (180) days prior to lease expiration.

4. RENT.

4.1 Base Rent.

Commencing on the Commencement Date and then throughout the Term, Tenant agrees to pay Landlord Base Rent according to the following provisions. Base Rent during each Lease Year (or portion of a Lease Year) will be payable in monthly installments in the amount specified for such Lease Year (or portion), in advance, on or before the first day of each and every month during the Term. However, if the Term commences on other than the first day of a month or ends on other than the last day of a month, Base Rent for such month will be appropriately prorated.

4.2 Additional Rent.

Tenant agrees to pay Landlord, as Additional Rent, in the manner provided below for each Fiscal Year subsequent to the Base Year that contains any part of the Term, Tenant's Share of (i) the amount by which Expenses for such Fiscal Year exceed Expenses for the Base Year ("Additional Expenses"); and (ii) the amount by which Taxes for such Fiscal Year exceed Taxes for the Base Year ("Additional Taxes").

(a) **Estimated Payments.** Prior to or as soon as practicable after the beginning of each Fiscal Year subsequent to the Base Year, Landlord will notify Tenant of Landlord's estimate of Tenant's Share of Additional Expenses and Additional Taxes for the ensuing Fiscal Year. On or before the first day of each month during the ensuing Fiscal Year, Tenant will pay to Landlord, in advance, 1/12 of such estimated amounts, provided that until such notice is given with respect to the ensuing Fiscal Year, Tenant will continue to pay on the basis of the prior Fiscal Year's estimate until 30 days after such notice is given. In the month Tenant first pays based on Landlord's new estimate, Tenant will pay to Landlord 1/12 of the difference between the new estimate and the prior year's estimate for each month which has elapsed since the beginning of the current Fiscal Year. If at any time or times it appears to Landlord that Tenant's Share of Additional Expenses or Tenant's Share of Additional Taxes for the then current Fiscal Year will vary from Landlord's estimate by more than 5%, Landlord may, by notice to Tenant, revise its estimate for such year and subsequent payments by Tenant for such year will be based upon the revised estimate. Landlord's revision of Tenant's share of Additional Expenses and Additional Taxes for the then current Fiscal year shall be limited to 2 times per Fiscal Year.

(b) **Annual Settlement.** As soon as practicable (but no later than 120 days) after the close of each Fiscal Year subsequent to the Base Year, Landlord will deliver to Tenant its statement of Tenant's Share of Additional Expenses and Additional Taxes for such Fiscal Year. If on the basis of such statement Tenant owes an amount that is less than the estimated payments previously made by Tenant for such Fiscal Year, Landlord will either refund (within 30 days) such excess amount to Tenant or credit such excess amount against the next payment(s), if any, due from Tenant to Landlord provided that in no instance will there be any credit or refund below the Base Year amount for either Expenses or Taxes. If on the basis of such statement Tenant owes an amount that is more than the estimated payments previously made by Tenant for such Fiscal Year, Tenant will pay the deficiency to Landlord within 30 days after the delivery of such statement. If this Lease commences on a day other than the first day of a Fiscal Year or terminates on a day other than the last day of a Fiscal Year, Tenant's Share of Additional Expenses and Additional Taxes applicable to the Fiscal Year in which such commencement or termination occurs will be prorated on the basis of the number of days within such Fiscal Year that are within the Term.

~~(c)(ii) Final Payment. Tenant's obligation to pay the Additional Rent and Landlord's obligation to refund or credit any overpayment of Additional Rent provided for in this Section 4.2 which is accrued but not paid for periods prior to the expiration or early termination of the Term will survive such expiration or early termination. Prior to or as soon as practicable after the expiration or early termination of the Term (but no later than 120 days after the close of the Fiscal Year in which the expiration or early termination of the Term occurred), Landlord may submit an invoice to Tenant stating Landlord's estimate of the amount by which Tenant's Share of Additional Expenses and Additional Taxes through the date of such expiration or early termination will exceed Tenant's estimated payments of Additional Rent for the Fiscal Year in which such expiration or termination has occurred or will occur. Tenant will pay the amount of any such excess to Landlord within 30 days after the date of Landlord's invoice and Landlord will promptly refund any overpayment to Tenant, provided that in no instance will there be any refund below the Base Year amount for either Expenses or Taxes.~~

4.3 Other Taxes.

Tenant will reimburse Landlord within 30 days after receipt of invoice for any and all taxes payable by Landlord (other than net income taxes and taxes included in Taxes) whether or not now customary or within the contemplation of Landlord and Tenant: (a) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises; (b) upon or measured by Rent; (c) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Premises; and (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it is not lawful for Tenant to reimburse Landlord, the Base Rent payable to Landlord under this Lease will be revised to yield to Landlord the same net rental after the imposition of any such tax upon Landlord as would have been payable to Landlord prior to the imposition of any such tax.

4.4 Terms of Payment.

All Base Rent, Additional Rent and other Rent will be paid to Landlord in lawful money of the United States of America, at Landlord's Billing Address or to such other person or at such other place as Landlord may from time to time designate in writing, without notice or demand and without right of deduction, abatement or setoff, except as otherwise expressly provided in this Lease.

4.5 Interest on Late Payments.

All amounts payable under this Lease by Tenant to Landlord, if not paid within ten (10) days of when due, will bear interest from the due date until paid at the lesser of the highest interest rate permitted by law or 5% in excess of the then-current Prime Rate.

4.6 Right to Accept Payments.

No receipt by Landlord of an amount less than Tenant's full amount due will be deemed to be other than payment "on account", nor will any endorsement or statement on any check or any accompanying letter effect or evidence an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any right of Landlord. No payments by Tenant to Landlord after the expiration or other termination of the Term, or after the giving of any notice (other than a demand for payment of money) by Landlord to Tenant, will reinstate, continue or extend the Term or make ineffective any notice given to Tenant prior to such payment. After notice or commencement of a suit, or after final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums of Rent due under this Lease, and such receipt will not void any notice or in any manner affect any pending suit or any judgment obtained.

5. CONDITION OF PREMISES.

Subject to any provision of this Lease concerning the making of Leasehold Improvements by Landlord in the Premises (if any), by taking possession of the Premises hereunder, Tenant accepts the Premises as being in good order, condition and repair, and otherwise as is, where is and with all faults, except for latent defects in the Building structure, exterior windows or Building Systems to the extent they exist in the Premises prior to buildout of the initial leasehold improvements. Except as may be expressly set forth in this Lease, including Exhibit B, Tenant acknowledges that neither Landlord, nor any employee, agent or contractor of Landlord has made any representation or warranty concerning the Land, Building, Common Areas or Premises, or the suitability of either for the conduct of Tenant's business. The Premises do not include any areas above the finished ceiling or below the finished floor covering installed in the Premises or any other areas not shown on Exhibit A as being part of the Premises. Landlord reserves, for Landlord's exclusive use, any of the following (other than those installed for Tenant's exclusive use) that may be located in the Premises: janitor closets, stairways and stairwells; fan, mechanical, electrical, telephone and similar rooms; and elevator, pipe and other vertical shafts, flues and ducts.

6. USE AND OCCUPANCY.

6.1 Use.

(a) Tenant agrees to use and occupy the Premises only for the Use described in Section 1.1(e), or for such other purpose as Landlord expressly authorizes in writing.

- (b) The use of the Premises permitted under Section 6.1(a) shall not include, and Tenant shall not use, or permit the use of, the Premises or any part thereof for: (i) the offices or business of a governmental or quasi-governmental bureau, department or agency, foreign or domestic, including an autonomous governmental corporation or diplomatic or trade mission; or (ii) conduct or maintenance of any gambling or gaming activities or any political activities or any club activities, or a school or employment or placement agency.

6.2 Compliance.

- (a) Tenant agrees to use the Premises in a safe, careful and proper manner, and to comply with all Laws applicable to Tenant's use and occupancy of the Premises. If, (i) due to the particular nature or manner of any use or occupancy of the Premises by Tenant (as opposed to general office use), or (ii) to a condition created by Tenant, or a breach of Tenant's obligations hereunder or the negligence of Tenant or its invitees, or (iii) the requirement of installation or modification of any gas, smoke or fire detector or alarm or any sprinkler or other system to prevent or extinguish fire or combustion or to promote fire safety, any improvements or alterations to the Premises or Building or changes in the services provided by Landlord according to Section 7 are required to comply with any Laws, or with requirements of Landlord's insurers, then Tenant will pay all costs of the required improvements, alterations or changes in services.
- (b) Landlord and Tenant agree that, during the Term, each will comply with all Laws governing, and all commercially reasonable procedures established by Landlord for, the use, abatement, removal, storage, disposal or transport of any substances, chemicals or materials declared to be, or regulated as, hazardous or toxic under any applicable Laws ("Hazardous Substances") and any required or permitted alteration, repair, maintenance, restoration, removal or other work in or about the Premises, Building or Land that involves or affects any Hazardous Substances. Each party will indemnify and hold the other and the other's "Affiliates" (as defined in Section 13.1) harmless from and against any and all claims, costs and liabilities (including reasonable attorneys' fees) arising out of or in connection with any breach by such party of its covenants under this Section 6.2(b). The parties' obligations under this Section 6.2(b) will survive the expiration or early termination of the Term. Anything in this Lease to the contrary notwithstanding, in the event that any Hazardous Substance is discovered by Tenant within the Premises after the Date of this Lease, Tenant shall promptly notify Landlord, and shall consult with Landlord concerning appropriate procedures to be followed. If the Hazardous Material was not introduced into the Premises by Tenant or its employees, agents, or contractors and the Hazardous Material was introduced into the Premises by landlord or its employees, agents, or contractors, then Landlord shall, to the extent required by Law, perform any necessary remedial work. To the extent that the party that introduced the Hazardous Material is in privity of contract with Landlord or Tenant and has a contractual obligation to remedy and/or remove such Hazardous Material, then the party in such privity will use commercially reasonable efforts to enforce such contractual obligations. If the Hazardous Material was introduced into the Premises by Tenant or its employees, agents, or contractors, then Tenant shall to the extent required by Law, at Tenant's sole cost and expense, perform any necessary remedial work.
- (c) The parties hereby agree that throughout the Term of this Lease, the Landlord shall be responsible for compliance with the Americans With Disabilities Act of 1990 and all regulations issued by the U.S. Attorney General or other authorized agencies under the authority of such Act ("ADA") in the Common Areas of the Building (including but not limited to elevators and core area restrooms) and that Tenant shall be responsible for compliance with the ADA in the Premises, except exterior windows, exterior structural walls, floor slab and Base Building systems. Tenant agrees that in the event it provides any plans or specifications for improvements, alterations or additions to the Premises pursuant to the terms and conditions of this Lease, Tenant shall be obligated to cause such plans to conform to all then applicable requirements of the ADA and shall otherwise cause them to be in accordance with the agreements contained in this Section 6.2(c) and Tenant shall notify Landlord of any particular requirements that Tenant may have to enable Landlord to meet its obligations under this Section 6.2(c). Landlord and Tenant covenant and agree to reimburse and indemnify each other for any expenses incurred by the indemnified party due to the indemnified party's failure to conform to the requirements of the ADA as agreed to in this Section 6.2(c), including, but not limited to, the cost of making any alterations, renovations or accommodations required by the ADA, or any governmental enforcement agency, or any court, any and all fines, civil penalties and damages awarded resulting from a violation of the ADA and all reasonable legal expenses incurred in defending such claims made under the ADA or in enforcing this indemnification, including, but not limited to, reasonable attorney's fees. Such indemnification shall survive the expiration or termination of this Lease.

6.3 Occupancy.

Tenant will not do or permit anything which obstructs or interferes with other tenants' rights or with Landlord's providing Building services, or which injures or annoys other tenants. Tenant will not cause, maintain or permit any nuisance in or about the Premises and will keep the Premises free of debris, and anything of a dangerous, noxious, toxic or offensive nature or which could create a fire hazard or undue vibration, heat or noise. If any item of equipment, building material or other property brought into the Building by Tenant or on Tenant's request causes a dangerous, noxious, toxic or offensive effect (including an environmental effect) and in Landlord's reasonable opinion such effect will not be permanent but will only be temporary and is able to be eliminated, then Tenant will not be required to remove such item, provided that Tenant promptly and diligently causes such effect to be eliminated, pays for all costs of elimination and indemnifies Landlord against all liabilities arising from such

effect. Tenant will not make or permit any use of the Premises which may jeopardize any insurance coverage, increase the cost of insurance or require additional insurance coverage. If by reason of Tenant's failure to comply with the provisions of this Section 6.3(a) any insurance coverage is jeopardized, then Landlord will have the option to terminate this Lease or (b) insurance premiums are increased, then Landlord may require Tenant to immediately pay Landlord as Rent the amount of the increase in insurance premiums. Tenant shall not use electricity in the Premises in excess of the capacity of any of the electrical conductors and equipment in or otherwise serving the Premises, or add to or alter the electrical system servicing the Premises.

7. SERVICES AND UTILITIES.

7.1 Landlord's Standard Services.

During the Term, Landlord will operate and maintain the Building in compliance with all applicable Laws which are not the obligation of Tenant and according to those standards from time to time prevailing for first-class office buildings in the area in which the Building is located. Landlord will provide the following services according to such standards, the costs of which will be included in Expenses to the extent provided in Section 1.3(f):

- (a) repair, maintenance and replacement of all the exterior and structural elements of the Building and structural elements of the Building within the Premises, including the exterior windows, the Common Areas and all general mechanical, plumbing and electrical systems installed in the Building, but excluding those portions of any mechanical, plumbing or electrical systems that exclusively serve the Premises, such as (by means of illustration only) supplemental heating, ventilation and air-conditioning ("HVAC") systems, kitchen plumbing and equipment, plumbing for restrooms exclusively used by Tenant and wall plugs and switches within the Premises ("Exclusive Systems").
- (b) heating and air conditioning the Premises and Common Areas during Building Business Hours, at temperatures and in amounts as may be reasonably required for comfortable use and occupancy under normal business operations with "Customary Office Equipment" (as used in this Lease, "Customary Office Equipment" will include typewriters, calculators, dictation recorders, desk top personal computers, small reproduction machines and similar devices and equipment; but will not include any machines, devices or equipment that adversely affect the temperature otherwise maintained in the Premises such as, e.g., data processing or heavy-duty computer or reproduction equipment) subject to compliance with all applicable voluntary and mandatory regulations and laws. If Tenant requires heating or air-conditioning for the Premises outside Building Business Hours, Landlord will furnish the same for the hours specified in a request from Tenant (which request will be made at the time and in the manner reasonably designated by Landlord for such requests from time to time), and for this service Tenant will pay Landlord, within 10 days after the date of Landlord's invoice, the hourly rate reasonably determined by Landlord from time to time;
- (c) cold water for small kitchens, hot and cold water for washrooms not exclusively used by Tenant and water for drinking fountains (excluding water for air conditioning units for exclusive use by Tenant);
- (d) janitorial services to the Premises and Building Common Areas substantially according to the standards described on Exhibit E, exclusive of Holidays; (but excluding any janitorial services to any lunchrooms or cafeterias in the Premises);
- (e) passenger elevators for access to and from the floor(s) on which the Premises are located;
- (f) toilet facilities, including necessary washroom supplies sufficient for Tenant's normal use;
- (g) electric lighting for all Common Areas that require electric light during the day or are open at night, including replacement of tubes and ballasts in lighting fixtures and a reasonable amount of electricity for normal office use in the Premises with existing receptacles not to exceed 3 watts connected per rentable square foot of the Premises (inclusive of Building standard lighting and HVAC) or 9 kilowatts per rentable square foot of the Premises per year; and
- (h) replacement of tubes and ballasts in those Building standard lighting fixtures installed in the Premises.

7.2 Additional Services.

- (a) If Tenant requires electric current, water or any other energy in excess of the amounts provided by Landlord according to Sections 7.1 and 7.2, such excess electric, water or other energy requirements will be supplied only with Landlord's consent, which consent will not be unreasonably withheld. If Landlord grants such consent, Tenant will pay all costs of meter service and installation of facilities or professional services necessary to measure and/or furnish the required excess capacity. Tenant will also pay the entire cost at the prevailing rate of such additional electricity, water or other energy so required.
- (b) If Tenant installs any machines, equipment or devices in the Premises that do not constitute Customary Office Equipment and such machines, equipment or devices cause the temperature in any part of the Premises to exceed the temperature the Building's mechanical system would be able to maintain in the Premises were it not for such machines, equipment or devices, then Landlord reserves the right to install supplementary air conditioning units in the Premises, and Tenant will pay Landlord all costs of installing, operating and maintaining such supplementary units.
- (c) If Tenant requires any janitorial or cleaning services in excess of the amounts provided by Landlord according to Section 7.1 (such as cleaning services beyond normal office janitorial services for areas such as kitchens, computer rooms, medical or dental examination rooms or other special use areas), Landlord will provide such excess services to Tenant within a reasonable period after Tenant's request made to Landlord's Building manager ("Property Manager"), provided that such excess services are

- available from Landlord's regular janitorial or cleaning contractor. Tenant will pay the cost of such excess services at prevailing rates. Landlord will also provide, within a reasonable period after Tenant's request made to the Property Manager, at Tenant's cost and to the extent available to Landlord, replacement of bulbs, tubes or ballasts in any non-Building standard lighting fixtures in the Premises.
- (d) Tenant will pay as Rent, within 30 days after the date of Landlord's invoice, all costs which may become payable by Tenant to Landlord under this Section 7.3.

7.3 Interruption of Services.

If any of the services provided for in this Section 7 are interrupted or stopped, Landlord will use reasonable due diligence to resume the service; provided, however, no irregularity or stoppage of any of these services will create any liability for Landlord (including, without limitation, any liability for damages to Tenant's personal property caused by any such irregularity or stoppage), constitute an actual or constructive eviction or, except as expressly provided below, cause any abatement of the Rent payable under this Lease or in any manner or for any purpose relieve Tenant from any of its obligations under this Lease. If, due to reasons within Landlord's reasonable control, any of the services required to be provided by Landlord under this Section 7 should become unavailable and should remain unavailable for a period in excess of 60 hours after notice of such unavailability from Tenant to Landlord, and if such unavailability should render all or any portion of the Premises where Tenant is actually unable to use any or all of the Premises for the normal conduct of its business ("Untenantable"), then Tenant's Rent will equitably abate in proportion to the portion of the Premises so rendered Untenantable for so long as such services remain unavailable for such reasons. Without limiting those reasons for an irregularity or stoppage of services that may be beyond Landlord's control, any such irregularity or stoppage that is required in order to comply with any Laws will be deemed caused by a reason beyond Landlord's control.

8. REPAIRS.

8.1 Repairs Within the Premises.

Subject to the terms of Sections 6, 7.1(a), 12 and 14, and except to the extent Landlord is required or elects to perform or pay for certain maintenance or repairs according to those sections, Tenant will, at Tenant's own expense: (a) at all times during the Term, maintain the Premises (excluding exterior Building plate glass and Building structural systems within the Premises), all fixtures and equipment in the Premises and those portions of any plumbing or electrical systems that exclusively serve the Premises (the "Exclusive Systems") in good order and repair and in a condition that complies with all applicable Laws; and (b) promptly and adequately repair all damage to the Premises and replace or repair all of such fixtures, equipment and portions of the Exclusive Systems that are damaged or broken, all under the reasonable supervision and subject to the prior reasonable approval of Landlord for Base Building systems and structure. Such repair and/or replacement must be to Building Standard. All work done by Tenant or its contractors (which contractors will be subject to Landlord's reasonable approval) will be done in a firstclass workmanlike manner using only grades of materials at least equal in quality to Building standard materials and will comply with all insurance requirements and all applicable Laws.

8.2 Failure to Maintain Premises.

If Tenant fails to perform any of its obligations under Section 8.1, then Landlord may perform such obligations and Tenant will pay as Rent to Landlord the cost of such performance, including an amount sufficient to reimburse Landlord for overhead and supervision, within 10 days after the date of Landlord's invoice. For purpose of performing such obligations, or to inspect the Premises, Landlord may enter the Premises upon not less than 10 days' prior notice to Tenant (except in cases of actual or suspected emergency, in which case no prior notice will be required) without liability to Tenant for any loss or damage incurred as a result of such entry, provided that Landlord will take reasonable steps in connection with such entry to minimize any disruption to Tenant's business or its use of the Premises.

8.3 Notice of Damage.

Tenant will notify Landlord promptly after Tenant learns of (a) any fire or other casualty in the Premises; (b) any damage to or defect in the Premises, including the fixtures and equipment in the Premises, for the repair of which Landlord might be responsible; and (c) any damage to or defect in any parts of appurtenances of the Building's sanitary, electrical heating, air conditioning, elevator or other systems located in or passing through the Premises.

9. ALTERATIONS.

9.1 Alterations by Tenant.

Tenant may from time to time at its own expense make changes, additions and improvements to the Premises (individually or collectively referred to as "Alterations") to better adapt the same to its business, provided that any such Alterations (a) will comply with all applicable Laws; (b) will be made only with the prior written consent of Landlord, which consent will not be unreasonably withheld; (c) will equal or exceed Building standard; (d) will be carried out only by persons selected by Tenant and approved in writing by Landlord, which approval will not be unreasonably withheld; (e) do not exceed or adversely affect the capacity, maintenance, operating cost or integrity of the Building's structure or any of its heating, ventilating, air conditioning, plumbing, mechanical, electrical, communications or other systems; (f) is approved by the holder of any Encumbrance if so required by the terms of the Encumbrance; (g) does not violate any agreement which affects the Building or binds Landlord; and (h) does not alter the exterior of the Building in any way. Tenant will maintain, or will cause the persons

performing any such work to maintain, worker's compensation insurance and public liability and property damage insurance (with Landlord named as an additional insured), in amounts, with companies and in a form reasonably satisfactory to Landlord, which insurance will remain in effect during the entire period in which the work will be carried out. If requested by Landlord, Tenant will deliver to Landlord proof of all such insurance. Tenant will promptly pay, when due, the cost of all such work and, upon completion, Tenant will deliver to Landlord, to the extent not previously received by Landlord, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials. Tenant shall pay the Construction Administration Fee on all Alterations. Tenant will also pay any increase in property taxes on, or fire or casualty insurance premiums for, the Building attributable to such Alterations and the cost of any modifications to the Building outside the Premises that are required to be made in order to make the Alterations to the Premises. Tenant, at its expense, will have promptly prepared and submitted to Landlord reproducible as-built CAD plans of any such Alterations upon its completion. All Alterations to the Premises, whether temporary or permanent in character, made or paid for by Landlord or Tenant will, without compensation to Tenant, become Landlord's property upon installation. If at the time Landlord consents to their installation, Landlord requests or approves the removal by Tenant of any such Alterations upon termination of this Lease, Tenant will remove the same upon termination of this Lease as provided in Section 3.4. All other Alterations will remain Landlord's property upon termination of this Lease and will be relinquished to Landlord in good condition, ordinary wear and tear excepted.

9.2 Alterations and Entry by Landlord.

Landlord may from time to time make repairs, changes, additions and improvements to the Building, Common Areas and those Building systems necessary to provide the services described in Section 7, and for such purposes Landlord may enter the Premises upon not less than 10 days' prior notice to Tenant (except in cases of actual or suspected emergency, in which case no prior notice will be required) without liability to Tenant for any loss or damage incurred as a result of such entry, provided that in doing so Landlord will not disturb or interfere with Tenant's use of the Premises and operation of its business any more than is reasonably necessary in the circumstances and will repair any damage to the Premises caused by such entry. No permanent change, addition or improvement made by Landlord will materially impair access to the Premises. In addition, Landlord and its agents, employees and contractors shall have the right to enter the Premises during Tenant's normal business hours, without undue interference with the conduct of Tenant's business therein, to inspect and examine the Premises and to exhibit the Premises to prospective purchasers or tenants (but as to prospective tenants only during the last twelve months of the Term).

10. LIENS.

Tenant agrees to pay before delinquency all costs for work, services or materials furnished to Tenant for the Premises, the nonpayment of which could result in any lien against the Land or Building. Tenant will keep title to the Land and Building free and clear of any such lien. Tenant will immediately notify Landlord of the filing of any such lien or any pending claims or proceedings relating to any such lien and will indemnify and hold Landlord harmless from and against all loss, damages and expenses (including reasonable attorneys' fees) suffered or incurred by Landlord as a result of such lien, claims and proceedings. In case any such lien attaches, Tenant agrees to cause it to be immediately released and removed of record (failing which Landlord may do so at Tenant's sole expense), unless Tenant has a good faith dispute as to such lien in which case Tenant may contest such lien by appropriate proceedings so long as Tenant deposits a lien transfer bond (if applicable) drawn on a bondsman acceptable to Landlord or deposits with Landlord a bond or other security in an amount reasonably acceptable to Landlord which may be used by Landlord to release such lien. Upon final determination of any permitted contest, Tenant will immediately pay any judgment rendered and cause the lien to be released.

11. INSURANCE.

11.1 Landlord's Insurance.

During the Term, Landlord will provide and keep in force the following insurance:

- (a) commercial general liability insurance relating to Landlord's operation of the Building, for personal and bodily injury and death, and damage to others' property; and
- (b) all risk or fire insurance (including standard extended coverage endorsement perils, leakage from fire protective devices and other water damage) relating to the Land and Building (but excluding Tenant's fixtures, furnishings, equipment, personal property, documents, files, inventory, stock-in-trade and work products and all leasehold improvements in the Premises);
- (c) and loss of rental income insurance or loss of insurable gross profits commonly insured against by prudent landlords; and
- (d) such other insurance (including boiler and machinery insurance) as Landlord reasonably elects to obtain or any Building mortgagee requires.

Insurance effected by Landlord under this Section 11.1 will be in amounts which Landlord from time to time reasonably determines sufficient or any Building mortgagee requires; will be subject to such deductibles and exclusions as Landlord reasonably determines; will, in the case of insurance under Sections 11.1 (b), (c) and (d), permit the release of Tenant from certain liability under Section 13.1 (as long as such permission can be obtained without material additional cost and without rendering void the protection afforded by the policy); and will otherwise be on such terms and conditions as Landlord from time to time reasonably determines sufficient. Tenant

acknowledges that Landlord's loss of rental income insurance policy provides that payments by the insurer may be limited to a period of one year following the date of any damage or destruction and that no insurance proceeds will be payable in the case of damage or destruction caused by an occurrence not included in the policies described in Sections 11.1(b), (c) and (d).

11.2 Tenant's Insurance.

During the term, Tenant will provide and keep in force the following insurance:

- (a) commercial general liability insurance relating to Tenant's business (carried on, in or from the Premises) and Tenant's use and occupancy, for personal and bodily injury and death, and damage to others' property, with limits of not less than the Liability Insurance Amount for any one accident or occurrence; and
- (b) all risk or fire insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) relating to Tenant's fixtures, furnishings, equipment, documents, files, work products, inventory, stock-in-trade and all leasehold improvements in the Premises on a full replacement cost basis in amounts sufficient to prevent Tenant from becoming a co-insurer and subject only to such deductibles and exclusions as Landlord may reasonably approve. Notwithstanding what is set forth herein, Landlord hereby approves a deductible for Tenant in the amount of \$100,000; and
- (c) if any boiler or machinery is operated in the Premises, boiler and machinery insurance.

Landlord and the holder of any Encumbrance will be named as an additional insureds in the policy described in Section 11.2(a), which will include cross liability and severability of interests clauses and will be on an "occurrence" (and not a "claims made") form. Landlord and the holder of any Encumbrance will be named as a loss payee, as its interest may appear, in the policies described in Sections 11.2(b) and (c), and such policies will permit the release of Landlord and the holder of any Encumbrance from certain liability under Section 13.2. Tenant's insurance policies will otherwise be upon such terms and conditions as Landlord from time to time reasonably requires. Tenant will file with Landlord, on or before the Commencement Date and before the expiration date of expiring policies, such copies of either an insurance binder (countersigned by the insurer), Evidence of Insurance (in form Accord 27), a binding certificate or other proofs, as may be reasonably required to establish Tenant's insurance coverage in effect from time to time and payment of premiums. If Tenant fails to insure or pay premiums, or to file satisfactory proof as required, Landlord may, upon a minimum of 2 business days' notice, effect such insurance and recover from Tenant on demand any premiums paid.

