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

S.C. Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin Dukes, III, Master in Equity

Case No. 2000-CP-07-524

**Bill P. Passaloukas and Susie H. Passaloukas,
Individually and as Shareholders Derivatively
On Behalf of Zorba's, Inc.,.....Appellants,**

v.

**Cynthia Bensch, Gary Bensch, Towne Center, LLC
and Zorba's, Inc. of whom Cynthia Bensch and
Gary Bensch are Respondents.**

RECORD ON APPEAL

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Respondents**

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Passaloukas, et al,

Case No. 00-CP-07-00524

Plaintiffs,

vs.

Bensch, et al,

ORDER

Defendants.

(not ending case)

SUMMARY OF THE CASE

These cross motions for summary judgment came before me on March 31st, 2008. This business and lease dispute case originated after the failure of a Hilton Head restaurant and corporation, Zorba's Inc. ("Zorba's").

On or about August of 1999, Bill Passaloukas, Sue Passaloukas (collectively: "Passaloukas"), Gary Bensch and Cynthia Bensch (collectively: "Bensch") formed Zorba's to run a restaurant. Passaloukas was to own 50% with the remaining 50% to be owned by Bensch. Both were to contribute certain funds, material and labor as specified in agreements. Contemporaneously with it's formation, Zorbas entered into a lease with Bensch, as the owner of the real estate, for the restaurant space. This, as the appellate court has pointed out, put Bensch in the dual role of lessor and half owner of the lessee.

Problems ensued almost immediately and Bensch, as lessor, evicted Zorba's for non-payment of rent. Litigation ensued as to the assets and debts of Zorba's together with other issues related to the failure of the business and the actions of the parties.

Ultimately, the Honorable Thomas Kemmerlin, Beaufort County Master-in-Equity ruled that the final net proceeds of the business should be divided evenly between Bensch and Passaloukas. In an unpublished opinion (2004-UP-506) filed October 11th, 2004, Judge Kemmerlin's ruling was reversed and remanded for an accounting.

As to "...all remaining issues...", the Appeals Court found them to be "...intertwined with the factual conclusions to be determined by the strict accounting..." and declined to address them, again calling for a strict accounting to be "...followed by.." a full de novo review. In so ruling, the appeals court had before it a "...daunting amount of evidence and testimony...", yet felt that the record required the addition of a strict accounting.

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It is clear to me that the Court of Appeals ruled that this case could not be decided by use of the existing record.

As an initial matter, the parties have clarified the identity of the landlord. Judge Kemmerlin's Order refers to Towne Center, LLC. The parties have since stipulated that the landlord was Bensch, not Town Center, LLC.

Plaintiffs motion for summary judgment seeks judgment as a matter of law that:

- 1) Zorba's was not wrongfully evicted by Bensch (1), and
- 2) Plaintiff has no legal claims to the value of improvements made by Zorbas to the leased property (2).

Defendants motion for summary judgment seeks:

- 1) Zorba's was wrongfully ejected by Bensch (A), and
- 2) Plaintiffs are entitled to a strict accounting (B & C), and
- 3) Plaintiffs are entitled to damages for the sale of the business, and or the value of the leasehold, sold or leased to third parties (D, E, F, G, H, I, J, & L), and
- 4) Plaintiff is entitled to unpaid salary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 56(c), SCRCP, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) (citing South Carolina Elec. & Gas Co. v. Town of Awendaw, 359 S.C. 29, 34, 596 S.E.2d 482, 485 (2004)). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Bennett v. Investors Title Ins. Co., 2006 WL 2728932 (S.C.App.2006) (citing Law v. S.C. Dep't of Corrections, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 620, 622 S.E.2d 733, 737 (Ct.App.2005)). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.

Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Id. (citing Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Wogan, 366 S.C. at 592, 623 S.E.2d at 112; B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct.App.2004)).

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Both parties believe that there is no issue of material fact related to the wrongful eviction question. I agree. This is a relatively narrow issue: did Zorba's, the tenant, comply with the terms of the lease with Bensch, the landlord? All parties agree that it did not. It is uncontested that the rent was not paid and that the lease allowed for a non-judicial eviction. I see nothing in the record that has been provided to me which would raise a material fact about this one issue. There is nothing that an accounting will produce that will change the uncontested fact that Zorba's did not pay rent that it was obligated to pay under the lease. There was no wrongful eviction.

Unfortunately, this finding settles almost nothing. The fact that no wrongful eviction occurred does not obviate the landlord from its post-eviction obligation to remove Tenants "...effects..." (Lease, page 5, paragraph 11 (a)(i)). What is or is not an "effect" is one of the key disputes in this case and is certainly full of factual dispute. I specifically do not make any finding as to the landlord's handling, sale or disposal of the assets or effects of Zorba's.

As to all other issues listed above, I find as follows:

- 1) I do not find as a matter of law that Plaintiff has no claim to recover from the Defendant the value of improvements made by Zorba's to the leased premises.
- 2) I have been asked to perform my own "strict accounting" using the same information that the appellate court found to be insufficient in its order for the same. I find that in the year 2004 the South Carolina Court of Appeals, after reviewing the record and finding it insufficient, ordered a strict accounting and that Plaintiff should undertake this accounting immediately, with the costs of such to be assessed at the final hearing. The accounting shall be performed by an accountant and shall include, but not be limited to the items listed in the Appeals Court Order. Both parties shall promptly provide the accountant with all information required to complete the accounting. In the event Defendant hires its own accountant, all information shall be shared.
- 3) I deny the Plaintiffs' remaining summary judgment motions, as there are material issues of fact as to all remaining damages.
- 4) I deny Plaintiffs' motion to compel related to Plaintiffs' request to obtain documents related to the sale (several years after this case was filed) of the shopping center to third parties.
- 5) I find that due to the age of this case it should be set for a review hearing such the parties may be given time to comply with the accounting and not be further delayed.

Wherefore it is Ordered:

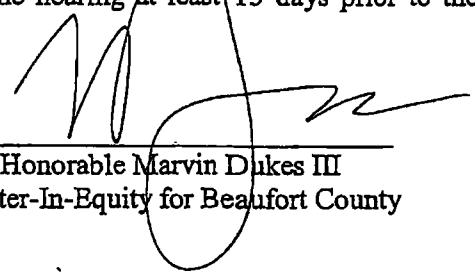
- 1) Summary Judgment is granted to the Defendant on the sole issue of "wrongful termination" as set forth and further clarified hereinabove.
- 2) Summary Judgment is denied to both parties on all remaining issues.
- 3) Parties are Ordered to immediately comply with the Order of the South Carolina Court of Appeals as set forth hereinabove.
- 4) Plaintiff's motion to compel is denied.

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- 5) This case is set for a de novo review hearing on Monday, July 14th, 2008 at 9:30am. Testimony will be limited to that required to comply with the accounting, including but not limited to testimony of accountant(s) and rebuttal testimony as the parties may desire. Any written accounting received by either party must be immediately shared. Parties must exchange witness lists, exhibits and documents sought to be used and/or introduced at the hearing at least 15 days prior to the hearing or such shall be excluded.

IT IS SO ORDERED.



The Honorable Marvin Dukes III
Master-In-Equity for Beaufort County

Beaufort, South Carolina
Tuesday, April 01, 2008

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

BILL P. PASSOULOUKAS AND)
SUSIE H. PASSALOUKAS,)
Individually and as shareholders)
Derivatively on behalf of)
Zorba's, Inc.,)

Plaintiffs,)

vs.)

CYNTHIA BENSCH, GARY)
BENSCH AND ZORBA'S, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 00-CP-07-524

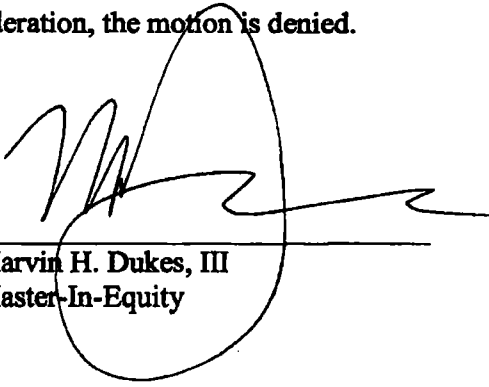
ORDER

16 APR 23 AM 9:21
CLERK OF COURT

This matter came before the Court pursuant to Plaintiffs' motion to reconsider this Court's Order of January 11th, 2010.

Having reviewed the same and after due consideration, the motion is denied.

AND IT IS SO ORDERED.


Marvin H. Dukes, III
Master-In-Equity

Beaufort, South Carolina

April 22, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

BILL P. PASSOULOUKAS AND
SUSIE H. PASSALOUKAS,
Individually and as shareholders
Derivatively on behalf of
Zorba's, Inc.,

CIVIL ACTION NO. 00-CP-07-524

Plaintiffs,

vs.

CYNTHIA BENSCH, GARY
BENSCH AND ZORBA'S, INC.,

Defendants.

ORDER

10 JAN 11 AM 11:28
CLERK OF COURT

This business dispute came before me, after Appellate Court reversal and remand, for a final determination with direct appeal to the SC Appellate Courts. The case involves shareholder derivative claims, conversion claims and landlord/tenant issues. Despite the complexity and longevity of the litigation, the largest monetary issue (in my opinion) involves a tenant's right to share in a windfall profit accrued through a landlord's efforts to mitigate.

In drafting this Order, I have utilized and copied much of the language of the prior Orders.

In early 1999, Bill and Susie Passaloukas (Plaintiffs) approached Gary and Cynthia Bensch (Defendants) and initiated discussion concerning the possible leasing of commercial real estate owned by Defendants for the purpose of opening a restaurant. Following these discussions, the parties incorporated Zorba's Inc., a statutory close corporation, to operate the restaurant. Plaintiffs and Defendants were each fifty-percent owners of this corporation, which was funded by contributions in various forms from both parties. Zorba's Inc. then entered into a commercial lease agreement with Defendants to rent retail space for the restaurant. This agreement essentially placed Defendants in the dual role of sole landlord and half owner of the leasing entity.

Zorba's lease with Defendants provided for default in the event rent was not paid, and clearly stated eviction could occur if default was not cured within ten days of notice. Just months into the restaurant's operation, Zorba's had yet to turn a profit and various

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disagreements arose between Plaintiffs and Defendants. In November 1999, Plaintiffs withheld the rent money due to a disagreement over Defendants' alleged responsibility to correct some problems with the property. The rent was put in an attorney's escrow account and eventually paid to Defendants. In December, however, the rent was again withheld due to disagreements between the parties and financial woes.

In response to the non-payment of rent, Defendants evicted Zorba's, Inc. from the premises by changing the locks on the restaurant and threatening Plaintiffs with criminal prosecution if they attempted entry. After a short and ill-fated attempt by Defendants to operate their own restaurant on the premises, the restaurant, its good-will, and all its equipment was sold to another restaurant for \$75,000. The purchasing restaurant also entered into a five-year lease with Defendants for the retail space.

Plaintiffs brought an action individually and as a derivative suit on behalf of Zorbas, Inc. against Defendants and Zorba's. Plaintiffs set forth several causes of action relating to actions of Defendants, including breach of fiduciary duty, unfair trade practices, and misappropriation of corporate assets. Additionally, they brought individual and derivative claims for damages resulting from the alleged conversion of corporate and personal property which was in the restaurant on the date of eviction. Defendants counterclaimed for damages.

At the first trial of this case, Judge Thomas Kemmerlin ordered any remaining assets of Zorbas be used to pay creditors and then split evenly between Plaintiffs and Defendants. He denied all other claims of both parties.

Judge Kemmerlin's ruling was reversed and remanded. In so doing, the Court of Appeals stated:

"We deem an accounting necessary to properly determine whether Respondents converted corporate assets to their personal use and whether there is any indication of oppressive or unfairly prejudicial behavior on the part of Respondents. The accounting should detail the contributions by the parties; the identity and value of equipment, furnishings, and other items in Zorba's at the time of eviction; the disposal of any property belonging to Zorba's; any revenues from the disposal of Zorba's property; and Zorba's debts, both paid and currently outstanding. As all remaining issues raised on appeal are to some degree intertwined with the factual conclusions to be determined by the strict accounting, we do not address them at this time. Instead, we remand for a strict accounting followed by a full de novo review of all legal and equitable issues." Passaloukas v Bench Unpublished Opinion 2004-UP-506

Based on the mandate from the Court of Appeals and as a part of the pre-trial proceedings in the case, on April 1st, 2008, I Ordered:

- 1) "...I find that in the year 2004 the South Carolina Court of Appeals, after reviewing the record and finding it insufficient, ordered a strict accounting and that Plaintiff should undertake this accounting immediately, with the costs of such

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to be assessed at the final hearing. The accounting shall be performed by an accountant and shall include, but not be limited to the items listed in the Appeals Court Order. Both parties shall promptly provide the accountant with all information required to complete the accounting. In the event Defendant hires it's own accountant, all information shall be shared...."

Despite the fact that Plaintiffs failed to comply with this Order, the trial proceeded, for the second time, over the course of several days.

As a part of the final trial, I had previously taken under advisement a motion by the Plaintiffs to reconsider my previous finding of Summary Judgment ruling against wrongful eviction. As it appears there were material issues of fact as to the alleged wrongful eviction (ie the date of service of the 10 day notice), I hereby grant Plaintiff's motion in this regard, reverse my earlier ruling and find that material issues of fact preclude me from granting either party summary judgment on the issue of wrongful eviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The summary of the Court of Appeals, hereinabove stated, is herein adopted as a finding of fact.

It is well known that many small businesses do not survive their first year. Despite Plaintiff's claims, no deadlock, illegal, fraudulent, unfair, or oppressive conduct contributed to the failure of the corporation. The corporation failed because the gross revenues failed to exceed the expenses. There was no testimony offered that led me to believe that this business had long-term potential. At the time of the eviction, Zorba's was in default on it's lease, lacked operating capital, lacked shareholder consensus¹ as to it's future and was entering the "slow season" for Beaufort County restaurants. With no hope of continuing to pay it's rent, Zorba's had no lease. A restaurant without a lease, according to Plaintiffs' expert testimony, has value only in the discounted breakup value of its non-fixtue assets.

When faced with a premature vacancy as the result of a tenant default, it is incumbent upon the landlord to mitigate damages by attempting to re-lease the space. Failure to so mitigate is a forfeiture of the landlord's rights. Subsequent to Zorba's default, landlords had both the obligation and the right to attempt to re-lease the space, including the fixtures which became the property of the Landlord upon default. The fact that landlord was ultimately very successful in this mitigation attempt does not entitle the Plaintiffs to share in the windfall occasioned by the Tenant's default.

Zorba's rent was past due at the time of the eviction. Although there were legitimate questions as to the timing of the notice, there is no question but that Zorba's was in default on the lease at the time of the eviction and I find no wrongful eviction.

¹ Among other things, the parties could not agree on menu and alcohol offerings.

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I find credible the testimony that the Defendants Bench undertook to pay the debts of the failed business. I am further convinced that these Defendants did what was necessary under the circumstances to wind down the business of the failed corporation and to mitigate their damages as landlords.

FINDINGS ON CONTRIBUTIONS OF THE PARTIES

The parties have stipulated that their contributions were as follows:

From the Benches: \$62995.09

From the Passaloukases: \$59375.16

Additionally, I find that in attempting to wind up the affairs of Zorba's, the Defendants Bensch incurred the following expenses: \$300 for Accountants final bill and \$950.00 paid to former employee Nick Eletheriou .

I find that, at the time of the default, no party was obligated to further fund the corporation to prevent such default.

FINDINGS ON IDENTITY AND VALUE OF EQUIPMENT, FURNISHINGS, AND OTHER ITEMS IN ZORBA'S AT THE TIME OF EVICTION

I find that, at the time of the eviction, the non-fixture items were as follows:

1. 1 USED 36" CHAR BROILER W/STAND & CASTERS	\$160.00
2. 2 USED FLOOR FRYERS W/CASTER AND TWO FRY BASKETS	\$200.00
3. 1 USED 30" X 30" S/S TABLE W/CASTERS	\$ 15.00
4. 1 USED GYRO CHROMOMATIC MACHINE	\$ 30.00
5. 2 USED WHIRLPOOL RESIDENTIAL MICROWAVES	\$ 20.00
6. 1 NEW ARTIC AIR 22 CUBIC FEET REFRIGERATOR W/CASTERS	\$100.00
7. 1 USED 7'6" REFRIGERATED PIZZA PREP UNIT W/CASTERS	\$110.00
8. 1 USED 96" X 3' S/S WORK TABLE W/LEGS & UNDER SHELF PLUS TABLE MOUNT POT RACK	\$ 70.00
9. 1 LOT USED DISHES, GLASSES & FLAT WARE	\$ 80.00
10. 1 USED CASH REGISTER	\$ 20.00
11. 1 USED ICE CREAM FREEZER -NOT WORKING	\$ 10.00
12. 1 LOT USED POTS, PANS, UTENSILS, SMALLWARE, and ETC	\$ 60.00
13. 1 USED 2 DOOR REACH IN FREEZER	\$140.00
14. 17 TABLES W/ PADDING & BASES	\$ 85.00
15. 53 BEIGE WROUGHT IRON CHAIRS W/PADDED SEATS	\$ 424.00
16. ROYAL TC100 TIME CLOCK	\$ 15.00

TOTAL APPRAISED VALUE \$ 1439.00

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(The value of these items is derived from the testimony of the parties and of Robert Steinberg.)

I find that any fixtures were not the property of Zorba's pursuant to the lease and the law of this state and any fixtures were forfeited to the landlord upon default.

I find that Zorba's had neither goodwill, nor any other valuable asset at the time of closing. Therefore, the total value of Zorba's was equal to the value of the non-fixture items listed above.

FINDINGS ON DISPOSAL OF ANY PROPERTY BELONGING TO ZORBA'S AND ANY REVENUES FROM THE DISPOSAL OF ZORBA'S PROPERTY

I find that the items listed hereinabove as non-fixture assets of Zorba's were last in the possession of the landlords Bensch and that the Benschs should repay to the Passaloukas one-half of the value of said items. There was no competent testimony that would allow me to link any value of these items to the sale or lease value of the Mia Tierra transfer as that restaurant sale included consulting fees and additional square feet.

OTHER FINDINGS

I find no persuasive evidence of oppressive or unfairly prejudicial behavior on the part of Defendants.

I find that the corporation has been administratively dissolved, has no value, and that there are no creditors. Therefore a judicial dissolution is unnecessary.

I find any claim for unpaid salary to be unproven and therefore denied.

I find that the Plaintiffs' claims of conversion are unproven.

I find no wrongful eviction.

On the direct claims against the individual Benschs for conversion of the personal items, I do not find conversion, but do award the Passaloukas damages for the following items of personal property which were apparently not stored or preserved by the landlord after the eviction:

CDs, ring, statues, plastic flowers, candles, 2 plates, medicine, yellow bucket, cook books, rolling pin, lasagna pan, stools, rattan screen and other miscellaneous items which I value at a total of \$1,000.00.

I find that the Benschs contributed \$62995.09 and the Passaloukas contributed \$59375.16 (a difference of \$3619.93.) This amount should be further increased by the final salary and accounting payments set forth hereinabove, leading to a total difference in contributions which favors the Benschs by \$3619.93 plus \$1250.00 or \$4,869.93 I find that from the non-

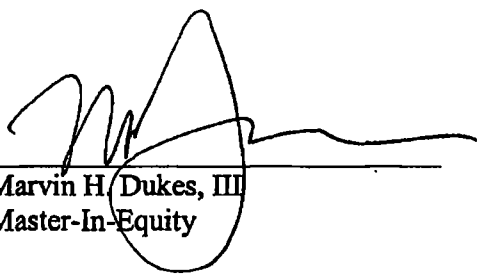
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fixture assets of the corporation, listed above, the Passaloukas should be compensated for one-half of the value or \$719.00 and further compensated in the amount of \$1,000.00 for the unpreserved personal items. Based on these calculations, I find that the Passaloukas Defendants would owe the Bensch Defendants the amount of \$3150.93. However, I decline to award this amount to Benschs, based on their failure to preserve the personal items and based on their failure to pursue or seek such damages from the individual Plaintiffs

I therefore find and Order as follows:

- 1) I deny all causes of action as unproven
- 2) I find that there are no remaining creditors of Zorba's Inc.
- 3) I award no attorney's fees to any party.
- 4) I find no conversion.
- 5) I find no wrongful eviction.
- 6) I find no deadlock, illegal, fraudulent, unfair, or oppressive conduct by any party.
- 7) I award no damages to any party.

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Master-In-Equity

Beaufort, South Carolina

Monday, January 11, 2010

6096

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bill P. Passaloukas and Susie H.
Passaloukas, Individually and as
Shareholders derivatively on
behalf of Zorba's Inc., Appellants,

v.

Cynthia Bensch, Gary Bensch
and Zorba's Inc., Respondent.