12. DAMAGE OR DESTRUCTION.

12.1 Termination Options.

If the Premises or the Building are damaged by fire or other casualty Landlord will, promptly after learning of such damage, notify Tenant in writing of the time necessary to repair or restore such damage, as estimated by Landlord's architect, engineer or contractor. If such estimate states that repair or restoration of all of such damage that was caused to the Premises or to any other portion of the Building necessary for Tenant's occupancy cannot be completed within 180 days from the date of such damage (or within 30 days from the date of such damage if such damage occurred within the last 12 months of the Term), then Tenant will have the option to terminate this Lease. If such estimate states that repair or restoration of all such damage that was caused to the Building cannot be completed within 180 days from the date of such damage, or if such damage occurred within the last 12 months of the Term and such estimate states that repair or restoration of all such damage that was caused to the Premises or to any other portion of the Building necessary for Tenant's occupancy cannot be completed within 30 days from the date of such damage, or if such damage is not insured against by the insurance policies required to be maintained by Landlord according to Section 11.1, then Landlord will have the option to terminate this Lease. Any option to terminate granted above must be exercised by written notice to the other party given within 10 days after Landlord delivers to Tenant the notice of estimated repair time. If either party exercises its option to terminate this Lease, the Term will expire and this Lease will terminate 10 days after notice of termination is delivered; provided, however, that Rent for the period commencing on the date of such damage until the date this Lease terminates will be reduced to the reasonable value of any use or occupation of the Premises by Tenant during such period and Landlord will be entitled to all proceeds of the insurance policy described in Section 11.2(b) applicable to any damaged leasehold improvements in the Premises (excluding any proceeds for Tenant's fixtures, furnishings, equipment, documents, files, inventory or stock-in-trade).

12.2 Repair Obligations.

If the Premises or the Building are damaged by fire or other casualty and neither party terminates this Lease according to Section 12.1, then Landlord will repair and restore such damage with reasonable promptness, subject to delays for insurance adjustments and delays caused by matters beyond Landlord's control.

Landlord will have no liability to Tenant and Tenant will not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the estimated time period, provided that Landlord promptly commences and diligently pursues such repairs and restoration to completion. In no event will Landlord be obligated to repair, restore or replace any of the property required to be insured by Tenant according to Section 11.2; Tenant agrees to repair, restore or replace such property as soon as possible after the date of damage, to at least the condition existing prior to its damage, using materials at least equal to Building standard. However, in connection with its repair and restoration of such damage, Landlord may, at its option, elect to repair and restore the damage, if any, caused to any or all of the leasehold improvements required to be insured by Tenant according

to Section 11.2(b). If Landlord makes such election, Landlord will be entitled to all proceeds of the insurance policy described in Section 11.2(b) applicable to the leasehold improvements Landlord so elects to repair or restore.

12.3 Rent Abatement.

If any fire or casualty damage renders the Premises Untenantable and if this Lease is not terminated according to Section 12.1, then Rent will abate beginning on the date of such damage. Such abatement will end on the date Landlord has substantially completed the repairs and restoration Landlord is required to perform according to Section 12.2. Such abatement will be in an amount bearing the same ratio to the total amount of Rent for such period as the untenable portion of the Premises bears to the entire Premises. In no event will Landlord be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from damage caused by fire or other casualty or the repair of such damage, provided however that, to the extent Tenant remains in possession of a portion of the Premises, Landlord will take all reasonable steps to minimize the disruption to Tenant's business and use of such portion of the Premises during the period of repair.

13. WAIVERS AND INDEMNITIES.

13.1 Landlord's Waivers.

As used in this Section 13, a party's "Affiliates" means that party's parent, subsidiary and affiliated corporations and its and their partners, ventures, directors, officers, shareholders, agents, servants and employees. Tenant and its Affiliates will not be liable or in any way responsible to Landlord for, and Landlord waives all claims against Tenant and its Affiliates for, any loss, injury or damage that is insured or required to be insured by Landlord under Sections 11.1(b), (c) or (d), so long as such loss, injury or damage results from or in connection with this Lease or Tenant's use and occupancy of the Premises. Landlord's waivers under this Section 13.1 will survive the expiration or early termination of the Term.

13.2 Tenant's Waivers.

Except to the extent caused by the willful or negligent act or omission or breach of this Lease by Landlord or anyone for whom Landlord is legally responsible, Landlord, its Affiliates and the holder of any Encumbrance will not be liable or in any way responsible for, and Tenant waives all claims against Landlord, its Affiliates and the holder of any Encumbrance for any loss, injury or damage suffered by Tenant or others relating to (a) loss or theft of, or damage to, property of Tenant or others; (b) injury or damage to persons or property resulting from fire, explosion, falling plaster, escaping steam or gas, electricity, water, rain or snow, or leaks from any part of the Building or from any pipes, appliances or plumbing, or from dampness; or (c) damage caused by other tenants, occupants or persons in the Premises or other premises in the Building, or caused by the public or by construction of any private or public work. Landlord, its Affiliates and the holder of any Encumbrance will not be liable or in any way responsible to Tenant for, and Tenant waives all claims against Landlord, its Affiliates and the holder of any Encumbrance for, any loss, injury or damage that is insured or required to be insured by Tenant under Sections 11.2(b) or (c), so long as such loss, injury or damage results from or in connection with this Lease or Landlord's operation of the Building. Tenant's waivers under this Section 13.2 will survive the expiration or early termination of the Term.

13.3 Landlord's Indemnity.

Subject to Section 7.4 and 13.2 and except to the extent caused by the willful or negligent act or omission or breach of this Lease by Tenant or anyone for whom Tenant is legally responsible, Landlord will indemnify and hold Tenant harmless from and against any and all liability, loss, claims, demand, damages or expenses (including reasonable attorneys' fees) due to or arising out of any willful or negligent act or omission or breach of this Lease by Landlord or anyone for whom Landlord is legally responsible. Landlord's obligations under this Section 13.3 will survive the expiration or early termination of the Term.

13.4 Tenant's Indemnity.

Subject to Section 13.1 and except to the extent caused by the willful or negligent act or omission or breach of this Lease by Landlord or anyone for whom Landlord is legally responsible, Tenant will indemnify and hold Landlord and the holder of any Encumbrance harmless from and against any and all liability, loss, claims, demands, damages or expenses (including reasonable attorneys' fees) due to or arising out of any accident or occurrence on or about the Premises (including, without limitation, accidents or occurrences resulting in injury, death, property damage or theft) or any willful or negligent act or omission of or breach of this Lease by Tenant or anyone for whom Tenant is legally responsible. Tenant's obligations under this Section 13.4 will survive the expiration or early termination of the Term.

14. CONDEMNATION.

14.1 Full Taking.

If all or substantially all of the Building or Premises are taken for any public or quasi-public use under any applicable Laws or by right of eminent domain, or are sold to the condemning authority in lieu of condemnation, then this Lease will terminate as of the date the earlier of when the condemning authority takes physical possession of or title to the Building or Premises.

14.2 Partial Taking.

- (a) **Landlord's Termination of Lease.** If only part of the Building or Premises is thus taken or sold, and if after such partial taking, in Landlord's reasonable judgment, alteration or reconstruction is not economically justified, then Landlord (whether or not the Premises are affected) may terminate this Lease by giving written notice to Tenant within 60 days after the taking.
- (b) **Tenant's Termination.** If over 20% of the Premises is thus taken or sold and Landlord is unable to provide Tenant with comparable replacement premises in the Building, Tenant may terminate this Lease if in Tenant's reasonable judgment the Premises cannot be operated by Tenant in an economically viable fashion because of such partial taking. Such termination by Tenant must be exercised by written notice to Landlord given not later than 60 days after Tenant is notified of the taking of the Premises.
- (c) **Effective Date of Termination.** Termination by Landlord or Tenant will be effective as of the date when physical possession of the applicable portion of the Building or Premises is taken by condemning authority.
- (d) **Election to Continue Lease.** If neither Landlord nor Tenant elects to terminate this Lease upon a partial taking of a portion of the Premises, the Rent payable under this Lease will be diminished by an amount allocable to the portion of the Premises which was so taken or sold. If this Lease is not terminated upon a partial taking of the Building or Premises, Landlord will, at Landlord's sole expense, promptly restore and reconstruct the Building and Premises to substantially their former condition to the extent the same is feasible. However, Landlord will not be required to spend for such restoration or reconstruction an amount in excess of the net amount received by Landlord as compensation or damages for the part of the Building or Premises so taken.

14.3 Awards.

As between the parties to this Lease, Landlord will be entitled to receive, and Tenant assigns to Landlord, all of the compensation awarded upon taking of any part or all of the Building or Premises, including any award for the value of the unexpired Term. However, Tenant may assert a claim in a separate proceeding against the condemning authority for any damages resulting from the taking of Tenant's trade fixtures or personal property, or for moving expenses, business relocation expenses or damages to Tenant's business incurred as a result of such condemnation.

15. ASSIGNMENT AND SUBLETTING.

15.1 Limitation.

Without Landlord's prior written consent, Tenant will not assign all or any of its interest under this Lease, sublet all or any part of the Premises or permit the Premises to be used by any parties other than Tenant and its employees. Except as permitted under Section 15.7, any such assignment or subletting shall act to void Tenant's rights under Articles 27 and 28 and Exhibit F.

15.2 Notice of Proposed Transfer; Landlord's Options.

If Tenant desires to enter into any assignment of this Lease or a sublease of all or any part of the Premises, Tenant will first give Landlord written notice of the proposed assignment or sublease, which notice will contain the name and address of the proposed transferee, the proposed use of the Premises, statements reflecting the proposed transferee's current financial condition and income and expenses for the past 2 years, and the principal terms of the proposed assignment or sublease. Except in the case of any transfer permitted under Section 15.7, Landlord will have the option, which must be exercised, if at all, by notice given to Tenant within 10 days after Landlord's receipt of Tenant's notice of the proposed transfer, either (i) if Tenant's notice relates to a subletting, to sublet from Tenant such space as is described in the notice for such portion of the Term as is described in the notice, upon the same terms and conditions and for the same Rent (apportioned, as appropriate, to the amount of such space) as provided in this Lease; or (ii) if such notice relates to an assignment, to become Tenant's assignee.

15.3 Consent Not to be Unreasonably Withheld.

If Landlord does not exercise its applicable option under Section 15.2, then Landlord will not unreasonably withhold or delay its consent to the proposed assignment or subletting if each of the following conditions is satisfied:

- (a) the proposed transferee, in Landlord's reasonable opinion, has sufficient financial capacity and business experience to perform Tenant's obligations under this Lease; and
- (b) the proposed transferee will make use of the Premises which in Landlord's reasonable opinion (i) is lawful, (ii) is consistent with the permitted use of the Premises under this Lease, (iii) is consistent with the general character of business carried on by tenants of a first-class office building, (iv) does not conflict with any exclusive rights or covenants not to compete in favor of any other tenant or proposed tenant of the Building, (v) will not increase the likelihood of damage or destruction to the Building, (vi) will not cause an increase in insurance premiums for insurance policies applicable to the Building, and (viii) will not require new tenant improvements incompatible with then-existing Building systems and components; and
- (c) the proposed transferee does not have a poor business reputation or reputation as being an undesirable tenant in the general business community; and

- (d) the proposed transferee, at the time of the proposed transfer, is neither (1) a tenant in the Building (except for a tenant for whom Landlord cannot otherwise accommodate as to the size of premises), nor (2) a party with whom Landlord is then negotiating for the lease of space in the Building, nor (3) a tenant in tenant or a party with whom any Affiliate of Landlord is then negotiating for lease of space in any building owned or managed by any such Affiliate of Landlord in Columbia South Carolina, for which landlord or such Affiliate has space of an adequate size; and
- (e) if the proposed transfer is a sublease, the rent which the proposed transferee will be required to pay will be equal to at least 90% of the then-current market rent for the portion of the Premises being sublet; and
- (f) at the time of the proposed transfer no "Default" (as defined in Section 20.1) exists under this Lease; and
- (g) Tenant shall pay Landlord's costs and attorney fees for review of the assignment or subletting documentation, not to exceed \$1,000.00 per assignment or sublet.

Landlord shall indicate its consent or disapproval of such proposed transfer within 10 business days of receipt of Tenant's notice. If Landlord fails to respond within such 10-day period, Tenant shall give Landlord written notice of such failure to respond. If Landlord fails to respond within 5 business days, then such failure shall be deemed a consent to such proposed transferee.

15.4 Form of Transfer.

If Landlord consents to a proposed assignment or sublease, Landlord's consent will not be effective unless and until Tenant delivers to Landlord an original duly executed assignment or sublease, as the case may be, in a form reasonably acceptable to Landlord, that provides, in the case of a sublease, that the subtenant will comply with all applicable terms and conditions of this Lease, and, in the case of an assignment, an assumption by the assignee of all of the terms, covenants and conditions which this Lease requires Tenant to perform. In addition to the reasons set forth in Section 15.3, Tenant acknowledges and agrees that Landlord may object to the form of any assignment or sublease whose non-economic terms conflict with the terms of this Lease.

15.5 Payments to Landlord.

If Landlord does not exercise its applicable option under Section 15.2 and Tenant effects an assignment or sublease, then Landlord will be entitled to receive and collect, either from Tenant or directly from the transferee, 100% of the amount by which the consideration required to be paid by the transferee for the use and enjoyment of Tenant's rights under this Lease (after deducting from such consideration Tenant's reasonable costs incurred in effecting the assignment or sublease) exceeds the Rent payable by Tenant to Landlord allocable to the transferred space. Such percentage of such amount will be payable to Landlord within 30 days of the time(s) Tenant receives the same from its transferee (whether in monthly installments, in a lump sum, or otherwise).

15.6 Change of Ownership.

Subject to Section 15.7 below, any change by Tenant in the form of its legal organization (such as, for example, a change from a general to a limited partnership), any transfer of 51% or more of Tenant's assets, and any other transfer of interest effecting a change in identity of persons exercising effective control of Tenant will be deemed an "assignment" of this Lease requiring Landlord's prior written consent. The transfer of any outstanding capital stock of a corporation whose stock is publicly-traded will not, however, be deemed a "transfer of interest" under this Section 15.6.

15.7 Permitted Transfers.

Tenant may, upon notice to Landlord, but without obtaining Landlord's consent, assign this Lease or sublease all or any part of the Premises to (i) any corporation which controls, is controlled by, or is under common control with Tenant, (ii) any corporation resulting from the merger or consolidation of Tenant, or (iii) any person or entity which acquires all of the assets of Tenant as a going concern of the business that is being conducted on the Premises, provided that such transferee assumes in full the obligations of Tenant under the Lease ("Permitted Transferee"). Notwithstanding the foregoing, Tenant's right to assign or sublet without Landlord's consent is conditioned upon (x) the transferee having a net worth as reflected by audited financial statements, equal to or greater than that of Tenant as of the date immediately prior to the transfer (however, so long as any entity that is fully and unconditionally obligated under the Lease has a net worth as set forth above, then Tenant may assign this Lease to a Permitted Transferee with a net worth of at least \$10,000,000), and (y) the transferee not being engaged in a business that violates the provision of any existing leases governing in the Building.

15.8 Effect of Transfers.

No subletting or assignment will release Tenant from any of its obligations under this Lease unless Landlord agrees to the contrary in writing. Acceptance of Rent by Landlord from any person other than Tenant will not be deemed a waiver by Landlord of any provision of this Section 15. Consent to one assignment or subletting will not be deemed a consent to any subsequent assignment or subletting. In the event of any default by any assignee or subtenant or any successor of Tenant in the performance of any Lease obligation, Landlord may proceed directly against Tenant without exhausting remedies against such assignee, subtenant or successor. The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord will not work a merger and will, at Landlord's option, terminate all or any subleases or operate as an assignment to Landlord of all or any subleases; such option will be exercised by notice to Tenant and all known subtenants in the Premises. If Landlord shall choose to take an assignment of a sublease then the subtenant shall be bound to Landlord for the balance of the Term thereof and shall attach directly to Landlord under all of the

executory terms of the sublease except that Landlord shall not (a) be liable for any previous act, omission or negligence of Tenant, (b) be subject to any counterclaim, defense or offset not expressly provided for in the sublease and accruing against Tenant, (c) be bound by any previous modification or amendment of the sublease made without Landlord's consent or by any previous prepayment of more than one month's Rent, or (d) be obligated to perform any repairs or other work beyond Landlord's obligation under this Lease. Each subtenant shall execute and deliver such instruments as Landlord may reasonably request to evidence said attornment.

16. PERSONAL PROPERTY.

16.1 Installation and Removal.

Tenant may install in the Premises its personal property (including Tenant's usual trade fixtures) in a proper manner, provided that no such installation will interfere with or damage the mechanical, plumbing or electrical systems or the structure of the Building, and provided further that if such installation would require any change, addition or improvement to the Premises, such installation will be subject to Section 9.1. Any such personal property installed in the Premises by Tenant (a) may be removed from the Premises from time to time in the ordinary course of Tenant's business or in the course of making any changes, additions or improvements to the Premises permitted under Section 9.1, and (b) will be removed by Tenant at the end of the Term according to Section 3.4. Tenant will promptly repair at its expense any damage to the Building resulting from such installation or removal.

16.2 Responsibility.

Tenant will be solely responsible for all costs and expenses related to personal property used or stored in the Premises. Tenant will pay any taxes or other governmental impositions levied upon or assessed against such personal property, or upon Tenant for the ownership or use of such personal property, on or before the due date for payment. Such personal property taxes or impositions are not included in Taxes.

17. ESTOPPEL CERTIFICATES.

Promptly upon Landlord's request after Tenant has occupied the Premises, Tenant will execute and deliver to Landlord an Occupancy Estoppel Certificate in the form of Exhibit C. In addition, Tenant agrees that at any time and from time to time (but on not less than 10 days' prior request by Landlord), Tenant will execute, acknowledge and deliver to Landlord a certificate indicating any or all of the following: (a) the Commencement Date and Expiration Date; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Base Rent, Additional Rent and any other Rent payable have been paid; (d) that no default by Landlord, to the best of Tenant's knowledge, or Tenant exists which has not been cured, except as to defaults stated in such certificate; (e) provided such events have occurred, that Tenant has accepted the Premises and that all improvements required to be made to the Premises by Landlord have been completed according to this Lease; (f) that, except as specifically stated in such certificate, Tenant, and only Tenant, currently occupies the Premises; and (g) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by Landlord and any prospective purchaser or present or prospective mortgagee, deed of trust beneficiary or ground lessor of all or a portion of the Building and/or Land.

18. TRANSFER OF LANDLORD'S INTEREST.

18.1 Sale, Conveyance and Assignment.

Nothing in this Lease will restrict Landlord's right to sell, convey, assign or otherwise deal with the Building or Landlord's interest under this Lease.

18.2 Effect of Sale, Conveyance or Assignment.

A sale, conveyance or assignment of the Building will automatically release Landlord from liability under this Lease from and after the effective date of the transfer, except for any liability relating to the period prior to such effective date; and Tenant will look solely to Landlord's transferee for performance of Landlord's obligations relating to the period after such effective date. This Lease will not be affected by any such sale, conveyance or assignment and Tenant will attorn to Landlord's transferee.

18.3 Subordination and Nondisturbance.

This Lease is and will be subject and subordinate in all respects to any ground lease, mortgage or deed of trust now or later encumbering the Building, and to all their renewals, modifications, supplements, consolidations and replacements (an "Encumbrance"). With respect to any Encumbrance first encumbering the Building subsequent to the Date of this Lease, Landlord will use its good faith efforts to cause the holder of such Encumbrance to agree (either in the Encumbrance or in a separate agreement with Tenant) that so long as Tenant is not in default of its obligations under this Lease, this Lease will not be terminated and Tenant's possession of the Premises will not be disturbed by the termination or foreclosure, or proceedings for enforcement, of such Encumbrance. While such subordination will occur automatically, Tenant agrees, upon request by and without cost to Landlord or any successor in interest, to promptly execute and deliver to Landlord or the holder of an Encumbrance such instrument(s) as may be reasonably required to evidence such subordination. In the alternative, however, the holder of an Encumbrance may unilaterally elect to subordinate such Encumbrance to this Lease.

18.4 Attornment.

If the interest of Landlord is transferred to any person (a "Successor Landlord") by reason of the termination or foreclosure, or proceedings for enforcement, of an Encumbrance, or by delivery of a deed in lieu of such foreclosure or proceedings, Tenant will immediately and automatically attorn to the Successor Landlord. Upon attornment this Lease will continue in full force and effect as a direct lease between the Successor Landlord and

Tenant, upon all of the same terms, conditions and covenants as stated in this Lease except that a Successor Landlord shall not be (a) liable for any previous act or omission or negligence of Landlord under this Lease, (b) subject to any counterclaim defense or offset not expressly provided for in this Lease and asserted with reasonable promptness, which therefore shall have accrued to Tenant against Landlord, (c) bound by any previous modification or amendment of this Lease or by any previous prepayment of more than one month's Rent, unless such modification or prepayment shall have been approved in writing by the holder of any Encumbrance through or by reason of which the Successor Landlord shall have succeeded to the rights of Landlord under this Lease or (d) obligated to perform any repairs or other work beyond Landlord's obligations under this Lease. Tenant agrees, upon request by and without cost to the Successor Landlord, to promptly execute and deliver to the Successor Landlord such instrument(s) as may be reasonably required to evidence such attornment.

19. RULES AND REGULATIONS.

Tenant agrees to faithfully observe and comply with the Rules and Regulations set forth in Exhibit D and with all reasonable modifications and additions to such Rules and Regulations (which will be applicable to all Building tenants) from time to time adopted by Landlord and of which Tenant is notified in writing. No such modification or addition will contradict or abrogate any right expressly granted to Tenant under this Lease. Landlord's enforcement of the Rules and Regulations will be uniform and nondiscriminatory, but Landlord will not be responsible to Tenant for failure of any person to comply with the Rules and Regulations.

20. TENANT'S DEFAULT AND LANDLORD'S REMEDIES.

20.1 Default.

This Lease and the Term and rights hereby granted are subject to the following limitations which will each constitute a material breach by Tenant and a "Default" under this Lease:

- (a) Failure to Pay Rent. Tenant fails to pay Base Rent, Additional Rent or any other Rent payable by Tenant under the terms of this Lease when due, and such failure continues for 5 days after written notice from Landlord to Tenant of such failure; provided that with respect to Base Rent and Additional Rent, Tenant will be entitled to only 3 notices of such failure during any Lease Year and if, after 3 such notices are given in any Lease Year, Tenant fails, during such Lease Year, to pay any such amounts when due, such failure will constitute a Default without further notice by Landlord or additional cure period.
- (b) Failure to Perform Other Obligations. Tenant breaches or fails to comply with any other provision of this Lease applicable to Tenant, and such breach or noncompliance continues for a period of 5 days after notice by Landlord to Tenant; or, if such breach or noncompliance cannot be reasonably cured within such 5-day period, Tenant does not in good faith commence to cure such breach or noncompliance within such 5-day period or does not diligently complete such cure as soon as possible, but no later than 60 days after such notice from Landlord. However, if such breach or noncompliance causes or results in (i) a dangerous condition on the Premises or the Building, (ii) any insurance coverage carried by Landlord or (a) Tenant with respect to the Premises or Building being jeopardized, or (iii) a material disturbance to another tenant, then a Default will exist if such breach or noncompliance is not cured as soon as reasonably possible after notice by Landlord to Tenant, and in any event is not cured within 30 days after such notice. For purposes of this Section 20.1 (b), financial inability will not be deemed a reasonable ground for failure to immediately cure any breach of, or failure to comply with, the provisions of this Lease.
- (b) Nonoccupancy of Premises. Tenant fails to occupy and use the Premises within 30 days after the Commencement Date or abandons substantially all of the Premises.
- (c) Transfer of Interest without Consent. Tenant's interest under this Lease or in the Premises is transferred or passes to, or devolves upon, any other party in violation of Section 15.
- (d) Execution and Attachment Against Tenant. Tenant's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Tenant, or is subject to any attachment by any creditor or claimant against Tenant and such attachment is not discharged or disposed of within 15 days after levy.
- (e) Bankruptcy or Related Proceedings. Tenant files a petition in bankruptcy or insolvency, or reorganization or arrangement under any bankruptcy or insolvency Laws, or voluntarily takes advantage of any such Laws by answer or otherwise, or dissolves or makes an assignment for the benefit of creditors, or involuntary proceedings under any such Laws or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for the Premises or for all or substantially all of Tenant's property, and such proceedings are not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment.

20.2 Remedies.

TIME IS OF THE ESSENCE. If any Default occurs, Landlord will have the right, at Landlord's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Landlord at law or in equity.

- (a) Cure by Landlord. Landlord may, at Landlord's option, upon 5 days' notice to Tenant (which notice may be given at the same time as any notice previously provided to Tenant pursuant to the Lease, so long as said notice indicates Landlord's intent to cure), but without obligation to do so, and without releasing Tenant from any obligations under this Lease, make any payment or take any action as Landlord deems necessary to cure any Default in such manner and to such extent as Landlord deems necessary. Landlord may do so without additional demand on, or additional written notice to, Tenant and without giving Tenant an additional opportunity to cure such Default. Tenant covenants and agrees to pay Landlord, upon demand, all advances, costs and expenses of Landlord in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest at the rate described in Section 4.5, from the date of payment of any such advances, costs and expenses by Landlord.
- (b) Termination of Lease and Damages. Landlord may terminate this Lease, effective at such time as may be specified by written notice to Tenant, and demand (and, if such demand is refused, recover) possession of the Premises from Tenant. Tenant will remain liable to Landlord for damages in an amount equal to the Base Rent, Additional Rent and other Rent which would have been owing by Tenant for the balance of the Term had this Lease not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to such termination, after deducting all Landlord's expenses in connection with such recovery of possession or reletting. Landlord will be entitled to collect and receive such damages from Tenant on the days on which the Base Rent, Additional Rent and other Rent would have been payable if this Lease had not been terminated. Alternatively, at Landlord's option, Landlord will be entitled to recover from Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum equal to (i) all unpaid Base Rent, Additional Rent and other Rent for any period prior to the termination date of this Lease (including interest from the due date to the date of the award at the rate described in Section 4.5), plus any other sum of money and damages owed by Tenant to Landlord for events or actions

occurring prior to the termination date; plus (ii) the present value at the time of termination (calculated at the rate commonly called the discount rate in effect at the Federal Reserve Bank of New York on the termination date) of the amount, if any, by which (A) the aggregate of the Base Rent, Additional Rent and all other Rent payable by Tenant under this Lease that would have accrued for the balance of the Term after termination (with respect to Additional Rent, such aggregate will be calculated by assuming that Expenses and Taxes for the Fiscal Year in which termination occurs and for each subsequent Fiscal Year remaining in the Term if this Lease had not been terminated will increase by 8% per year over the amount of Expenses and Taxes for the prior Fiscal Year), exceeds (B) the amount of such Base Rent, Additional Rent and other Rent which Landlord will receive for the remainder of the Term from any reletting of the Premises occurring prior to the date of the award, or if the Premises have not been relet prior to the date of the award, the amount, if any, of such Base Rent, Additional Rent and other Rent which could reasonably be recovered by reletting the Premises for the remainder of the Term at the then-current fair rental value, in either case taking into consideration loss of rent while finding a new tenant, tenant improvements and rent abatements necessary to secure a new tenant, leasing brokers' commissions and other costs which Landlord has incurred or might incur in leasing the Premises to a new tenant; plus (iii) interest on the amount described in (ii) above from the termination date to the date of the award at the rate described in Section 4.5.