Appeal From Beaufort County
Thomas Kemmerlin, Special Circuit Court Judge

Unpublished Opinion No. 2004-UP-506
Submitted September 14, 2004 – Filed October 11, 2004

REVERSED AND REMANDED

Frank F. Pape, Jr., of Atlanta, for Appellants.

James Arthur Brown, Jr., of Beaufort, for
Respondents.

PER CURIAM: In early 1999, Bill and Susie Passaloukas ("Appellants") approached Gary and Cynthia Bensch ("Respondents") and initiated discussion concerning the possible leasing of commercial real estate owned by Respondents for the purpose of opening a restaurant. Following these discussions, the parties incorporated Zorba's Inc., a statutory close corporation, to operate the restaurant. Appellants and Respondents were each fifty-percent owners of this corporation, which was funded by contributions in various forms from both parties. Zorba's Inc. then entered into a commercial lease agreement with Respondents to rent retail space for the restaurant. This agreement essentially placed Respondents in the dual role of sole landlord and half owner of the leasing entity.

Zorba's lease with Respondents provided for default in the event rent was not paid, and clearly stated eviction could occur if default was not cured within ten days of notice. Just months into the restaurant's operation, Zorba's had yet to turn a profit and various disagreements arose between Appellants and Respondents. In November 1999, Appellants withheld the rent money due to a disagreement over Respondents' alleged responsibility to correct some problems with the property. The rent was put in an attorney's escrow account and eventually paid to Respondents. In December, however, the rent was again withheld due to disagreements between the parties and financial woes.

In response to the non-payment of rent, Respondents evicted Zorba's, Inc. from the premises by changing the locks on the restaurant and threatening Appellants with criminal prosecution if they attempted entry. After a short and ill-fated attempt by Respondents to operate their own restaurant on the premises, the restaurant, its good-will, and all its equipment was sold to another restaurant for \$75,000. The purchasing restaurant also entered into a five-year lease with Respondents for the retail space.

Appellants brought an action individually and as a derivative suit on behalf of Zorbas, Inc. against Respondents and Zorba's. Appellants set forth several causes of action relating to actions of Respondents, including breach of fiduciary duty, unfair trade practices, and misappropriation of corporate assets. Additionally, they brought individual and derivative claims for damages resulting from the alleged conversion of corporate and personal

property which was in the restaurant on the date of eviction. Respondents counterclaimed for damages. After hearing exhaustive and often conflicting testimony from the parties, the circuit court ordered any remaining assets of Zorbas be used to pay creditors and then split evenly between Appellants and Respondents. He denied all other claims of both parties.

ANALYSIS

Despite the daunting amount of testimony and evidence presented in the record on appeal, we conclude a strict accounting is necessary to properly answer the questions before this court. While the trial court attempted to allow as much into the record as possible in an effort to preclude remanding the action, there is scant evidence from either party as to the identity and value of the property owned by Zorba's, the specific amounts of debt owed, or how the proceeds from the sale of Zorba's, its corporate assets, or Appellants' personal property were applied to this alleged debt. Although both parties introduced several vague and unspecific valuations, the record's lack of particularity leaves this court without the means to determine whether the circuit erred in simply splitting Zorba's meager remaining corporate assets.

We deem an accounting necessary to properly determine whether Respondents converted corporate assets to their personal use and whether there is any indication of oppressive or unfairly prejudicial behavior on the part of Respondents. The accounting should detail the contributions by the parties; the identity and value of equipment, furnishings, and other items in Zorba's at the time of eviction; the disposal of any property belonging to Zorba's; any revenues from the disposal of Zorba's property; and Zorba's debts, both paid and currently outstanding. As all remaining issues raised on appeal are to some degree intertwined with the factual conclusions to be determined by the strict accounting, we do not address them at this time. Instead, we remand for a strict accounting followed by a full de novo review of all legal and equitable issues.

REVERSED AND REMANDED.

GOOLSBY, ANDERSON, and WILLIAMS, JJ., concur.

COUNTY OF BEAUFORT

204

Bill P. Passaloukas and Susan H. Passaloukas, individually and as

VS.

Defendants.

GENERAL ALLEGATIONS

-15-

Towne Center.

3. During late February and early March of 1999, the Plaintiffs entered into a joint venture agreement with the Bensches the purpose of which was to own and operate an authentic Greek restaurant at Bluffton, in Beaufort County, South Carolina, to be known as "Zorba's".

4. As a part of their agreement, among other things, the Plaintiffs and Bensches agreed upon the following terms and conditions:

- a. The Plaintiffs and Bensches would thereafter incorporate the restaurant business, later incorporated as "Zorba's, Inc.";
- b. The Plaintiffs would jointly own a fifty (50%) percent interest in the restaurant Corporation;
- c. The Bensches would jointly own a fifty (50%) percent interest in the restaurant Corporation;
- d. In consideration for shares to be issued and a promissory note to be given to them, the Plaintiffs would contribute to the restaurant Corporation certain restaurant fixtures, equipment and furnishings, initial consumable inventory and cash in the sum of \$20,000;
- e. In consideration for shares to be issued and a promissory note to be given to them, the Bensches would construct the leasehold improvements and contribute cash in the sum of \$20,000;
- f. The Bensches would lease to the restaurant Corporation a premises owned by the Bensches, the said premises being Suite 101 located at 27 Mellichamp Drive, Bluffton, South Carolina;

g. The Bensches would complete all leasehold improvements required for operating the restaurant business on or before April, 1999, and the restaurant would be ready for occupancy and business operations by that date;

h. The Plaintiffs would manage the restaurant business and receive salaries and/or wages therefor;

i. The Plaintiffs and Bensches would share in the profits of the Corporation, equally.

5. At all times the Plaintiffs performed and did all things required of them under the terms and conditions of their joint venture agreement with the Bensches. They participated in the management and control of the business operations, attended and took part in meetings of shareholders.

6. In August, 1999, the Plaintiffs and Bensches entered into written agreements memorializing their participation in the venture and commenced the restaurant operations. They incorporated Zorba's, Inc. and organized the restaurant business under the laws of the State of South Carolina; they entered into written shareholders' management agreements; and acknowledged in the agreements their respective equal interests in the equity of the Corporation mentioned above. The Plaintiffs and Bensches became, and are now, the sole and equal shareholders of the Corporation.

7. The parties further authorized the Corporation to enter into a written lease agreement with the Bensches and/or Towne Center, the said lease agreement being entitled "Commercial Lease Agreement" and dated August 15, 1999.

FOR A FIRST CAUSE OF ACTION

(Plaintiffs' Individual Claim for Dissolution Under S.C. Code § 33-14-300, et seq)

8. The Plaintiffs incorporate herein each and every allegation above set forth.

9. On or about January 9, 2000, the Bensches and/or Towne Center (acting through its sole owners and agents) the Bensches, wrongfully ejected and evicted the Plaintiffs from the leased premises in violation of the provisions of the "Commercial Lease Agreement" in breach of the contractual obligations arising under the shareholders' management agreements between the parties and in breach of the fiduciary obligations owed by the Bensches to the Plaintiffs and to the Corporation.

10. As a result of the wrongful ejectment and eviction of the Plaintiffs from the leased premises the Plaintiffs have been deprived of their shareholder rights, their right to share in the equity of the business, their right to participate in the control and management of the restaurant's operations and their right to participate in distribution of profits and other distributions, including wages earned by them and to be earned by them in the future.

11. For the past several months, up to and including the present time, the Plaintiffs and the Bensches, being the sole shareholders and directors of the Corporation, have become deadlocked. The Bensches have used the deadlock to exercise improper control over the management of the restaurant and its business assets. The Bensches have exercised control in an oppressive and unfair manner, prejudicial to the interests of the Plaintiffs, in one or more of the following ways:

- a. by wrongfully discharging the Plaintiffs from their management position;
- b. by misapplying, wasting and/or converting the assets of the Corporation for their own uses;
- c. by abandoning the normal and customary business activities of the Corporation without having taken any steps to dissolve the Corporation, or to

liquidate and distribute its assets and without regards to the distribution rights of the Plaintiffs;

d. by unilaterally, and without right to do so, attempting to deprive the Plaintiffs of their share of the assets of the Corporation;

e. by unilaterally depriving the Plaintiffs of their rights to participate in the management of the affairs of the Corporation;

f. by taking action without proper notice to the Plaintiffs;

g. by withholding information from the Plaintiffs;

h. by conducting transactions in the Corporation's name without valid authority therefor;

i. by preventing the Plaintiffs' participation in the active participation in the business affairs of the Corporation;

j. by attempting to sell, or by misappropriating and transferring, valuable assets of the business venture and the Corporation without valid authority therefor and without right to do so, and without providing the Plaintiffs with proper notice thereof and by deliberately excluding the Plaintiffs from any participation therein;

k. by failing to provide financial statements;

l. by failing to allow inspection of books and records;

m. by failing to provide the Plaintiffs with notice of meetings with respect to the management of the corporate assets;

n. by failing to provide the Plaintiffs with a complete and accurate accounting of their capital contributions.

12. The parties are deadlocked and corporate action is impossible. The Plaintiffs are informed and believe that the circumstances are such that it would be wholly futile to once again apply to the Bensches for redress of their claims through corporate action or voluntary dissolution or other remedy. The Bensches, being the owners of the premises which is titled in either in their own names or in the name of Towne Center, in which the restaurant is located, have sole and exclusive control thereof and the assets of the Corporation, as evidenced by the aforementioned acts of exclusion, and would continue to deny the Plaintiffs any remedy whatsoever.

13. The Plaintiffs are informed and believe, therefore, that they are entitled, under authority of S.C. Code Ann. §§ 33-14-300, et seq, for an Order of this Court granting the following relief:

- a. To dissolve the Corporation;
- b. To appoint a receiver to undertake any or all of the following responsibilities, to the extent necessary or advisable:
 - i. Take over the assets of the Corporation, as well as the defense of this lawsuit on behalf of the said Corporation;
 - ii. To prosecute any lawsuits as may be needed to collect debts owed to the Corporation, including any owed by the Bensches as is otherwise set forth herein;
 - iii. To liquidate the assets of the Corporation;
 - iv. To pay the debts of the Corporation;
 - v. To distribute the assets among the shareholders in accordance with their respective interests;

- vi. To recover from the Bensches distributions to which they are not entitled and to recover corporate property which has been misappropriated by the Bensches;
- c. To require the Bensches to produce and make available for inspection and audit and copying all the books and records of the Corporation;
- d. To require the Bensches to fully and completely account for all contributions which they claim to have made to the Corporation and to fully and completely account for all wrongful distributions and misappropriated property as well as the proceeds and income thereof;
- e. To reimburse the Plaintiffs for attorney's fees which they have incurred and will incur in connection with the prosecution of this lawsuit, to be paid out of the funds generated pursuant to the liquidation;
- f. To enjoin the Bensches from making any further distributions or transfers of the assets of the Corporation.
- g. To require the Bensches to purchase their shares at fair value.

In the alternative the Plaintiffs are informed and believe that they are entitled to bring the shareholders derivative claims on behalf of the Corporation as are set forth hereinafter.

FOR A SECOND CAUSE OF ACTION

(Shareholder Derivative Claim for Wrongful Conversion/Misappropriation of Corporate Assets/Opportunities)

- 14. The Plaintiffs incorporate herein each and every allegation above set forth.
- 15. On or after January 9, 2000, the Bensches took possession of the restaurant, and misappropriated the leasehold improvements, restaurant fixtures, equipment,

furnishings and inventory which belongs to the Corporation, and began, and have continued, to operate the restaurant for the benefit of the Bensches and without accounting to the Corporation for any of the income and profits thereof.

16. The assets of the Corporation are valuable. The Corporation has been damaged and is entitled to be paid for the use of its assets and it is entitled to all income, profits, proceeds and other valuable benefits as to which it has been denied by the Bensches, including lost income and profits.

17. The Plaintiffs are informed and believe that the Bensches have converted and misappropriated corporate assets and/or the proceeds thereof, and/or interest on the value thereof from the dates on which they were converted or misappropriated at the legal rate until paid, including but not necessarily limited to, the following:

- a. The value of the restaurant business, including the proceeds from the sale made thereof, being the sum of \$75,000.00 and any further proceeds thereof;
- b. The leasehold improvements which the Plaintiff are informed and believe are worth the sum of approximately \$60,344.09,
- c. The value of an insurance policy which the Corporation owned and/or the proceeds thereof which the Plaintiffs are informed and believe is worth approximately \$896.25;
- d. A refund in the sum of \$481.00 from an insurance policy owned by the Corporation;
- e. Paper supplies valued at approximately \$500.00;
- f. Juice supplies valued at approximately \$200.00;
- g. Coffee supplies valued at approximately \$200.00;

- h. Wine, beer and champagne valued at approximately \$2,000.00;
- i. Food valued at approximately \$3,000.00;
- j. Stale checks converted by the Bensches valued at approximately \$94.15;
- k. Cash converted by Bensches valued at approximately \$404.00;
- l. The rental value of the leasehold improvements, being approximately \$109,243.44, arising from the lease which the Bensches and/or Towne Center entered into with Mi Tierra's;
- m. A security deposit in the sum of \$1,000.00 held by Bensches; and
- n. Last month's rent in the sum of \$1,885.00 held by the Bensches.

18. The Plaintiffs also are informed and believe that the Corporation is entitled to punitive damages for the Bensches' intentional, wanton, careless, reckless, willful and malicious conduct in respect of the wrongful conversion and misappropriation.

FOR A THIRD CAUSE OF ACTION

(Plaintiffs' Individual Claim for Wrongful Conversion/Misappropriation of Corporate Assets/Opportunities under S.C. Code Ann. § 33-18-400)

19. The Plaintiffs incorporate herein each and every allegation above set forth.

20. As a result of the Bensches' misappropriation and conversion the Plaintiffs have been damaged in as much as they have lost wages; they have lost their share of the return of profits from the restaurant operations, the assets and the proceeds thereof; they have lost the monies they are owed by the Corporation for loans which they have made to the Corporation; and they have lost their equity in the Corporation. They have also incurred threats of claims and lawsuits made by creditors and employees of the Corporation which has cost them money, great emotional distress and embarrassment.

21. As a result of the Bensches' misappropriation and conversion of the assets of

the Corporation, because it is a statutory close corporation, the Plaintiffs are informed and believe that they are entitled to attorneys fees under authority of S.C. Code Ann. § 33-18-410 for the Bensches' arbitrary and vexatious conduct and bad faith in respect of the wrongful conversion and misappropriation.

22. The Plaintiffs are further informed and believe that they are entitled to punitive damages for the Bensches' intentional, willful, wanton, reckless, careless and malicious conduct in respect of the wrongful conversion and misappropriation.

FOR A FOURTH CAUSE OF ACTION
(Plaintiffs' Individual Claim for Wrongful Conversion of Personal Property)

23. The Plaintiffs incorporate herein each and every allegation above set forth.

24. On or about January 9, 2000, the Plaintiffs were wrongfully ejected and evicted from the leased premises by the Bensches without just cause. At the time of the ejectment and eviction, certain personal property belonging to the Plaintiffs was stored on the premises. For a substantial and unreasonable period of time, the Plaintiffs were deprived of the possession and use of their certain personal property in spite of proper and reasonable demands made of the Bensches for return of the property.

25. The Bensches, by their conduct which is set forth above, from and after January 9, 2000, and to the present time, have wrongfully refused to return the Plaintiffs personal property to them for some periods of time; wrongfully converted the Plaintiffs' personal property; deprived the Plaintiffs from the rightful and peaceful enjoyment of their personal property, as well as the profits which would normally arise therefrom. All of which has directly damaged the Plaintiffs and has caused the Plaintiffs emotional distress and as to which the Plaintiffs are informed and believe that they are entitled to punitive damages for the Bensches' intentional, willful and malicious conduct in respect

of the wrongful conversion.

FOR A FIFTH CAUSE OF ACTION

(Plaintiff Bill Passaloukases' Individual Claim against Zorba's for Wages)

26. The Plaintiffs incorporate herein each and every allegation above set forth.

27. In consideration of the other promises and commitments made and things to be done by each of the parties, they agreed, under the provisions of Article IV, ¶ 4.2, p. 8, of the parties' "Shareholders' Management Agreement", that Plaintiff Bill Passaloukas would be paid as wages a monthly salary in the sum of \$3,000 per month.

28. At all times the Plaintiff Bill Passaloukas performed and did all things required of him under the terms and conditions of his agreement with the Bensches and with respect to the obligations which he owed to Zorba's.

29. As a result of the Bensches wrongful conduct which is set forth above, Plaintiff Bill Passaloukas' wages were unpaid and he is owed wages at the rate of \$3,000 per month for the period of time which he labored under the parties' agreements. The Plaintiffs are informed and believe that the total amount of wages to which Plaintiff Bill Passaloukas is entitled is approximately \$14,400.00.

FOR A SIXTH CAUSE OF ACTION

(Plaintiffs' Claim against Zorba's for Money Owed Pursuant to Loan Obligation)

26. The Plaintiffs incorporate herein each and every allegation above set forth.

27. In consideration of the other promises and commitments made and things to be done by each of the parties, they agreed that the Plaintiffs would tender a loan of cash from time to time.

28. From time to time the Plaintiffs tendered cash loans to the Corporation.

29. As a result of the Bensches wrongful conduct which is set forth above, the

Plaintiffs' cash loans to the Corporation went unpaid and are still unpaid. The Plaintiffs are informed and believe that the total amount of cash loans to which they are entitled to repayment is approximately \$29,375.16 together with interest thereon at the legal rate.

FOR A SEVENTH CAUSE OF ACTION
(Shareholders' Derivative Claim against Towne Center for Restitution)

30. The Plaintiffs incorporate herein each and every allegation above set forth.

31. The Plaintiffs are informed and believe that Towne Center claims an interest in the leasehold improvements which are the subject of this cause of action and that Towne Center has been unjustly enriched by the Bensches' misappropriation and transfer to Towne Center of assets to which the Corporation is entitled and to which Towne Center is not entitled. As a result thereof Towne Center must disgorge the Corporate assets and/or the proceeds thereof together with interest at the legal rate.

WHEREFORE, THE PLAINTIFFS ASK THIS HONORABLE COURT:

AS TO THE FIRST CAUSE OF ACTION
(Claim for Dissolution Under S.C. Code § 33-14-300, et seq):

- a. To dissolve the Corporation under authority of law;
- b. To appoint a receiver pendente lite and permanently to undertake the following responsibilities, as necessary or advisable, subject to the Plaintiffs' derivative claims on behalf of the Corporation:
 - i. Take over the assets of the Corporation, as well as the defense of this lawsuit on behalf of the said Corporation;
 - ii. To prosecute any lawsuits as may be needed to collect debts owed to the Corporation, including any owed by the Bensches as is otherwise set

forth herein;

- iii. To liquidate the assets of the Corporation;
 - iv. To pay the debts of the Corporation;
 - v. To distribute the assets among the shareholders in accordance with their respective interests;
 - vi. To recover from the Bensches distributions to which they are not entitled and to recover corporate property which has been misappropriated by the Bensches;
- c. To require the Bensches to produce and make available for inspection and audit and copying all the books and records of the Corporation;
- d. To reimburse the Plaintiffs for attorney's fees incurred in connection with the prosecution of this lawsuit, to be paid out of the funds generated pursuant to the liquidation and in accordance with law;
- e. To enjoin the Bensches from making any further distribution or transfer of the assets of the Corporation;
- f. To require the Defendant Corporation and/or the Bensches to purchase the Plaintiffs' shares at their fair value under authority of as amended, as an alternative to the other relief requested herein;

AS TO THE SECOND CAUSE OF ACTION

(Shareholder Derivative Claim for Wrongful Conversion/Misappropriation of Corporate Assets/Opportunities):

- g. To award the Corporation actual damages for the Bensches' wrongful conversion and misappropriation of the corporate assets and opportunities, together with punitive damages for the Bensches' intentional, wilful and malicious

acts;

AS TO THE THIRD CAUSE OF ACTION

(Plaintiffs' Individual Claim for Wrongful Conversion/Misappropriation of Corporate Assets/Opportunities under S.C. Code Ann. § 33-18-400):

h. To award the Plaintiffs actual damages, attorneys fees under authority of S.C. CODE Ann. § 33-18-410 for the Bensches' arbitrary, vexatious and bad faith conduct, together with punitive damages for the Bensches' intentional, willful, wanton, reckless, careless and malicious conduct in respect of the wrongful conversion and misappropriation.

AS TO THE FOURTH CAUSE OF ACTION

(Plaintiffs' Individual Claim for Wrongful Conversion of Personal Property):

i. To award the Plaintiffs actual damages arising from the Bensches' wrongful conversion of their personal property, together with punitive damages for the intentional, reckless, careless, wanton, wilful and malicious acts of the Bensches;

AS TO THE FIFTH CAUSE OF ACTION

(Plaintiff Bill Passaloukases' Individual Claim against Zorba's for Wages)

j. To award Plaintiff Bill Passaloukas damages against Defendant Zorba's and/or the corporate fund generated by this lawsuit for the unpaid and past due wages owed to him, together with interest thereon at the legal rate until paid.

AS TO THE SIXTH CAUSE OF ACTION

(Plaintiffs' Claim against Zorba's for Money Owed Pursuant to Loan Obligation)

l. To award the damages against Defendant Zorba's and/or the corporate fund generated by this lawsuit for the unpaid loans owed to them together with interest thereon at the legal rate until paid.

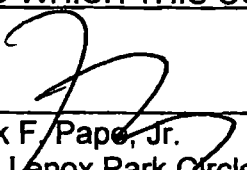
FOR A SEVENTH CAUSE OF ACTION

(Claim against Towne Center for Restitution)

- I. To require Towne Center to disgorge any assets which it may hold which belong to the Corporation.

FOR SUCH OTHER AND FURTHER RELIEF AS TO WHICH THIS COURT MAY
DEEM JUST AND PROPER.

May 9, 2005



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P.O. Box 95310
Atlanta, Georgia 30347
1-404-846-0228
ATTORNEY FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CASE # 2000-CP-07-524

**BILL P. PASSAULOUKAS and SUSIE)
PASSALOUKAS, individually and as)
shareholders derivatively on behalf of)
ZORBA'S, Inc.)**

Plaintiffs,)

-versus-)

**CYNTHIA BENSCH, GARY BENSCH,)
TOWNE CENTER, LLC and)
ZORBA'S, Inc.)
Defendants,)**

**ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIMS ON BEHALF
OF CYNTHIA AND GARY BENSCH**

TO: THE PLAINTIFFS ABOVE NAMED.

The Defendants, Cynthia and Gary Bensch, having reviewed the complaint in the above-captioned case, would respectfully show unto this court that:

1. The Defendants deny each and every allegation of the complaint not specifically hereinafter admitted, explained, or modified.
2. The Defendants admit the allegations contained in Paragraph 1 of the complaint.
3. The Defendants admit so much of the allegations of Paragraph 2 as allege that the Bensch's own a construction business. However, the Defendants deny the remainder of the allegations contained in Paragraph 2 and require strict proof thereof.
4. The Defendants admit so much of the allegations contained in paragraph 3 as allege that the Passaloukases approached the Bensch's to negotiate leasing of commercial space. Further, the Bensch's admit that the Passaloukases and the Bensch's eventually executed several operating agreements related to Zorba's. The Defendants deny the remainder of Paragraph 3 and

demand strict proof thereof.

5. The Defendants admit the allegations contained in paragraph 4, subparts a, b, c, and i. Further, they deny so much of the allegations of paragraph 4, subparts d and e as allege the manner of contributions to be given Zorba's. However, as stipulated in the previous trial, the Defendants admit that the Passaloukases ultimately provided a net \$59,375.16 in either loans or share purchases while the Bensches contributed a net \$57851.84 in either loans or share purchases. The Bensches deny so much of paragraph 4, subpart f as alleges that they would personally lease premises to the restaurant and demand strict proof thereof. The Defendants deny the allegations contained in subpart g and demand strict proof thereof. Finally, the Defendants admit so much of subpart h as alleges that Mr. Passaloukas would manage the restaurant business and receive a salary therefor, but deny the remainder of the subpart and demand strict proof thereof.

6. The Defendants deny paragraph 5 and demand strict proof thereof.

7. The Defendants admit paragraphs 6 and 7.

8. The Defendants deny paragraphs 8-13 and demand strict proof thereof.

9. The Defendants deny paragraphs 14-18 and demand strict proof thereof.

10. The Defendants deny paragraphs 19-22 and demand strict proof thereof.

11. The Defendants deny paragraphs 23-25 and demand strict proof thereof.

12. The Defendants deny paragraphs 26-29 of the Fifth Cause of Action and demand strict proof thereof.

13. The Defendants deny paragraphs 26-29 of the Sixth Cause of Action and demand strict proof thereof.

14. The Defendants deny paragraphs 30 and 31 and demand strict proof thereof.

AFFIRMATIVE DEFENSES

Unclean Hands

(As to Plaintiffs' Causes of Action One, Two, Three, Five, Six)

15. The Plaintiffs engaged in inequitable conduct.
16. The Plaintiff's inequitable conduct concerned them personally;
17. The inequitable conduct is related to the subject matter of this litigation;
18. The Defendants were prejudiced by this inequitable conduct.

Estoppel

(As to Plaintiffs' Causes of Action One, Two, Three, Five and Six)

19. Bill Passaloukas misrepresented to the Bensches that he would manage Zorba's and perform other duties;
20. These management duties included creating a budget and operating within this budget
21. Mr. Passaloukas intended that the stockholders of Zorba's would rely upon his promise to perform his managerial duties;
22. Mr. Passaloukas knew that he had not created a budget nor did he operate within this budget;
23. The other stockholders of Zorba's were unaware of Passaloukases' non-compliance with the budget.
24. The other Stockholders relied upon Mr. Passaloukases' assertion that he would operate within a budget.
25. Relying upon the misrepresentation that Passaloukas was managing Zorba's in accordance with a budget, the other stockholders allowed him to continue in his employment position as manager.

26. Had the other stockholders known the truth, Mr. Passaloukas would have been terminated as manager and owed no salary.

27. Had the other stockholders known the truth, these stockholders would have taken steps to prevent Zorba's insolvency and eviction.

Good Faith Disposal of Corporate Assets
(As to Plaintiffs' Causes of Action One, Two and Three)

28. The Bensches were corporate officers.

29. The Bensches only sold corporate assets to pay corporate debt

30. The Bensches acted in good faith during such actions.

Lack of Subject Matter Jurisdiction
(As to Plaintiffs' Causes of Action One through Seven)

31. The Circuit Court only acquired jurisdiction over this matter following remand from the Court of Appeals.

32. The Court of Appeals limited remand to a strict accounting.

33. Following the strict accounting, a *de novo* review should be conducted.

34. *De novo* review is a term of art referring to appellate review by a court of appeals following a final judgment on the merits.

35. The Circuit Court is not an appellate court empowered to review claims of equity.

Duty to Mitigate Damages
(As to Plaintiffs' Causes of Action One through 4)

36. Assuming *arguendo* that the Bensches were landlords for Zorba's, they had a duty to mitigate damages when Zorba's breached its lease.

37. Zorba's breached its lease by defaulting on rent in December, 1999.

38. Zorba's owed rent for a period of two years, from August 15, 1999 to August 14,

2001.

39. The Bensches relet the premises to Mi Tierra's.

40. This lease to Mi Tierra's mitigated the damages from Zorba's breach.

COUNTERCLAIMS

For a First Cause of Action

(Counterclaim Plaintiff's Cynthia and Gary Bensches' Derivative Claim on behalf of Zorba's against Bill Passaloukas for Negligence)

1. Bill Passaloukas undertook a contractual duty to manage Zorba's within a budget.
2. Mr. Passaloukas failed to operate Zorba's within this budget, in breach of his duty.
3. The breach of this duty caused Zorba's to suffer damages.

For a Second Cause of Action

(Counterclaim Plaintiffs Cynthia and Gary Bensches' Derivative Claim on behalf of Zorba's against Bill Passaloukas for Breach of Fiduciary Duty)

4. Counterclaim Plaintiffs reallege paragraphs 1-3 of their Counterclaims as though fully set forth herein.

5. Bill Passaloukas owed a fiduciary duty to Zorba's.
6. Bill Passaloukas breached that fiduciary duty.
7. Zorba's and its stockholders suffered damages as the result of this breach.

For a Third Cause of Action

(Counterclaim Plaintiffs Cynthia and Gary Bensches' Individual Claim for Appointment of a Reciever under S.C. Code Section 33-14-300)

8. Counterclaim Plaintiffs reallege paragraphs 1-7 of their Counterclaims as though fully set forth herein.

9. Counterclaim Plaintiffs are stockholders in Zorba's.
10. Zorba's is a domestic corporation incorporated pursuant to the laws of South

Carolina.

11. Zorba's has abandoned its business and has failed, within a reasonable time to dissolve.

12. Because of this failure, a receiver should be appointed to manage the winding up of Zorba's.

13. This receiver should be directed to oversee all derivative claims brought on behalf of Zorba's by all stockholders.

14. Because counsel for the Plaintiff has asserted claims against Zorba's, he should be disabled by conflict from prosecuting claims on behalf of Zorba's.

For a Fourth Cause of Action

(Counterclaim Plaintiffs' Cynthia and Gary Bensch's Individual Claim against Zorba's for Breach of Contract to Lease Property)

15. Counterclaim Plaintiffs reallege paragraphs 1-14 of their Counterclaims as though fully set forth herein.

16. Assuming arguendo that Cynthia and Gary Bensch, as opposed to Towne Center, are the landlords regarding the lease of Suite 101, 27 Mellichamp Drive, Bluffton, SC, then Zorba's owed a duty to pay rents in accord with the commercial lease signed on September 2, 1999.

17. Zorba's failed to pay such rent, as required.

18. As a result of this default, the Bensch's suffered damages.

19. Zorba's, as tenant, owes the landlord attorney fees related to this "legal action or suit in law or equity arising out of the mutual covenants, promises, and agreements of this lease."

For A Fifth Cause of Action

(Counterclaim Plaintiffs' Cynthia and Gary Bensch's Individual Claim against Zorba's for Money Owed Pursuant to Loan Obligation)

20. Counterclaim Plaintiffs reallege paragraphs 1-19 of their Counterclaims as though fully set forth herein.

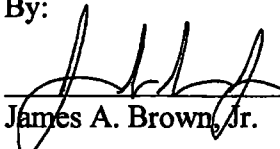
21. Zorba's failed to repay monies loaned to it by the Bensches as agreed in the operating agreements.

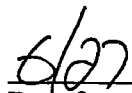
22. As a result of this failure to repay, the Bensches suffered damages.

WHEREFORE, Defendants Gary and Cynthia Bensch respectfully request that the Honorable Court dismiss Plaintiffs' Complaint against them and reward them relief on their counterclaims for actual and punitive damages as proven at trial and costs, attorneys' fees and any other such relief as the Court deems just and proper. Further not sayeth the Defendants.

Respectfully Submitted

By:


James A. Brown, Jr.

, 2005
Beaufort, SC

Law Offices of Jim Brown, P.A.
1111 Bay St., P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorney for the Defendant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO. 00-CP-07-524

Bill P. Passaloukas and Susie H.
Passaloukas, individually and as
shareholders derivatively on behalf
of Zorba's, Inc.,

Plaintiffs,

vs.

REPLY

Cynthia Bensch, Gary Bensch, Towne
Center, LLC, and Zorba's, Inc.,

Defendants.

The Plaintiffs, individually and as shareholders derivatively on behalf of Zorba's, Inc., replying to the Counterclaims of the Defendants herein, respectfully allege that:

FOR A FIRST DEFENSE

1. The Plaintiffs allege and re-allege each and every allegation of the Amended Complaint which they have previously filed herein.

FOR A SECOND DEFENSE

2. Except as admitted or qualified in the Complaint, the Plaintiffs deny each and every allegation of the Defendants' affirmative defenses and Counterclaims.

FOR A THIRD DEFENSE

3. The Defendants' claims which are set forth in the Amended Answer and Counterclaim are barred by the applicable statutes of limitations.

FOR A FOURTH DEFENSE

4. The Defendants' claims which are set forth in the Amended Answer and Counterclaim are barred by the applicable statute of frauds which prohibits enforcement

of such claims as alleged which are not in writing because the claims which the Defendants seek to enforce have not been signed by the Plaintiffs.

FOR A FIFTH DEFENSE

5. The Plaintiffs incorporate herein each an every allegation which is set forth above and which is set forth in its Complaint as fully as if repeated herein word for word.

6. The Defendants, by one or more acts which are set forth in the Amended Complaint and hereinabove and hereinafter, are estopped from making any claim for monies which they might otherwise be owed.

FOR A SIXTH DEFENSE

7. The Plaintiffs incorporate herein each an every allegation which is set forth above and which is set forth in its Complaint as fully as if repeated herein word for word.

8. The Defendants, by one or more acts which are set forth in the Amended Complaint and hereinabove and hereinafter, do not have clean hands and have not done equity towards the Plaintiffs in as much as they have breached contractual obligations which they owed to the Plaintiffs and breached statutory and fiduciary obligations to keep a proper books and records and have failed to render, without great expense to the Plaintiffs, a full, complete and strict accounting of the assets, monies, receipts and expenses of the corporation and by engaging in the other wrongful acts which are set forth in the Amended Complaint.

FOR A SEVENTH DEFENSE

10. The Plaintiffs incorporate herein each an every allegation which is set forth

above and which is set forth in its Complaint as fully as if repeated herein word for word.

11. The Defendants' claims against the Plaintiffs are barred in accordance with the principles of res judicata and collateral estoppel by virtue of the unappealed rulings of the Honorable Thomas Kemmerlin, Jr., by Order dated July 17, 2002, as follows:

a. From paragraph 25 of the said Order, the Defendants' claim against the Plaintiffs for conversion of assets of Zorba's, Inc. was dismissed thereby barring the claims of the Defendants as set forth in their Second Cause of Action (breach of fiduciary duties);

b. From paragraph 26 of the said Order, the Defendants' claims against the Plaintiffs for breach of fiduciary duties was dismissed thereby barring the claims of the Defendants as set forth in their Second Cause of Action (breach of fiduciary duties);

c. From paragraph 27 of the said Order, the Defendants' claims against the Plaintiff for fraud in violation of fiduciary duties owed to Zorba's, Inc. was dismissed thereby barring the claims of the Defendants as set forth in their Second Cause of Action (breach of fiduciary duties);

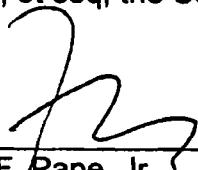
d. From paragraph 28 of the said Order, the Defendants' claims of breach of contract for violations of the management agreement between the parties was dismissed thereby barring the claims of the Defendants as set forth in their First and Fifth Causes of Action (breach of contract, breach of management agreement); and

e. From paragraph 29 of the said Order, the Defendants' two derivative actions on behalf of Zorba's, Inc. for waste of corporate assets with respect to unpaid rents to the Defendants and unpaid bills to third parties was dismissed thereby barring the

claims of the Defendants as set forth in their Fourth Cause of Action (breach of lease agreement obligation to pay rents and attorneys fees).

WHEREFORE, the Plaintiff asks for the relief prayed for in the Complaint; that the Defendants' Counterclaims be dismissed with prejudice; and that the Defendants and any others who have counseled them in the prosecution of these frivolous counterclaims be made to pay for all of the Plaintiff's costs of defending these frivolous claims under authority of S.C. Code § 15-36-10, et seq, the South Carolina Frivolous Civil Proceedings Sanctions Act.

July 1, 2005



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1-404-846-0228
ATTORNEY FOR THE PLAINTIFFS

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO. 00-CP-07-524
)

Bill P. Passaloukas and Susie H.
Passaloukas, individually and as
shareholders derivatively on behalf
of Zorba's, Inc.,

Plaintiffs,

vs.

Cynthia Bensch, Gary Bensch, Towne
Center, LLC, and Zorba's, Inc.,

Defendants.

NOTICE OF MOTION
AND
MOTION TO ALTER OR AMEND

TO: Defendants Gary Bensch and Cynthia Bensch:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiffs, will, ten days hereafter, at 10:00 a.m., at the Beaufort County Courthouse, in Beaufort, South Carolina, or at such other time and place as counsel may be heard, move before the Honorable Marvin Dukes, III, Master in Equity for Beaufort County, South Carolina, for an order, pursuant to Rules 52 and 59, SCRCP, to amend the Order dated January 11, 2010, for the following reasons:

1.

The Master erred in failing to write the findings and conclusions specially and separately on several central and determinative questions raised by the Plaintiff's, especially regarding:

a. A complete strict accounting of the contributions of the parties, the identity of the assets owned by Zorba's, the value of the assets, the disposal of the assets, the revenues from the disposal of the assets and the debts of the corporation which was required by the Court of Appeals after the first trial of this lawsuit.

b. The identity and meaning of state law which governs the obligations of fiduciaries as that law applies to the Defendants when they ejected Zorba's from the leased premises and took sole and exclusive control of the corporate assets, the Defendants' fiduciary duties and the Defendants' associated burden of proving by way of a strict accounting how they disposed of the assets, the value of the assets and the revenues received from the disposal of the assets.

c. The identity and meaning of those contract provisions and state law which govern the rights and liabilities of the parties with respect to the Defendants' right to eject Zorba's, including the factors which the Court must examine under *Kiriakides vs United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994) and the Defendants' duties as fiduciaries and the affect on the Defendants' rights, if any, to eject Zorba's.

d. The identity and meaning of those contract provisions and state law which govern the rights and liabilities of the parties with respect to the ownership of the leasehold improvements;

e. The identity and meaning of those contract provisions and state law which govern the rights and liabilities of the parties with respect to the Defendants' obligation to contribute \$20,000, cash, as a loan to Zorba's;

The error being that:

Trial courts, sitting without juries in an action at law, write their findings specially and separately: to allow a reviewing court to determine from the record whether the judgment-and the legal conclusions which underlie it-represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.

In the Matter of the Treatment and Care of Luckabaugh, 351 S.C. 122, 132, 568 S.E.2d 338, 343 (2002).

These are all central and determinative issues. The Court failed to

"specially" identify the contract provisions and the law which it believes must be used to measure the facts of this case.

This case will very likely be appealed, and the Plaintiffs believe that unless this Court makes "special" findings and conclusions on these very important issues in order to provide the Court of Appeals with facts and conclusions of law sufficient to inform the Court of Appeals that the Master has properly identified and applied the law to the facts of this case, the Court of Appeals will, once again, return the case to the Master for "special" findings as well as a complete strict accounting.

2.

The Master erred in concluding that:

Despite the fact that Plaintiffs failed to comply with this Order, the trial proceeded, for the second time, over the course of several days. Order, Page 3.

The error being that the Plaintiffs did comply with the provisions of the Order dated April 1, 2008. The Plaintiff's retained the services of an accountant who testified at trial and gave a written report at trial based upon evidence which was presented to the Court. The record contains a detailed accounting presented by the Plaintiffs of the contributions of the parties, the identity of the assets owned by Zorba's, the value of the assets, the disposal of the assets and the revenues from the disposal of the assets, as well as debts of the corporation.

No further accounting is required nor is a more strict accounting possible from the Plaintiffs. The Plaintiffs have offered into evidence all records which they have to offer, monthly statements and checks for the entire period of time during which they managed the business. Those records have not been challenged nor can they be challenged.

On the other hand, the Defendants, who became fiduciaries when they

took sole and exclusive possession of the assets at the time of the ejectment, have offered no strict accounting. Unfortunately, the Court has not placed the proper burden of a strict accounting on them. The Court has been wrongfully satisfied to accept their oral testimony without requiring them to produce written evidence as required by the cases which define what a "strict accounting" requires.

3.

The Master erred by failing to find and conclude that the Defendants have a fiduciary duty toward both the corporation and the Plaintiffs and that they are not entitled to keep any rents and profits arising from their dealings with, or their use of, the corporate property, the error being that, as fiduciaries, the Defendants are not entitled to keep the assets, the rents or the profits received thereon, the error being that the Defendants, when they took sole possession and control of the assets of Zorba's on the day they ejected Zorba's became fiduciaries to the Plaintiffs and to Zorba's. *Lesesne v Lesesne*, 307 S.C. 67, 413 S.E.2d 847, 848 (Ct.App. 1991); *Island Car Wash, Inc. v Norris*, 292 S.C. 595, 358 S.E.2d 150, 152 (Ct.App. 1987); *Talbot v James*, 259 S.C. 73, 190 S.E.2d 759 (1972).

The Defendants, in connection with the sale of the restaurant acknowledged their responsibility as fiduciaries and trustees of Zorba's assets. In a document entitled "Nicoli's Café, LLC Resolution No. 1" they state:

*We, the members of Nicoli's, LLC, do hereby resolve and agree that the Company is authorized to operate a restaurant business in Suite 101, Towne Center, 27 Dr. Mellichamp Drive, Bluffton in the space formerly occupied by Zorba's Café. Nicoli's shall maintain any equipment and assets owned by Zorba's and hold same in trust until that company is dissolved. Upon the liquidation or sale of the assets of Nicoli's Café, all such **assets or funds received for said assets shall be maintained in trust** by Nicoli's Café until such time as the assets and liabilities of Zorba's are resolved by written agreement of the shareholders of Zorba's or Order of the Court.*

So resolved this ____ day of February, 2000. (Emphasis added)

Plaintiff's Exhibit # 17.

4.