- (c) **Repossession and Reletting.** Landlord may, with due process of law, re-enter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Tenant and any party claiming by, through or under Tenant, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Landlord will be construed as an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. No notice from Landlord or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Tenant such written notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Landlord may, from time to time, but will not be obligated to do so unless required by South Carolina law, relet all or any part of the Premises for Tenant's account, for such term or terms and on such conditions and other terms as Landlord, in its discretion, determines. Landlord may make such repairs, alterations or improvements as Landlord reasonably considers appropriate to accomplish such reletting, and Tenant will reimburse Landlord upon demand for all costs and expenses, including attorneys' fees, which Landlord may incur in connection with such reletting. Landlord may collect and receive the rents for such reletting but Landlord will in no way be responsible or liable for any failure to relet the Premises or for any inability to collect any rent due upon such reletting. Regardless of Landlord's recovery of possession of the Premises, Tenant will continue to pay on the dates specified in this Lease, the Base Rent, Additional Rent and other Rent which would be payable if such repossession had not occurred, less a credit for the net amounts, if any, actually received by Landlord through any reletting of the Premises. Alternatively, at Landlord's option, Landlord will be entitled to recover from Tenant, as damages for loss of the bargain and not as a penalty, an aggregate sum equal to (i) all unpaid Base Rent, Additional Rent and other Rent for any period prior to the repossession date (including interest from the due date to the date of the award at the rate described in Section 4.5), plus (ii) the present value at the time of repossession (calculated at the rate commonly called the discount rate in effect at the Federal Reserve Bank of New York on the repossession date) of the amount, if any, by which (A) the aggregate of the Base Rent, Additional Rent and all other Rent payable by Tenant under this Lease that would have accrued for the balance of the Term after repossession (with respect to Additional Rent, such aggregate will be calculated by assuming that Expenses and Taxes for the Fiscal Year in which repossession occurs and for each subsequent Fiscal Year remaining in the Term if Landlord had not repossessed the Premises will increase by 8% per year over the amount of Expenses and Taxes for the prior Fiscal Year), exceeds (B) the amount of such Base Rent, Additional Rent and other Rent which Landlord will receive for the remainder of the Term from any reletting of the Premises occurring prior to the date of the award, or if the Premises have not been relet prior to the date of the award, the amount, if any, of such Base Rent, Additional Rent and other Rent which could reasonably be recovered by reletting the Premises for the remainder of the Term at the then-current fair rental value, in either case taking into consideration loss of rent while finding a new tenant, tenant improvements and rent abatements necessary to secure a new tenant, leasing brokers' commissions and other costs which Landlord has incurred or might incur in leasing the Premises to a new tenant; plus (iii) interest on the amount described in (ii) above from the repossession date to the date of the award at the rate described in Section 4.5.
- (d) **Bankruptcy Relief.** Nothing contained in this Lease will limit or prejudice Landlord's right to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any Laws governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable, either as damages or Rent, under this Lease.

21. LANDLORD'S DEFAULT AND TENANT'S REMEDIES.

21.1 Default.

If Tenant believes that Landlord has breached or failed to comply with any provision of this Lease applicable to Landlord, Tenant will give written notice to Landlord describing the alleged breach or noncompliance. Landlord will not be deemed in default under this Lease if Landlord cures the breach or noncompliance within 20 days after receipt of Tenant's notice or, if the same cannot reasonably be cured within such 20-day period, if Landlord in good faith commences to cure such breach or noncompliance within such period and then diligently pursues the cure to completion. Tenant will also send a copy of such notice to the holder of any Encumbrance of whom Tenant has been notified in writing, and such holder will also have the right to cure the breach or noncompliance within the period of time described above.

21.2 Remedies.

If Landlord breaches or fails to comply with any provision of this Lease applicable to Landlord, and such breach or noncompliance is not cured within the period of time described in Section 21.1, then Tenant may exercise any right or remedy available to Tenant at law or in equity, except to the extent expressly waived or limited by the terms of this Lease.

21.3 Cure by Encumbrance Holder.

If any act or omission by Landlord shall give Tenant the right, immediately or after the lapse of time, to cancel or terminate this Lease or to claim a partial or total eviction, Tenant shall not exercise any such right until (a) it shall have given written notice of such act or omission to each holder of any Encumbrance and (b) a reasonable period for remedying such act or omission shall have elapsed following such notice and following the time when such holder of an Encumbrance shall have become entitled under its Encumbrance to remedy the same (which shall in no event be less than the period to which Landlord would be entitled under this Lease to effect such remedy) provided such holder of an Encumbrance shall, with reasonable diligence, give Tenant notice of its intention to remedy such act or omission and shall commence and continue to act upon such intention.

22. SECURITY DEPOSIT.

22.1 Amount.

Upon Tenant's execution of this Lease and submission of this Lease to Landlord for Landlord's execution, Tenant will simultaneously deposit the Security Deposit with Landlord in the amount described in Section 1.1 (k). Landlord and Tenant intend the Security Deposit to be used solely as security for Tenant's faithful and diligent performance of all of Tenant's obligations under this Lease. The Security Deposit will remain in Landlord's possession for the entire Term, and Landlord will not be required to segregate it from Landlord's general funds. Tenant will not be entitled to any interest on the Security Deposit.

22.2 Use and Restoration.

If Tenant fails to perform any of its obligations under this Lease, Landlord may, at its option, use, apply or retain all or any part of the Security Deposit for the payment of (1) any Rent in arrears; (2) any expenses Landlord may incur as a direct or indirect result of Tenant's failure to perform; and (3) any other losses or damages Landlord may suffer as a direct or indirect result of Tenant's failure to perform. If Landlord so uses or applies all or any portion of the Security Deposit, Landlord will notify Tenant of such use or application and Tenant will, within 10 days after the date of Landlord's notice, deposit with Landlord a sum sufficient to restore the Security Deposit to the amount held by Landlord immediately prior to such use or application. Tenant's failure to so restore the Security Deposit will constitute a Default.

22.3 Transfers.

Tenant will not assign or encumber the Security Deposit without Landlord's express written consent. Neither Landlord nor its successors or assigns will be bound by any assignment or encumbrance unless Landlord has given its consent. Landlord will have the right, at any time and from time to time, to transfer the Security Deposit to any purchaser or lessee of the entire Building. Upon any such transfer, Tenant agrees to look solely to the new owner or lessee for the return of the Security Deposit.

22.4 Refund.

Provided that Tenant has fully and faithfully performed all of its obligations under this Lease, Landlord will refund the Security Deposit, or any balance remaining, to Tenant or, at Landlord's option, to the latest assignee of Tenant's interest under this Lease, within 60 days after the expiration or early termination of the Term and Tenant's vacation and surrender of the Premises to Landlord in the condition required by Section 3.4. If Tenant fails to make any final estimated payment of Additional Rent required by Landlord according to Section 4.2(c), Landlord may withhold such final payment from the amount of the Security Deposit refund. Landlord's obligations under this Section 22.4 will survive the expiration or early termination of the Term.

23. BROKERS.

Landlord and Tenant represent and warrant that no broker or agent negotiated or was instrumental in negotiating or consummating this Lease except the Brokers. Neither party knows of any other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. Landlord will pay all fees, commissions or other compensation payable to the Brokers to be paid by Landlord according to Section 1.1(q).

and Tenant will pay all fees, commissions or other compensation payable to the Brokers to be paid by Tenant according to Section 1.1(q). Tenant and Landlord will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party. Landlord's obligation under this Section 23 will survive the expiration or early termination of the Term.

24. LIMITATIONS ON LANDLORD'S LIABILITY.

Any liability for damages, breach or nonperformance by Landlord, or arising out of the subject matter of, or the relationship created by, this Lease, will be collectible only out of Landlord's interest in the Building and no personal liability is assumed by, or will at any time be asserted against, Landlord, its parent and affiliated corporations, its and their partners, venturers, directors, officers, agents, servants and employees, or any of its or their successors or assigns; all such liability, if any, being expressly waived and released by Tenant. Landlord's review, supervision, commenting on or approval of any aspect of work to be done by or for Tenant (under Section 9, Exhibit B or otherwise) are solely for Landlord's protection and except as expressly provided, create no warranties or duties to Tenant or to third parties.

25. NOTICES.

All notices required or permitted under this Lease must be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) 2 business days after deposit in the United States mails, certified or registered mail with return receipt requested and postage prepaid. All such notices must be transmitted by one of the methods described above to the party to receive the notice at, in the case of notices to Landlord, both Landlord's Building Address and Landlord's General Address, and in the case of notices to Tenant, the applicable Tenant's Notice Address, or, in either case, at such other address(es) as either party may notify the other of according to this Section 25. Time shall be of the essence for the giving of all notices required or permitted under the provisions of this Lease.

26. MISCELLANEOUS.

26.1 Binding Effect.

Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Landlord and Tenant, and their respective heirs, successors and assigns, provided this clause will not permit any transfer by Tenant contrary to the provisions of Section 15.

26.2 Complete Agreement; Modification.

All of the representations and obligations of the parties are contained in this Lease and no modification, waiver or amendment of this Lease or of any of its conditions or provisions will be binding upon a party unless in writing signed by such party.

26.3 Delivery for Examination.

Submission of the form of the Lease for examination will not bind Landlord in any manner, and no obligations will arise under this Lease until it is signed by both Landlord and Tenant and delivery is made to each.

26.4 No Air Rights.

This Lease does not grant any easements or rights for light, air or view. Any diminution or blockage of light, air or view by any structure or condition now or later erected will not affect this Lease or impose any liability on Landlord.

26.5 Enforcement Expenses.

Each party agrees to pay, upon demand, all of the other party's costs, charges and expenses, including the fees and out-of-pocket expenses of counsel, agents, and others retained, incurred in successfully enforcing the other party's obligations under this Lease. All obligations under this Section 26.5 will survive the expiration or early termination of the Term.

26.6 Building Planning.

At any time after the Commencement Date, Landlord may (upon at least 90 days prior notice) substitute for the Premises other premises in the Building ("New Premises") provided that the New Premises will be similar to the Premises in area and usable for Tenant's purpose. If Tenant is already occupying the Premises, then Landlord will also pay the reasonable expenses of Tenant's moving from the Premises to the New Premises and for improving the New Premises so that the leasehold improvements in the New Premises are substantially similar to those in the Premises. Such move will be made during evenings, weekends or otherwise so as to incur the least inconvenience to Tenant.

26.7 Building Name.

Tenant will not, without Landlord's consent, use Landlord's or the Building's name, or any facsimile or reproduction of the Building, for any purpose; except that Tenant may use the Building's name in the address of the business to be conducted by Tenant in the Premises. Landlord reserves the right, upon reasonable prior notice to Tenant, to change the name or address of the Building.

26.8 Building Standard.

The phrase "Building standard" will, in all instances, mean the type, brand and/or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Building or the exclusive type, grade or quality of material to be used in the Building and shall refer to the then-current standard described in Landlord's most recently published schedule of Building standard or, if no such schedule has been published, to the standard which commonly prevails in and for the entire Building.

26.9 No Waiver.

No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

26.10 Recording; Confidentiality.

Tenant will not record this Lease, or a short form memorandum, without Landlord's written consent and any such recording without Landlord's written consent will be a Default. Tenant agrees to keep the Lease terms, provisions and conditions confidential and will not disclose them to any other person without Landlord's prior written consent. However, Tenant may disclose Lease terms, provisions and conditions to Tenant's accountants, attorneys, managing employees and others in privity with Tenant, as reasonably necessary for Tenant's business purposes, without such prior consent.

26.11 Captions.

The captions of sections are for convenience only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

26.12 Invoices.

All bills or invoices to be given by Landlord to Tenant will be sent to Tenant's Invoice Address. Tenant may change Tenant's Invoice Address by notice to Landlord given according to Section 25. If Tenant fails to give Landlord specific written notice of its objections within 90 days after receipt of any bill or invoice from Landlord, such bill or invoice will be deemed true and correct and Tenant may not later question the validity of such bill or invoice or the underlying information or computations used to determine the amount stated.

26.13 Severability.

If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable provision as may be possible and be valid and enforceable.

26.14 Jury Trial.

~~Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by Landlord or Tenant against the other with respect to any matter arising out of or in connection with this Lease, Tenant's use and occupancy of the Premises, or the relationship of Landlord and Tenant. However, such waiver of jury trial will not apply to any claims for personal injury. If Landlord commences any summary or other proceeding for non-payment of rent or recovery of possession of the Premises, Tenant shall not interpose any counterclaim in any such proceeding, unless failure to raise same would constitute a waiver.~~

26.15 Authority to Bind.

The individuals signing this Lease on behalf of Landlord and Tenant represent and warrant that they are empowered and duly authorized to bind Landlord or Tenant, as the case may be, to this Lease according to its terms.

26.16 Only Landlord/Tenant Relationship.

Landlord and Tenant agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

26.17 Covenants Independent.

The parties intend that this Lease be construed as if the covenant between Landlord and Tenant are independent and that the Rent will be payable without offset, reduction or abatement for any cause except as otherwise specifically provided in this Lease.

26.18 Governing Law.

This Lease will be governed by and construed according to the laws of the State of South Carolina.

26.19 Signage.

Landlord hereby approves Tenant's corporate logo, graphics and colors, if any, but reserves the right, in Landlord's sole discretion (consistent with Landlord's criteria for office signage in the Building), to approve the material, size and placement of the signage at the Premises' entrance. Tenant shall be entitled to 1 Building Standard directory listing in the Building lobby identifying Tenant and Building standard listings on the floor lobby identifying Tenant and each partner of Tenant occupying the Premises, not to exceed 4 listings, and 1 Building standard sign at the Premises entry door provided at Landlord cost.

28. LIMITATION OF PARTNER LIABILITY.

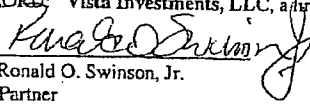
Landlord acknowledges that Tenant is a limited liability partnership. Landlord agrees that admissions of additional partners to the partnership, the death of partners, and the retirement, withdrawal or dismissal of partners from the partnership shall not constitute events or conditions of breach or default under this Lease, nor shall the same constitute an assignment of this Lease. Landlord agrees that Landlord shall not seek personal judgment against, or levy upon the assets of any then currently active, retired, withdrawn, deceased or dismissed partner of Tenant, nor against or upon the assets of any such partner's spouse, family or estate, nor against or upon the assets of any partner who is thereafter admitted to the partnership (all the foregoing being collectively referred to herein as the "Parties"), for any amounts due or which may become due under or by reason of this Agreement, or for the performance of any of the obligations of Tenant under this Lease. Landlord agrees that it shall be entitled to proceed only against the partnership and the assets of the partnership for any such amounts or for the performance of any such obligations. Landlord agrees that for the purposes of the foregoing, the assets of the partnership shall not include (i) any negative capital accounts, which may from time to time exist in the partnership, (ii) any obligation of any of the Parties to contribute capital to the partnership, pursuant to the partnership agreement or otherwise, or (iii) any right which the partnership or any trustee or similar person may otherwise have on behalf of the partnership to require contribution from any of the Parties to satisfy debts of the partnership in any bankruptcy, reorganization, or similar proceeding involving the partnership. In furtherance of the foregoing, Landlord hereby waives any right it may have to seek use and occupancy charges from any of the Parties in the event that this Lease is rejected by a trustee or debtor-in-possession in any bankruptcy, reorganization or similar proceeding involving the partnership. Nothing contained herein shall constitute a waiver or release of any of Tenant's obligations under this Lease or limit the right of Landlord to name any partner, former partner, or future partner of the partnership as a party in any action or suit by Landlord against Tenant to the extent that applicable state law or court rules or procedures require Landlord to name the partners (rather than the partnership entity) as parties in order to obtain judgment against, or proceed against, the partnership or the assets of the partnership; provided, however, that no judgment resulting from any such suit or action shall be enforced against any such partner personally or against any assets of such partner.

HAVING READ AND INTENDING to be bound by the terms and provisions of this Lease, Landlord and Tenant have signed it as of the Date.

TENANT: Tompkins & McMaster, LLP, a limited liability partnership

By: 
Name: Frank Barnwell McMaster
Its: Managing Partner

LANDLORD: Vista Investments, LLC, a limited liability corporation

By: 
Name: Ronald O. Swinson, Jr.
Its: Partner

Schedule 1

LEGAL DESCRIPTION

TRACT I:

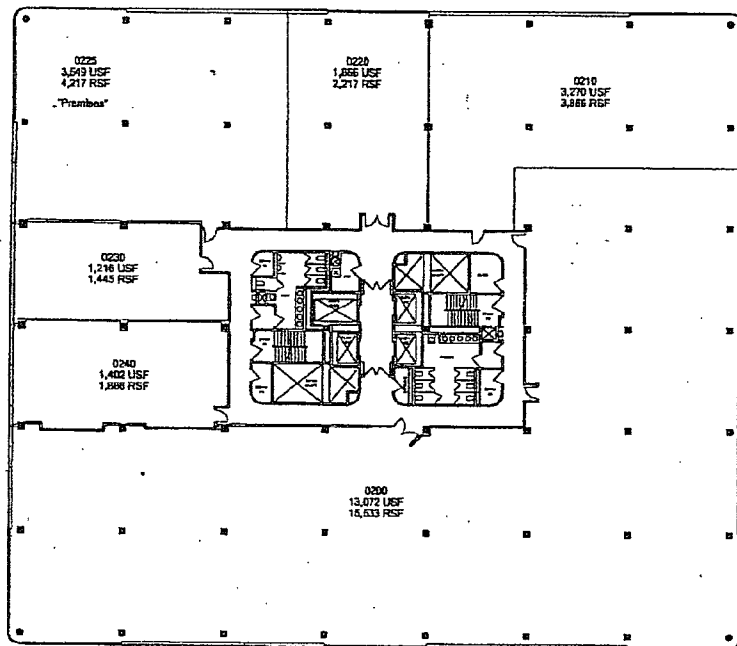
ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, LYING AND BEING IN THE CITY OF COLUMBIA, COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, BEING MORE PARTICULARLY SHOWN AND DELINEATED ON A PLAT ENTITLED "ALTNACSM CLASS "A" LAND TITLE SURVEY, TRIZEC COLUMBIA 111, INC. & CHICAGO TITLE INSURANCE COMPANY" BY B.P. BARBER & ASSOCIATES, INC., DATED APRIL 16, 1997, RECORDED IN THE OFFICE OF THE RMC FOR RICHLAND COUNTY IN PLAT BOOK 56 AT PAGE 8237 (HEREINAFTER THE "REFERENCED PLAT"), SAID PROPERTY HAVING THE FOLLOWING METES AND BOUNDS, TO-WIT:

BEGINNING AT A BUILDING CORNER ON THE WESTERN RIGHT-OF-WAY OF MAIN STREET, BEING 90.0 FEET NORTH OF THE NORTHERN RIGHT-OF-WAY OF LADY STREET AND PROCEEDING ALONG THE PROPERTY OF LEPERCQ COLUMBIA PARTNERS, L.P. AND GOR PROPERTY IN A DIRECTION OF S79°33'05"W FOR A DISTANCE OF 208.66 FEET TO A CALCULATED POINT; THENCE TURNING AND PROCEEDING ALONG THE PROPERTY OF FEET TO A CALCULATED POINT; THENCE TURNING AND CONTINUING ALONG THE OF 209.74 FEET TO AN "X" IN CONCRETE; THENCE TURNING AND PROCEEDING ALONG THE DISTANCE OF 107.03 FEET TO BUILDING CORNER; THENCE TURNING AND PROCEEDING ALONG THE PROPERTY OF MANUEL LIFCHEZ IN A DIRECTION OF N79°17'18"E FOR A DISTANCE OF 121.37 FEET TO AN "X" IN CONCRETE; THENCE TURNING AND PROCEEDING ALONG THE PROPERTIES OF MANUEL LIFCHEZ AND SIGMUND FRIEDMAN IN A DIRECTION OF N09°024'27"W FOR A DISTANCE OF 96.00 FEET TO A P/K NAIL; THENCE TURNING AND PROCEEDING ALONG THE PROPERTIES OF SIGMUND FRIEDMAN AND S.E.J. PARTNERSHIP IN A DIRECTION OF S79°034'19"W FOR A DISTANCE OF 123.37 FEET TO A BUILDING CORNER; STREET IN A DIRECTION OF N10°44'34"W FOR A DISTANCE OF 9.14 FEET TO AN "X" IN CONCRETE; THENCE TURNING AND PROCEEDING ALONG THE PROPERTY OF THE CITY OF COLUMBIA IN A DIRECTION OF N79°036'31"E FOR A DISTANCE OF 269.81 FEET TO A 5/8" REBAR; THENCE TURNING AND CONTINUING ALONG THE PROPERTY OF THE CITY OF COLUMBIA IN A DIRECTION OF N10°54'01"W FOR A DISTANCE OF 1.85 FEET TO A BUILDING CORNER; THENCE TURNING AND PROCEEDING ALONG THE PROPERTY OF KARO HOLDING INCORPORATED IN A DIRECTION OF N79°036'33"E FOR A DISTANCE OF 149.39 FEET TO A CALCULATED POINT; THENCE TURNING AND PROCEEDING ALONG THE EASTERN RIGHT TO A CALCULATED POINT, THIS BEING THE POINT OF BEGINNING, BE ALL MEASUREMENTS A LITTLE MORE OR LESS. BELK-WHITE COMPANY AND IN A DIRECTION OF N10°36'17"W FOR A DISTANCE OF 12.79 PROPERTY OF BELK-WHITE COMPANY IN A DIRECTION OF S79°07'41"W FOR A DISTANCE EASTERN RIGHT-OF-WAY OF ASSEMBLY STREET IN A DIRECTION OF N10°54'15"W FOR A THENCE TURNING AND PROCEEDING ALONG THE EASTERN RIGHT-OF-WAY ASSEMBLY OF-WAY OF MAIN STREET IN A DIRECTION OF S10°32'57"E FOR A DISTANCE OF 225.42 FEET TO A CALCULATED POINT, THIS BEING THE POINT OF BEGINNING, BE ALL MEASUREMENTS A LITTLE MORE OR LESS.

TOGETHER WITH THOSE EASEMENTS RESERVED TO 1333 MAIN - NYL JOINT VENTURE IN ITS DEED TO FIRST CITIZENS BANK AND TRUST COMPANY OF SOUTH CAROLINA DATED OCTOBER 9, 1985, AND RECORDED OCTOBER 11, 1995, IN THE OFFICE OF THE RMC FOR RICHLAND COUNTY IN DEED BOOK D763 AT PAGE 47.

ALSO TOGETHER WITH RIGHTS CREATED IN THAT CERTAIN FOOTING AGREEMENT, BY AND BETWEEN 1333 MAIN ASSOCIATES AND FIRST CITIZENS BANK AND TRUST COMPANY OF SOUTH CAROLINA, DATED AUGUST 5, 1983 AND RECORDED NOVEMBER 16, 1983 IN THE OFFICE OF THE RMC FOR FUCHLAND COUNTY IN DEED BOOK 670 AT PAGE 481.

EXHIBIT A
1333 MAIN STREET BUILDING
PLAN DELINEATING THE PREMISES



1333 Main Street

1333 Main Street Columbia, SC 29201
Vita Investments, LLC



Floor 2

Prepared by PlanCerts Systems Corp.
October 14, 2004

0 5 10 20 30 40 50

EXHIBIT B
1333 MAIN STREET BUILDING
POSSESSION AND LEASEHOLD IMPROVEMENTS AGREEMENT
(Work Allowance)

1. Conflicts; Terms. If there is any conflict or inconsistency between the provision of the Lease and those of this Exhibit B ("Work Letter"), the provisions of this Work Letter will control. Except for those terms expressly defined in this Work Letter, all initially capitalized terms will have the meanings stated for such terms in the Lease.

The following terms, which are not defined in the Lease, have the meanings indicated:

- (a) "Landlord's Representative" means Heidi McKinley-Anderson.
- (b) "Tenant's Representative" means Tommy McCartha.
- (c) "Submission Date" means at least 30 days prior to the start of construction, but no later than the date of Tenant's execution of the Lease.
- (d) "Landlord's Allowance" means an amount not to exceed \$16.83 per rentable square foot of the Premises, which the parties agree is \$71,000.
- (e) "Leasehold Improvements" means all alterations, improvements and installations to be constructed or installed by Landlord for Tenant in the Premises according to this Work Letter.
- (f) "Preliminary Plans" means space plans and general specifications for the Leasehold
 - (a) Improvements.
 - (g) "Construction Documents" means complete construction plans and specifications for the
 - (b) Leasehold Improvements.
- (h) "Total Cost" means the total cost of preparing the Preliminary Plans and Construction Documents, obtaining all necessary permits, constructing and installing the Leasehold Improvements in the Premises (including any Additional Tenant Work), and providing any Building services required during construction (such as electricity and other utilities, refuse removal and housekeeping).

2. Landlord's Obligations. Landlord will proceed to complete the Premises according to this Work Letter and tender possession of the Premises to Tenant when the Leasehold Improvements have been completed to the extent that only minor construction details, which would not materially interfere with Tenant's use and enjoyment of the Premises, require completion or correction ("Substantial Completion"). Tenant will accept the Premises when Landlord tenders possession, provided that the Leasehold Improvements have been substantially completed as described above; and provided further that Tenant will not be required to accept possession prior to the Scheduled Commencement Date. Landlord and Tenant agree that all alterations, improvements and additions made to the Premises according to this Work Letter, whether paid for by Landlord or Tenant, will, without compensation to Tenant, become Landlord's property upon installation and will remain Landlord's property at the expiration or earlier termination of the Term.

3. Punch List. Tenant's taking possession of any portion of the Premises will be conclusive evidence that such portion of the Premises was in good order and satisfactory condition when Tenant took possession, except as to any patent defects identified on a punch list prepared and signed by Landlord's Representative and Tenant's Representative after an inspection of the Premises by both such parties when Tenant takes possession, and except as to any latent defects of which Tenant notifies Landlord in writing within one year after the Commencement Date. Failure to advise Landlord in writing within one year of the Commencement Date of any latent defects shall result in a waiver of any claims regarding said defects by Tenant unless said defects could not be reasonably discovered within said year. Landlord will not be responsible for any items of damage caused by Tenant, its agents, independent contractors or suppliers. No promises to alter, remodel or improve the Premises or Building and no representations concerning the condition of the Premises or Building have been made by Landlord to Tenant other than as may be expressly stated in the Lease (including this Work Letter).

4. Representatives. Landlord appoints Landlord's Representative to act for Landlord in all matters covered by this Work Letter. Tenant appoints Tenant's Representative to act for Tenant in all matters covered by this Work Letter. All inquiries, requests, instructions, authorizations and other communications concerning the matters covered by this Work Letter will be made to Landlord's Representative or Tenant's Representative, as the case may be. Tenant will not make any inquiries of or request to, and will not give any instructions or authorizations to, any other employee or agent of Landlord, including Landlord's architect, engineers and contractors or any of their agents or employees, about matters covered by this Work Letter. Either party may change its Representative under this Work Letter at any time by 3 days' prior written notice to the other party.

5. Preliminary Plans. On or before the Submission Date, Tenant will cooperate with Landlord and submit all information necessary for preparation of the Preliminary Plans ("Design Information"). Each day after the Submission Date until Tenant has provided all Design Information will be a day of Tenant's delay. Promptly after receipt of all Design Information, Landlord will cause its architect to prepare the Preliminary Plans based on the submitted Design Information and shall submit same to Tenant for review. Tenant shall have 5 business days to review the proposed Preliminary Plans and either approve same or deliver to Landlord a notice containing Tenant's objections to same set forth in reasonable detail. Each day after said 5 business day period until Tenant either approves the proposed Preliminary or delivers notice of objections will be a day of Tenant's delay. Promptly upon receipt of any objection from tenant, Landlord will cause its architect to prepare the Preliminary

Plans based on the submitted Design Information, Landlord will cause its architect to prepare revised Preliminary Plans according to such notice and submit the revised Preliminary Plans to Tenant. Upon submittal to Tenant of the revised Preliminary Plans, and upon submittal of any further revisions, the procedures described above will be repeated. If the revised Preliminary Plans, or any further revisions, are consistent with the Design Information and all requirements identified in Tenant's prior notice(s) of objections, then each day following Landlord's receipt of Tenant's notice of any additional objections until the day on which Landlord receives Tenant's written approval of the Preliminary Plans will be a day of Tenant's delay. Tenant represents to Landlord that Tenant has furnished to Landlord and the party preparing the Construction Documents all information necessary such that (following construction of the Leasehold Improvements in accordance with the Construction Documents) Tenant, the Premises and the Leasehold Improvements will be in compliance with the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101-12213 and any state disability or handicapped acts (collectively "Disability Acts"). TENANT SHALL BE RESPONSIBLE FOR AND SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES) INCURRED BY OR ASSERTED AGAINST LANDLORD BY REASON OF OR IN CONNECTION WITH ANY VIOLATION OF THE DISABILITY ACTS ARISING FROM OR OUT OF (x) information or design and space plans furnished to Landlord by Tenant (or the lack of complete and accurate information so furnished) concerning the Leasehold Improvements, (y) Tenant's employer-employee obligations, or (z) after the Commencement Date, violations by Tenant and/or the Leasehold Improvements or the Premises not being in compliance with the Disability Acts as the result of changes in regulations or law or interpretations thereof not in effect on the Commencement Date. The foregoing indemnity shall not include any claims, liabilities or expenses (including reasonable attorneys' fees and expenses) arising out of the negligence or gross negligence of Landlord or Landlord's employees, agents or contractors. Without limiting the foregoing, if Landlord constructs the Leasehold Improvements based on any special requirements or improvements required by Tenant, or upon information furnished by Tenant that later proves to be inaccurate or incomplete resulting in any violation of the Disability Acts, Tenant shall be solely liable to correct such violations and to bring the improvements into compliance with the Disability Acts as promptly as is practicable.