The Master erred by failing to find and conclude that the Defendants, as fiduciaries, have the burden to render a strict account of their transactions and dealings with, or their use of, the corporate property from and after the date of the ejectment, the error being that they have the burden to render the said strict accounting. *Roberts v. Roberts*, 296 S.C. 93, 99, 370 S.E.2d 881, 884 (S.C.App., 1988)(The general rule is that the burden of evidence is imposed on the party best able to sustain it; so the party having peculiar knowledge of the facts or control of evidence, relating to an issue, has the burden of evidence as to it.) *Lawson v Rogers*, 312 S.C. 492, 435 S.E.2d 853, 857 (1993)(If the fiduciary fails to prove that the partnership had received the benefit of the asset, every presumption will be made against the fiduciary).

5.

The Master erred in determining that Zorba's was either insolvent or had failed. That is error because until the business is built, during the first year or two every restaurant needs someone to lend money. Testimony of Bill Passaloukas, Transcript Page 346, Lines 10 - 14. This restaurant had been in business only four and one-half months and was then, at the time of the ejectment in the middle of the very slow winter season.

Zorba's was in fact not insolvent. By the date of the ejectment, from August 15, 1999, to December 31, 1999, the restaurant was grossing almost

\$20,000 per month.¹ See TAB # 13², Plaintiff's Ex # 22 (Monthly statements and calculator tapes). On the date of the ejectment Zorba's owned a restaurant worth \$75,000 [Testimony of Robert Steinberg]. Zorba's owned leasehold improvements worth at least \$60,000. Zorba's had \$1,410 in its operating account as of January 31, 2000 [See TAB # 11, Defs' Ex # 2]. Zorba's had a line of credit, committed, but unpaid, by the Bensches in the sum of \$20,000. Zorba's was entitled to be reimbursed by the Bensches for expenses it had paid in the sum of \$1,990 but which were truly obligations of the Bensches. [TAB # 7, Plaintiff's Exhibit # 18]. Zorba's owned inventory worth \$6,000 [TAB # 12, Plaintiff's Ex # 23, 24]. It had deposited with the Bensches the last month's rent, \$1885, and a security deposit, \$1,000.

6.

The Master erred in concluding that:

A restaurant without a lease, according to Plaintiff's expert testimony, has value only in the discounted break-up value of its non-fixture assets.
Order, Page 3.

The error being that the Court failed to cite the entire testimony of the Plaintiff's valuation expert. The Plaintiff's expert testified that the restaurant had a value of \$75,000 if a lease was in place. The reality, and the fact, is that a lease was in place and there was a renewable option for an additional five years; and, as the Court has stated, a lease was entered into between the Defendants and Mi Tierra's, the third-party purchaser of the restaurant, and the restaurant was in reality and in fact sold for the sum of \$75,000, as the Court has found.

¹
The Passaloukases' contributions have been netted out in the calculator tapes.

²
"TAB" refers to the tabs containing exhibits which are attached to the Post Trial Brief previously provided to the Court.

Plaintiff's Exhibit # 1.

A business should be valued at its fair market value as a going business. *Mazloom v Mazloom*, 382 S.C. 307, 675 S. E. 2d 746 (2009). In *Mazloom* the Court of Appeals found that the business which was the subject of that lawsuit was actually sold to a third party in an arm's length transaction for \$345,000. The Court therefore concluded that the fair market value of that business was the sale price \$345,000. In this case Zorba's restaurant was actually sold for \$75,000. That is the fair value of the business. The business therefore can not be evaluated at the "discounted" liquidated value. The reality is that the restaurant was not liquidated or sold at a discounted value.

The Defendants understood they had the option of liquidating the assets or selling them and that they would hold the funds from the sale in trust until order of the court. In a document entitled "Nicoli's Café, LLC Resolution No. 1" they state:

*We, the members of Nicoli's, LLC, do hereby resolve and agree that... Upon the liquidation or sale of the assets of Nicoli's Café, all such **assets or funds received for said assets shall be maintained in trust** by Nicoli's Café until such time as the assets and liabilities of Zorba's are resolved by written agreement of the shareholders of Zorba's or Order of the Court.*

So resolved this ____ day of February, 2000. (Emphasis added)

Plaintiff's Exhibit # 17.

The Defendants did not liquidate. When they converted and misappropriated the restaurant, the Bensches, rather than liquidate, instead, converted the restaurant to their own use, operating the restaurant known as Nicoli's. On that date, because they had a lease of indefinite duration (since they were the landlords) the restaurant was worth, \$75,000, as evidenced by the testimony of the Plaintiffs' valuation expert. It was later sold for a price of \$75,000, not liquidated. A lease was still in place. They sold to Mi Tierra's, for

\$75,000.

The Bensches committed to hold the \$75,000 in trust until order of the court. The Plaintiffs are waiting for an order from this Court to disburse the \$75,000.

7.

The Master erred in concluding that:

When faced with a premature vacancy as a result of a tenant default, it is incumbent upon the landlord to mitigate damages by attempting to re-lease the space. Failure to so mitigate is a forfeiture of the landlord's rights. Subsequent to Zorba's default, landlords had both the obligation and the right to attempt to re-lease the space, including the fixtures which became the property of the landlord upon default. The fact that the landlord was ultimately very successful in this mitigation attempt does not entitle the Plaintiffs to share in the windfall occasioned by the Tenant's default. Order, Page 3.

The error being that the Bensches had no right to claim the assets as landlord. A landlord's only remedy against the assets of a tenant is to bring a claim for distraint. See *Burnett v. Boukedes*, 125 S.E.2d 10, 17(S.C.1962)(The lien of a landlord against property of tenant is statutory and can only be acquired by an actual levy under a distress warrant made in conformity with the provision of the statute.) The Bensches brought no distraint action to levy Zorba's assets and therefore had no right to the property. Zorba's owned the restaurant.

8.

The Master erred in concluding that:

Zorba's rent was past due at the time of the eviction. Although there were legitimate questions as to the timing of the notice, there is no question but that Zorba's was in default on the lease at the time of the eviction and I find no wrongful eviction. Order, Page 3.

And

I find no wrongful eviction. Order, Page 6.

The error being:

a. Failure to Give Ten Day Notice

Although rent was past due, the Defendants are required to strictly comply with the pre-conditions for terminating the lease. They did not comply. The only reliable evidence is that the defendants used self-help to lock Zorba's out of the space, prior the expiration of the required ten (10) day notice. "Forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract both as to time and content." *Litchfield Co. of South Carolina, Inc. v. Kiriakides*, 290 S.C. 220, 226, 349 S.E.2d 344, 347 (S.C.App. 1986).

The Bensches failed to give Zorba's the required ten day right to cure. See TAB # 2, from Plaintiff's Ex. # 1. The Lease Agreement, Paragraph 10, defines what is called an "Event of Default". An "Event of Default" for non-payment of rent occurs only if the rent is not paid "within 5 days of the due date." Until the passage of 5 days there is no default. Under Paragraph 11 (a), if rent is then not paid within 5 days, in order to "cancel and terminate" the Landlord must provide the tenant no less than 10 days prior written notice and must specify in that notice a date on which the lease will terminate. The tenant is entitled to cure the default within the 10 day period as evidenced in Paragraph 10 which refers to the "period herein provided for the curing of such event."

The undisputed evidence is that the ejectment notice was delivered to Mr. Passaloukas on December 31, 1999.³ See TAB # 3, from Plaintiff's Ex # 8. Ten

³

The general rule is that "notice to one at a specified place is not given until it is received by the person to be notified at the place specified." 66 C.J.S. *Notice* §§ 18(c)-(d) and cases there cited.

days from its delivery on December 31, 1999, is January 10, 2000.⁴ Zorba's was ejected on January 9, one day early. While the Bensches did testify that they hand delivered the notice to Mr. Passaloukas, it presents not only a factual issue which the Court can resolve against them, but it is also an issue of law, because they did not offer any evidence of the date on which they did hand delivered it. Their failure to provide a date makes it impossible for the Court to conclude anything other than that the notice was delivered on December 31, 1999.

b. Failure to Comply with Other Conditions of Default Provision

The notice is otherwise defective. While the Lease Agreement requires the Landlord to specify a date not less than 10 days after delivery of written notice to the tenant, the notice delivered by the Landlord to the tenant in this instance states that the lease terminated on December 28, 1999. Specifying December 28, 1999, as the termination date is less than the required 10 day notice. Further, this notice provides no right to cure and instead demands that the tenant turn over all keys by January 8, eight days after delivery, not ten.

c. Bensches' Absence from Office (Place of Delivery)

See TAB # 4, from Plaintiff's Ex # 1. The Lease Agreement required payment of rents to be made "at the Landlord's office". Paragraph 2.a. Rents had never been paid by mail. The rent check had always been picked up on the 15th day of each month by Mrs. Bensch. Transcript Page 378, Lines 20 - 22. The undisputed evidence is that Mr. and Mrs. Passaloukas, after receiving the ejectment notice, attempted to contact the Bensches at their office after

⁴
One day has 24 hours. The first day expired on January 1, 24 hours after delivery to Mr. Passaloukas. The 10th day would not have expired until January 10, 2000. This is consistent with the SCRPC which state, with respect to the calculation of time when determining deadlines for service of pleadings, that the first day is not counted.

December 31, 1999. Mrs. Passaloukas testified that they posted a message on the office door. This evidence is not in dispute.

The only evidence about where the Bensches were is Mrs. Bensch's testimony that they were at home at Christmas time. However, that raises no issue at all. The question is whether they were in their office from December 31 to January 8, not Christmas and not whether they were at home. When asked about where he was from December 28 to January 8 Mr. Bensch testified that he did not remember. Trial Transcript Page 97, Lines 1 - 10.

The bottom line is that the Bensch's cannot take advantage of their absence from the office (where rents were to be paid) between December 31, 1999, and January 10, 2000 in order to disable Zorba's from curing the default. See *Champion v. Whaley*, 311 S.E.2d 404, 280 S.C. 116 (S.C.App. 1984)(A defendant cannot take advantage of the uncertainty created by his own wrongdoing.)

d. *Kiriakides Factors*

Kiriakides vs United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994) requires the Court to examine five factors to determine whether the failure to timely pay December rent was material.

Factor No 1. *The extent to which the injured party will be deprived of the benefit which he reasonably expected.*

In its decision the Supreme Court cited and endorsed the reasoning of the *Restatement (Second) of Contracts*, § 241 (1981). *Kiriakides vs United Artists Communications, Inc.*, 440 S.E.2d at 366. The Official Comments provide that where an installment contract calls for installment payments, a default as to one installment does not justify treating the whole contract in default unless the default as to the one payment "substantially impairs" the value of the whole contract. *Restatement (Second) of Contracts*, § 241, Comment b., p. 239. One

late payment does not substantially impair the value of entire lease. See analysis hereafter.

The Official Comments of the *Restatement* also provide that if the injured party already has some security for the performance of the defaulting party, it is less likely that the default will be considered to be material. *Restatement (Second) of Contracts*, § 241, Comment e., p. 241. The Bensches have more than sufficient security. See analysis hereafter.

The Bensches held enough security in pre-paid rents to cover the full amount of the December rent. See TAB # 5, Plaintiff's Ex # 2, and Testimony of Gary Bensch, Pages 55, 56. They held \$2,885, last months rent (\$1,885) and the security deposit (\$1,000). They could have applied this \$2,885 towards payment of the December rent and would have been protected from any real loss until well past January 9, 2000, the date of the ejectment.

They also were secure because they held the leasehold improvements which were worth approximately \$60,000. They had a restaurant (equipment and furnishings) which was worth approximately \$75,000. These would have more than satisfied a claim for damages had they sought damages rather than forfeiture.

See TAB # 6, from Plaintiff's Ex # 11. The Bensches had an obligation to lend \$20,000 to Zorba's. The rents could have been paid from the \$20,000 loan.⁵

See TAB # 7, Plaintiff's Ex # 18. Construction of leasehold improvements

5

Compare *Kuznik v. Bees Ferry Associates*, 538 S.E.2d 15, 22, 342 S.C. 579, 593 (S.C.App. 2000), where the court found that the partners had breached their obligation to respond to a capital call. It lead to default in payment of a mortgage. As a result, the partnership collapsed. The majority partners had argued, as has been done in the case at bar, that they did not have to put more money into a failing business.

was the Bensches' obligation. Zorba's was therefore entitled to reimbursement from the Bensches in the sum of about \$1,990 for leasehold improvements which had been paid for by Zorba's.

Factor No. 2. The extent to which the injured party can be adequately compensated by damages for the part of that benefit of which he will be deprived.

The evaluation presented in Factor No. 1 applies with equal force. The Bensches would always be adequately compensated even if they eventually found it necessary to bring suit against Zorba's for these rents.

Factor No. 3. The extent to which the party failing to perform or to offer to perform will suffer forfeiture.

The Official Comments of the *Restatement* provide that a breach is less likely to be regarded as material if it occurs after substantial preparation or performance. It is also less likely to be regarded as material if such preparation or performance cannot be returned to or salvaged by the defaulting party.

Restatement (Second) of Contracts, § 241, Comment d., pp. 239-240.

Zorba's, through their shareholders, invested in excess of \$120,000 in this restaurant business. There was no way for the investment to be readily returned except through litigation as is evidenced by the lengthy history of litigation in this case. The Passaloukases lost their investment \$59,375.16 (documented hereafter) which was their life savings, the value of their labors, including wages in the sum of \$14,400 (documented hereafter), their share in the equity of the business (calculated hereafter) and their hopes and dreams for a comfortable future. They lost their home.

Factor No. 4. The likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances.

Zorba's owned valuable assets. Zorba's was owed \$20,000 by the Bensches. Zorba's owned leasehold improvements worth at least \$60,000, and

a restaurant worth \$75,000. The Passaloukases had the ability to obtain more money from other sources. They had a history of putting a lot of cash into the business.

Factor No. 5. The extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

The Passaloukases did not fail to comport with standards of good faith and fair dealing. See the evaluation of the evidence set forth in Factor No. 4. They were trying to resolve their disputes which arose from the Bensches' failure to tender any part of their \$20,000 loan obligation to the corporation and their failure to honor their other obligations to repair the premises.⁶

e. The Bensches' fiduciary duties to conform to standards of good faith and to act in the best interests of Zorba's.

The Bensches, as controlling shareholders in sole possession of the corporate assets, are also fiduciaries. Good faith and fair dealing requires them to resolve their substantial differences without resort to heavy-handed measures. Therefore, even though the Bensches had the right, as landlord, to declare a default and deliver an ejectment notice, their right to do so was limited by their obligations of good faith and to act in the best interests of Zorba's. They failed to act in good faith and in the best interests of Zorba's using their economic leverage to force Zorba's into assuming financial obligations which were theirs. They engaged in deceptive conduct which elevated their personal interests over Zorba's best interests. Among their oppressive acts are:

I. Failure to Fund \$20,000 Loan

Until the business is built, during the first year or two every restaurant

⁶

See *Holliday v. Pegram*, 71 S.E. 367, 371 (S.C. 1911)(Tenant is entitled to set-off and ededuct damages for repairs from rents owed to the landlord).

needs someone to lend money. Testimony of Bill Passaloukas, Transcript Page 346, Lines 10 - 14. The Bensches failed to tender the \$20,000 loan to Zorba's.⁷ See TAB # 6, from Plaintiff's Ex # 11, Testimony of Bill Passaloukas, Page 384, and Gary Bensch, Pages 132, 155, 157. The obligation to lend \$20,000 is set forth in Exhibit "A" to the "Written Consent in Lieu of an Organizational Meeting". It states on Page 5 that "The following is the listing of the shareholders, the amount and the terms and security being provided for loans being made by the shareholders to the Corporation." By the names Gary Bensch and Cynthia Bensch, in a column titled "Amount of Loan", is the number "\$20,000.00 and leasehold improvements".

ii. Economic Leverage to Force Zorba's to Assume Obligations Owed by Bensches

See TAB # 9, from Plaintiff's Ex #7. The Bensches' obligation was to take care of all plumbing.⁸ Yet they used their considerable financial leverage to force Zorba's to pay additional rents and incur added liabilities under the deceit that they were not obligated to pay for installation of a hot water heater and a grease trap⁹ or water/sewer tap in and availability charges. Mr. Passaloukas testified

⁷
This is comparable to the breach described in *Kuznik v. Bees Ferry Associates*, 538 S.E.2d 15, 342 S.C. 579 (S.C.App. 2000). The breaching partners there had failed to respond to a call for more capital because they made a judgment that the enterprise was failing.

⁸
S.C. Code 1976 § 40-11-410 (f): "Plumbing" which includes the installation...of all plumbing...and the installation...of all piping, fixtures, and appliances related to water supply, including...tanks, and...venting and sanitary drainage systems for all fluid and semi-fluid and organic wastes; ...and installation of a system of pipes, fittings, fixtures, drains, and all necessary component parts upon the premises or in a building to supply water to buildings and to convey sewage or other waste products from buildings."

⁹
Beaufort County Code Sec. 98-63. Definitions: "...Grease trap means a device designed and installed to separate and retain particular wastes from sewage and typically utilized in the wastewater plumbing systems of food services and

that he had no other choice but to agree to have Zorba's pick up these unwarranted costs. He had already invested his life's savings into the venture.

iii. Deceptive Conduct Meant to Take Unfair Advantage of Zorba's

See TAB # 8, Plaintiff's Ex # 32. In a notice written just one week earlier, the Bensches did not mention ejectment. Instead, the Bensches lead the Passaloukases to believe that they would merely charge Zorba's a late fee if the December rent was not paid.

The Bensches made themselves unavailable to communicate the week after the notice of ejectment was delivered.

The Bensches, because of religious reasons, refused to allow Zorba's to sell alcoholic beverages on Sundays.¹⁰

The Bensches threatened Mrs. Passaloukas, insisting that she not be allowed back in the restaurant.

The Bensches insisted on eating large quantities of food for themselves and their associates for free.

See TAB # 10, Plaintiff's Ex # 25. The Bensches had failed to make repairs which were promised.¹¹ Transcript Page 302, Lines 16 - 24; Page 304, Line 25 - Page 305, Line 1.

9.

The Master erred in concluding that:

establishments."

¹⁰

Yet, in other matters, when criticizing the Passaloukases for insisting, for example, that the restaurant have a Greek menu, they testified that their sole purpose was to make a profit.

¹¹

A tenant is entitled to an off-set for failure to make repairs. *Holliday v. Pegram*, 71 S.E. 367 (S.C. 1911).

I find credible the testimony that the Defendants Bench undertook to pay the debts of the failed business. I am further convinced that these defendants did what was necessary under the circumstances to wind down the business of the failed corporation and to mitigate their damages as landlords. Order, Page 4.

The error being that the Defendants have not strictly accounted for the debts which they allegedly paid. There is not any "record" proof that they paid any debts of Zorba's. Being in sole control of the assets of the Zorba's, the Defendants hold fiduciary obligations to keep a record of the transactions and have the burden of proving those transactions by the offer of written checks showing payment, that is a "strict accounting". They are prohibited, therefore, from relying on oral testimony as to what they may have paid.

10.

The Master erred in concluding that:

The parties have stipulated that their contributions were as follows: From the Benches: \$62995.09. From the Passaloukases: \$59375.16. Order, Page 4.

The error being that the Passaloukases contributed equipment, furnishings and cash in the sum of \$68,875.16. See TAB # 5, Plaintiff's Exhibit # 2.

11.

The Master erred in concluding that:

Additionally, I find that in attempting to wind up the affairs of Zorba's, the Defendants Bench incurred the following expenses: \$300 for Accountants final bill and \$950.00 paid to former employee Nick Eletheriou. Order, Page 4.

The error being that, as fiduciaries, the Defendants have a duty to offer a strict accounting of their corporate transactions and these alleged payments have not been evidenced by sufficient documentation.

Every presumption will be made against the fiduciary. Lawson v Rogers,

312 S.C. 492, 435 S.E.2d 853, 857 (1993). No invoice or check supports the \$300 allegedly paid to the accountant. It does not meet the "strict accounting" standards required of fiduciaries. As for the payments to the employee, Eleftheriou, see TAB # 29, Defs' Ex # 21. The supporting checks were paid by a company by the name of Bensch-Mark Custom Builders. One check, # 6163 is in the sum of \$10. That hardly looks like payment of past due wages and does not state its purpose. One check, #6164, states that its purpose is "toward money owed". Had it been for wages for Zorba's there is no doubt that it should have said so. The last check is #6529 in the amount of \$500.00. This check the purpose as "loan to (Nicolis) Nick". This is a clear reference to the restaurant which the Benschkes operated as "Nicolis's". To find for the Benschkes the Court must rely entirely on testimony from Mrs. Bensch. That is not sufficient to meet the "strict accounting" standards required of fiduciaries. Furthermore, Mr. Elefetheriou brought a suit against Mr. Passaloukas to ask the Magistrate Court for an award of damages for non-payment of these wages, after the dates posted on these checks.