6. Cost Estimate; Construction Documents; Cost Proposal. Landlord and Tenant hereby confirm that the following actions have occurred:

- (a) the Preliminary Plans have been prepared and approved in writing by both Landlord and Tenant;
- (b) Landlord has obtained and notified Tenant of an estimate of the Total Cost based on the approved Preliminary Plans ("Cost Estimate");
- (c) the Cost Estimate is less than or equal to Landlord's Allowance;
- (d) the Cost Estimate has been approved (or deemed approved) by Tenant;
- (e) Landlord caused its architect and engineer to prepare the Construction Documents;
- (f) the Construction Documents have been approved, reviewed and confirmed and conform to the Preliminary Plans;
- (g) Landlord obtained bids for the construction or installation of the Leasehold Improvements according to the Construction Documents and notified Tenant of the proposed Total Cost based on the lowest of such bids ("Cost Proposal");
- (h) the Cost Proposal has been approved by Tenant and is less than or equal to the Landlord's Allowance; and
- (i) under no circumstances shall Landlord be obligated to exceed the Landlord's Allowance in the construction of the Leasehold Improvements.

7. Construction of Leasehold Improvements. Landlord will cause the Leasehold Improvements to be constructed or installed in the Premises in a good and workmanlike manner and according to the Construction Documents and all applicable Laws. Tenant will not be entitled to any credit if Landlord's Allowance exceeds the Total Cost.

8. Change Orders. Tenant's Representative may authorize changes in the work during construction only by written instructions to Landlord's Representative on a form approved by Landlord. All such changes will be subject to Landlord's prior written approval according to Paragraph 10 below. Prior to commencing any change, Landlord will prepare and deliver to Tenant, for Tenant's approval, a change order ("Change Order") identifying the total cost of such change, which will include associated architectural, engineering and construction contractor's fees, and an amount sufficient to reimburse Landlord for overhead and related expenses incurred in connection with the Change Order. If Tenant fails to approve such Change Order within 5 business days after delivery by Landlord, Tenant will be deemed to have withdrawn the proposed change and Landlord will not proceed to perform the change. Upon Landlord's receipt of Tenant's approval, Landlord will proceed to perform the change. Tenant will pay the total cost of any Change Orders within 10 days of their approval of same.

9. Additional Tenant Work. If Tenant desires any work in addition to the Leasehold Improvements as set forth in the Construction Documents to be performed in the Premises ("Additional Tenant Work"), Tenant, at Tenant's expense, will cause plans and specifications for such work to be prepared either by Landlord's architect or engineer or, at Landlord's discretion, by consultants of Tenant's own selection. All plans and specifications for Additional Tenant Work will be subject to Landlord's approval according to Paragraph 10 below. If Landlord approves Tenant's plans and specifications for any Additional Tenant Work, Landlord will, subject to the following terms and conditions, perform said Additional Tenant Work pursuant to the terms of this Exhibit F.

Tenant shall pay to Landlord the total cost of any Additional Tenant Work (including the Construction Administration Fee) within 10 days of receipt of Landlord's invoice for same.

10. Landlord's Approval. All Preliminary Plans, Construction Documents and Change Orders; and any drawings, space plans, plans and specifications for any Additional Tenant Work or any other improvements or installations in the Premises, are expressly subject to Landlord's prior written approval. Landlord may withhold its approval of any such items that require work which:

- (a) exceeds or adversely affects the capacity or integrity of the Building's structure or any of its heating, ventilating, air conditioning, plumbing, mechanical, electrical, communications or other systems;
- (b) is not approved by the holder of any Encumbrance;
- (c) would not be approved by a prudent owner of property similar to the Building;
- (d) violates any agreement which affects the Building or binds Landlord;
- (e) Landlord reasonably believes will increase the cost of operating or maintaining any of the Building's systems;
- (f) Landlord reasonably believes will reduce the market value of the Premises or the Building at the end of the Term;
- (g) does not conform to applicable building code or is not approved by any governmental authority having jurisdiction over the Premises;
- (h) does not meet or exceed Building Standard; or
- (i) Landlord reasonably believes will infringe on the architectural or historical integrity of the Building.

11. Tenant's Delays. As provided in Section 3.1 of the Lease, the Term of the Lease (and therefore Tenant's obligation for the payment of Rent) will not commence until Landlord has substantially completed all work to be performed by Landlord as stated in Paragraph 8 above; provided, however, that if Landlord is delayed in Substantially Completing such work, or in obtaining a certificate of occupancy, if required by the applicable governmental authority, as a result of

- (a) any Tenant delays described in Paragraphs 5,6 or 7 above;
- (b) Tenant's request for materials or installations as a part of the Leasehold Improvements that are other than Building standard materials or installations that take longer to process or install than Building Standard materials or installation;
- (c) any Change Orders or changes in any drawings, plans or specifications requested by Tenant;
- (d) Tenant's failure to review, confirm or approve in a timely manner any item requiring Tenant's review, confirmation or approval;
- (e) performance of any Additional Tenant Work or any failure to complete or delay in completion of such work; or
- (f) any other act or omission of Tenant or Tenant's architects, engineers, contractors or subcontractors (all of which will be deemed to be delays caused by Tenant),

then the Commencement Date will only be extended under Section 3.1 of the Lease until the date on which Landlord would have substantially completed the performance of such work but for such delays.

12. General. No approval by Landlord or Landlord's architect or engineer of any drawings, plans or specifications which are prepared in connection with construction of improvements in the Premises will constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such drawings, plans or specifications, or the improvements to which they relate, for any use, purpose or condition, but such approval will merely be the consent of Landlord to the construction or installation of improvements in the Premises according to such drawings, plans or specifications. Failure by Tenant to pay any amounts due under this Work Letter will have the same effect as failure to pay Rent under the Lease, and such failure or Tenant's failure to perform any of its other obligations under this Work Letter will constitute a Default under Section 20.1 of the Lease, entitling Landlord to all of its remedies under the Lease as well as all remedies otherwise available to Landlord.

EXHIBIT C
1333 MAIN STREET BUILDING
OCCUPANCY ESTOPPEL CERTIFICATE

THIS OCCUPANCY ESTOPPEL CERTIFICATE ("Certificate") is given by Tompkins & McMaster, LLP ("Tenant") to Vista Investments, LLC ("Landlord"), with respect to that certain Lease Agreement dated _____ ("Lease"), under which Tenant has leased from Landlord certain premises known as Suite 225 ("Premises") in the 1333 Main Street Building ("Building").

In consideration of the mutual covenants and agreements stated in the Lease, and intending that this Certificate may be relied upon by Landlord and any prospective purchaser or present or prospective mortgagee, deed of trust beneficiary or ground lessor of all or a portion of the Building, Tenant certifies as follows:

1. Except for those terms expressly defined in this Certificate, all initially capitalized terms will have the meanings stated for such terms in the Lease.
2. Landlord first delivered possession of the Premises to Tenant (either for occupancy by Tenant or for the commencement of construction by Tenant) on _____.
3. Tenant moved into the Premises (or otherwise first occupied the Premises for Tenant's business purposes) on _____.
4. The Commencement Date occurred on _____ and the Expiration Date will occur on _____.
5. Tenant's obligation to make monthly payments of Base Rent under the Lease began (or will begin) on May 1, 2005.
6. Tenant's obligation to make monthly estimated payments of Additional Rent under the Lease began (or will begin) on _____.

Executed this day of _____.

TENANT: Tompkins & McMaster, LLP, a limited liability partnership

By: _____
Name: Frank Barnwell McMaster
Its: Managing Partner

EXHIBIT D
1333 MAIN STREET BUILDING
OFFICE RULES AND REGULATIONS

1. Rights of Entry. Tenant will have the right to enter the Premises at any time, but outside of Business Hours Tenant will be required to finish proper and verifiable identification and will be required to use building access cards as set forth in Rule 6 below. Landlord will have the right to enter the Premises at all reasonable hours to perform janitorial services or clean windows; and also at any time during the last 3 months of the Term, with reasonable prior notice to Tenant, to show the Premises to prospective tenants.

2. Right of Exclusion. Landlord reserves the right to require each person entering the Building to sign a register and either (i) to present a Building pass, or (ii) to be announced to the tenant such person is visiting and to be accepted as a visitor by such tenant or to be otherwise properly identified. Landlord may exclude from the Building any person who cannot comply with such requirement. Landlord also reserves the right to require any person leaving the Building to sign a register or to surrender any special entry pass given to such person. If Landlord elects to exercise the rights reserved above, Landlord will furnish a Building pass to all persons designated by Tenant in writing. Finally, Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of alcohol or drugs.

3. Obstruction. Tenant will not obstruct or place anything in or on the sidewalks or driveways outside the Building, or in the lobbies, corridors, stairwells or other Common Areas. Landlord may remove, at Tenant's expense, any such obstruction or thing without notice or obligation to Tenant.

4. Refuse. Tenant will place all refuse in the Premises in proper receptacles provided and paid for by Tenant, or in receptacles provided by Landlord for the Building, and will not place any litter or refuse on or in the sidewalks or driveways outside the Building, or the Common Areas, lobbies, corridors, stairwells, ducts or shafts of the Building.

5. Public Safety. Tenant will not throw anything out of doors, windows or skylights, down passageways or over walls. Tenant will not use any fire exits in the Building except in case of emergency.

6. Keys; Locks. Landlord may from time to time install and change locks on entrances to the Building, Common Areas and the Premises, and will provide Tenant a reasonable number of keys to meet Tenant's requirements. If Tenant desires additional keys, they will be furnished by Landlord and Tenant will pay a reasonable charge for them. Tenant will not add or change existing locks on any door in or to the Premises without Landlord's prior written consent. If with Landlord's consent, Tenant installs lock(s) incompatible with the Building master locking system:

(a) Landlord, without abatement of Rent, will be relieved of any obligation under the Lease to provide any service that requires access to the affected areas;

(b) Tenant will indemnify Landlord against any expense as a result of forced entry to the affected areas which may be required in an emergency; and

(c) Tenant will, at the end of the Term and at Landlord's request, remove such lock(s) at Tenant's expense.

At the end of the Term, Tenant will promptly return to Landlord all keys for the Building and Premises which are in Tenant's possession. For each building access card, a \$20.00 non-refundable "processing fee" will be charged. For each lost building access card, a non-refundable "processing fee" of \$20.00 will be charged. Building access cards not working properly will be exchanged at no charge.

7. Aesthetics. Tenant will not attach any awnings, signs, displays or projections to the outside or inside walls or windows of the Building which are visible from outside the Premises without Landlord's prior written approval, which may be withheld in Landlord's sole discretion. Tenant will use only Building Standard lighting in areas where such lighting is visible from outside the Building.

8. Window Treatment. If Tenant desires to attach or hang any curtains, blinds, shades or screens to or in any window or door of the Premises, Tenant must obtain Landlord's prior written approval. Tenant will not coat or sunscreen the interior or exterior of any windows without Landlord's express written consent. Tenant will not place any objects on the windowsills that cause, in Landlord's reasonable opinion, an aesthetically unacceptable appearance.

9. Directory Boards. The Building office directory boards have a limited capacity; however, Landlord will make every reasonable effort to accommodate Tenant's requirements.

10. Building Control. Landlord reserves the right to control and operate the Common Areas as well as facilities furnished for the common use of tenants in such manner as Landlord deems best for the benefit of tenants generally. Landlord reserves the right to prevent access to the Building during an emergency by closing the doors or otherwise, for the safety of tenants and protection of the Building and property in the Building.

11. **Engineering Consent.** All plumbing, electrical and heating, ventilating and air conditioning ("HVAC") work for and in the Premises requires Landlord's prior written consent to maintain the integrity of the Building's electrical, plumbing and HVAC systems.
12. **HVAC Operation.** Tenant will not place objects or other obstructions on the HVAC convectors or diffusers and will not permit any other interference with the HVAC system. Whenever the HVAC system is operating, Tenant will cause the shades, blinds or other window coverings in the Premises to be drawn as reasonably required by the position of the sun.
13. **Plumbing.** Tenant will only use plumbing fixtures for the purpose for which they are constructed. Tenant will pay for all damages resulting from any misuse by Tenant of the plumbing fixtures.
14. **Equipment Location.** Landlord reserves the right to specify where Tenant's heavy business machines, mechanical equipment and heavy objects will be placed in the Premises in order to best absorb and prevent vibration, noise and annoyance to other tenants, and to prevent damage to the Building. Tenant will pay the cost of any required professional engineering certification or assistance.
15. **Bicycles; Animals.** Tenant will not bring into, or keep about, the Premises any bicycles, vehicles, birds, animals (except seeing eye dogs) or organic Christmas decor of any kind. Bicycles and vehicles may only be parked in areas designated for such purpose.
16. **Carpet Protection.** In those portions of the Premises where carpet has been provided by Landlord, Tenant will, at its own expense, install and maintain pads to protect the carpet under all furniture having castors other than carpet castors.
17. **Proper Conduct.** Tenant will conduct itself in a manner which is consistent with the character of the Building and will ensure that Tenant's conduct will not impair the comfort or convenience of other tenants in the Building.
18. **Elevators.** Any use of the elevators for purposes other than normal passenger use (such as moving to or from the Building or delivering freight), whether during or after Building Business Hours, must be scheduled through the office of the Property Manager. Tenant will reimburse Landlord for any extra costs incurred by Landlord in connection with any such non-passenger use of the elevators.
19. **Deliveries.** Tenant will ensure that deliveries of materials and supplies to the Premises are made through such entrances, elevators and corridors and at such times as may from time to time be reasonably designated by Landlord. Such deliveries may not be made through any of the main entrances to the Building without Landlord's prior permission. Tenant will use or cause to be used, in the Building, hand trucks or other conveyances equipped with rubber tires and rubber side guards to prevent damage to the Building or property in the Building. Tenant will promptly pay Landlord the cost of repairing any damage to the Building caused by any person making deliveries to the Premises.
20. **Moving.** Tenant will ensure that furniture and equipment and other bulky matter being moved to or from the Premises are moved through such entrances, elevators and corridors and at such times as may from time to time be reasonably designated by Landlord, and by movers or a moving company reasonably approved by Landlord. Tenant will promptly pay Landlord the cost of repairing any damage to the Building caused by any person moving any such furniture, equipment or matter to or from the Premises.
21. **Solicitations.** Canvassing, soliciting and peddling in the Building are prohibited and Tenant will cooperate in preventing the same.
22. **Food.** Only persons approved from time to time by Landlord may prepare, solicit orders for, sell, serve or distribute food in or around the Building. Except as may be specified in the Lease or on construction drawings for the Premises approved by Landlord, and except for microwave cooking, Tenant will not use the Premises for preparing or dispensing food, or soliciting of orders for sale, serving or distribution of food.
23. **Parking Rules and Regulations.** Tenant will comply with all reasonable rules and regulations applicable to the parking facilities serving the Building as determined by the parking facility operator.
24. **Employees, Agents and Invitees.** In these Rules and Regulations, "Tenant" includes Tenant's employees, agents, invitees, licensees and others permitted by Tenant to access, use or occupy the Premises.
25. **Work Orders.** Tenant requirements will be attended to only upon application to Landlord. Building employees shall not be requested to perform, and shall not be requested by any tenant to perform, any work outside of regular duties, unless under specific instructions from Landlord.

EXHIBIT E
1333 MAIN STREET
JANITORIAL SPECIFICATIONS

I. CLEANING

A. General

1. All cleaning work will be performed between 8:00 a.m. and 12:00 midnight, Monday through Friday, unless otherwise necessary for stripping, waxing, etc.
2. Abnormal waste removal not usually associated with the operation of an office or retail building operation shall be Tenant's responsibility.
3. On the days the Building is closed due to national holidays as they are observed by national banks in South Carolina, building services are provided on an emergency basis only.

B. Daily Operating (5 times per week)

1. Tenant Areas

- (a) Empty and clean all waste receptacles; wash receptacles as necessary.
- (b) Vacuum all rugs and carpeted areas.
- (c) Empty, damp-wipe and dry all ashtrays.

2. Lavatories

- (a) Sweep and wash floors with disinfectant.
- (b) Wash both sides of toilet seats with disinfectant.
- (c) Wash all mirrors, basins, bowls and urinals.
- (d) Spot clean toilet partitions.
- (e) Empty and disinfect sanitary napkin disposal receptacles.
- (f) Refill toilet tissue, towel, soap and sanitary napkin dispensers.

3. Public Areas

- (a) Wipe down entrance doors and clean glass (interior and exterior).
- (b) Vacuum elevator carpets and wipe down doors and walls.
- (c) Clean Water Coolers

C. Operations as Needed (but not less than every other day)

1. Tenant and Public Areas

- (a) Buff all resilient floor areas.

D. Weekly operations

1. Tenant Areas, Lavatories, Public Areas

- (a) Hand-dust and wipe clean all horizontal surfaces with treated cloth include furniture, office equipment, windowsills, door ledges, chair rails, baseboards, convactor tops, etc., within normal reach.
- (b) Remove finger marks from private entrance doors, light switches and doorways.
- (c) Sweep all stairways.

E. Monthly Operations

1. Tenant and Public Areas

- (a) Thoroughly vacuum seat cushions on chairs, sofas, etc.
- (b) Vacuum and dust grillwork.

2. Lavatories

- (a) Wash down interior walls and toilet partitions.

F. As Required and Weather Permitting

1. Entire Building

- (a) Clean inside of all windows.
- (b) Clean outside of all windows.

G. Yearly

1. Tenant and Public Areas

- (a) Strip and wax all resilient tile floor areas.

THESE SPECIFICATIONS ARE SUBJECT TO CHANGE BY LANDLORD FROM TIME TO TIME.

EXHIBIT F
1333 MAIN STREET BUILDING PARKING

- 1. Term:** Provided that Tenant is not in default of the Lease, Tenant may take a maximum of ___ reserved parking permits ("Reserved Permits") in the surface parking lot immediately adjacent to the Building ("Parking Lot") and a maximum of ___ unreserved parking permits ("Unreserved Permits") in the Vista Center parking garage ("Vista Garage") for a term concurrent with the term of the Lease under Section I.J(Q). The Parking Lot and the Vista Garage are herein collectively, the "Parking Facilities". If Landlord ceases to have the right to use parking spaces in the Parking Facilities, Landlord shall exercise its good faith efforts to supply replacement spaces for use by Tenant within a reasonable proximity of the Building. If the Commencement Date is not the 1st day of the month then the 1st month of assessment of parking fees shall be a fractional month and each subsequent month shall begin on the first day and end on the last day of a month.
- 2. Fees:** The monthly fee for access to the Parking Facilities shall be the rate from time to time designated by Landlord as standard for the Building. On the execution date of the Lease, the rate is _____ for each Reserved Permit and _____ per Unreserved Permit. Landlord shall provide Tenant at least 30 days' written notice of any change in the parking rates at the Parking Facilities and the giving of such notice shall be deemed an amendment to this Lease and Tenant shall thereafter pay the adjusted rent. All payments of rent for parking permits shall be made (i) at the same time as Base Rent is due under the Lease and (ii) to Landlord or to such persons (for example but without limitation, the manager of the Garage) as Landlord may direct from time to time. For each parking/building access card, a _____ non-refundable "processing fee" will be charged. For each lost parking/building access card, a non-refundable "processing fee" of _____ will be charged. Parking/building access cards not working properly will be exchanged at no charge. Parking access cards will not be activated until the user provides Landlord with the vehicle's license plate number, make, model and year.
- 3. Use:** Tenant's parking spaces will be for its employee's use only ("Patron"). Patrons will be granted access to the parking facilities only upon the signing of a Parking License with Landlord. Tenant and Patrons also agree to abide by Landlord's Parking Rules and Regulations as amended from time to time. Parking access does not include storage, and storage of vehicles is prohibited.
- 4. Assignment:** The privilege of access to the Parking Facilities shall not be assignable by Tenant. Landlord reserves the right to freely assign these parking rights to any subsequent owner or manager of the Parking Facility.
- 5. Indemnification:** Each party waives all claims against the other for damage to any property or injury or death of any person in, upon or about the Parking Facility arising at any time and from any cause other than the negligence or willful act of the other party, the employees or agents. This indemnity obligation shall include reasonable attorneys' fees, investigation costs and all other reasonable costs expenses incurred by a party from the first notice that any claim or demand is to be made or may be made against that party. The provisions of this indemnity shall survive the termination of this Lease with respect to any damage, injury or death occurring on or prior to such termination.
- 6. Disclaimer:** The Parking Facility only provides a license to park at Tenant's sole risk. No bailment is created. Landlord does not provide safekeeping, nor shall it be deemed an insurer for vehicles or their contents. Landlord will not be responsible for fire, theft, damage or loss. Attendants are present solely to assist Tenant and its employees and are unable to verify ownership of the vehicles departing any facility. No representation, guaranty or warranty is made or assurance given that any communication or security systems, devices or procedures in the Parking Facilities will be effective to prevent injury to Tenant, Patrons or any other person, and Landlord reserves the right to discontinue or modify at any time such communication or security systems or procedures without liability to Tenant or Patrons.
- 7. Damage to or Condemnation of Parking Facilities:** If Landlord fails or is unable to provide any parking space to Tenant in the Parking Facilities because of damage or condemnation, such failure or inability shall never be deemed to be a default by Landlord as to permit Tenant to terminate the Lease, either in whole or in part, but Tenant's obligation to pay rent for any such parking space which is not provided by Landlord shall be abated for so long as Tenant does not have the use of such parking space and such abatement shall constitute full settlement of all claims that Tenant might otherwise have against Landlord by reason of such failure or inability to provide Tenant with such parking space.
- 8. Rules and Regulations:** A condition of any parking shall be compliance by the Patron with Parking Facilities rules and regulations, including any sticker or other identification system established by Landlord. Parking Facilities managers or attendants are not authorized to make or allow any exceptions to these Rules and Regulations. The following rules and regulations are in effect until notice is given to Tenant of any change. Landlord reserves the right to modify and/or adopt such other reasonable and generally applicable rules and regulations for the Parking Facilities as it deems necessary for the operation of the Parking Facilities.
- (a) Cars must be parked entirely within the stall lines painted on the ground
 - (b) All directional signs and arrows must be observed.
 - (c) The speed limit shall be no more than five (5) miles per hour.

- (d) Parking is prohibited in areas not striped for parking, aisles, areas where "no parking" signs are posted, in cross hatched areas and in such other areas as may be designated by Landlord or Landlord's agent(s) including, but not limited to, areas designated as "Visitor Parking" or reserved spaces not rented under this Agreement.
- (e) Every Patron is required to park and lock his own car. All responsibility for damage to cars or persons or loss of personal possessions is assumed by the Patron.
- (f) Spaces which are designated for small, intermediate or full-sized cars shall be so used. No intermediate or full-size cars shall be parked in parking spaces limited to compact cars.

9. Default: Failure to promptly pay the rent required hereunder shall constitute a default under the Lease and Landlord, may, at its option and in addition to all other remedies provided for in the Lease, terminate Tenant's rights to use the Parking Facilities. Landlord may refuse to permit any person who violates the rules to park in the Parking Facilities and any violation of the rules shall subject the car to removal at the car owner's expense. No such refusal or removal shall create any liability on Landlord or be deemed to interfere with Tenant's right to quiet possession of the Premises.

10. Voidable: This allocation of parking permits under this Exhibit F applies to Tenant only and shall be void if (a) Tenant assigns the Lease or sublets the Premises or otherwise transfers all or part of its interest in the Lease or the Premises or (b) Tenant exercises its Termination Option as contained in Section 27 of the Lease.

FIRST AMENDMENT OF OFFICE LEASE

THIS FIRST AMENDMENT OF OFFICE LEASE ("First Amendment") is made on August 26, 2005, between VISTA INVESTMENTS, LLC, ("Landlord"), whose address is 1333 Main Street, Suite 700, Columbia, South Carolina, 29201 and TOMPKINS & MCMASTER, LLP ("Tenant"), whose address is 1333 Main Street, Suite 225, Columbia, SC 29201.

RECITALS

Landlord and Tenant entered into a Lease dated November 30, 2004, for the Premises consisting of approximately 4,217 rentable square feet on the second (2nd) floor ("Premises") of the 1333 Main Street, Columbia, South Carolina 29201 ("Building").

Landlord and Tenant desire to amend the Lease to include an additional 1,666 rentable square feet, known as Suite 240 ("Additional Premises").

THEREFORE, in consideration of the mutual covenants and agreements stated in the Lease and below, and for other sufficient consideration received and acknowledged by each party, Landlord and Tenant agree to amend the Lease as follows:

1. Section 1.1 (h) of the Lease shall be deleted and replaced with the following:

" 'Base Rent' means the rent payable according to Section 4.1, which will be in an amount per month applicable during each lease year as follows:

Period	Annual Base Rent per RSF	Annual Base Rent	Monthly Base Rent
Commencement Date Expiration Date			
05/01/05-09/30/05	\$13.00/RSF	\$54,821.00	\$4,568.42
10/01/05-04/30/06	\$13.00/RSF	\$76,479.00	\$6,373.25
05/01/06-04/30/07	\$13.50/RSF	\$79,420.50	\$6,618.38
05/01/07-04/30/08	\$14.00/RSF	\$82,362.00	\$6,863.50
05/01/08-04/30/09	\$14.50/RSF	\$85,303.50	\$7,108.63
05/01/09-04/30/10	\$15.00/RSF	\$88,245.00	\$7,353.75
05/01/10-04/30/11	\$15.50/RSF	\$91,186.50	\$7,598.88

2. Section 1.1 (d) of the lease shall be deleted and replaced with the following:

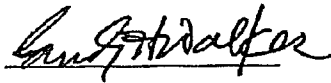
" 'Premises' means those premises known as Suite 225 and 240 located on the second (2nd) floor of the Building and identified on Exhibit A which is hereby deemed to be 5,883 rentable square feet."

3. DELIVERY AND IMPROVEMENTS OF THE ADDITIONAL PREMISES.
Tenant acknowledges and agrees that Landlord agrees to paint the Additional Premises at no cost to the Tenant prior to October 1, 2005. No other promises to alter, remodel, or improve the Additional Premises or Building and no representations concerning the condition of the Additional Premises or Building have been made by Landlord to Tenant other than as may be expressly stated in the Lease.

4. **CONFLICTING PROVISIONS.** If any provisions of this First Amendment conflict with any of those of the Lease, then provisions of this First Amendment shall govern.
5. **REMAINING LEASE PROVISIONS.** Except as stated in this First Amendment, all other viable and applicable provisions of the Lease shall remain unchanged and continue in full force and effect throughout the Lease Term.
6. **BINDING EFFECT.** Landlord and Tenant ratify and confirm the Lease and agree that this First Amendment shall bind and insure the benefit of the parties, and their respective successors, assigns, and representatives as of the date first signed.

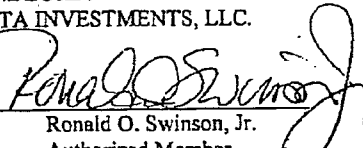
AFFIRMING THE ABOVE, the parties have executed this FIRST AMENDMENT OF OFFICE LEASE on the date first stated.

WITNESSES



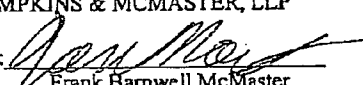
LANDLORD:
VISTA INVESTMENTS, LLC.

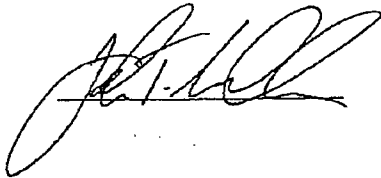
BY:


Ronald O. Swinson, Jr.
Authorized Member

TENANT:
TOMPKINS & MCMASTER, LLP

BY:


Frank Barnwell McMaster
ITS: Managing Partner



1

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3

1

SUPPLEMENTAL

- 1

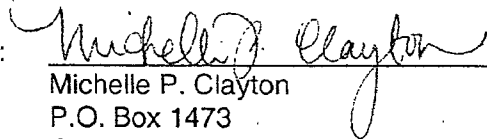
4. The Petitioner is informed and believes that the Respondent, Tompkins & McMaster, LLP, has assets in its possession and control and is withholding them from the satisfaction of the Petitioner's judgment. The Petitioner is entitled to an Order directing the Respondent Tompkins & McMaster, LLP to appear and answer under oath questions concerning any assets which are or may be owned by Tompkins & McMaster, LLP or may be in Tompkins & McMaster, LLP's possession. The Petitioner is further entitled to the appointment of a receiver to take possession of any assets so discovered, pursuant to the statutory and decisional laws of the State of South Carolina relating to supplementary proceedings, and the Petitioner is further entitled to an allowance of its costs and attorneys' fees in these proceedings. The Petitioner is further entitled to an Order that the Respondent Tompkins & McMaster, LLP appear and produce certain financial documentation and further that the Respondent Tompkins & McMaster, LLP be restrained from secreting or disposing of any of its property.

WHEREFORE, the Petitioner prays that this Court issue a Rule to Show Cause directing the Respondent Tompkins & McMaster, LLP to appear and answer under oath questions concerning any assets which may have been withheld from the satisfaction of the Petitioner's judgment and requiring the Respondent Tompkins & McMaster, LLP to produce any and all books and records concerning its assets, including checkbooks, savings account books, life insurance policies, stock certificates, deeds, notes, mortgages, bonds, and tax returns for the preceding three (3) years, both for the United States and for the State of South Carolina, and any all current records pertaining to the financial status of the judgment debtor, including, but not limited to balance sheets, inventory statements, and related accounting documents, current leases, stock

subscription agreements, receipts, and contracts of sale and purchase, and further requiring the Respondent Tompkins & McMaster, LLP to show cause, if any can be shown, why a receiver should not be appointed to take and apply such assets to the satisfaction of the Petitioner's judgment; and the Petitioner would request that the Respondent Tompkins & McMaster, LLP be restrained and enjoined from changing, altering, destroying, or defacing any said instruments, or from making any transfer or other disposition of the property not exempt by law from execution, and for such other and further relief in favor of the Petitioner and against the Respondent Tompkins & McMaster, LLP as this Court, in its discretion, deems just and appropriate.

TURNER PADGET GRAHAM & LANEY P.A.

By:



Michelle P. Clayton

P.O. Box 1473

Columbia, South Carolina 29202

Telephone: (803) 254-2200

ATTORNEYS FOR THE PETITIONER

February 23, 2011

OP

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No. 2011-CP 40-6176
)

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

AMENDED COMPLAINT
(SET ASIDE CONVEYANCE)
(NON-JURY)

FILED
2011 SEP 20 PM 1:02
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, Vista Investments, LLC ("Plaintiff" or "Vista"), complains of the Defendants herein, would respectfully show unto this Court the following:

1. Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.
2. Defendant Tompkins & McMaster, LLP ("T&M") is a limited liability partnership organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
3. Defendant John Gregg McMaster, Jr. ("McMaster") is a citizen and resident of the State of South Carolina, Richland County.
4. Jurisdiction, venue and subject matter of this Complaint are properly before this Court.
5. On November 30, 2004, T&M entered into a Lease Agreement with Plaintiff for the purpose of leasing 4,217 square feet located at 1333 Main Street in Columbia, South Carolina known as Suite 225.

6. On August 26, 2005, T&M executed a First Amendment of Office Lease to include an additional 1,666 square feet located at 1333 Main Street in Columbia, South Carolina known as Suite 240.

7. On July 31, 2009, prior to the expiration of the aforementioned lease agreements, T&M vacated Suite 225 and Suite 240, and at that time, T&M owed Plaintiff for back rent and late charges.

8. On November 30, 2009, Plaintiff filed an action in the Richland County Court of Common Pleas, styled *Vista Investments, LLC v. Tompkins & McMaster, LLP*, Civil Action Number 2009-CP-40-8410.

9. The lawsuit alleged that T&M was in default of the terms of the lease agreements by reason of its abandonment of Suite 225 and Suite 240 before the expiration of the lease term and its failure to pay monthly rent. Plaintiff requested back rent and the entire remaining balance of the full rental for the entire remaining term of the lease.

10. T&M filed an Answer on or about February 1, 2010.

11. The Plaintiff filed a Motion for Summary Judgment and prior to the hearing, the parties agreed to resolve the matter by having T&M execute a Confession of Judgment in the amount of \$201,125.24 in favor of the Plaintiff. The Confession of Judgment was executed on August 10, 2010 and filed with the Richland County Clerk of Court on August 10, 2010.

12. In the course of attempting to locate assets owned by T&M, the Plaintiff has discovered that, on or about July 28, 2009, while indebted to the Plaintiff as set forth above and three (3) days before T&M vacated the Plaintiff's property, a UCC

financing statement was filed purporting to give Defendant McMaster a security interest in certain collateral identified on Exhibit A to the UCC financing statement. A copy of the UCC financing statement is attached hereto and incorporated herein by reference as Exhibit 1. The existence of this UCC filing has frustrated Plaintiff's efforts to collect sums due.

13. The Plaintiff is informed and believes that T&M gave McMaster a security interest in the collateral for the purpose of hindering, delaying, and/or defrauding the Plaintiff of the sums to which it is entitled and in an effort to protect the listed collateral from levy and execution, and such intent is imputable to McMaster.

14. Said UCC financing statement purportedly gave Defendant McMaster an interest in property, which has been owned by T&M.

15. Upon information and belief, the transfer was made for no or inadequate or nominal consideration and thus was voluntary.

16. Upon information and belief, T&M failed to retain sufficient property to pay its debts at all times relevant hereto.

17. The transfer was made with T&M's and McMaster's knowledge of the amounts due to the Plaintiff, Plaintiff's claim, and with the actual intention to defraud the Plaintiff.

18. The Plaintiff is informed and believes that T&M gave McMaster a security interest in the property in order to defeat T&M's creditors, including the Plaintiff, in violation of the Statute of Elizabeth, as codified at South Carolina Code § 27-23-10.

19. The Plaintiff is informed and believes that, pursuant to South Carolina Code § 27-23-10, the transfer described herein should be declared null, void, and of no

effect and the property referenced herein be released from the UCC financing statement filed on July 28, 2009.

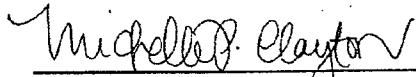
20. The Plaintiff seeks the penalty allowed under South Carolina Code § 27-3-30 for the punishment of parties to fraudulent conveyances.

WHEREFORE, the Plaintiff prays for the following relief:

- a. That the transfer referenced herein be declared a fraudulent conveyance under South Carolina law;
- b. That the UCC financing statement be declared null and void and of no effect and the collateral released from the UCC filing;
- c. That the Plaintiff be awarded the penalty allowed under South Carolina Code § 27-23-30.
- d. For such other and further relief as the Court deems just and proper.

TURNER PADGET GRAHAM & LANEY P.A.

By:



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**ATTORNEYS FOR VISTA INVESTMENTS,
LLC**

September 20, 2011

TPGL 4037633v1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO: 11-CP-40-6176
	)	
Vista Investments, LLC,	)	
	)	
Plaintiff,	)	
	)	DEFENDANTS' NOTICE OF MOTION
v.	)	AND MOTION FOR SUMMARY
	)	JUDGMENT
Tompkins & McMaster, LLP and	)	
John Gregg McMaster, Jr.,	)	
	)	
Defendants.	)	

TO: MICHELLE P. CLAYTON, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, through the undersigned attorney, will on the tenth day after service hereof, at 11:00 a.m., or as soon thereafter as counsel can be heard, move before the Presiding Judge of the Court of Common Pleas of Richland County for an Order granting Defendants Summary Judgment on the Plaintiff's claims.

Said motion will be made on the specific grounds of the affirmative defense of res judicata and/or collateral estoppel:

1. Plaintiff seeks in the present action to set aside the U.C.C. security filing of July 28, 2009.
2. The Plaintiff alleges in the present action that the Defendants made a conveyance to John G. McMaster and filed a U.S.C. security interest on July 28, 2009, to frustrate the Plaintiff's collection efforts.

ARGUMENT

The Plaintiff's present action clearly should be barred by the application of the principles of

res judicata and/or collateral estoppel.

- A. It is undisputed that on July 28, 2009, a U.C.C. filing was made which filing is public notice of the security interest held by Defendant John G. McMaster in certain assets of Tompkins & McMaster, LLP. (Attached as Exhibit A.)
- B. Plaintiff filed an action for breach of lease and the collections on past due and accelerated rent on November 30, 2009 naming Tompkins & McMaster, LLP as the Defendant (attached as Exhibit B.)
- C. The Defendant Tompkins & McMaster, LLP confessed judgment on August 10, 2010 (attached as Exhibit C) and a portion of the judgment was satisfied by the conveying of real estate to the Plaintiff on February 3, 2011 in the amount of \$36,000.00. This real estate was held in the name of Tompkins and McMaster, LLP and was subject to the judgment of the Plaintiff.
- D. On April 25, 2011, a full and complete supplemental hearing was held before the Honorable Joseph Strickland, Master-in-Equity for Richland County for the purpose of locating additional assets subject to the judgment of the Plaintiff.
- E. The Defendant Tompkins & McMaster, LLP placed in the possession of the Plaintiff a copier, computer monitors, conference table, chairs, art work, volumes of the South Eastern Second at the specific request and argument of the Plaintiff at the supplemental hearing of April 25, 2011.
- F. Prior to and/or during collection process of the November 30, 2009, breach of lease action and the supplemental hearing, the Plaintiff was aware of the July 28, 2009, U.C.C. filing as specifically referenced to in # 12 of Plaintiff's complaint in the

present action as follow:

12. In the course of attempting to locate assets owned by T&M, the Plaintiff has discovered that, on or about July 28, 2009, while indebted to the Plaintiff as set forth above and three (3) days before T&M vacated the Plaintiff's property, a UCC financing statement was filed purporting to give Defendant McMaster a security interest in certain collateral identified on Exhibit A to the UCC financing statement. A copy of the UCC financing statement is attached hereto and incorporated herein by reference as Exhibit 1. The existence of this UCC filing has frustrated Plaintiff's efforts to collect sums due.

G. The present action is Plaintiff's attempt at a second bite of the apple. The Plaintiff is attempting to raise an issue that could have been – but was not – raised in the first action filed on November 30, 2009 and followed by supplemental hearings on April 25, 2011. The Defendant John G. McMaster is the sole equity partner in Tompkins & McMaster, LLP, is 97 years of age and has been the sole equity partner in Tompkins & McMaster, LLP for numerous years prior to the filing of the November 30, 2009 action.

H. It should be noticed that the lease upon which the Plaintiff filed the November 30, 2009, action specifically excluded the individual partners of Tompkins and McMaster, LLP to any liability associated with the lease agreement and/or collection process. This specific “non partner liability” language is referenced to in the Confession of Judgment executed and filed by the Plaintiff on August 10, 2010 and attached as Exhibit D.

The following sequence of dates outlines and forecloses Plaintiff's present action:

- July 28, 2009 – UCC filing, attached as Exhibit A)
- November 30, 2009 – Plaintiff filed breach of lease collection action (lease agreement attached as Exhibit B)
- August 10, 2010 – Confession of judgment entered, attached as Exhibit C)
- April 25, 2011 – Supplemental hearing before the Honorable Joseph Strickland for location and/or seizure of assets.

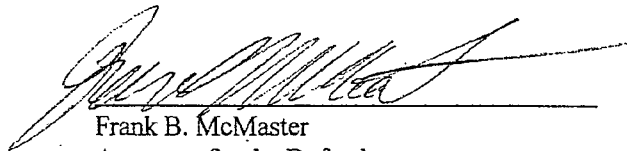
SUMMARY

The Plaintiff was on notice and had knowledge of the UCC filing prior to and/or during the collection process associated with the November 30, 2009 breach of lease and collection action and the filing itself is public notice to the Plaintiff. The Plaintiff could have raised the issue during the collection action process but failed to pursue and/or raise the issue although Plaintiff had substantial notice and pursued the action through full and complete supplemental hearings.

The Confession of Judgment and supplemental hearing is a final judgment on the issue that could have, but was not raised by the Plaintiff and the same parties were involved in the prior action as Tompkins & McMaster, LLP is composed of three (3) partners with John G. McMaster being the sole equity partner.

The Plaintiff's action to set aside conveyance is clearly barred by the affirmative defense of res judicata and/or collateral estoppel.

The Plaintiff's action should be dismissed with cost and Defendants reserve the right to submit additional argument and supporting evidence/material based upon the pleadings, SC case laws as is applicable and such other matters properly submitted to the Court.



Frank B. McMaster
Attorneys for the Defendant
TOMPKINS AND McMASTER
1530 Richland Street
Columbia, South Carolina, 29202
803-799-4499

Columbia, South Carolina

November 28, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP 40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

**MOTION FOR ENTRY OF DEFAULT
AND DEFAULT JUDGMENT
AGAINST DEFENDANTS**

2011 DEC -7 PM 4:52
JANETTE W. McBRIDE
C.C.P. & G.S.

FILED

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Vista Investments, LLC ("Plaintiff"), by and through its undersigned attorneys, moves pursuant to Rule 55(a) and (b) of the South Carolina Rules of Civil Procedure for Entry of Default and for an Order Granting Judgment by Default to the Plaintiff with respect to the Amended Complaint and claims therein against the Defendants Tompkins & McMaster, LLP and John Gregg McMaster, Jr..

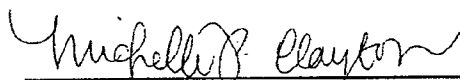
This request is made based on the fact that the Amended Summons and Amended Complaint were served on Frank B. McMaster, as counsel for the Defendants, on September 29, 2011, as shown by the Acceptance of Service attached as Exhibit A to the Affidavit of Default. The Defendants were granted an extension of time until November 28, 2011 in which to respond to the Plaintiff's Amended Complaint, as shown by the acknowledgement of extension attached as Exhibit B to the Affidavit of Default. Defendants served and filed a Motion for Summary Judgment on November 28, 2011, but Defendants have failed to answer or otherwise defend the Amended

Complaint as provided by Rule 12 of the South Carolina Rules of Civil Procedure. See Rule 12(a), SCRCP (a defendant must serve his answer within thirty days after the service of the complaint upon him); Rule 55 (a) ("When a party . . . has failed to plead or otherwise defend as provided by these rules, the clerk of court shall enter . . . default."); *see also Stark Truss Co., Inc. v. Superior Constr. Corp.*, 360 S.C. 503, 602 S.E.2d 99, (Ct. App. 2004)(explaining "otherwise defend" refers to Rule 12 challenges such as matters of service, venue, and the sufficiency of the prior pleading). Accordingly, pursuant to Rules 55(a) and (b) of the South Carolina Rules of Civil Procedure, Plaintiff is entitled to an entry of default and judgment by default as to Defendants Tompkins & McMaster, LLP and John Gregg McMaster, Jr.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Counsel for the Plaintiff certifies that consultation would serve no useful purpose in this matter.

TURNER PADGET GRAHAM & LANEY P.A.

By:



Michelle P. Clayton
MClayton@TurnerPadget.com
W. Duvall Spruill
DSpruill@TurnerPadget.com
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200

**ATTORNEYS FOR VISTA INVESTMENTS,
LLC**

December 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP 40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

AFFIDAVIT OF DEFAULT

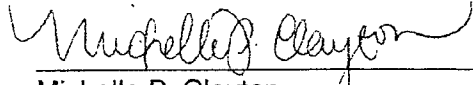
FILED
2011 DEC - 7 PM 4:43
JEANETTE McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED before me, Michelle P. Clayton, who being duly sworn, states:

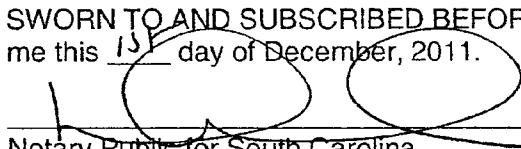
1. She is an attorney for the Plaintiff Vista Investments, LLC ("Plaintiff") in the above-entitled action.
2. The Amended Complaint of the Plaintiff (dated and filed on September 20, 2011) was served upon Frank B. McMaster, Esquire, as counsel for the Defendants, on, September 29, 2011, as shown by the attached Acceptance of Service. (Exhibit A).
3. The Defendants were granted an extension of time until November 28, 2011 in which to respond to the Plaintiff's Amended Complaint, as shown by the attached acknowledgement of extension. (Exhibit B).
4. As of December 1, 2011, the Defendants have served no Answer or other pleading upon Plaintiff pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

5. The Defendants are now and have been in default as to the Amended Complaint pursuant to Rule 55 of the South Carolina Rules of Civil Procedure.

6. Upon information and belief, the Defendant John Greg McMaster, Jr. is not an infant or an incompetent person, is not in the military service of the United States, and is not entitled to relief under the Soldiers' and Sailors' Relief Act of 1940, as amended.


Michelle P. Clayton

SWORN TO AND SUBSCRIBED BEFORE
me this 13th day of December, 2011.


Notary Public for South Carolina

My Commission Expires: 5/27/2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP-40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

ACCEPTANCE OF SERVICE
AS TO DEFENDANT TOMPKINS &
McMASTER, LLP & G.S.

JEFF W. McBRIDE

2011 SEP 30 PM 2:18

Service of the Civil Action Coversheet, Amended Summons and Amended Complaint in connection with the above referenced action is accepted and a copy retained by me this 29 day of September, 2011, at Columbia, South Carolina.

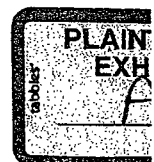
Frank B. McMaster

Frank B. McMaster, Esquire
P.O. Box 7337
Columbia, SC 29202

ATTORNEY FOR TOMPKINS & McMASTEI
LLP

9/29/11

*I request 30 Extension to Answer
or otherwise Proceed.
Serving
Tompkins & McMaster*



COPI

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2011-CP-40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John

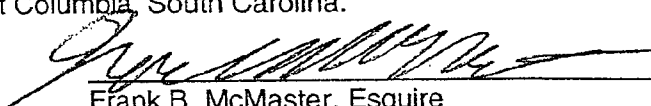
Gregg McMaster, Jr.,

Defendants.

ACCEPTANCE OF SERVICE AS TO JOHN
GREGG McMASTER, JR.

FILED
2011 SEP 29 PM 2:18
JEANE L. McBRIDE
Clerk, C.D. G.S.

Service of the Civil Coversheet, Amended Summons and Amended Complaint
connection with the above referenced action is accepted and a copy retained by me til
24 day of September, 2011, at Columbia, South Carolina.


Frank B. McMaster, Esquire
P.O. Box 7337
Columbia, SC 29202

ATTORNEY FOR JOHN GREGG McMASTER

9/29/11
I request 30 Day Extension
in which to Answer or
otherwise Plead.
Sincerely
Frank B McMaster

REPLY TO:

W. Duvall Spruill

E-Mail: DSpruill@TurnerPadget.com
Writer's Direct Dial: (803) 227-4291
Direct Fax: (803) 400-1528

September 30, 2011

VIA E-MAIL

Frank B. McMaster, Esquire
Tompkins & McMaster, LLP
P.O. Box 7337
Columbia, SC 29202

Re: Civil Action No. 2011-CP-40-6176
Vista Investments, LLC v. Tompkins & McMaster, LLP
and John Gregg McMaster, Jr.
Our File No. 5603.109

Dear Frank:

Thank you for having the signed Acceptances of Service hand delivered to our office this morning. Acknowledging your request for an extension of time, Defendants' responsive pleadings will now be due on or before November 28, 2011.

Yours truly,

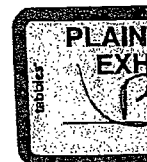

W. Duvall Spruill

WDS:bdg

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TPGL 4059678v1



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP 40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

ENTRY OF DEFAULT

2011 DEC -7 PM 4:42
JEANETTE W. BRIDE
C.C.P. & G.S.

It appearing from the records on file that Defendants, Tompkins & McMaster, LLP and John Greg McMaster, Jr., have failed to answer, plead, or otherwise defend this action though said Defendants were duly served with a copy of the Amended Summons and Amended Complaint on September 29, 2011; therefore, in accordance with *South Carolina Rule of Civil Procedure* 55(a), it is declared that the Defendants, Tompkins & McMaster, LLP and John Greg McMaster, Jr., are in default and the default of said Defendants is hereby entered.

Columbia, South Carolina

December 5th, 2011


Clerk of Court, Richland County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO: 11-CP-40-6176
VISTA INVESTMENTS, LLC,	)	
	)	
PLAINTIFF,	)	
	)	DEFENDANTS' RETURN AND
V.	)	MEMORANDUM TO PLAINTIFF'S
	)	MOTION FOR DEFAULT JUDGMENT
TOMPKINS & MCMASTER, LLP AND	)	
JOHN GREGG MCMASTER, JR.,	)	
	)	
DEFENDANTS.	)	

This case is based upon Plaintiff's action/complaint to set aside a conveyance or UCC security filing held in the name of John Gregg McMaster.

The present action was filed on September 19, 2011 (attached as Exhibit A). An extension to answer or otherwise plead was granted until November 28, 2011.

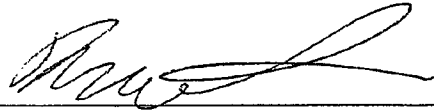
The Defendant's filed a Motion for Summary Judgment based upon Rules 12(b) and Rule 8 SCRCF and including the affirmative defenses of Res Judicata and Collateral Estoppel.

Pursuant to Rules 12, 12(b) and 8(e) SCRCF, a motion based upon these Rules can be pled as a part of the Defendant's Answer or by motion prior to the filing of an Answer. Regardless, it is abundantly clear that the Defendants appeared and pled in response to the Plaintiff's Complaint in a timely fashion.

The Plaintiff's request for and order of default is frivolous and a desperate attempt to avoid the results of Plaintiff's failure to attempt to set aside the UCC filing during the full and complete collection process of the first action between the same parties filed on November 30, 2009 (attached as Exhibit B).

No default should be entered and the Plaintiff's Motion for Default should be

dismissed with cost and possible sanctions.



Frank B. McMaster
Attorneys for the Defendant
TOMPKINS AND McMASTER
1530 Richland Street
Columbia, South Carolina, 29202
803-799-4499

Columbia, South Carolina
December 28, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO: 11-CP-40-6176
VISTA INVESTMENTS, LLC,	)	
	)	
PLAINTIFF,	)	
	)	ANSWER OF DEFENDANTS
V.	)	TOMPKINS & MCMASTER, LLP
	)	AND JOHN GREGG MCMASTER, JR.
TOMPKINS & MCMASTER, LLP AND	)	
JOHN GREGG MCMASTER, JR.,	)	
	)	
DEFENDANTS.	)	

The Defendants, Tompkins & McMaster, LLP and John Gregg McMaster, Jr., responding to the Amended Complaint of the Plaintiff, Vista Investment, LLC, answer as follows:

1. The Defendants deny each and every allegation contained in the Complaint, except those hereinafter specifically admitted.
2. The Defendants admit the allegations contained in paragraphs 1, 2, and 3 of the Amended Complaint.
3. The Defendants deny allegations contained in paragraph 4 as the Court no longer has jurisdiction over the subject matter based upon the principal of res judicata and/or collateral estoppel.
4. Defendants admit paragraphs 5, 6, 7, 8, 9, 10, and 11 and Defendants refer to the prior action between these parties and makes reference to Defendant's Motion of Summary Judgment filed in the present action on November 28, 2011 attached as Exhibit 1.
5. The Defendants admit that a U.C.C. statement was filed, but the Defendant John Gregg McMaster, Jr. has been the sole equity party of Tompkins and McMaster, LLP for not less than 10 years prior to the filing of the U.C.C. financing statement and that the firm of Tompkins & McMaster, LLP is liable to Defendant John Gregg McMaster, Jr. as a result of loans made by

Defendant John Gregg McMaster, Jr. to Tompkins & McMaster, LLP over a period of not less than 10 years which the loans are secured by a promissory note and perfected by the U.C.C. filing.

6. That Defendant denies the allegations contained in paragraph 13 and demand strict proof thereof.

7. The defendants admits so much of Paragraph 16 as alleges that the U.C.C. filing confirmed and perfected the debt owed to John Gregg McMaster, Jr. Defendants deny the allegations in paragraph 14 which alleges the debt, U.C.C. filing, promissory note and status of sole equity partner are invalid and/or non-enforceable and demand strict proof thereof. The Defendants deny any additional allegations contained in paragraph 14 that imply that Defendant John Gregg McMaster, Jr. was and is not the owner of all assets of Tompkins & McMaster, LLP prior to the execution of the lease to the Plaintiff and demands strict proof thereof.

8. The Defendants deny the allegations contained in paragraphs 15, 16, 17, 18, 19, and 20 and demands strict proof thereof.

FOR A SECOND DEFENSE

AND BY WAY AFFIRMATIVE DEFENSE

9. The response of the Defendants in Paragraphs 1 – 8 are realleged as if restated herein.

10. The Plaintiff initiated an action for breach of lease and collection of past due rent against Tompkins & McMaster, LLP on or about November 30, 2008 attached as Exhibit 2.

11. The Defendant Tompkins & McMaster, LLP confessed judgment to the Plaintiff for the full amount of past due and accelerated rent for the remainder. (See attached Exhibit 3.)

12. The Defendant Tompkins & McMaster, LLP transferred to the Plaintiff real property owned by Tompkins & McMaster, LLP in the amount of \$36,000.00 which amount satisfied a portion of the debt/judgment owed the Plaintiff. (Copy of deeds and Partial Satisfaction attached as Exhibits 4 and 5.) This real property was property of Tompkins &

McMaster, LLP, but not secured by the U.C.C. filing and/or promissory note to the Defendant John Gregg McMaster and was subject to the judgment of the Plaintiff.

13. Plaintiff had prior notice and was informed by Tompkins & McMaster, LLP of the perfected U.C.C. financial statement made to John Gregg McMaster and his interest in Tompkins & McMaster, LLP as the sole equity partner prior to the confession of judgment being entered in August 10, 2010.

14. The lease entered by Tompkins & McMaster specifically excludes any liability of any individual partner of Tompkins & McMaster, LLP from any personal liability including but not limited to negative accounts/debts owed to any partner of Tompkins & McMaster, LLP as shown by Exhibit 6.

15. On April 25 a full and complete hearing was held before the Honorable Joseph Strickland and included detailed testimony of all issues as to the assets of Tompkins & McMaster, LLP, including but not limited to the U.C.C. filing, promissory note and all other financial aspects of Tompkins & McMaster, LLP and the structure of Tompkins & McMaster, LLP as to John Gregg McMaster being the sole equity partner.

16. At the close of the Supplemental Hearing, the Plaintiff demanded tables, chairs, computers, art work, desks, telephones, the complete volume of SC Code, complete volume of SE 2nd located at the office of Tompkins & McMaster, LLP and several other items as shown on pages 43 and 44 of the transcript attached as Exhibit 7.

17. The Defendant assembled a portion of the items demanded by the Plaintiff and attempted to make delivery. Plaintiff refused to accept the items for several days although Plaintiff had demanded in open court delivery and possession of the items.

18. After the Defendant questioned Plaintiff as to the demand for the items but subsequent refusal to take possession thereof, the Plaintiff consented and accepted the items but has failed to satisfy any portion the judgment and/or give credit to the

Defendant for any of the items delivered.

19. The Plaintiff is and was charged with public notice of a filed U.C.C. statement as of July 28, 2009.

20. The Plaintiff's present action (2010) is nothing more than an attempt to raise an issue that could have and should have been raised in the prior action of 2009.

21. The present action should be barred by the principals of res judicata and/or collateral estoppel.

FOR A THIRD DEFENSE

22. The allegations and denial contained in Paragraphs 1-21 as if repeated herein.

23. The Plaintiff's present 2010 action is barred as the prior 2009 action is completed and Plaintiff's 2010 action is the same action between the same parties which was concluded by the Supplemental Hearing before Judge Strickland on April 25, 2011.

24. That as a result of the conclusion of the prior action between the same parties, the Court no longer has jurisdiction over this matter as to any and all issues which could have and/or should have been raised by Plaintiff.

FOR A FOURTH DEFENSE

AND AFFIRMATIVE DEFENSE

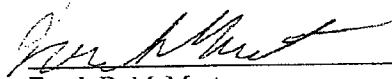
25. That the allegations and denials of Defendants contained in Paragraphs 1 - 24 are realleged as if repeated verbatim.

26. That the Plaintiff's action is barred by the application of laches as the Plaintiff filed the original action for breach of lease against Tompkins & McMaster, LLP on November 30, 2009.