12.

The Master erred in concluding that:

I find that, at the time of the default, no party was obligated to further fund the corporation to prevent such default. Order, Page 4.

The error being that, at the time of the default, the Defendants had an obligation to lend Zorba's the sum of \$20,000. They had never tendered the loan to Zorba's. TAB 6, from Plaintiff's Exhibit # 11.

13.

The Master erred in concluding that:

I find, at the time of the eviction, the non-fixtured items were as follows:

[Here the Court itemizes 16 items of equipment allegedly having a total value of \$1439.00] Order, Page 4.

And

I find that any fixtures were not the property of Zorba's pursuant to the lease and the law of this state and any fixtures were forfeited to the landlord upon default. Order, Page 5.

And

I find that Zorba's had neither goodwill, nor any other valuable asset at the time of closing. Therefore, the total value of Zorba's was equal to the value of the non-fixture items listed above. Order, Page 5

The error being that the Bensches had no right to claim any asset of Zorba's as landlord. A landlord's only remedy against the assets of a tenant is to bring a claim for distraint. See *Burnett v. Boukedes*, 125 S.E.2d 10, 17(S.C.1962)(The lien of a landlord against property of tenant is statutory and can only be acquired by an actual levy under a distress warrant made in conformity with the provision of the statute.) The Bensches brought no distraint action to levy Zorba's assets and therefore had no right to the property.

Further, at the time of the eviction, Zorba's owned the following valuable assets:

a. Value of Stock In Trade

See TAB # 12, from Plaintiff's Ex # 23 and Plaintiff's Ex # 24. The only evidence is that the value of the stock in trade on the premises on the date of the ejectment was \$6,000. Mr. Passaloukases' testimony is supported by the inventory which he testified that he had done in December, 1999. It is supported by the evidence from the checks paid to suppliers from the period of August 15, 1999, through January 2000. The Bensches offered up no evidence to support any other value except self-serving and conclusory statements. Every presumption will be made against the fiduciary. *Lawson v Rogers*, supra at 857.

b. Cash in the Sum of \$404

See TAB # 25. From Plaintiff's Ex # 13. On the date of the ejectment \$404 in cash was left behind in a cash bag. It was turned over to the Bensches' attorney to hold in trust.

c. Refund of Insurance Premium

See TAB # 26, from Plaintiff's Ex # 18. The Bensches obtained the refund of \$481 from Kinghorn Insurance.

d. \$1,000 Security Deposit

See TAB # 5, Plaintiff's Ex # 2 and testimony of Gary Bensch. Zorba's paid the Bensches the sum of \$1,000 as a security deposit.

e. Last Months Rent in the Sum of \$1,885

See TAB # 5, Plaintiff's Ex # 2 and testimony of Gary Bensch. Zorba's paid the Bensches the sum of \$1,885 as last month's rent.

f. Restaurant Worth \$75,000

g. Leasehold Improvements Worth \$60,248.57.

See TAB # 18, Plaintiff's Ex # 4 (Leasehold improvements contributed by Bensches) and TAB # 19 (testimony of Gary Bensch). The value of the leasehold improvements as of January 8, 2000, was \$60,248.57. The value is arrived at by subtracting from their total contributions (\$62,995.09), [TAB # 18], costs paid to Kinghorn Insurance Company in the sum of \$2,151 [TAB # 18], and the cost of champagne glasses in the sum of \$95.52, and depreciation in the sum of \$500.

The depreciation in value is evidenced by testimony of Mr. Bensch who testified [TAB # 19] that if he had contributed \$75,000 to Zorba's by way of leasehold improvements they were worth \$75,000 when he put them in; then testifies that the leasehold improvements had diminished in value a small

amount, no more than \$500. Mrs. Bensch also testified [TAB # 20] that the leasehold improvements had not diminished in value more than \$500.¹²

There is no other evidence of the value of the leasehold improvements in the record. This undisputable evidence of the value of the leasehold improvements, therefore, is not only sufficient, it is dispositive as to the value. Every presumption will be made against the fiduciary. *Lawson v Rogers*, supra at 857.

See *Gheen v. Gheen*, 276 S.C. 404, 279 S.E.2d 361 (1981) where the Supreme Court sustained the Circuit Court's judgment to the tenant as to the value of the leasehold improvements which was based upon evidence of the tenant's out of pocket costs for installation. In this case not only is there proof of the out of pocket cost of the installation, the Bensch's testified directly that the value of the leasehold improvements was the out of pocket cost.

14.

The Master erred in concluding that:

I find that the items listed hereinabove as non-fixture assets of Zorba's were last in the possession of the landlords Bensch and that the Bensch should repay to the Passaloukases one -half of the value of said items. There was no competent testimony that would allow me to link any value of these items to the sale of lease value of the Mia Tierra transfer as that restaurant sale included consulting fees and additional square feet.
Order, Page 5.

The error being that the undisputed evidence is that the equipment and fixtures were sold to Mi Tierra's by the defendants for the sum of \$75,000. In the sales agreement no value was allocated to any consulting agreement and no

¹²

See TAB # 21, testimony of Mrs. Bensch. She testified that they sold the shopping center (including the leasehold improvements) and that they had sold it for more than they had invested, the implication being that the leasehold improvements had not diminished in value at all. Based upon this testimony the leasehold improvements should not be depreciated in value at all.

value was allocated to any "additional square feet". The fixtures and furnishings were in fact valued at \$37,500 and good will at \$37,500. TAB 14, Plaintiffs' Exhibit # 10.

Further, when they converted and misappropriated the restaurant, the Bensches did not liquidate the restaurant. Instead, they converted the restaurant to their own use, operating the restaurant known as Nicoli's. On that date, because they had a lease of indefinite duration (since they were the landlords) the restaurant was worth \$75,000, as evidenced by the testimony of the Plaintiffs' valuation expert. It was later sold for a price of \$75,000, not liquidated. A lease was still in place.

15.

The Master erred in concluding that:

I find no persuasive evidence of oppressive or unfairly prejudicial behavior on the part of Defendants. Order, Page 5.

And

I find no deadlock, illegal, fraudulent, unfair, or oppressive conduct by any party. Order, Page 6.

And the Master further erred by failing to award punitive damages owed to the corporation as a result of the Defendant Bensches' malicious and willful conversion and misappropriation of corporate assets. The error being, that there is much evidence of oppressive, willful, intentional and malicious conduct in the record. The Bensches, with conscious disregard and indifference refused to honor their agreements to the Plaintiffs and to Zorba's:

- a. Breached their obligation to fund the \$20,000 loan, withholding it in order to obtain a controlling interest in Zorba's and causing cash flow problems during the early stages of the enterprise.
- b. Breached their obligation to pay for the hot water heater.

c. Breached their obligation to pay for other parts of the plumbing system.
d. Increased Zorba's rents from \$1,885 to \$2,461 to make Zorba's pay for parts of the plumbing system which was the obligation of the Bensches.
e. Just one week prior to the ejectment, lulled the Passaloukases, in a notice written just one week earlier, the to believe that they would merely charge Zorba's a late fee if the December rent was not paid.

f. The Bensches made themselves unavailable to communicate the week after the notice of ejectment was delivered, making themselves unavailable to receive a rent check.

g. The Bensches had failed to make repairs which were promised.¹³
Transcript Page 302, Lines 16 - 24; Page 304, Line 25 - Page 305, Line 1.

h. Ejected Zorba's from the leased premises, without recourse to judicial process, against advice of their attorney.

i. Brought policemen with them to the restaurant, in a show of force.

j. Threatened the Passaloukases with criminal prosecution if they attempted to re-enter the restaurant.

k. Pocketed all of the money from the sale of the corporate assets.

l. Failed to account for the profits which they have made from the use of the assets.

m. The Bensches, because of religious reasons, refused to allow Zorba's to sell alcoholic beverages on Sundays.¹⁴

¹³

A tenant is entitled to an off-set for failure to make repairs. *Holliday v. Pegram*, 71 S.E. 367 (S.C. 1911).

¹⁴

Yet, in other matters, when criticizing the Passaloukases for insisting, for example, that the restaurant have a Greek menu, they testified that their sole purpose was to make a profit.

n. The Bensches insisted on eating large quantities of food for themselves and their associates for free.

o. Demanded that Suzie Passaloukas, who had been working at the restaurant seven days a week, without pay, leave the restaurant and never return. (Mrs. Passaloukases had her life savings invested in this venture.)

The Bensches have tried to mislead the Court into believing that Zorba's equipment and furnishings were worth only some small liquidated value although they sold the same furnishings and equipment for \$37,500. They have tried to mislead the Court by arguing that they are not the landlord but that the landlord is Towne Center, LLC, a company they own.

Finally the Bensches sold the restaurant for \$75,000 and pocketed the proceeds of the sale.

The harm to the Passaloukases was grievous. They had invested in excess of \$60,000 in the restaurant and had labored without payment of wages for many months. The Passaloukases lost their home because they had mortgaged it to finance their investment into Zorba's.

Examine Plaintiff's Exhibits # 3, # 5, # 8, # 9, documents which show the deadlock and efforts of the Bensches to take control of Zorba's.

16.

The Master erred in concluding that:

I find that the corporation has been administratively dissolved, has no value, and that there are no creditors. Therefore, a judicial dissolution is unnecessary. Order, Page 5.

The error being that this conclusion is not dispositive of the Court's duty under S.C. Code Ann. § 33-14-330. The Court must:

After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs...
S.C. Code Ann. § 33-14-330 (b).

In the case at bar, the Court will render its accounting, identify and value Zorba's assets and distribute the proceeds equitably to the shareholders, and/or under S.C. Code Ann. § 33-18-410 (a)(9), award "damages to any aggrieved party".

17.

The Master erred in concluding that:

I find any claim for unpaid salary to be unproven and therefore denied.
Order, Page 5.

The error being that the only evidence is that Bill Passaloukas is owed a salary by Zorba's in the sum of \$14,400 and that he was never paid. See TAB # 28, from Plaintiff's Ex # 7. Mr. Passaloukas was entitled to a monthly salary in the sum of \$3,000 per month by virtue of Article IV, ¶ 4.2, p. 8, of the "Shareholders' Management Agreement". Mr. Passaloukas had worked from February, 1999, through January 8, 2000, without pay. The restaurant opened on August 15, 1999 and he worked until January 8, 2000. At the rate of \$3000 per month, for four and one-half months, the first month (August 15 - September 15), the second month (September 15 - October 15), the third month (October 15 - November 15), the fourth month (November 15 - December 15) and the fifth month being roughly one half of a month (December 15 - January 8), the total sum is \$14,400.

18.

The Master erred in concluding that:

I find that the Plaintiff's claim of conversion are unproven. Order, Page 5.

And

I find no conversion. Order, Page 6.

The error being documented by the other errors enumerated herein and for the reason that the undisputed evidence is that the Defendants misappropriated or converted the assets of Zorba's by ejecting Zorba's and the

Passaloukases in January, 2000, took sole custody and possession of the assets, used them for a time in their effort to operate a restaurant, then sold the restaurant and its equipment and furnishings to Mi Tierra's for \$75,000, and earned rents from the lease of the leasehold improvements. They also misappropriated other assets which are identified and itemized in the other errors enumerated herein.

19.

The Master erred in concluding that:

I find that the Benschs contributed \$62995.09 and the Passaloukas contributed \$59375.16 (a difference of \$3619.93). This amount should be further increased by the final salary and accounting payments set forth hereinabove, leading to a total difference in contributions which favors the Benschs by \$3619.93 plus \$1250 or \$4,869.93. I find that from the non-fixture assets of the corporation, listed above, the Passaloukas should be compensated for one-half of the value or \$719.00 and further compensated in the amount of \$1,000.00 for the unpreserved personal items. Based upon these calculations, I find that the Passaloukas Defendants would owe the Benschs the amount of \$3150.93. However, I decline to award this amount to Benschs, based upon their failure to preserve the personal items and based on their failure to pursue or seek such damages from the individual Plaintiffs. Order, Pages 5 and 6.

And

I award no damages to either party. Order, Page 6.

The error being that the Court has failed to take account of the following reimbursements made to the Defendants:

a. All of the contributions made by the Defendants were fully reimbursed in kind by their taking possession of the leased space at the time of the eviction, a sum in the amount of \$62,995.09.

b. The Defendants were reimbursed additional sums totaling \$6,288.32 for reimbursements from the monthly payments made to them by Zorba's (at \$576 per month); for reimbursement of the hot water heater (\$1,833.32); and for reimbursement of insurance (\$2,151.00). See Plaintiff's Exhibit # 12.

c. See TAB # 26, from Plaintiff's Ex # 18. The Bensches obtained the refund of \$481 from Kinghorn Insurance.

d. See TAB # 5, Plaintiff's Ex # 2 and testimony of Gary Bensch. Zorba's paid the Bensches the sum of \$1,000 as a security deposit.

e. See TAB # 5, Plaintiff's Ex # 2 and testimony of Gary Bensch. Zorba's paid the Bensches the sum of \$1,885 as last month's rent.

f. See TAB # 25. From Plaintiff's Ex # 13. On the date of the ejectment \$404 in cash was left behind in a cash bag. It was turned over to the Bensches' attorney to hold in trust.

The further errors in the Master's accounting which are enumerated herein.

20.

The Master erred by failing to account for expenses incurred by Zorba's which were the obligation of the Defendants, including the sum of \$1,990.92 for sums paid by Zorba's for the construction of improvements which the Defendants should have made as landlords. See Plaintiff's Exhibit # 19.

21.

The Master erred by failing to account for expenses incurred by the Plaintiff's which were the obligation of Zorba's, including a debt in the sum of \$1,500 incurred by the Plaintiffs to defend a lawsuit brought by a former employee of Zorba's. The employee sought unpaid wages owed by Zorba's. See TAB # 27, from Plaintiff's Ex # 28.

22.

The Master erred in concluding that:

I award no attorneys fees to any party. Order, Page 6.

The error being that attorneys fees are proper under authority of either of

two legal theories. First, Zorba's is a South Carolina statutory close corporation. Plaintiff's Exhibit # 6. Under the closed corporation statute, attorneys fees may be awarded if the Bensches have acted arbitrarily, vexatiously and in bad faith justifying an award of attorneys fees under S.C. Code Ann. § 33-18-410.

Attorneys fees may also be awarded under the "common fund" rule, that is out of the common fund or property created or preserved where the attorney represents a party who, at his own expense, has maintained a suit for the recovery, preservation, protection, or increase of a common fund. Petition of Crum, 196 S.C. 528, 14 S.E.2d 21, 23 (1941). The main thrust of this lawsuit is for the benefit of Zorba's. A pot of money will be paid to Zorba's, not to the Passaloukases. From the pot, the debts of the corporation will be paid, followed by a distribution of the remaining funds to the parties. Equity and fairness dictate that since Zorba's benefits it should pay the reasonable fees incurred in recovering the fund. Of course, because the fees come from the common fund, the burden is shared equally by the shareholders. Therefore, if the attorneys fee award is \$80,000, the Passaloukases will net only \$40,000.

23.

The Master erred in concluding that:

I deny all causes of action as unproven. Order, Page 6.

The error being that, as seen by the other errors enumerated herein, every cause of action has been proven by the preponderance of the evidence in accordance with applicable principles of law.

24.

The Master erred in failing to find that the Defendants Bensch had an obligation to lend the corporation \$20,000 in cash and that they breached their obligation in that respect by failing to tender cash to the corporation as is

evidenced by the preponderance of the evidence. See TAB # 6, from Plaintiff's Ex # 11.

25.

The Master erred by failing to acknowledge and find that Zorba's held a two year lease which still had 20 months remaining together with an option to renew the lease for a period of five years. Plaintiff's Exhibit #1.

26.

The Master erred by failing to find that the leasehold improvements were owned by Zorba's in as much as the Defendants Bensch, by written agreement, expressly and irrevocably transfer to the corporation all of the leasehold improvements, it being irrelevant that the said leasehold improvements became affixed to the real property in as much as the corporation is, under applicable law, entitled to either an equitable interest therein.

a. The Conveyance of the Leasehold Improvements to Zorba's

See TAB # 16, from Plaintiff's Ex # 11, and TAB # 18. The Bensch's contributed leasehold improvements and other assets to Zorba's in the sum of \$62,995.09. They are conveyed to Zorba's, Inc. at page 4 of Exhibit "A" to the "Written Consent in Lieu of an Organizational Meeting". Following the words "Description on nature and type of capital contributions:" are the words "Leasehold improvements to be provided utilizing these funds". The conveyancing language which is set forth below these words reads:

The undersigned, by the execution of this Exhibit "A", do hereby transfer, grant and convey the **assets and interests referenced above** and further agree such conveyances, transfer and assignments, and agree that such transfers are being made free and clear of all liens or other encumbrances except as is otherwise provided above. The undersigned acknowledge by execution of this Exhibit "A" that they are **irrevocably making and completing such transfer**, and further agree to execute such other and additional documentation as is necessary to give further or recorded notice of such transfer. (emphasis added)

See TAB # 17, Testimony of Gary Bensch and Cynthia Bensch. The Bensches admitted that they conveyed the "leasehold improvements" to Zorba's and that the conveyance of the "leasehold improvements" was the essential feature" of their obligation to Zorba's:

- a. Both Mr. And Mrs. Bensch testified that the assets "referenced above" in Exhibit "A" are the "leasehold improvements".
- b. Mr. Bensch testified that it was intended that Zorba's own the leasehold improvements; and that the conveyance found in Exhibit "A" refers to the leasehold improvements.
- c. Mr. Bensch testified that they intended to convey, and did convey, the leasehold improvements to Zorba's, not \$30,000, cash; and that between February and August, 1999, they contributed leasehold improvements to Zorba's, being the essential feature of their obligation to Zorba's.

Unlike the lease agreement which expires at the end of the term of the lease, this conveyance does not expire. Zorba's rights in the leasehold improvements are "irrevocable".

b. Law of Fixtures

The law of fixtures has no direct application to the case at bar. No analysis is required of each and every appellate decision which concerns the law of fixtures. It is sufficient to say that:

1. These cases involve disputes between landlords and tenants. The dispute in this case is one between shareholders. When the lease agreement was terminated, the shareholders agreement was still in place.
2. These cases involve situations in which the landlord and tenant have failed to set forth an agreement with respect to ownership of the alleged fixtures. In this case the shareholders expressed their intent with certainty.

3. These cases involve a dispute in which the tenant claims that he is entitled to remove the fixture from the real property. In the case at bar, the Passaloukases are not asking the Court to remove any fixture, only to enforce an express trust which irrevocably granted the leasehold improvements to Zorba's.

Even if the Court were to decide that the appellate cases involving fixtures have some application to the case at bar, then the Court must also apply the core principle expressed in the cases. That core principle is that it is the expressed intentions of the parties which determines ownership of the fixture. See *Pope v. McMillan*, 232 S.C. 100, 101 S.E.2d 55, 59 (1957):

"We know of no legal barrier to the voluntary sale of a common-law fixture, separate from the land upon which it is located, by the owner of both." (emphasis added)

See *Saye v. Hill*, 100 S.C. 21, 84 S.E. 307, 308 (1915) which states:

"While the manner in which a thing is attached to the soil may be of some value in determining whether it is a fixture or not, it does not afford an absolute or conclusive test. The intention with which it is so attached is usually a more controlling factor. Yet all the circumstances should be considered, especially as they throw light upon the intention." (emphasis added)

c. Equitable Conversion and Equitable Trusts

This is a Court of equity. Equitable principles must be acknowledged and applied. "Equitable assets include all which are chargeable with the payment of debts or legacies in equity and which do not fall under the description of legal assets. They are called equitable assets, because, in obtaining payment out of them, they can only be reached by the aid and instrumentality of a Court of equity." *State v. Spartanburg & U.R. Co.* 1875 WL 5398, 30 (S.C. 1875).

In this case, the Bensches by contract conveyed all of the leasehold improvements to Zorba's as consideration for their 50% equity ownership in Zorba's. The conveyance of the leasehold improvements is not disputed. If those leasehold improvements, then, were not removable fixtures, then they must be permanent, unremovable fixtures, and by their character defined as real property which is chargeable with a trust as provided herein.

"Under the familiar doctrine that equity considers as done that which was agreed to be done, a contract for the sale of land operates as an equitable conversion." 17 Williston on Contracts § 50:42 (4th ed.). "The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor." *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime I*, 315 S.C. 474, 445 S.E.2d 630 (1994).