27. The Plaintiff has unreasonably delayed to pursue an issue which was known to it during the collection process of the November 30, 2009 action and could have and should have been raised in the 2009 action.

28. The Defendants are prejudiced by the Plaintiff's unreasonable delay and frivolous action filed on September 20, 2011 as the Defendant Tompkins & McMaster, LLP has substantially reduced its staff, storage ability, accounts ability and John Gregg McMaster is presently 98 years old, has substantial difficulty with his memory and bone cancer.

Wherefore the Defendants request the Plaintiff's action be dismissed with cost and that Defendants' request for affirmative relief and application of affirmative defenses be granted.


Frank B. McMaster
Attorneys for the Defendants
TOMPKINS AND McMASTER
1530 Richland Street
Columbia, South Carolina, 29202
803-799-4499

Columbia, South Carolina
April 4, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP 40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr.,

Defendants.

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

FILED
C.C.P. 2011
2012 MAR -7 PM 4:40

The Plaintiff, Vista Investments, LLC ("Vista Investments" or "Plaintiff"), by and through its undersigned counsel, submits this Memorandum in Opposition to the Defendants' Motion for Summary Judgment ("Defendants' Motion").

INTRODUCTION / BACKGROUND

The present action is brought pursuant to the Statute of Elizabeth, codified at South Carolina Code § 27-3-30. Vista Investments is a judgment creditor of the Defendant, Tompkins & McMaster, LLP ("T&M"). On August 10, 2010, T&M confessed judgment in the amount of \$201,125.24 in favor of Vista Investments.¹ The confession resulted from a 2009 lawsuit filed in the Richland County Court of Common Pleas, styled *Vista Investments, LLC v. Tompkins & McMaster, LLP*, Civil Action Number 2009-CP-40-8410 ("the Lease Dispute"), which was filed after T&M vacated the property it was leasing from Vista Investments, where it operated its practice. When T&M vacated, its lease had not yet expired, and it owed back rent.

¹ The judgment balance has since been reduced as Vista Investments has accepted conveyance of real property in the amount of \$36,000 as well as certain office related items, but there remains a significant amount of money owed to Vista Investments.

Upon obtaining the judgment against T&M for walking out on its lease, Vista Investments started the process to collect its judgment. After receiving a *nulla bona* return from the Richland County Sheriff's Department on its Execution Against Property, on March 23, 2011, Vista Investments initiated supplemental proceedings.² A hearing was held on April 25, 2011 before the Honorable Joseph M. Strickland, Master-in-Equity for Richland County, at which Frank McMaster appeared on behalf of T&M and answered questions under oath concerning T&M's assets.

In the course of attempting to discover assets owned by T&M, it was discovered that, while indebted to Vista Investments, T&M filed a UCC financing statement, on or about July 28, 2010, purporting to give John Gregg McMaster, Jr. ("McMaster"), a security interest in certain collateral ("the UCC"). The UCC covers T&M's accounts receivables, its operating account at First Citizens Bank, six laptops, seven computers, seven monitors, ten printers, two typewriters, and certain courtroom, mediation presentation, and deposition equipment. During the hearing on April 25, 2011, Frank McMaster testified about the UCC and explained that the UCC was given to secure old debt — debt in the amount of \$242,607.79 incurred between 2004 and 2009. (McMaster Tr., pp. 18-19).

On September 19, 2011, Vista Investments filed this lawsuit against the Defendants to have the UCC declared null, void, and of no effect under South Carolina Code § 27-3-30, dealing with fraudulent conveyances. The crux of this lawsuit is that T&M gave McMaster a security interest in T&M's property in order to defeat T&M's creditors, including Vista Investments.

² The Court can take judicial notice of the filings. *Masters v. Rodgers Dev. Groups*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).

The Amended Complaint (dated and filed on September 20, 2011) was served upon Frank B. McMaster, Esquire, as counsel for the Defendants, on, September 29, 2011. The Defendants were granted an extension of time until November 28, 2011 in which to respond to the Amended Complaint. On November 28, 2011, the Defendants filed a Motion for Summary Judgment, asserting that the present action to set aside the UCC is barred by the principles of *res judicata* and/or collateral estoppel. On December 1, 2011, Vista Investments filed a Motion for Entry of Default and Default Judgment, based on the Defendants failure to answer or otherwise respond to the Amended Complaint. On December 5, 2011, Entry of Default was entered against the Defendants. On December 28, 2011, the Defendants filed a Return and Memorandum to Plaintiffs' Motion for Default Judgment. To date, the Defendants still have not served an Answer or other pleading pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. Nor have they moved to have the entry of default set aside.

LEGAL ARGUMENT

A. THE DEFENDANTS ARE IN DEFAULT.

The Defendants have failed to answer or otherwise defend this lawsuit, and therefore Vista Investments is entitled to have judgment entered in its favor.

Rule 12(a) of the South Carolina Rules of Civil Procedure states, "A defendant shall serve his answer within 30 days after the service of the complaint upon him." Rule 12(a), SCRPC. "If a party has failed to **'plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure]** and that fact is made to appear by affidavit or otherwise," the clerk will enter default." *Stark Truss Co., Inc. v. Superior*

Constr. Corp., 360 S.C. 503, 508-09, 602 S.E.2d 99, 102 (Ct. App. 2004)(quoting Rule 55(a), SCRCP)(emphasis added).

The Defendants are and have been in default since November 28, 2011, and they have taken no action to request that their default be set aside. The Defendants claim that their Motion for Summary Judgment is based upon Rule 12(b) and Rule 8(e) of the South Carolina Rules of Civil Procedure. Rule 8 provides that no technical forms of pleadings or motions are required, and Rule 12(b) lists eight defenses and gives the defendant the option to raise them by motion before the answer.³ The Defendants' Motion for Summary Judgment does not even reference Rule 12, and it is not grounded in any of the eight defenses listed in Rule 12(b). Rather, the Defendants move for summary judgment based on *res judicata* and collateral estoppel. These are not Rule 12(b) defenses that can be made by motion. Rather, these are affirmative defenses under Rule 8(c) which must be set forth in a pleading. See *Wagner v. Wagner*, 286 S.C. 489, 491, 335 S.E.2d 246, 247 (Ct. App. 1985)("[t]he defense of preclusion by a former judgment is an affirmative defense which ordinarily must be specially pleaded"); Rule 8(c), SCRCP. Therefore, the Defendants Motion can only be treated as one for summary judgment.

A motion for summary judgment is not an answer, nor it is a valid pleading or defense "as provided" by the Rules for purposes of Rule 55(a), which requires the entry of default if the party has failed to "plead or otherwise defend." Rule 55(a), SCRCP; see also *Educational Servs., Inc. v. Maryland State Board for Higher Education*, 710 F.2d

³ Those defenses include: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the party, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party, and (8) another action is pending between the same parties for the same claim. Rule 12(b), SCRCP.

170, 176 (4th Cir. 1983)(“a motion [excluding defenses that can be asserted by a Rule 12(b) motion] or a response to one is not deemed a responsive pleading for purposes of the time limits” for filing an answer). A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. The Defendants are noncompliant. Therefore, not only have the Defendants not answered or otherwise responded to the Amended Complaint, but they have waived the affirmative defenses of *res judicata* and collateral estoppel, and admitted the allegations concerning liability. *Harbor Island Owners’ Assoc. v. Preferred Island Props., Inc.*, 369 S.C. 540, 546, 633 S.E.2d 497, 500 (holding a default admits the allegations of the complaint as to liability).

B. VISTA INVESTMENTS ACTION TO SET ASIDE THE UCC IS NOT BARRED BY RES JUDICATA OR COLLATERAL ESTOPPEL.

The Defendants argue that the present action is an impermissible second bite at the apple. The Defendants’ premise is that Vista Investments should have tried to set aside the UCC —the fraudulent conveyance to McMaster— in (1) the action it brought in 2009 to hold T&M responsible for walking out on its lease or (2) the supplemental proceedings initiated to try to collect on the judgment. The Defendants are simply wrong.⁴ Neither *res judicata* nor collateral estoppel bar the instant action to set aside the UCC.

1. Res Judicata

To establish *res judicata*, three elements must be proven: “(1) identity of the parties, (2) identity of the subject matter, and (3) adjudication of the issue in the former suit.” *Judy v. Judy*, 393 S.C. 160, 168, 712 S.E.2d 408, 412 (2011). *Res judicata* “bars

⁴ Counsel for the Plaintiff could not have brought such an action without violating Rule 11 of the South Carolina Rules of Civil Procedure.

a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former lawsuit." *Pye v. Aycock*, 325 S.C. 426, 432, 480 S.E.2d 455, 458 (Ct. App. 1997). The Defendants argue the latter—that this claim to set aside the UCC should have been made a part of the Lease Dispute.

When applying principles of *res judicata*, our courts have utilized at least four tests in determining whether a claim should have been raised in a prior suit:

(1) when there is identity of the subject matter in both cases; (2) when the first and second cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; (3) when there is the same evidence in both cases; and recently, (4) when the claims arise out of the same transaction or occurrence that is the subject of the prior action.

Judy, 393 S.C. at 172, 712 S.E.2d at 414 (citing James F. Flanagan, South Carolina Civil Procedure 649-50 (2d ed. 1996)). In *Judy*, the South Carolina Supreme Court recently explained that the four tests "should be considered as factors," and each case must be assessed on its own. *Id.* However, ultimately, the purpose of *res judicata* is to ensure that "no one should be twice sued for the same cause of action." *Id.* (quoting *First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)). Using the guidance of *Judy*, it is clear that neither of the Defendants is being sued twice, and the present claim to set aside the UCC should not have been raised in the prior suit.

Here, the parties are different. The Lease Dispute involved only Vista Investments and T&M. John Gregg McMaster, a named defendant in this lawsuit, was not a party to the Lease Dispute and could not have been because he was not a party to the lease. Further, the lease included a limitation of liability clause stating that Vista Investments would proceed only against T&M. The facts at issue in the present case

are entirely dissimilar to the facts at issue in the Lease Dispute. In the Lease Dispute, Vista Investments sought damages against T&M as a result of its default on the lease. Whereas, the main issue raised in this lawsuit is whether the UCC should be set aside— whether T&M gave McMaster the security interest with the intent to place its assets beyond the reach of its creditors. This narrow issue was not decided in the Lease Dispute. The UCC was not even a consideration or factor in that action. Moreover, the identity of the subject matter between the Lease Dispute and the avoidance action are not the same for purposes of *res judicata*. The thing sued upon in the Lease Dispute was the lease agreement signed by T&M so Vista Investments could get a judgment. While the Complaint in this action references how Vista Investments obtained its judgment, the thing sued on now is T&M giving McMaster a security interest — the UCC —and how that is a fraudulent transfer. The cause of action asserted in this case is not the same as that asserted in the Lease Dispute. Further, the elements of proof and damages for breach of a lease agreement are entirely distinct from what from that which is required to prove that a transfer violates the Statute of Elizabeth. In fact, the allegations of the two cases are entirely different. The Lease Dispute focused on the terms of the lease and T&M's breach. However, this case centers on T&M's grant of a security interest to McMaster. The factual issues are simply not the same in both cases. The evidence is different. The evidence for the lease dispute consisted of the lease, T&M's payment history, and T&M vacating the property. Whereas, the evidence for this lawsuit will focus on the UCC, which was entirely irrelevant to the Lease Dispute. Based on these differences, the Lease Dispute does not have a *res judicata* preclusive effect on the claims raised by Vista Investments in this lawsuit.

2. Collateral Estoppel

Further, the doctrine of collateral estoppel is likewise inapplicable to the facts of the present case. Collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding. *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997). "Under the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id.*

Whether T&M gave McMaster a security interest for the purpose of hindering or defrauding Vista Investments, was neither actually litigated in the lease dispute, nor was that issue necessary to the resolution of the Lease Dispute, but it is to this lawsuit. The UCC was simply of no consequence to the lease dispute. In the absence of such litigation and a consequent determination of the merits of whether T&M gave McMaster a security interest to put its assets beyond Vista Investment's reach, there is no collateral effect in this action that was commenced upon a different cause of action and subject matter.

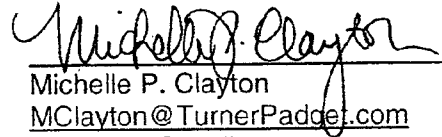
CONCLUSION

The Defendants have failed to answer or otherwise respond to this lawsuit and are in default. Even if the Defendants have somehow complied with the rules and responded in appropriate form, the principles of *res judicata* and collateral estoppel do not bar this lawsuit. Vista Investments has never gotten its day in Court to have a full and fair opportunity to litigate the relevant issue in this lawsuit— whether the UCC should be set aside because it is a fraudulent transfer, made with the intent to deceive creditors, like Vista Investments. For the foregoing reasons, the Defendants' Motion for

Summary Judgment is due to be denied, and Vista Investments is entitled to judgment by default.

TURNER PADGET GRAHAM & LANEY P.A.

By:



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**ATTORNEYS FOR VISTA INVESTMENTS,
LLC**

March 7, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO: 11-CP-40-6176
VISTA INVESTMENTS, LLC,	)	
	)	
PLAINTIFF,	)	
	)	DEFENDANTS' SUPPLEMENTAL
V.	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFF'S MOTION FOR DEFAULT
TOMPKINS & MCMASTER, LLP AND	)	
JOHN GREGG MCMASTER, JR.,	)	
	)	
DEFENDANTS.	)	

The Plaintiff seeks a default judgment against the Defendants for failure to timely answer or otherwise plead pursuant to Rule 55 S.C.R.C.P.

The Plaintiff fails and does not disclose to the Court that a supplemental hearing was held before the Honorable Joseph Strickland on April 25, 2011. The managing partner for Tompkins and McMaster, LLP, Frank McMaster, Esquire appeared at the supplemental hearing and testified on behalf of the Defendant.

Plaintiff demanded art work, computers, chairs, tables, printers and typewriters. (Transcript of Supplemental Hearing P. 43, LL 16-25; P. 44, LL 1-25; P. 45, LL 1-25; P. 46, LL 1-25).

Pursuant to Plaintiff's demand that Defendant contact the Plaintiff for delivery of a conference table, chairs, art work, copier, computer terminal, S.E. 2nd. The Plaintiff responded that it did not want the items although Plaintiff specifically requested during the hearing.

The Plaintiff reluctantly took possession of the items after several days.

The Defendant fully explained the nature of the structure of Tompkins and McMaster, LLP, including loans made by John Gregg McMaster to Tompkins and McMaster, LLP which loan balance was secured by a U.C.C. filing and promissory note

(P. 5, LL 16-25; P. 6, LL 1-25; P. 7, LL 1-25; P. 18, LL 1-25; P. 19, LL 1-25).

Prior to the Supplemental hearing of April 25, 2011, the Plaintiff had notice and the opportunity to request Judge Strickland to set aside the U.C.C. filing, but failed to make the request during any portion of the collection process which lasted approximately 1.5 years.

Plaintiff's present action filed on September 19, 2011, captioned Vista Investments, LLC vs. Tompkins & McMaster, LLP and John Gregg McMaster, Jr. is virtually the same action Plaintiff pursued in 2009 and which proceeded to a supplemental hearing (copy of full transcript attached as Exhibit A).

The Defendants have filed for summary judgment based upon rules 12 and 8 S.C.R.C.P. and raised affirmative defenses in the summary judgment motion.

Furthermore, the supplemental proceeding was the final stage of the collection process between the parties.

The Defendant has raised the affirmative defenses of Res Judicata and Collateral Estoppel in its Motion to Dismiss. The entire collection action was ended by the conclusion of the 2009 Breach of Lease action and Supplemental Hearing.

It is undisputable that the Defendants have appeared in the present action by the filing of a Motion for Summary Judgment and/or Motion to Dismiss based upon Rules 12 and 8 S.C.R.C.P.

Pursuant to Rule 4 S.C.R.C.P.:

The Summons shall be signed by the Plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties; be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address and the time within which these rules require the defendants to APPEAR and defend,

and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

The Defendant's appeared pursuant to the Note 8 of Rule 4 S.C.R.C.P. annotated as follows:

An appearance may be expressly made by a party, such that the court acquires jurisdiction over the party, by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction.

The Defendants also appeared by filing of its Motion pursuant to Rule 12 S.C.R.C.P. (Definitions), an appearance is defined as follows:

As a general rule, an "appearance" in an action involves some presentation or submission to the court. However, it has been stated that a defendant does not have to respond directly to a complaint in order for his actions to constitute an appearance. If fact, an appearance may arise by implications when a defendant takes, seeks or agrees to some step in the proceedings that is beneficial to himself or detrimental to the plaintiff, *Roland v. W&L Motor Lines, Inc.*, 231 SE2d 685 (NC App 1977).

Plaintiff's Motion for Default should be denied as it is clear that the Defendants appeared in this matter.

Respectfully Submitted:



Frank B. McMaster
Attorneys for the Defendants
TOMPKINS AND McMASTER
1530 Richland Street
Columbia, South Carolina, 29202
803-799-4499

Columbia, South Carolina
March 13, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No. 2011-CP-40-6176

Vista Investments, LLC,

Plaintiff,

vs.

Tompkins & McMaster, LLP and John
Gregg McMaster, Jr. ,

Defendant.

PLAINTIFF'S RULE 59(E) MOTION TO
ALTER OR AMEND

FILED
2013 FEB 22 PM 1:22
CLERK OF COURT
W. Duval Spruill
C.C.P. & G.S.

The Plaintiff hereby moves the Court to reconsider or amplify its order of February 7, 2013. The court's one line order granting summary judgment gave no reasons or justification for its decisions. There is no indication that the Court gave consideration to any of Plaintiff's arguments, including the fact that Defendant never answered the Complaint and was in default. Plaintiff's memorandum of March 7, 2012 in opposition to Defendant's motion for summary judgment stated numerous valid reasons for denying the motion.

TURNER PADGET GRAHAM & LANEY P.A.

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February 22, 2013

ATTORNEYS FOR VISTA INVESTMENTS,
LLC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2009-CP-40-8410

Vista Investments, LLC,)
Plaintiff,)
v.)
Tompkins & McMaster, LLP,)
Defendant.)

COPY

HEARING

Monday, April 25, 2011
2:53 p.m. - 4:09 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 25th day of April, 2011, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter
Master in Equity, Richland County
1701 Main Street - Post Office Box 192 (29202)
Columbia, South Carolina 29201

APPEARANCES

Michelle P. Clayton, Esquire
Turner Padgett Graham & Laney, PA
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Columbia, South Carolina 29202
Attorney for the Plaintiff

Frank B. McMaster, Esquire
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1530 Richland Street
Columbia, South Carolina 29201
Attorney for the Defendant

INDEX

<u>Mr. McMaster:</u>	<u>Page:</u>
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Mr. McMaster	41
Certificate	47

EXHIBITS

	Marked:	Entered:
Plaintiff's Exhibit Number One	18	18
(UCC Filing)		
Plaintiff's Exhibit Number Two	18	18
(General Ledger, 2/1/09 to 4/18/11)		
Plaintiff's Exhibit Number Three	20	20
(General Ledger, 1/1/07 to 7/24/09)		
Plaintiff's Exhibit Number Four	20	20
(Balance Sheet)		
Plaintiff's Exhibit Number Five	20	20
(Income Statement, Period Ending 3/31/11)		
Defendant's Exhibit Number One	42	42
(Confession of Judgment)		
Defendant's Exhibit Number Two	42	42
(Notice of Federal Tax Lien)		

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1 **THE COURT:** This is Civil Action 2010-CP-40-8410, Vista
2 Investments, LLC against Tompkins and McMaster, LLP.
3 Mr. McMaster, I know you know what this is all
4 about, but I always make a little spiel for clarity
5 of the record in case anybody has to read it. Be
6 seated, I'm sorry, be seated. In South Carolina
7 when somebody sues you or a business, and wins a
8 money judgment, they can bring you back to court,
9 put you under oath and ask you questions. The
10 purpose is to see if there's money or property that
11 can be used to pay the judgment. It's not an
12 appeal, it's not a new trial, it's not a chance to
13 fight the case again on the merits; it's just a
14 remedy that creditors have. As you know, Ms.
15 Clayton's going to ask you some questions, and when
16 she finishes she's going to ask for some kind of
17 relief. And, hopefully, that'll be the end of it
18 after she finishes her questions and asks for
19 relief. Please raise your right hand, sir.

20 (Witness is sworn.)

21 **THE COURT:** All right, you may proceed. And everyone can
22 stay seated.

23 **MS. CLAYTON:** Thank you, Your Honor.

24 **THE COURT:** Yes, ma'am.

25 **FRANK B. McMASTER,** being duly sworn, testifies as follows:

3

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1 MR. McMASTER - EXAMINATION BY MS. CLAYTON:

2 Q: Mr. McMaster, my name is Michelle Clayton. We've
3 spoken on the phone before, but today's the first
4 time we've met. As you know, I represent the
5 plaintiff, Vista Investments, LLC, with regards to a
6 judgment that Vista Investments has obtained against
7 Tompkins & McMaster. And that judgment amount, as
8 we are here today, totals \$175,170.58. That is
9 inclusive of post-judgment interest and actually
10 reflects a personal satisfaction in the amount of
11 \$36,000, which reflects property that Tompkins &
12 McMaster has transferred to Vista Investments,
13 specifically two pieces of property in Pickens
14 County. Mr. McMaster, what is your affiliation with
15 Tompkins & McMaster?

16 A: Managing partner.

17 Q: As the managing partner, are you familiar with the
18 assets of Tompkins & McMaster?

19 A: Yes, ma'am.

20 Q: And I understand that you're an attorney. Are you
21 also representing Tompkins & McMaster in this action
22 or have you obtained other counsel?

23 A: I'll be representing the firm also, the LLP.

24 Q: Is Tompkins & McMaster still in business today?

25 A: Yes, ma'am.

1 Q: Where is it located?
2 A: 1530 Richland Street.
3 Q: Are there any other locations?
4 A: Nope, no ma'am.
5 Q: The 1530 Richland Street, is that property leased by
6 Tompkins & McMaster?
7 A: Correct.
8 Q: And who is the landlord?
9 A: John Gregg McMaster, III; it's my older brother.
10 Q: How long has Tompkins & McMaster been physically
11 located at 1530 Richland Street?
12 A: A couple years, whenever we vacated 1333 Main. I'm
13 not sure exactly the date.
14 Q: Does the July 2010 time period sound about right?
15 A: It's around there, yeah.
16 Q: Tell me about the organization of Tompkins &
17 McMaster, how is it legally organized?
18 A: Set up as an LLP. It's my father, my older brother
19 George and me are partners, one associate, two
20 paralegals, our brother. My father is the only
21 equity partner. George and I hold no equity in the
22 LLP.
23 Q: Okay. And you were leading exactly where I was
24 going next. You indicated that you're the managing
25 partner and that your father's the only equity

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1 partner. What distinction do you make between your
2 father as the equity partner then yourself and your
3 brother George as just partners?
4 A: As an equity partner, he's the only one that
5 actually owns anything in the LLP itself. He owns
6 all the equipment, everything.
7 Q: Has he always been the sole equity partner?
8 A: No. We made him the equity partner about the time
9 my brother Henry went to work as the attorney
10 general. And I think the decision was made right
11 before he did that. I want to say '04, but I'm not
12 sure.
13 Q: Okay. And so John Gregg McMaster, your father, is
14 the one hundred percent owner of Tompkins &
15 McMaster, LLP?
16 A: Yes, ma'am.
17 Q: And you and your brother George McMaster hold no
18 interest?
19 A: Correct.
20 Q: And that would be the same for Henry McMaster?
21 A: No, Henry's no longer ... yeah, correct. Henry is
22 no longer with the firm.
23 Q: And I think you were trying to tell me the number of
24 employees that are currently employed with Tompkins
25 & McMaster, but give me that number.

6

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1 A: Three partners, one associate, two paralegals, one
2 runner.
3 Q: Seven?
4 A: Right.
5 Q: Do each of those employees receive an ... the runner
6 may receive an hourly rate, but are the others paid
7 on a salary basis?
8 A: I'm paid by the hour.
9 Q: Everyone's paid by the hour?
10 A: Yes, ma'am.
11 Q: Do you know how much the two paralegals earn on an
12 annual basis?
13 A: On an annual basis, no ma'am. I can tell you,
14 payroll costs me right around \$25,000 ... between
15 \$25,000 and \$30,000 every month.
16 Q: What's the hourly rate for your paralegals?
17 A: I don't know.
18 Q: Do you know for your runner?
19 A: I want to say it's around \$10, \$12, but off the top
20 of my head I don't know. I just sign the checks.
21 Q: Understood. The one associate, do you know how much
22 he or she earns a year?
23 A: He's in at least, I want to say the \$50,000 range.
24 Like I said, depends on how much he bills.
25 Q: Okay. And then the three partners would be yourself

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1 A: He does some. He doesn't appear in court anymore;
2 he's got bone cancer, doesn't have much time left,
3 but he still turns up at the office.
4 Q: And George McMaster, does he also bill on a regular
5 basis?
6 A: George bills some, but it's not ... it's been a long
7 time since he's actually knocked a long ball and
8 actually had an hourly paying client.
9 Q: Does Tompkins & McMaster maintain accounts at any
10 financial institution, whether it's a national bank
11 or a credit union, and where are those accounts
12 located?
13 A: First Citizens. I sent you all the records.
14 Q: So Tompkins & McMaster's operating account is at
15 First Citizens?
16 A: Yes, it is.
17 Q: And the trust account, would that also be with First
18 Citizens?
19 A: Yes, ma'am.
20 Q: Are there any accounts that Tompkins & McMaster
21 maintains that is with an institution other than
22 First Citizens?
23 A: No, ma'am. No 401ks, no retirements, nothing.
24 Q: The operating account, you've provided me some
25 financial statements, actually the statements of

9

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1 account for the operating account at Tompkins &
2 McMaster. But for purposes of the record, would you
3 agree that that account number is 083053226301?
4 A: Yes, I'm sure it is.
5 Q: If that's the number reflected ...
6 A: Yeah.
7 Q: ... you would agree? Do you know the current
8 balance of that account?
9 A: About \$2000.
10 Q: And with respect to the trust account, what is the
11 current balance of that account?
12 A: I don't think there's anything in the trust account.
13 That would just be (inaudible) real estate clients.
14 Q: Does Tompkins & McMaster maintain any cash on-hand
15 that is not kept with a financial institution or not
16 kept with First Citizens?
17 A: No, ma'am.
18 Q: Any type of safe deposit box?
19 A: No, ma'am.
20 Q: How are the bills paid for Tompkins & McMaster?
21 A: How are the bills paid?
22 Q: Yes. Are they paid from the operating account?
23 A: Oh, bills for the corporate ...
24 Q: Yes.
25 A: Yeah, out of the operating account.

10

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1 Q: And who has check writing authority?
2 A: Me. Myself and my father.
3 Q: And so George would be the only partner not having
4 check writing authority?
5 A: Right.
6 Q: In the summer of 2009, who were Tompkins &
7 McMaster's largest clients in terms of revenue
8 production?
9 A: In '09, probably ... we had some criminal clients
10 back then. I want to say, it's either ... criminal
11 clients come and go, so you get a volume and you do
12 pretty well. But Norfolk Southern, we used to have
13 a large number of cases with them, which has slimmed
14 down some.
15 Q: What kind of work were you doing for Norfolk
16 Southern in 2009?
17 A: Railroad defense, main thing was railroad accidents,
18 you know, crossing accidents.
19 Q: And that was one of the largest in terms of volume
20 and revenue in 2009?
21 A: Yes, ma'am.
22 Q: Are you guys doing any work for Norfolk Southern
23 today?
24 A: We still do, but they don't give us the crossing
25 accidents anymore. Then we were just doing the

11

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1 Q: Fitz O'Connor.
2 A: Collecting that will be real (inaudible).
3 Q: Any idea how much is owed?
4 A: I'd say it'd be maybe \$40,000, maybe \$50,000. Like
5 I say, collecting that money is ... I've pretty much
6 given up.
7 Q: Any other clients who owe Tompkins & McMaster fees?
8 A: Yes. There's one, Chris Thomason (ph.), his is
9 \$90,000. I had to move to get out of that case too,
10 for nonpayment.
11 Q: Anyone else come to mind?
12 A: No.
13 Q: Has Norfolk Southern, for the work in 2011, already
14 paid Tompkins & McMaster everything that is up-to-
15 date on a monthly basis?
16 A: They usually do, yes, ma'am. They knock it out.
17 They used to spend a whole lot, which the last
18 couple months of this year they ...
19 Q: Who handles the tax preparation or the accounting
20 services for Tompkins & McMaster?
21 A: Randy Raber is one we hired, and in-house is Terry
22 ... (inaudible) Terry McKinny, comes in part-time
23 two days a week.
24 Q: So would that bring, if we're just counting
25 employees and not full-time, that would bring it up

15

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1 to eight?