No party shall be permitted to deprive another of his fruits and labors if the interests of all parties can be protected. See *Bank of Swansea v. Rucker*, 156 S.C. 29, 152 S.E. 712, 716 (1930):

A court of equity will not allow one man to deprive another of the fruits of his labors and expenditures if such an unconscionable result may be avoided consistently with the security to each of them of the full measure of all that he is entitled to claim. *** The co-tenant, whether he supposes himself to be the sole owner, or knows that there are others who are owners in common with him, is entitled to occupy and use the property, though his co-tenants fail or refuse to share with him in the enjoyment thereof; and if, in the course of his use and occupation, he makes improvements on a part of the common property, in good faith, and without any intention of embarrassing or obstructing a partition, or gaining an advantage therein, there is no good reason why he should not be allowed to retain the part improved by him, if his improvements in fact do not constitute a hindrance or obstacle in the way of the other co-tenants getting their full shares on the division of the property. A court of equity will simply so order the partition as to secure the rights of all parties without visiting an unnecessary hardship upon any of them. (emphasis added)

Courts of equity can imply a constructive trust to protect an equitable interest in property. See *Smith v. South Carolina Retirement System*, 336 S.C. 505, 520 S.E.2d 339, 352 (Ct.App. 1999):

In general, a constructive trust may be imposed when a party obtains a benefit which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.

In the case at bar, the trust created is more like what has been described by the courts as a "resulting trust". "Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another."(emphasis added). *McDowell v. South Carolina Dept. of Social Services*, 296 S.C. 89, 92, 370 S.E.2d 878, 880 (S.C.App., 1987). That is the very case in this instance. The Bensches, for valuable consideration paid to them, conveyed the leasehold improvements to Zorba's. Now it is claimed that Zorba's cannot hold title because the leasehold improvements are real estate and not removable fixtures. Zorba's has paid for the property. It was the intent that Zorba's own the property. Equity therefore must impose a resulting trust.

The owner of the equitable title is not only entitled to possession of the property which is subject to his equitable interest, he is also entitled to the rents and profits. *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime I*, supra.

In this case, the Bensches contracted to transfer identifiable elements of unit 101 to Zorba's. It included air conditioning equipment, electrical components, water heater, plumbing, carpet, fixtures, dry wall and other things identified in the Bensches' list of contributions all at a cost of, and valued in excess of \$60,000. TAB # 18. That was the bargain. "Equity considers as

done that which was agreed to be done". If the Court is to acknowledge this fundamental principle of equitable jurisprudence, then the Court cannot ignore the inequitable actions of the Bensches in this case. The Bensches received a 50% interest in Zorba's in exchange of the transfer of the leasehold improvements. They have used their 50% ownership of Zorba's to exercise control. They even used it, in spite of fiduciary duties owed as controlling shareholders, to exclude the Passaloukases from sharing in the assets. In fact, they are now asking this Court, in their counter-claim, to award them their share of the equity in Zorba's and, as further damages, the amount of their loan to Zorba's. The only remedy in this case is to require the Bensches to fully account for the assets which they traded in exchange for their 50% interest in Zorba's, and the only asset which they contributed, the leasehold improvements.

Compare *Coggins v. McKinney*, 112 S.C. 270, 99 S.E. 844 (1919). The Supreme Court determined that a son-in-law was entitled to be reimbursed for the cost of his leasehold improvements while a tenant on property which belonged to his father-in-law. The son-in-law had erected the improvements in good faith, with the knowledge and consent of the father-in-law, and with the intention of enjoying them in event he eventually became the owner of the land. The Court reasoned that the land benefitted from the leasehold improvements; that the father-in-law received increased rents above and beyond those he would have received had the leasehold improvements not been constructed¹⁵; that the father-in-law was not harmed; and that there was no reason not to compensate the son-in-law. The Court rejected the dissent's argument that there could be no compensation unless there was an enforceable agreement to convey the property to the son-in-law. The case at bar is much stronger because of the

¹⁵ An issue presented in the case at bar.

"irrevocable" conveyance of the leasehold improvements to Zorba's.

Also see *Gheen v. Gheen*, 276 S.C. 404, 279 S.E.2d 361 (1981). The Supreme Court, citing *Coggins v McKinney*, supra, held that the tenant was entitled to the value of the leasehold improvements made by him. In that case the tenants had rented a residence and held an option to purchase.

Also see *Thompson v. Thompson*, 51 S.E.2d 169, 173 (S.C.1948)(Where the court, albeit dicta, stated that a trust might be imposed in favor of a corporation based upon the corporation's funding of the construction on the land of the defendant.)

27.

The Master erred by failing to require the Defendants to account for a proportionate share of rents received by the Defendants for the rental of the leasehold improvements owned by Zorba's, the error being that the Defendants conveyed the leasehold improvements to Zorba's and Zorba's therefore holds either a legal interest or equitable interest in the leasehold improvements and a proportionate share of the rents received thereon.

Because Zorba's owned the leasehold improvements constructed in Unit 101, Zorba's is entitled to a share of the rents which are attributable to the leasehold improvements under the terms of the Bensches lease of Unit 101 from May 2, 2000, to May 1, 2005, to MiTierra's. TAB # 1 accounts for that share of the rents.

The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime I*, 315 S.C. 474, 445 S.E.2d 630 (1994). Furthermore, the owner of the equitable title is not

only entitled to possession of the property which is subject to his equitable interest, he is also entitled to the rents and profits. *Id.*

28.

The Master erred in failing to find that Zorba's is entitled to a proportionate share of the rents in the sum of \$91,898.50, the error being that:

a. An owner of an equitable interest in real estate is entitled to the rents and profits. *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime I*, *supra*.

b. See TAB # 22, Plaintiffs' Exhibit # 14 (Lease Agreement with MiTierra's) and TAB # 23, Plaintiff's Ex # 16 ("Rents Received from MiTierra's). These show conclusively that the Bensches received the sum of \$168,898.50 from rents of Unit 101 from May 2, 2000, to May 1, 2005.¹⁶

c. See TAB # 24, testimony of Gary Bensch. Had the leasehold improvements not been constructed, the Bensches would have received \$1,200 per month during the same period of time, or, a total sum of \$72,000 for the five years they leased to MiTierra's. This is based upon the testimony of Gary Bensch who said about Unit 101 that "It could be used as a warehouse". He stated "At the time we, we had it available for lease at 12, \$1500, 12, \$1400 a month. We just never found anybody". He again said, "12 to 15", meaning \$1200 to \$1500 per month. Because the Bensches have the burden of strictly accounting for the assets of Zorba's from the time they took exclusive possession and control, the Court must resolve all doubts in favor of Zorba's. Every presumption will be made against the fiduciary. *Lawson v Rogers*, *supra* at 857. The rental value is either \$1,200 per month, \$1,400 per month or \$1,500 per

¹⁶ The record is unclear what rents the Bensches received after May 1, 2005. The testimony of Mrs. Bensch on that issue was evasive.

month. Because Mr. Bensch testified that he had not been able to rent it at \$1,500 or \$1,400 per month, the best evidence is that it was worth only \$1,200 per month. It was, after all, useable only as a warehouse. The Court must therefore find that the rents for Unit 101, unimproved, was \$1,200 per month; that the Bensches would have received rents for an unimproved Unit 101 from May 2, 2000 to May 1, 2005, in the total sum of \$72,000.

d. The share of the rents attributable to the leasehold improvements during the period from May 2, 2000, to May 1, 2005, is \$91,898.50.¹⁷ This is the difference between rents received, \$163,898.50, and rents for unimproved unit, \$72,000.

29.

The Master erred by failing to award interest at the legal rate on the assets which belong to Zorba's and misappropriated and converted by the Defendants, as well as interest on the wages owed Bill Passaloukas, and all other assets and rents, the error being that interest at the legal rate is required to fully compensate Zorba's for the loss which it has sustained as a result of the Defendants' misappropriation and conversion of the assets.

"As a general rule, the measure of damages in a case for conversion of personal property is the value of the property with interest thereon and the jury may give the highest value up to the time of trial." *Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc.* 276 S.C. 196, 199, 277 S.E.2d 885, 886 (1981) (emphasis added).

Interest at the legal rate is 8.75% per annum.

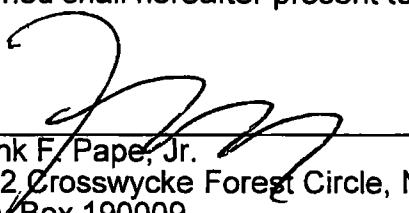
¹⁷ See *Carjow, LLC v. Rev. John D. Simmons*, 349 S.C. 514, 521, 563 S.E.2d 359 (2002) where the court allowed as damages lost rents based upon the difference in the rental value with fixtures and the rental value without the fixtures. The court allowed the owner to testify to the rental value.

Although in cases at law, interest is assessed only upon damages which are liquidated, equity courts have jurisdiction to award interest on unliquidated sums. *QHG of Lake City v McCutcheon*, 360 S.C. 196, 600 S.E.2d 105 (2004), citing *Anderson v Purvis*, 220 S.C. 259, 67 S.E.2d 80 (1951), stating that "interest will be allowed according to the equity of the case" and that "upon demands not bearing interest at law, equity usually allows interest, but in its discretion withhold it."

In the case at bar, because of the unduly long period of time that the Bensches deprived Zorba's of the use of its assets (in excess of nine years since the ejectment), this case demands an award of interest on the value of all of Zorba's assets.

Conclusion

This motion is based upon the record of the trial, the testimony, the exhibits, the Post Trial Brief previously tendered to the Court, applicable legal authorities and such matters as the undersigned shall hereafter present to the Court.



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January 20, 2010

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

MR. PAPE: I would like to call Mr.

Bensch.

GARY BENSCH, called as a

witness, after being duly sworn, testified as follows:

BY MR. PAPE:

Q. Good morning, Mr. Bensch, how are you?

A. I am fine, sir.

Q. Been a long journey, hasn't it?

A. I am afraid it has.

Q. Well, maybe we will be finished with it the next couple of days.

A. I hope so for the both of us.

Q. What business are you in Mr. Bensch?

A. I am a builder and developer.

Q. And how long have you been a builder and developer?

A. About 30 years.

Q. And you have negotiated many contracts and agreements over these 30 years is that correct?

A. I have.

Q. And you thoroughly familiar with the construction industry?

A. Yes.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. Security deposit, I am sorry was \$1,000.00. First
2 month's rent was \$1885.00 is that correct?

3 A. Right.

4 Q. Last month's rent was \$1885.00 --

5 A. Correct.

6 Q. For a total of \$4,770.00?

7 A. Correct.

8 Q. On August 15, 1999 you and Mr. and Mrs.
9 Passaloukas and Mrs. Bensch signed a lease agreement
10 that we have just seen as well as the shareholder's
11 management agreements, is that correct?

12 A. Correct.

13 Q. And as of that date, August 15, 1999, all of the
14 leasehold improvements had been completed by you, is
15 that correct?

16 A. Seems like I am not positive whether everything
17 was completed at the time I signed. I am sure most of
18 them were.

19 Q. Okay, as of August 15, 1999 the business opened,
20 is that correct, for operation?

21 A. Okay. If it opened, we were pretty much
22 completed.

23 Q. And you agree it was open and therefore everything
24 was substantially complete?
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 A. If your date is correct, I am sure.

2 Q. Okay. And the restaurant went into operations and
3 then on December 1, 1999, the November rent had not
4 been paid, is that correct?

5 A. That is correct.

6 Q. And so you sent him a demand letter for payment of
7 the November rent?

8 A. I did.

9 Q. And then after that date and as of that time you
10 were having some differences with Mr. and Mrs.
11 Passaloukas about various issues, is that correct?

12 A. That's correct.

13 Q. And among those issues that you were having
14 differences about, were of the amount of your
15 contributions, is that correct? As well as the amount
16 of his contributions, is that also correct?

17 A. Yes, I would say that would be one of the things.

18 Q. And you were claiming as of December 1, 1999 that
19 you had contributed roughly \$80,000 to the corporation,
20 is that correct?
21

22 MR. CLABAUGH: Objection, Your
23 Honor, I don't think there has been any
24 document put into that effect and I
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. Well, between December 28th and January 8th , where
2 were you and Mrs. Bensch?

3 A. I have no idea except we moved in here around
4 Christmas time.

5 Q. It was Christmas and New Year's holidays. Were
6 you traveling?

7 A. Mr. Pape, that was nine years ago, please.

8 Q. So you don't know where you were then? Is that
9 what I am -- or don't remember where you were.

10 A. I don't remember where I was last month.

11 Q. Okay. All right, but on January 8th you
12 accompanied by deputy sheriffs from Beaufort County
13 Sheriff's Department went into the restaurant, changed
14 the locks, and put a sign on the door, is that correct?
15

16 A. That is correct.

17 MR. CLABAUGH: Your Honor --

18 COURT: It sounds like to me we are
19 getting into stipulated information. Is
20 that your --
21

22 MR. CLABAUGH: That's correct. And
23 also the fact that, you know, again if
24 the termination was not wrongful, this
25 testimony is irrelevant.

1 have to take it in context because
2 obviously in this case, when they
3 undertook to evict they are acting in
4 their capacity.

5 COURT: And I don't mean to limit
6 your question by design, but anyway, as
7 I go back and read this I just want to
8 make sure I am going to understand it.

9 MR. PAPE: Not by design, Judge. I
10 can't follow it. Your Honor, I am just
11 learning of this issue today.
12

13 BY MR. PAPE:

14 Q. Let me ask you Mr. Bensch to identify Plaintiff's
15 Exhibit No. 9.

16 A. This is the eviction notice that was posted on the
17 door.

18 Q. You posted it yourself?

19 A. I did.

20 Q. All right, and you posted it on Sunday, January 8,
21 2000, is that correct?
22

23 A. Yes.

24 Q. And you went into the restaurant that date -- did
25 you or the deputy sheriffs break the locks for you?

A. We employed a locksmith to assist us.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. All right.

2 A. And the sheriff authorized him to open the door.

3 Q. Okay. All right, you did not go to the
4 Magistrate's Court in order to go through some sort of
5 judicial eviction process, did you?

6 A. No.

7 Q. No, okay. Did you give any prior notice to Mr.
8 and Mrs. Passaloukas of your entry into the premises on
9 January 8, 2000?

10 A. Well, I personally gave them a copy of that letter
11 that was sent to them certified. They knew that was
12 coming.

13 Q. When you say you personally gave it, are you
14 saying that you placed it in the mail to them, is that
15 correct?

16 A. No, I personally delivered one to the restaurant.

17 Q. To the restaurant, when did you do that?

18 A. Probably the day it was written, or the day after.

19 Q. Did --

20 A. Then I sent one through the mail.

21 Q. This Plaintiffs' Exhibit No. 8 you are talking
22 about?

23 A. Yes.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. PAPE: Your Honor, I
2 understand. I have got to bring all
3 that together, but I am in the process
4 of doing that.

5 COURT: Well I will allow it
6 subject to Mr. Pape attempting to bring
7 it all together.

8 MR. CLABAUGH: Note my objection
9 for the record?

10 COURT: Yes, sir.

11 BY MR. PAPE:

12 Q. So that's the Sale Agreement for the sale of the
13 restaurant business that was then existing at Suite 101
14 to Mi Tierra's, is that correct?

15 A. That is correct.

16 Q. Now when did you begin negotiating that agreement
17 with Mi Tierra's?

18 MR. CLABAUGH: Again, we say you,
19 who are we talking about?

20 MR. PAPE: I am talking about Mr.
21 Bensch.

22 MR. CLABAUGH: Mr. Bensch didn't
23 own that equipment, Nicolli's owned it
24 and Nicolli's --
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. And it included all the equipment and furnishings
2 that Mr. and Mrs. Passaloukas had contributed to the
3 corporation, is that correct?

4 A. Most all of them, yes, I can't think of an
5 exception.

6 Q. Then for a period of time Nicolli's operated a
7 restaurant there using the same equipment and
8 furnishings that the Passaloukas' had contributed to as
9 Zorbas, is that correct?

10 A. Well, we made improvements to the restaurant. We
11 added quite a bit to it.

12 Q. All right, we'll talk about that but then when
13 Nicolli's sold -- entered into this agreement with Mi
14 Tierra's you negotiated that agreement with Mi
15 Tierra's, is that correct?

16 A. I did.

17 Q. All right, on what date did you begin those
18 negotiations with Mi Tierra's? In March or April?

19 A. I believe it was a month or two months before we
20 sold it because they originally came to us and wanted
21 to buy the entire shopping center because when they
22 asked me about buying the restaurant I told them we
23 just had started it and we weren't really interested in
24 selling it at the moment.
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

COURT: Hold on one second.

1 BY MR. PAPE:

2 Q. I am just asking what you did to the equipment and
3 I think you've already testified you made some new
4 decorations to change it from a Greek to Italian décor
5 and you think you added a stove. Any other equipment?
6

7 A. Not that comes to mind, no sir.

8 Q. Okay, so substantially all of the equipment that
9 you sold to Mi Tierra's, except for the new stove that
10 you added, was the equipment that the Passaloukases had
11 contributed to the corporation, is that correct?
12

13 A. I think that is correct.

14 Q. Okay, that's all I wanted to know. Now you also
15 entered into a Lease Agreement with Mi Tierra's at that
16 time, did you not?

17 MR. CLABAUGH: Objection, Your
18 Honor. The subsequent lease is
19 irrelevant. What the landlord
20 subsequently does with his property has
21 nothing to do with the value of the
22 equipment that was in at the time they
23 took it over.
24

25 COURT: Sustained.

BY MR. PAPE:

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 if I don't know who we are speaking
2 about, but state your question again. I
3 am sorry.

4 BY MR. PAPE:

5 Q. Mr. Bensch, you and Mrs. Bensch contributed
6 leasehold improvements to the corporation, is that
7 correct?

8 MR. CLABAUGH: Objection.

9 COURT: All right, and the point of
10 the objection is what exactly?

11 MR. CLABAUGH: They didn't
12 contribute leasehold improvements. They
13 contributed monies, which were used by
14 the corporation for the up-fit of the
15 restaurant.
16

17 BY MR. PAPE:

18 Q. Mr. Bensch, did you ever contribute --

19 COURT: Hold on one second. Let me
20 think about this for a second.

21 MR. PAPE: I mean, he's actually
22 testifying for his client and I have --

23 MR. CLABAUGH: My point, Your
24 Honor, is under the lease agreement was
25 a corporation that had the

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. PAPE: Yes, there was one done
2 in September as well as October 23rd.

3 MR. CLABAUGH: Okay, where's the
4 other one? And that's the transcript.
5 No, that's the trial transcript. No,
6 this is the short version. There must
7 be another continuation -- that's okay,
8 go ahead.

9 BY Mr. PAPE:

10 Q. Okay, beginning on Page 50 on line 23 read along
11 with me. On Line 17 I am sorry, Page 50. I ask you a
12 question "But it only had rental value if leasehold
13 improvements were in it" and what was your answer?
14

15 A. My answer was "correct".

16 Q. All right, let me --

17 A. But that was incorrect.

18 Q. Let me ask you to do me a favor just so that we
19 have a clear record. If you will just read your
20 answers and you can elaborate on these at some later
21 point in time, but if you don't mind, let's start over
22 and I will read the question and you just stick to the
23 answer. Is that fair?
24

25 A. I will read the answer that I gave back then, yes.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. And you were under oath back then, is that
2 correct?

3 A. I was.

4 Q. And you swore to tell the truth?

5 A. I'm sure.

6 Q. And I will read the first question again at Line
7 17. "But it only had rental value if leasehold
8 improvements were in it". What was your answer?

9 A. My answer was "correct". Whether I heard your
10 question clearly or understood it, I do not know.

11 Q. Mr. -

12 A. It certainly is not an accurate answer.

13
14 MR. CLABAUGH: Judge -- if you
15 don't mind --

16 BY MR. PAPE:

17 Q. Gary, just read the answer that's in the
18 transcript.

19 A. Okay, it was correct at that time that I stated
20 it.

21 Q. I will read the question again and because we have
22 several lines that we've got to go through, Mr. Bensch
23 and to get through this just stick to only what's on
24 the page. My question was "But it only had rental
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 value if leasehold improvements were in it?" What was
2 your answer?

3 A. "Correct."

4 Q. My question was "And so without leasehold
5 improvements, its rental value is zero essentially, you
6 think" and what was your answer?

7 A. "No. It could be used as a warehouse."

8 Q. Did I ask you? That is what I am trying to get
9 at, as a warehouse, how much and then you interrupt me
10 and you said --

11 A. "What was its value for rental?"

12 Q. And you went on to say what?

13 A. "At the time we had it available for lease at
14 \$12.00 a foot."

15 Q. I am going to ask you again, Mr. Bensch, to stick
16 only to what's there. Beginning at Line 4 just read
17 what's there.

18 A. Okay. "What was its value for rental?" That was
19 the question I asked, or repeated I guess. "At the
20 time we -- we it has a double we", as --

21 Q. If you don't mind, just start over and just stick
22 to the words that are there. And what was your answer
23 beginning at Line 6?
24
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 A. "At the time we, we had it available for lease at
2 12 \$1500, 12, \$1400 a month. We just never found
3 anybody."