2 A: Correct.

3 Q: Okay. And Randy Raber, he ...

4 A: R-A-B-O-R (sic), he does accounting and he does some
5 personal tax returns, as well as the firm.

6 Q: Is he associated with any particular accounting
7 firm?

8 A: No, he's an individual, sole.

9 Q: Located here in Columbia?

10 A: Barnwell Street.

11 Q: Barnwell? Do you know, for purposes of accounting
12 and tax purposes, whether Tompkins & McMaster is on
13 accrual or cash basis?

14 A: No, ma'am. I just sign off on them. I gave you the
15 last three returns.

16 Q: Okay. Does Tompkins & McMaster own any real
17 property?

18 A: Gave it all to you.

19 Q: And that's the two lots in Pickens County?

20 A: Yes, ma'am.

21 Q: No property located anywhere else in South Carolina?

22 A: No, ma'am.

23 Q: Anywhere out of state?

24 A: No, ma'am. Wish we did.

25 Q: Are there any vehicles that are titled to Tompkins &

16

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1 McMaster?
2 A: No, ma'am.
3 Q: Motorcycles?
4 A: No, ma'am. No vehicles. Nothing with an engine on
5 it.
6 Q: No boats or motors?
7 A: No.
8 Q: Mobile homes or trailers?
9 A: No. We had a gun collection.
10 Q: I'm sorry?
11 A: We had a gun collection.
12 Q: You had one?
13 A: Yeah.
14 Q: Where is it now?
15 A: That was part of Fitz O'Connor. He gave Jan and I a
16 collection that was supposed to be worth a lot of
17 money. Ended up being worth about \$20,000.
18 Supposed to be worth half a million.
19 Q: But it was worth \$20,000?
20 A: \$20,000 was all we could get for it.
21 Q: Do you guys have possession of the gun collection?
22 A: No, ma'am, we sold it.
23 Q: When did you sell that?
24 A: Months ago.
25 Q: Three months, six months, nine months?

17

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1 A: It was probably ... more than a year, I want to say
2 more than a year ago.
3 Q: And who did you sell it to?
4 A: I don't know. I wasn't in charge of that. I was
5 just in charge of collecting the money.
6 (Plaintiff's Exhibit Numbers One and Two were marked for
7 identification and entered into the record at this
8 time.)
9 Q: Mr. McMaster, I'm showing you Plaintiff's Exhibit
10 One. Do you recognize this document?
11 A: Yes, ma'am.
12 Q: Okay. This is a UCC that was given to John Gregg
13 McMaster that appears to have been filed July 28,
14 2010. What money was paid that this UCC secures?
15 A: What it all ... all it did was secure a loan that he
16 had. That's more than it is now. He's got invested
17 into us, or loaning to us about \$250,000; it's more
18 than that now. And he's got a promissory note.
19 Q: When was the money paid?
20 A: Paid to us?
21 Q: Yes.
22 A: It's just accrued over the years.
23 Q: Okay. When you say it's accrued over the years,
24 tell me what time period we're talking.
25 A: '04 to at least, I want to say '09. It's in the

18

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1 notes.

2 Q: And the first monies would have been paid in '04?

3 A: Yeah, he's done it several times and we'd pay it

4 down, then it accrues more.

5 Q: How is the money paid; is it paid in the form of a

6 check, cash?

7 A: If we had a large enough sum and there's enough

8 there, we'd pay him, you know ...

9 Q: I'm sorry, I wasn't very clear. How is it that John

10 Gregg McMaster has made these loans that you say

11 secure this UCC?

12 A: You mean that added up to the amount on the

13 promissory note?

14 Q: Yes.

15 A: He just wrote us checks to the firm to make payroll.

16 Q: And then were those checks deposited into the

17 operating account?

18 A: Yes, ma'am.

19 Q: And the payments that have occurred over the period

20 2004 to 2009, that were made by Mr. McMaster, what

21 was the purpose of those payments?

22 A: The loans? Why he loaned us money?

23 Q: Yes.

24 A: To meet payroll, pay health insurance, same thing

25 for the employees.

19

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1 Q: So, operating purposes?
2 A: Uh-huh (affirmative response), kept us going.
3 (Plaintiff's Exhibit Numbers Three through Five were
4 marked for identification and entered into the
5 record at this time.)
6 Q: Okay, Mr. McMaster, let me show you Plaintiff's
7 Exhibits Two and Three. And if you will tell me
8 what these documents are, please.
9 A: General ledger.
10 Q: Okay. And one covers the time period February 2009
11 to April 2011, and the other is January 2007 to July
12 of 2009.
13 A: Right. It's just the balance going forward
14 continues and once in a while he'll write us a
15 check.
16 Q: Okay. If you're looking at Exhibit Three, walk me
17 through the columns and just tell me what each one
18 means, and I apologize for my ignorance there. But
19 if you'll walk me through those.
20 A: Okay. Well, you've got the description, partial
21 payment on the loans are a debit. And what that is,
22 those are payments back to them.
23 Q: Okay. And when you say payments back to them,
24 you're referring to payments to John Gregg McMaster?
25 A: Correct.

20

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1 Q: Okay. And then with respect to the account date,
2 would that be either the date of payment that is to
3 John Gregg McMaster or the date that he makes an
4 additional loan to Tompkins & McMaster?
5 A: Well, this one's marked as a loan, so that'd be the
6 dates he made the loan to us.
7 Q: Okay.
8 A: The other ones would be ... where it says partial
9 payment on loan, that's ... it was back to him.
10 Q: Okay. And then there's the initials GB, and I could
11 be wrong, those may not be initials, but what do you
12 understand GB to stand for?
13 A: Where are you?
14 Q: Exhibit Three, GB, second column, all the way down.
15 A: Yeah, I see it. GB, it may be general balance, I
16 don't know.
17 Q: You're not entirely sure?
18 A: No, ma'am.
19 Q: Okay. And then the next column there are numbers.
20 Would those ... what do those numbers represent, to
21 the best of your knowledge?
22 A: I think that's account numbers. Or check numbers.
23 Q: And then what would the next column, those numbers
24 represent?
25 A: 47734, that's got to be check numbers.

21

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1 Q: Okay. The balance at the top of Exhibit Three
2 appears to be negative \$148,600. What does that
3 figure represent?
4 A: The loans owed to my father. It's a negative amount
5 (inaudible).
6 Q: Would that have been loans owed before February
7 2007?
8 A: That looks like a total of all prior to ... as of
9 probably January.
10 Q: Of '07?
11 A: Yes. Of ... correct.
12 Q: And so the balance that we end up with at the bottom
13 of Exhibit Three, which is \$242,607.79, that just
14 means that he has made additional loans to the
15 business?
16 A: Correct.
17 Q: As accounted for with respect to payments?
18 A: That's right. And you've got payments on the other
19 side, one for \$85,000.
20 Q: Okay. And so this \$148,600, could that date back as
21 far as January 2004, based on your previous
22 testimony?
23 A: Yeah, it could.
24 Q: Okay. And then if we were looking at Exhibit Two,
25 and Exhibit Two is the general ledger that covers

22

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1 February 2009 to April 18th, 2011, so this year, am I
2 reading this correctly, that as of April 15th, 2001,
3 Tompkins & McMaster owes John Gregg McMaster
4 \$310,870.29?
5 A: Yes, ma'am.
6 Q: And so the most recent loan that John Gregg McMaster
7 has made to Tompkins & McMaster is \$1000 on April
8 15th?
9 A: Correct.
10 Q: And then this Exhibit Two also reflects additional
11 payments that John Gregg has given to Tompkins &
12 McMaster, and then Tompkins & McMaster has made some
13 payments ...
14 A: Yes, ma'am.
15 Q: ... as reflected on here? And so, for instance, one
16 payment to John Gregg McMaster would have been on
17 October 22nd, 2010, in the amount of \$3500?
18 A: Yes, ma'am.
19 Q: There is a reference to a Visa on April 30th, 2010,
20 that says Pope Davis Tire, Loan to Mr. Mac for
21 Tires, \$100.76; what is that transaction there?
22 A: We bought ... he must have had a flat tire or
23 something.
24 Q: So is that money that Tompkins & McMaster ...
25 A: Paid and took it off ... used it as a payment

23

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1 Q: We talked about the gun collection. Any other
2 firearms that belong to Tompkins & McMaster?
3 A: No.
4 Q: Any recreational vehicles, wave runners, jet skis,
5 golf carts, four-wheelers?
6 A: No, ma'am.
7 Q: Any farming equipment or supplies?
8 A: No, ma'am.
9 Q: Horses and livestock?
10 A: No.
11 Q: If you'll look with me at Exhibit Four. What is
12 Exhibit Four?
13 A: The balance sheet.
14 Q: And is this current as of March 31st, 2011?
15 A: Yes, ma'am.
16 Q: Okay. For assets, under the fixed assets, you have
17 listed furniture and equipment in the figure you've
18 identified with us, \$42,630.87. What furniture and
19 equipment does Tompkins & McMaster own that is
20 included here?
21 A: It ... the only stuff that we use would be the
22 material listed in the UCC. And if you ... I think
23 it (inaudible). Fixed assets, (inaudible).
24 Q: Okay. When you say the materials listed in the UCC,
25 you're referring to the second page of Exhibit One?

26

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1 A: Yes, ma'am.

2 Q: And that includes laptops, computers, monitors,
3 printers, typewriters, some courtroom/mediation
4 presentation and deposition equipment?

5 A: Uh-huh (affirmative response). The copiers were
6 leased I believe. We had two of them.

7 Q: Is there any equipment or furniture that Tompkins &
8 McMaster has acquired that is not listed on page two
9 of Exhibit One?

10 A: Acquired when? In the entire existence? We've been
11 open for over 100 years.

12 Q: Well, we can start with acquired after July 28th,
13 2010.

14 A: This is a pretty good list, but it doesn't list a
15 heck of a lot ... because everybody's got desks.

16 Q: How many desks are there?

17 A: There's four. Four, five, six.

18 Q: Six desks?

19 A: Uh-huh (affirmative response).

20 Q: What about credenzas?

21 A: No, ma'am, not any credenzas. We have them but they
22 were ... somebody made them and put them in the
23 office itself, stuck to the wall, nailed in, drilled
24 in. Made out of 2x4's.

25 Q: But they're not actually your traditional credenzas

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1 that you might see in an office?

2 A: No, ma'am.

3 Q: What about book cases or book shelves?

4 A: Same thing.

5 Q: The South Carolina Code and the Fed 2nd, where is

6 that located?

7 A: Sitting in the hallway on one of those 2x4 ... not

8 2x4, I want to say it's quarter of an inch by a foot.

9 planks that we had put together and stained.

10 Q: Are they part of the wall that they can't be

11 removed?

12 A: Yes, ma'am. Otherwise, you'd have those things fall

13 over.

14 Q: What about tables?

15 A: We've got one conference table. That's about it. I

16 think we used to have two. We actually left one in

17 the old Palmetto Building before we moved over to

18 1333 Main because we couldn't get it out. That was

19 the biggest one we had.

20 Q: So you just have one conference room?

21 A: Yes, ma'am.

22 Q: How many chairs with that table?

23 A: Six, eight.

24 Q: In terms of the desks, an office chair for each

25 desk?

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1 A: Yes, ma'am.

2 Q: How old is the conference room table?

3 A: I have no clue about that, at least 20 years.

4 Q: What about the chairs?

5 A: Those have been here now anywhere from ten to six

6 years.

7 Q: The desks?

8 A: They look a lot like these desks in this room right

9 here. Matter of fact, they look to me by the same

10 people. They're this quality. George has got a

11 pretty nice one. I think he brought his personal

12 desk up.

13 Q: In terms of putting a value on the six desks, the

14 conference room table, the 12 plus, 12 to 14 chairs,

15 what would you value that at?

16 A: I'd just be guessing. It's whatever it would bring.

17 But, you know, that stuff (inaudible) furniture, I

18 couldn't begin to tell you. Not more than \$5000 if

19 you got lucky.

20 Q: Is there any other equipment, excuse me, furniture

21 that Tompkins & McMaster owns that we haven't talked

22 about?

23 A: We used to have some old furniture, either we gave

24 it away or donated it. That's about it. We used to

25 have some in storage. The storage fees got more

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1 Q: Does Tompkins & McMaster intend to pay the
2 outstanding judgment that's due to Vista
3 Investments?
4 A: To Vista?
5 Q: Uh-huh (affirmative response).
6 A: Yeah, if we get the ... hit a long lick we'll pay
7 whatever we can.
8 Q: Is Tompkins & McMaster willing to make payments on
9 the outstanding judgment?
10 A: As ... you know, I could say yes but with this IRS
11 tax lien that came on us for payroll recently for
12 \$100,000, they're claiming it before you guys.
13 Q: Now, you mentioned that Tompkins & McMaster doesn't
14 hold any judgments against anyone, but do you have
15 any claims of any nature that could be asserted
16 against anyone?
17 A: Any claims?
18 Q: Uh-huh (affirmative response).
19 A: You mean for amounts that are owed?
20 Q: Yes.
21 A: Well, yes, there are clients that owe money.
22 Q: But other than those clients, are you aware of any
23 other ...
24 A: No, no.
25 MS. CLAYTON: Your Honor, I don't have any further

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1 questions for Mr. McMaster.

2 **THE COURT:** All right. Mr. McMaster, anything to add?

3 **MR. McMASTER:** Just briefly. The lease itself, on which
4 you've got the supplemental hearing ... you've got a
5 confession of judgment that the firm actually
6 signed. The lease itself should be already in
7 evidence. Did you put it in?

8 **MS. CLAYTON:** I did not put it in here, but it's certainly
9 part of the record in this case.

10 **MR. McMASTER:** Here's the confession and a wet copy of the
11 lease.

12 **MS. CLAYTON:** It should already be a part of the Court's
13 file. Your Honor, just a little bit by way of
14 background. Tompkins & McMaster for a period of
15 time was leasing property through my client, Vista
16 Investments. They moved out, defaulted on the terms
17 of the lease, and Mr. McMaster and I were able to
18 come to terms of a confession of judgment. And so
19 that was entered August 10th, 2010. The amount at
20 that time was much more substantial than it is now.
21 It was \$201,125.

22 **MR. McMASTER:** That's right.

23 **MS. CLAYTON:** As we talked previously, Tompkins & McMaster
24 agreed to transfer two pieces of property in Pickens
25 County to my client. And so we have filed a partial

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1 satisfaction of judgment, giving them credit for
2 those properties, Your Honor. And the amount of
3 that partial satisfaction was \$36,000.

4 MR. McMASTER: That's correct. And I only want to put
5 this in to have it ready-made for you.

6 (Defendant's Exhibit Number One is marked and entered into
7 the record at this time.)

8 MR. McMASTER: I was the one who negotiated the lease, and
9 what I want to make sure of is there was no
10 individual liability. And you'll see in paragraph
11 28 that there's no individual liability of any
12 partner individually, any capital accounts, any
13 capital accounts or anything like that; I think
14 that's the way we set it up. The only thing that
15 can be collected by this ... it's (inaudible).
16 Furthermore, we've got a tax problem we're trying to
17 get negotiated out of. We're working with that
18 right now, trying to negotiate that also. This is
19 payroll taxes. You can mark that as Number Two.

20 (Defendant's Exhibit Number Two is marked and entered into
21 the record at this time.)

22 MR. McMASTER: I was hoping Vista would actually be ...
23 have priority, but I don't think they do.
24 (Inaudible) where good chases bad. As a rule of
25 thumb, the payroll taxes, they slam down on that

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1 without ... and I would argue that actually Vista
2 would have priority because ... I was glad we gave
3 them the real estate as it was, before that thing
4 was issued.

5 **THE COURT:** All right.

6 **MR. McMASTER:** Other than that, everything's ... the UCC
7 was filed and the promissory note was filed prior to
8 bringing this lawsuit. It covers everything, and
9 there's no individual out there that (inaudible).
10 But it doesn't make any difference what that tax
11 lien does; if the partnership can't pay it, I have
12 to pay it. If I can't pay it, my father's got to
13 pay it. So they come to me first, then go to him.
14 That's where we are.

15 **THE COURT:** Ms. Clayton, what relief do you request?

16 **MS. CLAYTON:** Your Honor, we would certainly request that
17 Tompkins & McMaster be prohibited from transferring
18 or disposing of any assets or encumbering any
19 assets. With respect to the client advancements
20 that we spoke with Mr. McMaster about in Exhibit
21 Four, and that's \$122,483.78, we would request an
22 order directing that those clients make payment to
23 my client, Visa Investments. Concerning the amounts
24 in Exhibit Four owed to Tompkins & McMaster from
25 Frank McMaster, as well as Joe McMaster, and those

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1 amounts respectively are \$337,068.38 for Frank
2 McMaster and \$25,946.18 for Joe McMaster, we would
3 ask that those accounts be assigned to Vista
4 Investments and that we be allowed to collect on
5 those to the extent that they're collectible. With
6 respect to the operating account of Tompkins &
7 McMaster that is with First Citizens, we would
8 request an order that the sheriff attach and seize
9 the funds in the operating account and a check be
10 issued to Vista Investments for that amount. And
11 then also, Your Honor, with respect to the artwork
12 or the painting that Mr. McMaster identified, as
13 well as the desks, and I think there were six of
14 those, the conference room table, the 12 to 14
15 chairs, the telephones and laptop computers,
16 monitors, printers, typewriters, televisions, and
17 actually I think he said they'd disposed of the
18 televisions, but the video cameras, any VCR, DVD,
19 stereo systems, speakers, everything identified on
20 page two of Exhibit One, that the sheriff seize
21 those assets and that they be sold in order to
22 satisfy the judgment of Vista Investments.

23 **THE COURT:** All right. Mr. McMaster?

24 **MR. McMASTER:** The amount owed by me, or supposedly owed
25 by me, is actually income. So that's ... I've got

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1 to claim that as income. The amount owed by my
2 brother Joe, I honestly don't have any problem with
3 any of that, giving it to Vista, any portion of it.

4 **THE COURT:** Well, let me address your request like this.
5 As far as the restraining order, Judge Lee's order
6 assigning the case to me contains a restraining
7 order. Mr. McMaster, that's still in effect, you
8 concede that ...

9 **MR. McMASTER:** Yes, sir.

10 **THE COURT:** So we don't need to act on that. As far as
11 the other requests, Ms. Clayton, if you could submit
12 a proposed order, talk to Mr. McMaster about it, and
13 I'll have to consider that. But one of the things
14 that's hanging me up is that this is a law firm and
15 I think a whole different set of rules may apply to
16 law firms. Not saying they're immune from this type
17 of thing, but there may be some hoops the Supreme
18 Court wants you to jump through before you execute a
19 judgment against this firm. Now, Mr. McMaster, this
20 is an LLP?

21 **MR. McMASTER:** Yes, sir.

22 **THE COURT:** It's not a true partnership, in the classical
23 sense of the word, is what you're saying?

24 **MR. McMASTER:** LLP.

25 **THE COURT:** LLP, okay. I have to get educated on the

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1 applications of that. But, Ms. Clayton, you'll
2 submit a proposed order and run it by Mr. McMaster
3 and then we'll make a decision.
4 MS. CLAYTON: I'll be happy to, Your Honor. Thank you.
5 THE COURT: All right. You're welcome. Anything further,
6 Mr. McMaster?
7 MR. McMASTER: No, sir.
8 THE COURT: All right. Thank you very much.
9 MS. CLAYTON: Thank you, Your Honor.
10 MR. McMASTER: I would add one thing. The operating
11 account that we have, that's just payroll for the
12 employees, that's all it is.
13 (There being nothing further, the hearing was concluded at
14 4:09 p.m.)

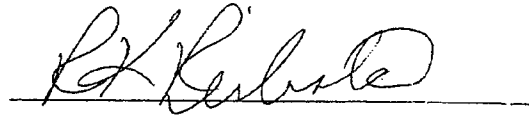
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CERTIFICATE

I certify that the foregoing transcript, consisting of 46 pages, is a true, accurate and complete transcript of the hearing taken before me, Robin K. Reibold, the undersigned Court Reporter. This hearing was held without a jury before The Honorable Joseph M. Strickland, Master in Equity for Richland County, on April 25, 2011, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.



May 6, 2011

ROBIN K. REIBOLD

MY COMMISSION EXPIRES: 5-11-2011

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1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 VISTA INVESTMENTS, LLC,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 TOMPKINS AND MCMASTER, LLP) 2011-CP-40-6176
9 AND JOHN GREGG MCMASTER, JR.)
10 DEFENDANTS.)

11

12 MARCH 14, 2012

13 RICHLAND, SOUTH CAROLINA

14

15 B-E-F-O-R-E:

16 HONORABLE CASEY L. MANNING, JUDGE;

17

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

19 FOR THE PLAINTIFF:

20 MICHELLE CLAYTON, ESQ.

21

22 FOR THE DEFENDANT:

23 FRANK B. MCMASTER, ESQ.

24

25

1 I-N-D-E-X

2 MOTIONS

3

4 CERTIFICATE OF REPORTER: 17

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7 (REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

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1 (The following proceedings were held on
2 March 14, 2012.)

3 THE COURT: Mr. McMaster, this is your motion?

4 MR. MCMASTER: Yes, sir.

5 THE COURT: Y'all ready?

6 MS. CLAYTON: Yes, sir.

7 MR. MCMASTER: We're ready.

8 THE COURT: All right, go ahead..

9 MR. MCMASTER: Please the court. Judge, give you
10 a little back history on this, in 2004 Tompkins and McMaster
11 entered a lease with Vista Investments on Main Street. The
12 lease itself I negated had no individual liability for the
13 partners in any fashion.

14 In 2008 we tried to negotiate, get out of the
15 lease. We couldn't do it -- we moved out. Subsequently we
16 were sued. We understood that there was an amount paid.
17 This was all in 2008. We confessed judgment, Tompkins and
18 McMaster. We took it through supplemental proceedings all
19 the way through with Judge Stricklen. All the assesses were
20 examined, everything was -- tax returns, all debits, all
21 receipts. I testified pursuant to the questioning by the
22 plaintiff in this case was indicated the --

23 The -- I've got a transcript of the supplemental
24 hearing before Judge Stricklen with me.

25 Now, my father who by the way, will be 98

1 tomorrow.

2 THE COURT: You sure it's not hundred?

3 MR. MCMASTER: No, 98.

4 THE COURT: I remember when his father was 87
5 doing a PCR at 9:15 in the morning. That was a long time
6 ago but go ahead.

7 MR. MCMASTER: The three partners is my father,
8 myself and my brother Gorge. All right. My father is the
9 only equity partner in Tompkins and McMaster. He owns all
10 of the interest. He's got a UCC filing which protects his
11 interest in that firm because it owes him money and this was
12 fully explored, fully disclosed to the plaintiff during the
13 action in the 2008. It's all disclosed in the supplemental
14 hearing before Judge Stricklen which occurred in 2011. They
15 had a chance at it. They looked at it. They asked about
16 it. How was he paid? Has he been paid back, all of this
17 types of stuff.

18 All right, we finish this action in 2008. Low and
19 behold I get another action filed against me. This one
20 being Vista versus Tompkins and McMaster and John Gregg
21 McMaster to set aside the UCC filing. Well, in response to
22 that I filed a motion for summary judgment or a motion to
23 dismiss for several: Res judicata, collateral estoppel, and
24 some other affirmative defenses plus you've actually got a
25 lawsuit that's already been resolved between the same

1 parties regardless plaintiffs had a chance and didn't pursue
2 it in that first action. They were well aware of the UCC
3 filing. They had a chance to go through it with Judge
4 Stricklen. And, in fact, in their new lawsuit I believe
5 it's paragraph 12 they make reference to the fact that they
6 discovered the UCC finally made it to my father is
7 frustrating their efforts for collections. It's something
8 you need to know. Tompkins and McMaster also conveyed to
9 the plaintiffs \$36,000 worth of real estate and as well as a
10 demanded in supplemental proceeding they wanted books,
11 computers, desks. Well, I gathered all of that stuff
12 together and gave it n them. Well, low and behold they
13 didn't want it; said, it didn't have any value. I'm still
14 willing to give it to them if they want to come get it.

15 Well, here we are again with a whole other action.
16 It's the same people. The same issues but they're trying to
17 – the plaintiff is trying to say in this new action no,
18 it's not. We're just trying to set aside the UCC action.
19 UCC filings which are frustrating us. They had their chance
20 at that apple. They could have fought it during the first
21 hearing. They fully explored it. They had notice of it.
22 Their taking a second bite of that apple. It's the same
23 parties. It's the same thing. That could have done it in
24 the first action.

25 And then, I end up with a motion for a default

1 judgment in this action. This -- the plaintiffs indicated
2 that I haven't appeared. Well, if you take a look at the
3 motion for summary judgment that I filed in a timely fashion
4 before the answer was due based on affirmative defenses as
5 well as other defenses in Rule 12 those can be heard for a
6 responsive filing. Furthermore, Rule 4 as well as Rule 12
7 says an appearance is an appearance. It doesn't have to be
8 nominal or expressed and I have cited that in the memorandum
9 and in opposition for plaintiff's motion for default as well
10 as a full copy of the transcript which I had given Ms.
11 Clayton and I'll just hand it up.

12 THE COURT: All right.

13 MR. MCMASTER: But the transcript is so -- is
14 small I just hadn't attached it all to it. So my point is,
15 very similarly, number one: I think I'm entitled to summary
16 judgment because that issue is already been resolved with
17 the UCC filing. They had a chance and didn't take it. You
18 can't file it again. The same parties were there. They
19 just didn't do anything about it. And to be quite honest, I
20 don't even think there is a final order from Judge Stricklen
21 with yet.

22 THE COURT: All right.

23 MR. MCMASTER: With the supplemental proceedings.
24 I don't think it's ever been a ruling but they've got this
25 other action that they want to go forward with. Well,

1 number one, I think we're entitled to summery judgment on
2 motion to dismiss and I think at their attempt to put me in
3 default -- I timely responded and appeared by more paperwork
4 here I don't think I can appear anymore. I would be covered
5 up.

6 THE COURT: Okay.

7 MR. MCMASTER: I get a little emotional, sorry.

8 THE COURT: Thank you, sir.

9 Yes, ma'am.

10 MS. CLAYTON: Thank you, Your Honor. And actually
11 I have a notebook for Your Honor if I may pass it up.

12 THE COURT: Sure.

13 MS. CLAYTON: It includes a copy for a motion for
14 default the fact that the clerk has entered default. The
15 plaintiff's memorandum in opposition the motion for summery
16 judgment as well as the case law of reference and our memo.

17 Mr. McMaster makes reference of an appearance.
18 Well, an appearance is different from answering the
19 complaint and really there are two matters before Your Honor
20 today. One, the defendant's motion for summery judgment and
21 then the second issue is the merits of that motion for
22 summery judgment. But Your Honor doesn't even have to look
23 at the merits of the motion for summary judgment because the
24 defendants are in default.

25 THE COURT: Has an order of default been signed?

1 MS. CLAYTON: An order of default has not been
2 inside and we have filed a motion for entry default and for
3 default judgment. The clerk entered default on
4 December 7th. The defendants were served with the amended
5 complaint and given an extension to answer or otherwise
6 respond to that complaint to November 28th, 2011. Well, on
7 November 28th they didn't file an answer. Rather they
8 filled a motion for summary judgment. As we stand here
9 today the defendants still have not filed an answer and they
10 have not moved to have the entry of default set aside.

11 Mr. McMaster makes reference to the fact that his
12 motion for summary judgment is sufficient for an answer.
13 That simply isn't the case according to the rules and the
14 case law. The rules we're looking at, of course, are Rule
15 12(a) and Rule 55. Rule 12(a) says the defendant has to
16 serve his answer within 30 days after service of the
17 complaint.