4 Q. And then I asked you as an empty warehouse use and
5 what was your answer?

6 A. "No, as a location."

7 Q. And then I asked "As a location". What was your
8 answer?

9 A. Correct.

10 Q. And you went on to say "It is the location that is
11 valuable." And then I asked 12 and \$1500 a month and
12 what was your answer?

13 A. 12 to 15.

14 Q. Okay, thank you. Now let's look at Shareholders'
15 Management Agreement, okay, that's not it. That's not
16 what I was looking for, I was looking for this document
17 that's entitled --
18

19 MR. CLABAUGH: What number is that?

20 MR. PAPE: Actually, let's maybe
21 make an aside here. Mr. Bensch pointed
22 out to me that we had two Exhibits 9.
23

24 MR. CLABAUGH: The Shareholders'
25 Agreement was 7, I believe.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. And then there's a footnote by the word paid,
2 footnote 6?

3 A. 6.

4 Q. And then it goes on to say down below it says
5 indicate below how much -- how such contribution is
6 made and specify any terms and conditions pertaining to
7 such contribution, is that correct?

8 MR. CLABAUGH: Your Honor, again --

9 COURT: Yeah, the document speaks
10 for itself. What's the --

11 BY MR. PAPE:

12 Q. Well, let me ask you, you agree, Mr. Bensch, don't
13 you that the contributions of ~~Cynthia Bensch~~ and Gary
14 ~~Bensch~~ were the leasehold improvements, is that
15 correct?
16

17 A. Yes, I would agree with that.

18 Q. And you never actually put in \$30,000 in cash in
19 the corporation, is that also correct?

20 MR. CLABAUGH: Your Honor, it -- I
21 object, the witness is mischaracterizing
22 the document.
23

24 MR. PAPE: I am sorry.

25 COURT: Let me stop you all for a
second. I think you have already

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 stipulated and told me several times
2 that Mr. Bensch didn't put \$30,000 into
3 the till. I don't even think that is a
4 question. You are only trying to
5 convince me for the fifth time that that
6 didn't happen.

7 MR. PAPE: Judge, I wasn't sure
8 whether we did it on the record or back
9 in chambers.

10 COURT: I thought that was a
11 stipulation that the Bensch's
12 contributions were by way of the
13 Benchmark modifications to the leasehold
14 --
15

16 MR. PAPE: By way of the Bensch's,
17 not Benchmark's contributions - well,
18 they may have contracted with Benchmark
19 or even third parties, subcontractors to
20 install those improvements but it was
21 those improvements that were made.
22

23 COURT: What I meant was in lieu of
24 taking a box of cash and putting it in
25 the cash register or not.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. CLABAUGH: Well, but it says
2 the leasehold improvements are made
3 utilizing these funds.

4 COURT: I understand. I think I
5 understand.

6 BY MR. PAPE:

7 Q. And at the bottom there below the word leasehold
8 improvements are to be provided utilizing these funds,
9 it says, "That the undersigned by execution of this
10 Exhibit A, do hereby transfer, grant and convey the
11 assets and interest referenced above and further agree
12 such conveyances, transfers and assignments and agree
13 that such transfers are being made free and clear of
14 all liens and other encumbrances except as otherwise
15 provided above." It goes on to say that, "The
16 undersigned acknowledges by this Exhibit A that they
17 are irrevocably making and completing such transfer and
18 further agree to execute such other additional
19 documentation as is necessary to give further record
20 notice of such transfer." Do you recall that language?
21
22

23 MR. CLABAUGH: Same objection, Your
24 Honor. The document, it says what it
25 says.

COURT: Sustained.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

BY MR. PAPE:

1 Q. And by executing that document, Mr. Bensch, you
2 understood clearly that you and Mrs. Bensch were
3 transferring the leasehold improvements to Zorbas, is
4 that correct?
5

6 MR. CLABAUGH: Again.

7 COURT: Sustained. Let's move on.
8 This is the document and you put it into
9 evidence.
10

BY MR. PAPE:

11 Q. Now, Mr. Bensch, Zorbas made the rent payments for
12 August, September, October and November, is that
13 correct?
14

15 A. I believe that is correct.

16 Q. And for each one of those payments there was a sum
17 there that was for the purpose of reimbursing Gary and
18 Cynthia Bensch in the sum of \$561.00 a month for
19 contributions they had made, right?
20

21 MR. CLABAUGH: Your Honor, the
22 question I believe has been asked and
23 answered.

24 COURT: I lost track of it, but I
25 will allow it, go ahead. You can answer
it.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

Exhibit No. 2. There it is right there.

We have already stipulated to that.

MR. CLABAUGH: Okay.

MR. PAPE: If you will permit me then, I will go ahead and mark this document as Plaintiffs' No. 12 I believe, is that right, Joanne?

BY MR. PAPE:

Q. And Mr. Bensch, Plaintiffs' Exhibit No. 12 represents all of the reimbursements of contributions to you and Mrs. Bensch, is that correct?

A. That is correct.

Q. Okay, thank you very much.

A. It does have an error on here though, Mr. Pape. It says added rent to repay for hot water heater and grease trap. That is incorrect.

Q. How would you amend that?

A. Well it was to repay the cost of the Beaufort Jasper Water Tap Fee for Zorbas and the grease trap and the installation of the hot water heater.

Q. All right, but nevertheless those are still the amounts?

A. The numbers are correct but that's --

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 COURT: Well, let him ask a
2 question and then I will get to the
3 objection, so I understand -- go ahead.

4 BY MR. PAPE:

5 Q. And then it indicates there that Gary Bensch and
6 Cynthia Bensch are to lend the corporation \$20,000 and
7 leasehold improvements. Is that what it says?

8 MR. CLABAUGH: Again, objection,
9 Your Honor, it speaks for itself.

10 COURT: Well, it does speak for
11 itself.

12 MR. PAPE: Well, I mean, what I am
13 concerned about the fact that there is
14 an objection and Mr. Bensch is not
15 admitting it. I don't know what --

16 A. Well, I am not admitting that we were ever to make
17 a loan to the corporation. We were not.

18 Q. Well, then, I have a right to ask the question.

19 COURT: Well, if there's an
20 ambiguity or something in the contract,
21 you can ask it.

22 MR. PAPE:
23
24
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. It says Mr. Bensch that Gary Bensch and Cynthia
2 Bensch are to lend the corporation \$20,000 and
3 leasehold improvements, is that what it says?

4 A. I don't read it that way, Mr. Pape.

5 Q. Just read the words that are there. I am just
6 asking you what the words are.

7 COURT: Well, I can see what the
8 words are. I mean if you want to ask
9 him what his take on what it means is, I
10 would be happy to hear that.

11 BY MR. PAPE:

12 Q. What is your interpretation of what those words
13 mean?

14 A. Mr. Passaloukas had to -- well I can't speak to
15 what Mr. Passaloukas had to do here, but I knew -- at
16 the time this was written, this was in April 15 of '99,
17 I mean August 15 of '99 and we probably had maybe spent
18 40 or \$50,000 a piece at the time this document was
19 produced.
20

21 Q. And you had spent that 40-\$50,000 yourself for the
22 provision of leasehold improvements, is that correct?
23

24 A. We both had.
25

1 Q. Okay, Mr. and Mrs. Passaloukas, that sum of money
2 in contributions of the kitchen equipment and the
3 furnishings and --

4 A. Right, yeah.

5 Q. And the Bensches for contributions to leasehold
6 improvements, is that also right?

7 A. That's correct.

8 Q. But on the date that this was signed, you hadn't
9 contributed any -- that is, you and Mrs. Bensch hadn't
10 contributed any cash?

11 MR. CLABAUGH: Your Honor, there's

12 --

13 A. Neither had Mr. Passaloukas.

14 Q. And it says the terms and conditions upon which
15 the loan contributions are being made, follow me, there
16 is a "X" by the word cash, is that correct?

17 A. Yes.

18 Q. All right, okay, thank you, let me look at that.
19 And then going to the following page, Page 6, it says
20 below the loans it says, "The undersigned by execution
21 of Exhibit A do hereby agree to make the loans as
22 provided herein and the corporation hereby agrees to
23 such loans and agrees to make the payments and provide
24 the securities as referenced above. The undersigned
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 and the corporation acknowledge by execution of this
2 Exhibit A that they are irrevocably making and
3 completing such loans and granting security interest
4 and further agree to execute such other additional
5 documentation as deemed necessary advisable to give
6 further or record notice of such loans as security
7 interest. Is that correct?

8 MR. CLABAUGH: Your Honor, again,
9 the document speaks for itself.

10 COURT: It does and now if you can
11 cut through some of that. If it says
12 it, you don't have to have him read it
13 again.
14

15 By the way, I will take this
16 opportunity to mention to the lawyers I
17 don't know if you have read the new
18 Supreme Court rule on identity theft,
19 but we are not supposed to put in or you
20 aren't supposed to put in exhibits that
21 have Social Security numbers. The
22 damage may already be done because most
23 of these were already in in the prior
24 trial, but of course we are getting the
25 completely electronic system where

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. And do you remember giving me an estimate as to
2 the diminishment value of the leasehold improvements as
3 of the date of the eviction?

4 A. Yes, but I gave you a guess then also.

5 Q. No, I asked you to give me an informed opinion.

6 A. Okay, I can do that again, I think.

7 Q. I again refer you to your deposition and ask you
8 to identify in six and again if you don't mind I will
9 read the questions and then I would like for you to
10 provide an answer, or read the answer as it was then
11 without embellishing, is that okay?

12 A. Okay, all right.

13 Q. I asked you this question "So if it cost, as you
14 were claiming here, you and Mrs. Bensch put in --
15 contributed \$75,000 toward those leasehold improvements
16 as of December 15, 1999, they are still worth \$75,000
17 as you are concerned, is that right?" And what was your
18 answer?

19 A. My answer then was "Yes, definitely. When they
20 were put in." Not sure what --

21 Q. And then my question was "Explain that for me".
22 And what was your answer?

23 A. "When they were put in, they were operational and
24 perfect and as they were used through the year, they
25

1 Q. And I asked you - "Your attorney can ask him about
2 that but as of September 15, 1999 or even January of
3 2000, those leasehold improvements were as valuable"
4 and then you interrupted me and said what?

5 A. "As stated."

6 Q. And then I asked you, "As what you paid for them?"
7 And your answer was?

8 A. "Correct."

9 Q. And then I asked "Explain to me what happens to
10 the value of the leasehold improvements once you put
11 them in the property". What was your answer?

12 A. "Well, they exist for the -- something. In this
13 case they were -- they exist through the term of the
14 lease and then they have to be generally annexed to it
15 or someone modifies it." I am not sure this was copied
16 properly, I have no idea what that even says. I would
17 answer it differently today.

18 Q. Let's go on. And my question to you was, "How does
19 that affect the value though?"
20

21 A. And I stated then that --
22

23 MR. CLABAUGH: Your Honor, I think
24 he was asking the witness to review the
25 deposition in response to a specific
question.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 A. You are asking me a question and I said it was
2 worth less.

3 Q. No, you said that I would say that is an accurate
4 statement. Isn't that what you said?

5 A. Oh, you are still reading?

6 Q. Didn't you say at that time that it was accurate
7 that if the property, the leasehold improvements were
8 worth \$75,000 in the beginning, they were still worth
9 at least \$74,500.00, didn't you agree with that
10 statement then?

11 A. I said at that time I would say that that is an
12 accurate statement.

13 Q. And then did you hear Mrs. Bensch respond that she
14 agreed with that statement too?
15

16 MR. CLABAUGH: Your Honor, again he
17 can use the deposition for impeachment.
18 It's improper for him to simply
19 continue to read from the deposition.

20 MR. BENSCH: I don't think it
21 disagrees with my statement.
22

23 COURT: Well, hold on Mr. Bensch.
24 Sustained.

25 BY MR. PAPE:

1 SEPTEMBER 16, 2009 - 9:00 A.M.

2
3 COURT: Back on the record in Case
4 00-524. I think when we finished
5 yesterday, Plaintiffs' first witness was
6 Mr. Bensch and now at this time cross-
7 examination by Mr. Clabaugh, is that
8 correct?
9

10 MR. CLABAUGH: No questions, at
11 this time Your Honor.
12

13 MR. PAPE: Your Honor, I have
14 already advised Mr. Clabaugh based on a
15 voluntary statement Mr. Bensch made to
16 me this morning, I would like to ask him
17 one question, if I may?
18

19 MR. CLABAUGH: We can just
20 stipulate to it.
21

22 MR. PAPE: Stipulate that the date
23 of the meeting -- it was testified
24 earlier that the date of the meeting was
25 November 15. He recollected his memory,
he agrees that it was December 15th now.

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. CLABAUGH: He went back and
2 listened to a tape of the meeting, Your
3 Honor.

4 COURT: Okay.

5 MR. PAPE: Your Honor, I would like
6 to call Cynthia Bensch.

7 COURT: All right.

8 CYNTHIA BENSCH, called as a witness,
9 after being duly sworn, testified as follows:

10 BY MR. PAPE:

11 Q. Good morning, Mrs. Bensch. You were one of the
12 four shareholders of Zorbas, Inc., is that correct?

13 A. Correct.

14 Q. And you and Gary Bensch also were the owners of
15 the property, which is the subject of the various
16 leases in this?

17 A. Correct.

18 Q. Okay. On or about May 2 when you sold the
19 business to Mi Tierra's, did you and Mr. Bensch enter
20 into an agreement with Mi Tierra's? A lease agreement?

21 A. Yes, we did.

22 Q. And is this Plaintiffs' Exhibit 14 a copy of that
23 lease agreement?
24
25

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. And you and Mr. Bensch sold the shopping center
2 for 2.15 million dollars I think?

3 A. We sold Town Center.

4 Q. Town Center.

5 A. Yes.

6 Q. And Town Center included Unit 101 is that correct?

7 A. Correct.

8 Q. And it also included the leasehold improvements,
9 is that correct?

10 A. Correct.

11 Q. And it also included the leasehold improvements,
12 is that correct?

13 A. Correct.

14 Q. Did you all sell it for money than you had
15 invested in the property?

16 A. Did we - well, we were able to pay off our
17 mortgage so I guess we did sell it for more than we had
18 invested.

19 Q. Okay. Now when you all - well, let me ask you if
20 you recognize this document.
21

22 MR. CLABAUGH: May I see it or a
23 copy of it?
24

25 MR. PAPE: Yes.

Q. And you were sworn in at that time?

A. Yes.

Q. And you recall the testimony yesterday concerning the value of the leasehold improvements, is that correct?

A. Yes.

Q. And I was trying to ascertain how much the leasehold improvements had diminished in value. At the time of deposition, you had agreed with Mr. Bensch's testimony that the value of the leasehold improvements had not diminished in value as of January, 2000 anymore than \$500, is that correct?

A. Truly, I cannot remember my deposition ten years ago.

Q. I understand. Well, let's go ahead and so -- on Page 30 beginning at Line 19 I asked Mr. Bensch - it was directed toward him, "So as of January, 2000 the leasehold improvements that you might have made to the tune of \$75,000 were still worth at least \$74,500.00 and it says that Mr. Bensch said "I would say that is an accurate statement". And then my next question was directed to you, I read "Mrs. Bensch, would you confirm that" and what was your answer?

A. It says I said, "Yes".

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Q. Okay, so you were confirming Mr. Bensch's
2 statement the leasehold improvements had diminished in
3 value no more than \$500.00 is that correct?

4 A. Yes.

5 Q. And would you stand by that testimony today?

6 A. I would really have to think about that, Mr. Pape.

7 Q. Okay.

8 MR. CLABAUGH: Cynthia, please
9 speak up so the court reporter and
10 everyone can hear you.

11 BY MR. PAPE:

12 Q. Okay. Just a minute Your Honor, I might not have
13 any more questions. Oh, I do have a question about the
14 insurance policy.

15
16 MR. CLABAUGH: Are you looking for
17 the Kinghorn --

18 MR. PAPE: Yes, I got it right
19 there. Thank you.

20 MR. CLABAUGH: Is that 18?

21 MR. PAPE: It's 18.

22 BY MR. PAPE:

23 Q. Let me ask you about the Plaintiffs Exhibit No.
24 18. You recognize those documents?
25

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 A. Well we have insurance on Town Center so actually
2 it was doubly insured. There was no need for that
3 policy to be in effect.

4 Q. Well my question is, didn't you and Gary Bensch
5 receive \$481.00 when it was terminated?

6 A. Yes, I did.

7 Q. Okay.

8 MR. PAPE: I would like to offer
9 Plaintiffs' Exhibit 18.

10 MR. CLABAUGH: No objection.

11 MR. PAPE: I don't have any further
12 questions, Your Honor.

13 COURT: Any questions, Mr.
14 Clabaugh.

15 MR. CLABAUGH: Your Honor, just a
16 point of order. May I question this
17 witness at this time on just those
18 documents that were introduced and still
19 reserve the right to call her in our
20 case in chief?

21 COURT: Oh yeah, you can always
22 call her. You can cross-examine her
23 right now if you would like.

24 BY MR. CLABAUGH:

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 MR. PAPE: I object, Your Honor,
2 There's no testimony as to these others.
3 She didn't testify at any other numbers.

4 COURT: Sustained at this time.

5 MR. CLABAUGH: Just mark it for
6 identification then.

7 MR. PAPE: You going to mark that
8 or -- this is what you've got okay. I
9 would like to call Mr. Passaloukas.

10 PASSALOUKAS, called as a witness, after
11 being duly sworn, testified as follows:

12 BY MR. PAPE:

13 Q. Good morning Mr. Passaloukas, how are you?

14 A. Good morning. I am doing well.

15 MR. CLABAUGH: Frank, would it help you
16 if we switch sides.

17 MR. PAPE: No, I think this will be
18 fine. Thank you for offering.

19 BY MR. PAPE:

20 Q. When did you and Susie Passaloukas contact Gary and
21 Cynthia Bensch about putting together some venture to
22 operate a Greek restaurant?

23 A. It was early January and the reason I remember --

24 Q. January, 1999?

1 A. We might have talked some, I cannot exactly if it was
2 that first meeting or we met again. I am sure we knew or
3 they told us the building was just a shell and I was looking
4 for a partner because I knew that to start a restaurant like
5 this it would come one day that I would need some back up.

6 Q. What do you mean by back up?

7 A. Cash flow. I knew that -- you know a restaurant after
8 the first year even the second year need some help.

9 Q. Need some help with respect to --

10 A. -- with cash.

11 Q. With cash?

12 A. Right. So we talked about partnership. I am not sure
13 exactly what was offered at that time. I think -- I never
14 say I was an expert in restaurants. I have worked in a
15 couple of restaurants before. We had -- we run a couple of
16 restaurants before. We are familiar with the Greek cuisine
17 and we wanted to have something nice in their little
18 shopping center they had. And we talked about that we want
19 to have a nice quality restaurant with Greek wine and Greek
20 authentic food and they liked the idea. I think they was
21 excited about the idea about doing a restaurant and she
22 offered that since he was the builder that he can finish
23 that building and make it into a restaurant and I think we
24 talked about getting equipment and do the kitchen and the
25

1 A. Me, my wife, and my two kids almost seven days a week.
2 I had to get up early in the morning to go to open for
3 whoever was working there. I helped him myself many times.
4 My kids that was there bringing some of his stuff that he
5 had left there and helped him every which way we could to
6 try to help him out to empty the building, fix it, finish
7 the building and try to open the doors.

8 Q. What sort of specific work were you doing?

9 A. Help him with the walls, help him with his walls, the
10 insulation, everything with the trim, or the materials. I
11 have carry sheet rock, I carry metals everything the
12 building need to be built. Anything need to be done.

13 Q. All right, let me ask you to identify I believe we are
14 on Plaintiffs' Exhibit 19 now. What is Plaintiffs' Exhibit
15 19?
16

17 MR. CLABAUGH: May I see it?

18 MR. PAPE: Yes.

19 A. That's expenditures I paid from Zorbas account for
20 stuff he did, Gary did. We was working together and he
21 would need something, some wood trim, some caulking or sheet
22 rock and I had to run to Home Depot or other places to try
23 to get some of that material and help him out. He promised
24 me he would reimburse me. He never did. There was some
25 charges there from Campbell Electric that he was supposed to

1 take care of the electrical and I ended up with his bills
2 because I didn't have much choice. We opened up the place.
3 The sign it was supposed to be all electrical. The sign
4 would keep going off. Go back there, turn the breaker.
5 People would tell me the sign is off. I was going back
6 there to turn the breaker up. So I ended up calling Mr.
7 Campbell, the electric man, the electrician that he did all
8 that. So I thought it was his responsibility and his
9 responsibilities as it was to finish all the electric up to
10 finish this sign like it should be. So he came there Mr.
11 Campbell and he changed some breakers, got it to work okay.
12 The next thing he bring me the bill. I said this is not my
13 responsibility. This is Mr. Bensch's responsibility, he was
14 supposed to take care of all that from the beginning. If
15 that thing was not working right after we opened up, that's
16 still his responsibility in my mind. So he did not want to
17 pay and I don't think it was my responsibility to pay, he
18 ended up suing me.
19

20 Q. And so you ended up having to pay?

21 A. We did.

22 Q. All right, attached to Plaintiffs' Exhibit 19 are a
23 list of checks from the Zorbas account showing these
24 payments?
25

A. Yes.

1 is relevant, so -- I can't look at it
2 standing alone, so anyway, so I understand
3 your objection. Your exception is noted, but
4 overruled. We will allow it in as the next
5 number.