18 A motion for summary judgment simply is not an
19 answer. The fourth circuit has said that. It isn't a
20 motion under 12(b) either. Rule 12(b) sets forth eight
21 defenses that can be asserted before filing an answer. The
22 motion for summary judgment the defendants have filed rely
23 on res judicata and collateral estoppel. Well, those are
24 affirmative defenses and the defendants even say as much in
25 their motions for summary judgment that yes, affirmative --

1 the affirmative defenses are res judicata and collateral
2 estoppel and collateral estoppel. That's their basis for
3 moving forward today. Affirmative defenses have to be set
4 forth in some type of pleading an answer. And there is no
5 answer in this case setting forth any pleading of -- for the
6 affirmative defenses of res judicata or collateral estoppel
7 and so because the motion for summary judgment isn't an
8 answer and the defendant have an answer the defendants are
9 in fault and at this time the plaintiff would be entitled to
10 the relief requested in the complaint which is to have the
11 UCC set aside as a fraudulent -- under the statute of
12 Elizabeth. Even setting aside the fact that the defendants
13 are in default and that the courts decides to consider their
14 motion for summary judgment there's simply no merit to the
15 defendant's motion.

16 And just by way of background, and I know that
17 Mr. McMaster went through some of the factual history but
18 Vista Investments was the landlord for Tompkins and McMaster
19 when they operated their law practice on Main Street. There
20 was a lease agreement. The term of the lease had not
21 expired when Tompkins and McMaster vacated the property and
22 just walked out on their lease. As any landlord would do,
23 Vista Investments initiated a collection action. An action
24 to determine that Vista Investments was -- excuse me, that
25 Tompkins and McMaster was responsible for breaching its

1 lease agreement. Once that action was initiated we actually
2 moved for summary judgment. Before that motion could be
3 heard the defendant -- the defendant in that action -- the
4 only defendant in that action was Tompkins and McMaster they
5 agreed to confess judgment in the amount of \$201,000.

6 Now, some of this has been paid down by virtue of
7 a transfer of property but they're still a sufficient amount
8 of money owed to Vista Investments because Tompkins and
9 McMaster walked off on their lease agreement.

10 After obtaining the confession of judgment like
11 any creditor Vista Investments started supplemental
12 proceedings, trying to actually collect its judgment.
13 During the course of trying to collect that judgment, of
14 course, we set execution of his property to the sheriff
15 asking the sheriff to go and seize the assets that could be
16 used to satisfy the judgment. The sheriff notified us that
17 they could not do that because there was a UCC filing in
18 favor of John Greg McMaster. Well, having had the execution
19 against property returned all by the sheriff's we then
20 initiated supplemental proceedings before Judge Stricklen.
21 Mr. McMaster is correct that he did appear and testify on
22 behalf of Tompkins and McMaster and answer questions under
23 oath about the assets. Some of those questions were
24 directed to the UCC. And what we learned at the
25 supplemental proceeding was that that UCC that was filed

1 roughly three days before Tompkins and McMaster walked out
2 on their lease. It was in place to secure old debt. It
3 wasn't in UCC was contemporaneous debt. It was a new CC
4 saying their future advances anything along those lines.
5 When the UCC was filed I believe the date was July 2010 it
6 was actually to secure debt that was given in 2004 all the
7 way through 2009. So at that point we became aware that
8 there was a very good sound argument that this UCC was given
9 to John Gregg McMaster for the purpose of hindering efforts
10 to collect on the judgment. Because that first lawsuit was
11 just simply a breach of contract action where a landlord is
12 suing a tenant who's in default to determine the liability
13 of the tenant and determine the damages. It had absolutely
14 nothing to do with UCC. It was simply to establish to
15 establish damages. Once we had the supplementally
16 proceeding transcript and we had that testimony that is when
17 we filed this action. This action is nothing more than an
18 action under the Statute of Elizabeth to set aside fraudulent
19 conveyance. That being that the UCC that Tompkins and
20 McMaster gave to John Gregg McMaster to secure old debt.
21 There are certain badges of fraud that have to be present in
22 order for the Statute of Elizabeth to apply.

23 Mr. McMaster says, Oh, this is a second bite at
24 the apple. Not the case at all, Your Honor. We could not
25 have brought the UCC action meaning the Statute of Elizabeth

1 action when we sued on lease agreement under Rule 11. We
2 had no information about any of the badges of fraud
3 associated with the UCC transfer. That information didn't
4 become available until Mr. McMaster himself testified under
5 oath in front of Judge Stricklen. Once we had that -- we
6 filed this action to set aside the UCC.

7 Now, if we're talking about collateral estoppel
8 and res judicata it just simply does not apply in this case.
9 The plaintiff is not trying to take a second bite at the
10 apple. The defendants say, Oh, they should have done it try
11 to set a side the UCC when they filed on the lease. Not the
12 case. We've talked about Rule 11. The elements for res
13 judicata simply aren't there. Of course, there are three we
14 have the identity of the parties, identity of the subject
15 matter, adjudication of the issue in the former lawsuit.
16 Well, we don't have those factors present here. This isn't
17 a situation were the lawsuit that we are in today is the
18 second bite of the apple and we're not suing the same people
19 on this same thing. If we're talking about identity of
20 parties. The parties are entirely different.

21 The first lawsuit to collect -- excuse me, to
22 establish damages, the only defendant was Tompkins and
23 McMaster. This lawsuit the defendants are Tompkins and
24 McMaster and John Gregg McMaser. Really the party in
25 interest is John Gregg McMaster because we are setting --

1 trying to set aside the transfer made to him Tompkins and
2 McMaster is also a defendant because they were a party to
3 that transaction.

4 The lawsuits do not have the same subject matter.
5 Their based on entirely different causes of action. The
6 lawsuit on the lease agreement was simply an action on the
7 lease. It was to determine if Tompkins and McMaster had
8 defaulted on a lease which they had and they confessed
9 judgment. It was to establish the amount that was owed to
10 the landlord. This action, the issue is did Tompkins and
11 McMaster give John Gregg McMaster a UCC --

12 THE COURT: So are you saying you knew all along
13 you think you should have gotten it and you want to get more
14 of it?

15 MS. CLAYTON: We haven't gotten any money. All we
16 did in the first action was get a judgment.

17 THE COURT: All right. A confession of judgment?

18 MS. CLAYTON: Excuse me?

19 THE COURT: A confessed judgment?

20 MS. CLAYTON: Yes.

21 THE COURT: All right.

22 MS. CLAYTON: We got a confession of judgment in
23 that first action but what that first action didn't
24 determine was whether -- the first action had absolutely
25 nothing to do with the UCC. The evidence in that first

1 action will not be the same evidence in this action. The
2 evidence that would have been presented had the defendants
3 not confessed judgment would have simply been the lease
4 agreement, the payment history, and when they vacated.
5 Nothing of that has any relevancy to the action to set aside
6 the Statue of Elizabeth.

7 THE COURT: All right.

8 MS. CLAYTON: Rather what we're talking about here
9 is the details of the transfer. The fact that it was given
10 to a family member which is one of the badges. The fact
11 that it was given to secure old debt so the UCC was not
12 supported by valid consideration. The evidence on the two
13 actions is entirely different and the courts have said when
14 you have different parties, you have different evidence, you
15 have different causes of action res judicata simply doesn't
16 apply. And for the same reason collateral estoppel doesn't
17 apply because what collateral estoppel means is that
18 something was determined in that first action. The only
19 things determined in the first action was that Tompkins and
20 McMaster confessed judgment saying that they owed the
21 plaintiff. There wasn't any determination as to the UCC
22 filing and whether it was a valid transfer and whether that
23 transfer violated the State of Elizabeth and for those
24 reasons the actions are entirely different. It's not a
25 second bite of apple. The first action is just --

1 THE COURT: I understand. You're repeating
2 yourself. Anything further?

3 MS. CLAYTON: No, Your Honor. I believe the fact
4 that --

5 THE COURT: Thank you very much.

6 Mr. McMaster your response.

7 MR. MCMASTER: Just briefly, Judge. What they
8 keep forgetting is there's no individual liability of the
9 parties including negative accounts. The money owed to my
10 father is regardless. It isn't even an issue. The lease
11 itself say no -- and I negated it, no individual liability.
12 So even going into it, let's say the UCC is satisfied and my
13 father owns all of the property. We don't owe a house or
14 anything or a building but that there's no individually
15 liability. He can't be held liable for it. They just
16 throwing this in to try to find something else. Did we pay
17 them? We gave them real estate. We could have claimed that
18 under the UCC but no, we were fair and honest about it,
19 \$36,000 worth conveyed it without a problem. They demanded
20 books takings all of this. I tried to give it the them,
21 didn't want it. I still got a warehouse full of stuff they
22 can have. Don't want it and --

23 THE COURT: I understand.

24 Yes, ma'am.

25 MS. CLAYTON: If I could only respond briefly to

1 that --

2 THE COURT: Sure --

3 MS. CLAYTON: To the individually liability
4 argument. This Statue of Elizabeth case isn't about
5 individual liability. It is simply setting aside --

6 THE COURT: You said that already. You're
7 repeating yourself.

8 Thank you both for your lively presentations.
9 I'll let you know my decision in due course.

10 MR. MCMASTER: Thank you, Judge.

11 MS. CLAYTON: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

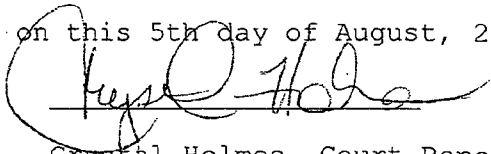
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Vista Investments, LLC Vs.
5 Tompkins and McMaster, LLP and John Gregg McMaster, Jr.,
6 Case No. 2011-CP-40-6176, at the Richland County Courthouse,
7 March 14, 2012.

8 I FURTHER CERTIFY that the foregoing pages 1
9 through 17 constitute a true, accurate and full transcript
10 of said hearing.

11 I FURTHER CERTIFY that I am not employed by any of
12 the parties hereto and I have no financial interest in the
13 outcome of said case.

14 IN WITNESS WHEREOF, I have heretofore set my hand
15 and seal at Richland County on this 5th day of August, 2013.

16 
17 Crystal Holmes, Court Reporter
18 and Notary Public for the
19 State of South Carolina my
Commission Expires:
April 21 2014

20

21

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UCC1

STATE OF SOUTH CAROLINA FILING FEES:

\$ 8.00 - For the FIRST TWO pages \$20.00 - Public Finance Transaction
 \$ 2.00 - For THIRD page \$20.00 - Manufactured Home Transaction
 \$ 1.00 - Each ADDITIONAL page after the THIRD page.

For each additional Debtor more than two (2), add \$2.00 for each additional Debtor.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

JOHN GREGG MCMASTER
321 SPRING LAKE ROAD
COLUMBIA, SOUTH CAROLINA 29206

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME					
TOMPKINS & MCMASTER, LLP					
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
POST OFFICE BOX 7337			COLUMBIA	SC	29202
1d. TAX ID #: (Organizations)	ADD'L INFO RE ORGANIZATION	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any	
(Optional) 7-0403400	DEBTOR	LAW FIRM	SC		

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID #: (Organizations)	ADD'L INFO RE ORGANIZATION	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any	
(Optional)	DEBTOR				

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
MCMASTER			JOHN	GREGG	
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
321 SPRING LAKE ROAD			COLUMBIA	SC	29206

4. This FINANCING STATEMENT covers the following collateral:

SEE ATTACHED

5. ALTERNATIVE DESIGNATION (if applicable):		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILE
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. REQUEST SEARCH REPORT(S) ON UCC 11 FORM			All Debtors	Debtor 1	Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — SC SECRETARY OF

090728-0942450

UCC-1 FINANCING STATEMENT

Lapse Date: 07/28/2014 09:42:45 Filing Fee: 8 ORIG



4. This FINANCING STATEMENT cover the following collateral:

1. Tompkins & McMaster, LLP – Accounts Receivables (Present and Future)
2. Tompkins & McMaster, LLP – First Citizens Bank Operating Account

LAPTOPS 6

1. Acer Travel Mate 4060 (extra)
2. Acer Travel Mate 4060 (extra)
3. Acer TravelMate C310 LT (GHM)
4. Aspire 3000 (FBM)
5. Dell Inspiron 630 m (Empty Office)
6. Dell Latitude D600 (Conference Rm)

COMPUTERS 7

1. Dell Dimension 3000 (VNC)
2. Acer Aspire (TM)
3. Dell Dimension 3000 (LC)
4. Dell Dimension 9150 (LSB)
5. Dell Optiplex 330 (BAP)
6. Don't know computer (JGM)
7. Dell (Receptionist)

MONITORS 7

1. Accusync 75F NEC Monitor (TM)
2. Acer – Flat Screen Monitor (JGM)
3. Dell – Flat Screen Monitor (JAS)
4. Dell Monitor (LC)
5. Dell Flat Screen Monitor (BAP)
6. Dell Flat Screen Monitor (VNC)
7. Trinitron Monitor (Receptionist)

PRINTERS 10

1. HP Deskjet 5550 (VNC)
2. HP LaserJet 1000 (BAP)
3. HP LaserJet 1020 (GHM)
4. HP LaserJet 1020 (JAS)
5. HP LaserJet 1012 (Receptionist)
6. HP LaserJet 1200 (FBM)
7. HP LaserJet 1200 (JGM)
8. HP LaserJet 4200 (copy room)
9. HP LaserJet 6p (TM)
10. Brother HL – 5170DN (JJG)

TYPEWRITERS 2

2 - IMB Electric Typewriter

COURT ROOM/MEDIATION PRESENTATION – DEPOSITION EQUIPMENT

Elmo Visual Presenter DV-400 AC

JVC Video Camera w/tripod

Kenwood Stereo System w/speakers

Magnavox DVD/VCR Combo

Magnavox TV 48"

Magnavox VCR

Pitney Bowes DM 300 w/scale

Screen w/stand

Sharp 19" TV

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CONFESSION OF JUDGMENT

WHEREAS, Tompkins & McMaster, LLP entered into a lease agreement and first amendment of office lease with Vista Investments, LLC for the purpose of leasing a total of 5,883 square feet of office space, Suites 225 and 240, located at 1333 Main Street in Columbia, South Carolina ("Leased Property") through April 30, 2011. Copies of the lease agreement and first amendment of office lease were attached to the Complaint filed in this matter as Exhibit A and include paragraph 28 titled "limitation of partner liability."

WHEREAS, monthly rent due from Tompkins & McMaster, LLP for the period May 1, 2009 through April 30, 2010 was \$7,353.75 per month, and on May 1, 2010 monthly rent increased to \$7,598.88 per month for the remainder of the lease term.

WHEREAS, on July 31, 2009, Tompkins & McMaster, LLP vacated the Leased Property, and at that time, Tompkins & McMaster, LLP owed Vista Investments, LLC back rent and continued to remain responsible for rent through the remainder of the lease term.

WHEREAS, Tompkins & McMaster, LLP has defaulted on the terms of the Lease Agreements by virtue of its failure to pay rent and abandoning the Leased Property prior to the expiration of the Lease.

WHEREAS, despite efforts to lease the Leased Property, the Leased Property remains vacant.

WHEREAS, there is presently due and owing to Vista Investments, LLC by Tompkins & McMaster, LLP the sum of \$201,125.24, said amount representing the entire amount due to Vista Investments, LLC.

NOW THEREFORE, pursuant to South Carolina Code of Laws § 15-35-350, et seq., which provides for judgment by confession, **Tompkins & McMaster, LLP** hereby confesses and stipulates to judgment and directs that said judgment is to be entered in favor of **Vista Investments, LLC** in the office of the Clerk of Court for Richland County or in any other county in the Judgment Rolls pursuant to law, in the amount \$201,125.24.

This judgment is for the amount that actually is owed and does not constitute a confession as to any contingent liability.

This Confession of Judgment is pursuant to an agreement whereby the parties desire to resolve the matter in exchange for Tompkins & McMaster, LLP executing this Confession of Judgment.

This Confession & Stipulation of Judgment is for money justly due and owing to Vista Investments, LLC by Tompkins & McMaster, LLP, arising from Tompkins & McMaster, LLP's default on the Lease Agreements.

It is understood that should any part of the Leased Property formerly occupied by Tompkins & McMaster, LLP be leased to a new tenant, that a partial satisfaction of this judgment shall be entered in an amount which represents the amount of rent paid by the new tenant for its occupancy during the remaining of the lease term of Tompkins & McMaster, LLP.

The Undersigned, on behalf of Tompkins & McMaster, LLP, being familiar with South Carolina Code of Laws § 15-35-350, et seq., and having read the within document, being in total agreement with its contents, and with the opportunity to procure the advice and representation of legal counsel, has hereunto set its hands and seals this 10 day of August 2010, thereby directing the Court to enter this judgment.

Tompkins & McMaster, LLP

Tompkins & McMaster, LLP

By: *Rand M. Mast*

Its: *Managing Partner*

SWORN to and subscribed before me
this 10th day of August, 2010.

Beverly A. Poston (L.S.)
Notary Public for South Carolina

My Commission Expires: 7/30/2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF COUNTY OF RICHLAND:

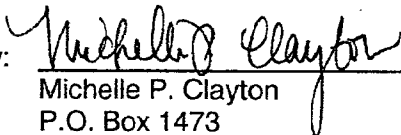
WHEREAS, judgment was entered on August 10, 2010 in an action in the Court of Common Pleas, County of Richland, South Carolina between Vista Investments, LLC, Plaintiff, and Defendant Tompkins & McMaster, LLP, in favor of the said Plaintiff Vista Investments, LLC, against the Defendant in the sum of Two Hundred One Thousand One Hundred Twenty-Five and 24/100 (\$201,125.24), as appears by the Judgment Roll No. 2009-CP-40-8410 filed in the office of the Clerk of Court of Common Pleas, County of Lexington.

WHEREAS, said judgment was docketed in your county on August 10, 2010.

AND WHEREAS, as of December 20, 2010, there is due and owing the amount of \$201,125.24 plus post judgment interest in the amount of \$5,313.35, with additional post judgment interest accruing at the rate of \$39.95 per day thereafter.

THEREFORE, YOU ARE THEREFORE DIRECTED to satisfy the said judgment out of the personal property of the said judgment debtor within your County, and if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands the same may be, and duly return this Execution according to the law to the Clerk of Court of Common Pleas for said County.

TURNER PADGET GRAHAM & LANEY P.A.

By: 

Michelle P. Clayton
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200

ATTORNEYS FOR VISTA INVESTMENTS, LLC

ATTESTED BY:

Jeanette W. McBride/Ons
Clerk of Court for Richland County (SEAL)

This 23 day of DEC, 2010.

RECEIVED
2011 JAN 21 AM 8:17
RCSD

Entered 1-28-11
Book _____ Page _____
Number J20110033
Leon Lott, Sheriff
Richland County Sheriff's Department

Return to Clerk
Nulla Bona
LEON LOTT
SHERIFF, R. C., S. D.
JAN 28 2011

Leon Lott

__ TOMPKINS AND McMASTER, LLP

ATTORNEYS AND COUNSELORS AT LAW
1530 RICHLAND STREET (29201)
POST OFFICE BOX 7337

COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE: (803) 799-4499

TELEFAX: (803) 252-2240

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JOHN GREGG McMASTER
GEORGE HUNTER McMASTER **
FRANK BARNWELL McMASTER
LANCER S. BOOZER

**ALSO ADMITTED IN TEXAS

FRANK G. TOMPKINS
1874-1856
FRANK G. TOMPKINS, JR.
1908-1973
ELIZABETH ELDRIDGE
1894-1975

January 21, 2011

Civil Process Division
Richland County Sheriff's Department
5623 Two Notch Road
Columbia, South Carolina 29223

Re: Civil Action No. 2009 CP 40-8410

Dear Sir or Madam:

I am in receipt of Michelle P. Clayton's letter to you regarding the seizure of assets. Please be advised that Tompkins & McMaster, LLP owns no assets which are subject to the judgment held by Vista pursuant to a Confession of Judgment executed by Tompkins & McMaster, LLP other than two parcels of real estate.

Attached is a copy of the lease upon which the judgment is based.

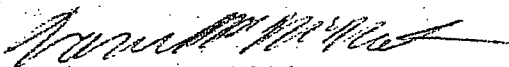
Please note paragraph 28, which is very specific as to personal liability of the partners of Tompkins & McMaster, LLP. Furthermore, John Greg McMaster, my father, has a perfected security interest as to all assets of Tompkins & McMaster which has priority over the Judgment held by Vista. Quite frankly, regardless of the security interest held by John Gregg McMaster, the allowable exemptions exceed the value of the books and items Ms. Clayton makes reference to in her letter of January 20, 2011.

Please be advised that I have agreed to transfer all rights and title of the two parcels of real estate to Vista. Attached hereto is my response to her letter of January 19, 2011.

I do not believe Ms. Clayton can instruct the Richland County Sheriff's Office to take improper actions simply for the benefit of her client and in total disregard of established SC case law and Statutes.

Should you have any questions please do not hesitate to contact me.

Yours very truly,



Frank B. McMaster

FBM/bap
Attachments

cc: Michelle P. Clayton, Esq.

TOMPKINS AND McMASTER, LLP

ATTORNEYS AND COUNSELORS AT LAW

1530 RICHLAND STREET 29201

POST OFFICE BOX 7337

COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE: (803) 799-4499

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WWW.TMMLAW.COM

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JOHN GREGG McMASTRR
GEORGE HUNTER McMASTER **
FRANK BARNWELL McMASTER
LANCE S. BOOZER

**ALSO ADMITTED IN TEXAS

FRANK G. TOMPKINS
1874-1958
FRANK G. TOMPKINS, JR.
1908-1973
ELIZABETH ELDRIDGE
1894-1975

April 27, 2011

RECEIVED
APR 28 2011
CLERK OF COURT
RICHLAND COUNTY

The Honorable Joseph M. Strickland
Post Office Box 192
Columbia, SC 29202-0192

RE: Vista Investments, LLC v. Tompkins and McMaster, LLP
Case No.: 2009-CP-40-08410

Dear Judge Strickland:

I inadvertently placed some of the court exhibits in my file when I left the courtroom yesterday (4/25/11).

Enclosed please find Plaintiff's Exhibit Nos. 1, 2, 3, 4 and 5. Also, please find #28 of the lease, which does not allow for individual liability of any partner, including negative capital accounts for money owed by a partner to the LLP.

I have already designated the \$335,000 as income to the IRS and this line item is not a debt but income for which I will incur a substantial tax liability.

The UCC filing and promissory note is a perfected lien on all items attached to Defendant's Exhibit 2, which was filed on July 28, 2009, and perfected prior to the filing of Plaintiff's pleading and the Confession of Judged filed on August 10, 2010.

Finally, regardless of the UCC filing, John Gregg McMaster is the 100% equity partner of Tompkins & McMaster, LLP and therefore he owns all the equipment, furniture and operating account.

The 100% equity ownership of Tompkins & McMaster, LLP by John Gregg McMaster was confirmed during the hearing before you on April 25, 2011.

A small amount of research has provided me with information that my firm can not assign any client receivable s unless they have been reduced to judgment.

The \$122,483.78 referenced in Plaintiff's Exhibit No. 4 consists of client unrecoverable expenses and expenditures most of which are uncollectable, but not reduced to judgment and it appears that this figure is inaccurate.

I have no objection to the assignment of approximately \$25,000.00 owned by Joe McMaster to Tompkins & McMaster, LLP and will execute an assignment of the debt to the Plaintiff if acceptable.

The firm operating account is secured and owed to John Gregg McMaster and is used to pay wages to the staff. The balance is approximately \$2,500.00 - \$2,000.00 and is not enough to pay the staff on April 29, 2011.

The IRS lien is for past due payroll taxes and appears to take precedent over both the equity ownership of my father the UCC filing securing the promissory note and the Plaintiff's confession.

In an effort to resolve this matter, I have offered to Plaintiff's attorney and prepared for delivery to Plaintiff the following items:

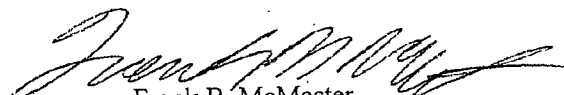
- a. Conference table and 4 chairs,
- b. Fed. 2nd,
- c. Copier, and
- d. 2 computers.

I have no objections and will deliver the following items also:

- a. S.C. Code,
- b. S.C. Digest, and
- c. Pictures and/or art work.

I contacted Ms. Clayton this morning as to the delivery of these items.

Yours very truly,


Frank B. McMaster

FBM/bap
Enclosures

TURNER PADGET

TURNER PADGET GRAHAM & LANEY PA.

CHARLES
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

W. Duvall Spruill

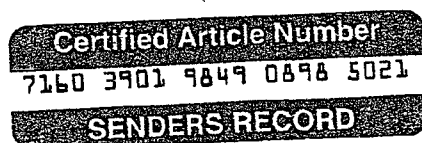
REPLY TO:

E-Mail: DSpruill@TurnerPadget.com
Writer's Direct Dial: (803) 227-4291
Direct Fax: (803) 400-1528

May 5, 2011

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY
VIA U.S. MAIL**

John Gregg McMaster, Esquire
321 Spring Lake Road
Columbia, South Carolina 29206



Re: Vista Investments, LLC v. Tompkins & McMaster, LLP
Civil Action No. 2009 CP 40-8410
Our File Number 5603.108

Dear Mr. McMaster:

I hope this letter finds you well. As the most senior member of this firm, I am writing concerning the outstanding judgment that Tompkins & McMaster, LLP owes our client, Vista Investments, LLC.

As you are aware, on August 10, 2010, Tompkins & McMaster confessed judgment in favor of Vista Investments in the amount of \$201,125.24. We were able to identify two parcels of real property in Pickens County, which Tompkins & McMaster deeded to Vista Investments in January 2011. We have recently been provided delinquent tax notices for 2010 for the Pickens County properties. Although Vista Investments did not even own the properties in 2010, Vista Investments has paid the 2010 taxes and the late fine to stop further fines from accumulating. In any event, Vista Investments has given Tompkins & McMaster a \$36,000 credit for the Pickens County properties. Thus, as of May 5, 2011, the outstanding judgment is \$175,513.78.

There has been some suggestion that your UCC filing of July 2010, a copy of which is enclosed, protects some of the law firm's collateral from levy and execution. We do not believe that to be the case and think the UCC is subject to being set aside.

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

TURNER PADG

John Gregg McMaster, Esquire
May 5, 2011
Page 2

since it was given to secure old debt. We intend to attack the UCC and will be initiating suit unless you are agreeable to releasing the UCC. The necessity of such action will be upsetting to us.

We would still like to find a resolution of this matter short of additional litigation, but no settlement offer has been made. Please let me know if you are agreeable to releasing the UCC so we can proceed to collect the judgment or if you would like to try to get this matter resolved. I look forward to speaking with you.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.


W. Duvall Spruill

cc: Frank B. McMaster

TPGL 3805354v1

TOMPKINS AND McMASTER, LLP

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1874-1856
FRANK G. TOMPKINS, JR.
1908-1873
ELIZABETH ELDRIDGE
1894-1975

May 10, 2011

HAND DELIVERY

Michelle P. Clayton, Esquire
Turner Padgett Graham & Laney, PA
1901 Main Street, 17th Floor
PO Box 1473
Columbia, South Carolina 29202

**RE: Vista Investments, LLC v. Tompkins and McMaster, LLP
Case No.: 2009-CP-40-08410**

Dear Michelle:

Enclosed please find an original sketch which is signed by the artist and secured several recognitions.

I am in the process of securing additional art work, desks and chairs as it appears your client is not interested in the volumes of case law materials you stated in open court that you requested the court seize.

Yours very truly,



Frank B. McMaster

FBM/bap
Enclosures

RECEIVED

FEB 20 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Fifth Circuit Court Judge

Civil Action No.: 2011-CP-40-6176

Vista Investments, LLC

.....Appellant

v.

Tompkins & McMaster, LLP and John Gregg McMaster, Jr.

..... Respondents

PROOF OF SERVICE

I certify that I have served the **RECORD ON APPEAL** on Tompkins & McMaster, LLP and John Gregg McMaster, Jr. by having one (1) copy of the same hand delivered on February 3, 2014, addressed to counsel of record for Respondents, Frank B. McMaster, Esquire, Tompkins and McMaster, 1530 Richland Street, Street, Columbia, SC 29202.


W. Duvall Spruill (Bar No. 5295)
Turner Padgett Graham & Laney, P.A.
Post Office Box 1473
Columbia, South Carolina 29202
(803) 254-2200
Attorneys for Appellant

February 3, 2014

RECEIVED

FEB 03 2014

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in cursive script, reading "W. Duvall Spruill", is written over a horizontal line.

W. Duvall Spruill
Turner Padgett Graham & Laney, P.A.
Post Office Box 1473
Columbia, South Carolina 29202
(803) 254-2200
Attorneys for Appellants