6 MR. CLABAUGH: Furthermore, one other
7 thing Your Honor, the numbers that he was
8 testifying to as his contributions are on
9 this sheet. They are listed on this sheet.

10 COURT: I understand. I figured that
11 was the case.

12 MR. PAPE: Well in order to determine
13 gross sales -- net sales of the business
14 you've got to make a calculation. That's all
15 he is doing.

16 COURT: I get that. Go ahead please.

17
18 BY MR. PAPE:

19 Q. Sorry, where's those other documents? Now, Mr.
20 Passaloukas, at the time you and Mrs. Passaloukas and Zorbas
21 were evicted on January 8th were there items that belonged --
22 assets that belonged to Zorbas that were left behind in the
23 restaurant?
24

25 A. Yes.

Q. Did it include consumables?

MR. CLABAUGH: Objection, Your Honor.

1 BY MR. PAPE:

2 Q. What did it include?

3 MR. CLABAUGH: Leading. He asked him --

4 COURT: Well, it's a broad category.

5 Anyway, try not to lead.

6 BY MR. PAPE:

7 Q. What was there in the form of consumables?

8 A. There was food, frozen stuff, steaks, seafood. We had
9 paper stuff to go, Styrofoam boxes, cups, drinks, plenty of
10 wine. We had wine, different kinds. We had American wine,
11 we had Greek wine, champagne. We had cheap champagne, we
12 had expensive champagne, medium some. We had a good variety
13 of stock and we -- there was plenty of food and we just --
14 that week we had paid a good bit of money the Sysco the food
15 company. We had about \$1,000 worth of groceries just had
16 come in. Always, we kept our stock. We would run the place
17 breakfast, lunch and dinner to try to make it. And we had
18 enough food to -- over the minimum.

19 Q. At some point, did you estimate what the value of those
20 consumables were that were left behind in the restaurant on
21 January 8, 2000?

22 A. Yes, we did.
23
24
25

1 Q. What do you estimate was the value of those
2 consumables?

3 A. It was close to \$6,000.00.

4 Q. And is that --

5 A. Or more I don't --

6 Q. Let me ask you to identify this next document, which I
7 have marked as Plaintiffs' Exhibit 23 now.

8 MR. CLABAUGH: What is this?

9 MR. PAPE: Well, he will tell you what
10 it is.

11 MR. CLABAUGH: Well, do I get a copy of
12 it? Thank you.

13 MR. PAPE: You are welcome.

14 BY MR. PAPE:

15 Q. What is Plaintiffs' Exhibit No. 23?

16 A. That's money I paid for food, drinks, wine, vegetables
17 for August, September, October.

18 Q. Did you go through the checks that are set forth in
19 Plaintiffs' Exhibit 21 and cull from that all the checks
20 that --

21 A. Yes, all the checks that was --

22 Q. That were for what?

23 A. Food, drinks, wine.

1 Q. And have you circled the checks that were for those
2 consumables?

3 A. Yes. Beer.

4 Q. And have you -- did you calculate the amount that you
5 spent in August for those consumables?

6 A. Yes.

7 Q. And how much is that amount?

8 A. For August it was \$13,413.98.

9 Q. And what was it for September of 1999?

10 A. For September it was \$5,539.26.

11 Q. And for October, 1999 what was it?

12 A. \$9,077.94.

13 Q. Okay, and for November what was it?

14 A. For November it was \$5,096.81.

15 Q. And what did Zorbas spend in December for those
16 consumables?

17 A. \$4,811.92.

18 Q. And in January what did Zorbas pay for those
19 consumables?

20 A. That was for the first, the only week the first week
21 \$1,684.98.

22 Q. And right before you all were evicted from the
23 restaurant, can you tell the Judge, let's say the last
24 couple of weeks, what you had spent for those consumables?
25

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 A. Well that's January a couple days before they locked us
2 out for food to Sysco \$946.94.

3 Q. And what date was that?

4 A. That was January 6th.

5 Q. Just prior to that had you spent any other sums for
6 consumables?

7 A. The 4th we spent \$42.00 to Coca Cola for Coke products.
8 The 4th we spent \$97.00 for vegetables to Mosovitz.

9 Q. You mean January 4th?

10 A. Right. The 3rd of January we spent \$347.86 to Roma for
11 food. December 29th we spent \$44 to S&H Poultry for
12 chickens.

13 Q. All right. It seems to be falling apart. Let me --
14 now at some time during the period when you were operating
15 the restaurant did you --
16

17 MR. CLABAUGH: Are you moving that into
18 evidence?

19 MR. PAPE: Yes, I am moving that into
20 evidence.

21 COURT: This is Exhibit --
22

23 MR. CLABAUGH: Your Honor, if this is
24 submitted in support of the witness's
25 testimony as to what was in the restaurant at
the time, you know, I object to it. Simply

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 COURT: Go ahead, again, the volume of
2 it is not my concern. The scanner is across
3 the hall.

4 BY MR. PAPE:

5 Q. All right, Mr. Passaloukas at some point in time, did
6 you and Mrs. Passaloukas conduct an inventory of the
7 equipment and the consumable inventory that was in there?

8 A. Yes, it was around the time that they was requesting a
9 meeting.

10 Q. Who were they?

11 A. Gary and Cynthia and I am not very good with the legal
12 terms, shareholder meeting, and they request what we have in
13 the restaurant, how much we have put in the restaurant
14 money- wise and equipment-wise and of course my time and my
15 labor is not there. But that's all the equipment plus the
16 stock, how much food we had, inventory. I've got time to
17 remember all this.

18 Q. Did you prepare several different documents listing
19 those things?

20 A. Yes, Susie and I would prepare.

21 Q. When was that again? Did you prepare this?

22 A. That was just before the shareholder meeting.

23 Q. Was the shareholder's meeting December 15th?

1 A. Yes. And maybe we would prepare them together with Nick
2 too cause Nick was there too.

3 Q. But again so the Judge is sure when do you think you
4 prepared it? Put a date on it.

5 A. It was December -- December, the meeting was the 15th it
6 had to be that week the 10th.

7 Q. Okay, well let me ask you then to identify Plaintiffs'
8 Exhibit No. 24, what is that precisely?

9 A. That's all of the equipment, furniture and inventory
10 included but not limited of the kitchen equipment, for
11 kitchen equipment.

12 Q. All right, whose handwriting is that on that document?

13 A. Susie's.

14 Q. And did you and Mrs. Passaloukas do this inventory
15 together?
16

17 A. Well, we did it together with Nick and Susie, my
18 writing is not great, so Susie always complete things for
19 me.

20 Q. And Nick Alveri who was one of your employees assisted
21 you in this process?
22

23 A. Right. He was a cook in the kitchen who helped me with
24 it.

25 Q. Now, on Page 6 of this, at the top, is the word
"inventory", which is underlined.

1 A. Right.

2 Q. And tell the Judge what that section of this document
3 represents.

4 A. That was food, stock to have to go, paper, paper bags,
5 napkins, plastic forks, spoons, drinks, wine, beer,
6 everything we had in-house.

7 Q. How did you arrive at those values? For example, on
8 the first one it says saltine crackers \$20.00. How did you
9 arrive at that figure?

10 A. We went one by one and how much it cost us and we
11 guesstimate it was about \$20.00.

12 Q. You counted the item --

13 A. We counted how many crackers we had and we counted how
14 many marshmallow we had, whatever. Ice cream,
15

16 COURT: Let me ask you to stop real
17 quick. Is there anyway to reach a
18 stipulation as to the value of the goods in
19 the restaurant at the time of the eviction.
20 Have you all discussed that and tried to come
21 up with a number? I am happy to add in the
22 crackers and all this stuff but is there --
23 have you all tried to come up with a number
24 that suits everybody.
25

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

MR. PAPE: Pages 6, 7, 8, and 9.

COURT: 7, 8 okay, if we could remove those perhaps and make those the exhibit.

MR. CLABAUGH: That's fine Your Honor.

COURT: And I will -- that will be 24.

MR. PAPE: 24, yes sir.

BY MR. PAPE:

Q. Mr. Passaloukas, Plaintiffs' Exhibit No. 24 as revised is the written inventory that you and Mrs. Passaloukas and Mr. Alveri did on or about December 15th or before?

A. Yes.

Q. And that's the inventory of the consumables?

A. Right.

Q. And what does that total up to?

A. About \$6,000.00.

Q. Okay. Now on or about that December time frame when you all were having that shareholders' meeting, did you prepare for Mr. and Mrs. Bensch and the lawyers and their accountants a detailed list of what your contributions were?

A. Yes I did.

Q. All right, now let me ask you to identify Plaintiffs' Exhibit and tell me whether or not that's that detailed itemization of what your contributions were?

A. You telling me the total -- to say the total or to --

1 COURT: No, I ruled --

2 MR. PAPE: So I think it needs to stay
3 marked as 25 but it is -- for only for
4 identification. There's --

5 MR. CLABAUGH: No, he sustains the
6 objection; it is not in the record. No
7 objection to 26, Your Honor.

8 COURT: Or 25.

9 MR. CLABAUGH: Is it 25?

10 MR. PAPE: Okay, thank you for your
11 patience. I will rewrite this and we will
12 make it 25. I was trying to figure out if I
13 needed to make a record of 25.
14

15 BY MR. PAPE:

16 Q. What is Plaintiffs' Exhibit 25?

17 A. It is a list of items to be finished or repaired.

18 Q. And did you present that complaint and that list to the
19 Bensches at the shareholders' meeting?

20 A. Yes, actually we had talked about this a long time ago
21 and he was not finishing the stuff he promised to finish in
22 the building. We was operating the restaurant with all
23 these problems. We kept asking him in September, October
24 when was he going to fix it and he never fixed it so finally
25 in November after I talked to the lawyer we had at that time

1 he told me to put the rent in escrow until he finished all
2 this stuff.

3 Q. Which month's rent did you put in escrow?

4 A. November's.

5 Q. November. And let me ask you a question, were rents
6 payable from the first to the end of the month or were they
7 were payable at a different time?

8 A. The 15th of every month Cynthia usually would come there
9 and get the rent.

10 Q. Okay, so the rents under the lease were due and payable
11 for the period from the 15th to the 15th of the following
12 month?

13 A. Right.

14 Q. Okay.

15 A. That's the way I understood it.

16 Q. Okay.

17 A. A couple of things here it was already fixed.

18 Q. Well, describe to the judge what the problems were with
19 the premises.

20 A. Well, the main problems was the patio, he had promised
21 to have it by spring. We was operating, finally the patio
22 it was halfway ready in the fall. People were getting
23 tripped because he fixed it himself. It was all uneven;
24 people would get tripped on it. The patio windows and the
25

1 side doors and the back door all leaked. We were asking for
2 him to fix all our leaks and all the doors like he promises
3 to open properly and he promised us he was going to put some
4 kind of canopy outside on the back door because that's the
5 main problem we had. You open the door and all the water
6 would come inside the restaurant. The front door it was not
7 broken like he said the other day but the front door from
8 the beginning because he installed it and it was not closing
9 right.

10 Q. When you say, "he", you mean Gary Bensch personally?

11 A. Exactly. Yes, he was the expert in everything.

12 Kitchen floor to be fixed properly that -- that floor
13 another thing that he poured the cement himself and it never
14 got cured. I don't know what he did or how he mixed it, you
15 would get a spoon and we would get the cement and scrape it
16 on the floor. That's the main problem we had and the Health
17 Department hold us from opening and then he went over that
18 and he put a paint from a swimming pool and he made it
19 worse. We would throw hot water to clean the floor and the
20 painting will peel and the cement would come apart. So we
21 was asking about all the stuff to be fixed. How can you
22 operate in the kitchen like this? We did though and we did
23 our best for many months. The carpet, for one, I was
24 arguing with Cynthia for a long time don't put it in the
25

1 kitchen area, in the preparing area. She want to put it
2 because it looked good, so it was coming apart. The main --
3 another main problem we had a smell from the ladies bathroom
4 and that was because Mr. Gary Bensch opened up and did some
5 work there --

6 MR. CLABAUGH: Your Honor, again, I
7 would object to this speculative testimony.
8 This person is not a plumber.

9 BY MR. PAPE:

10 Q. Are you saying that Gary Bensch himself personally did
11 the plumbing work?

12 A. He did some work but something -- he did some work out
13 there but we had the smell -- we had to move tables because
14 people who would come to eat there there come a smell out of
15 the ladies bathroom. We brought the plumber there and we
16 still had that problem. The whole thing had to come apart
17 and be fixed. I don't know what he had done behind the wall
18 but the wall had to be changed. It was a firewall and I am
19 sure he sheetrocked it so he can cover it back. He did that
20 illegally. I am sorry I am getting lost now. The patio was
21 another problem. It was never finished properly and once he
22 finished it, it was a waste because cold weather had come.
23

24 Q. What was wrong with it?
25

1 A. He put it down himself with some kind of sand and some
2 kind of tile she brought there and it was very uneven.
3 Ladies' heels would go in between and be tripped and people
4 would get tripped and finally when he finished it, it was
5 cold weather. That was the reason we wanted a patio from
6 the beginning to have in the spring because the restaurant
7 was a no smoking restaurant and I wanted somebody who wanted
8 to smoke to have the patio so they can go sit out there and
9 enjoy their food and smoke outside if they wanted to. So by
10 the time he finished it, it was a waste. It was cold
11 weather. We used it a couple of times. On good days people
12 would sit there in the sum but --

13
14 Q. What happened at the December 15th meeting regarding all
15 of these problems that you just described?

16 A. Well, he promised me that he was going to take care of
17 it. We needed more deck on the back. He was telling from
18 the beginning he was going to put more deck and when it was
19 raining in the back all that stuff was coming inside in our
20 back door. He never did that. The men's bathroom to finish
21 the paint job, it was never right and I think I might had go
22 and try to finish that, I can't remember but that's
23 something he was supposed to do.

24
25 Q. But he -- you said he promised to --

A. Of course.

Q. -- complete everything.

A. Yes.

Q. And as a result of his promises did you release the November rent check to him?

A. Yes.

Q. All right. Did he ever do any of the work that he promised to do?

MR. CLABAUGH: Your Honor, I would object to the -- to the -- he released the, he said did he -- he is talking about talking to Gary Bensch in a shareholders' meeting and then he said, Did he release the check to him?" Is he talking about Gary Bensch the landlord or who is he talking to?

COURT: Well, that's obviously the root of the confusion in the whole case. Gary Bensch was, I think we can all agree, both the landlord and the shareholder. Was Gary Bensch the landlord and wearing his landlord and shareholder hat at the shareholders' meeting? I don't know and since I don't know, I think it is important to allow Mr. Pape to make a record of it and then I will figure it out on the back end, so --

BY MR. PAPE:

1 Q. Mr. Passaloukas, was Gary Bensch the landlord asking
2 for you to release the November rent payment to him?

3 A. Yes.

4 Q. Was Gary Bensch the shareholder present at the December
5 15th meeting?

6 A. Yes, same question.

7 Q. And did Gary Bensch the landlord promise to correct all
8 of these problems with the leased premises?

9 A. Yes.

10 Q. Did Gary Bensch the landlord ever correct any of those
11 problems?

12 A. He correct a couple of things.

13 Q. What did he correct?

14 A. What I have marked over there. We was asking for -- he
15 had built the little office I was asking in the back of the
16 building and he never had put enough -- any air flowing so
17 we was asking for some kind of vent. I cannot remember what
18 he did but marked it out, "sufficient air flow", I guess, it
19 was corrected. And the water, we had a major water leak.
20 He went up there and I think he throw some stuff up there
21 and finally it was not leaking.

22 Q. Were any of the other items that you have described
23 ever repaired?

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 A. No.

2 Q. Okay. What time is it getting to be?

3 MR. CLABAUGH: A quarter to twelve.

4 Q. Okay, I will try to move along.

5 COURT: Why don't we break at 12:00 for
6 lunch?

7 BY MR. PAPE:

8 Q. Mr. Passaloukas, following the eviction of Zorbas, were
9 you personally sued by any of the employees?

10 A. Yes.

11 Q. Who were you sued by?

12 MR. CLABAUGH: Your Honor, I would
13 object to the testimony, irrelevant. If he
14 was personally sued --

15 COURT: Was it Zorbas that was sued or
16 him personally?

17 MR. PAPE: He was personally sued with
18 respect to Zorbas' debt that he had to
19 defend.

20 COURT: I will allow it subject to it
21 being tied into Zorbas somehow.

22 BY MR. PAPE:

23 Q. And who --

24 MR. CLABAUGH: May I have a copy of it?

BILL PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

MR. PAPE: Yes. We will find it. Thank
you.

BY MR. PAPE:

Q. Mr. Passaloukas, let's go back on the record. Now, do
you recall receiving this demand letter of December 28th from
Mr. Bensch? Let me see if I can find it. I believe they
were all sitting right there.

MR. CLABAUGH: What are you looking for?

MR. PAPE: The demand letter.

MR. CLABAUGH: What number is it?

MR. PAPE: It's number 8.

MR. CLABAUGH: I have got a copy of it
here.

MR. PAPE: Well there's several exhibits
missing.

COURT: I have a copy you handed me
earlier. You talking about the December 28th
letter?

MR. PAPE: Yes sir.

COURT: Just to keep things moving.

MR. PAPE: All right.

COURT: I will hand this one back.

MR. PAPE: Thank you, Your Honor.

BY MR. PAPE:

1 Q. Mr. Passaloukas, you recall receiving that letter?

2 A. Yes.

3 Q. How did you receive that letter?

4 A. Certified by the mailman whatever.

5 COURT: And just so that letter so the
6 record will read a little more clearly, we've
7 marked that for identification as Plaintiffs'
8 26?

9 COURT REPORTER: I think that's No. 9,
10 right?

11 MR. CLABAUGH: No. 8.

12 MR. PAPE: No, its No. 8, can I just go
13 ahead and mark it as No. 8, Your Honor.

14 COURT: Whatever the right number is.

15 BY MR. PAPE:

16 Q. Plaintiffs' Exhibit 8 Mr. Passaloukas is that the
17 demand letter that you said you received by mail?

18 A. Yes.

19 Q. All right, do you recall when you received it?

20 A. Probably the last day of December I think.

21 Q. All right, well there's a notation on Page 2 of that
22 the post office form that under Article No. says 12/31/99
23 although that's probably in the wrong place.
24
25

1 A. Right.

2 Q. And were you open for business on --

3 A. Saturday was the 1st?

4 Q. 31st.

5 A. 31st we was open.

6 Q. 31st was Friday.

7 A. New Year's Eve Friday, I think Saturday we was off.

8 Q. On the 1st?

9 A. I can't remember if we was off on the 1st.

10 Q. When was the first day you had to deal with that
11 letter?

12 A. I think Saturday probably we was closed on the 1st and
13 we took the weekend off and then Monday probably when we
14 opened up.

15 Q. All right, when you opened up on Monday, what did you
16 do to try to deal with this demand letter?

17 A. I tried to call Gary and Cynthia and they was out of
18 town. Somebody told me or they had told me, I can't
19 remember --
20

21 MR. CLABAUGH: Objection, Your Honor.

22 BY MR. PAPE:

23 Q. Just say what efforts you made to contact them.

24 A. I tried to call them. I think we went to their office.
25 They was out of town. That's what --

1 Q. During the week, did you make any other efforts?

2 A. I just tried to call them and tried to contact them
3 through the phone and through their office, they was closed.

4 Q. How did you usually make the payment to them?

5 A. Usually Cynthia would come about the 15th. I don't
6 remember Gary ever came to pick it up. Cynthia usually
7 would come there by the 15th. That was the routine.

8 Q. That was the routine the way you had -- were accustomed
9 to making the payments?

10 A. Right.

11 Q. Did they ever come or contact you after you received
12 that notice to ask for payment?

13 A. No.

14 Q. All right, tell the Judge about your ability to make
15 the payment and you had an opportunity to talk with the
16 Bensches.
17

18 MR. CLABAUGH: Your Honor, I think the
19 case law is very clear that you know, the
20 issue is whether or not the payment was made.
21 Whether or not he had the ability or did not
22 have the ability is immaterial.
23

24 COURT: Well, just to understand his
25 theory from our earlier discussions, Mr.
Pape's theory, and Plaintiff's theory is that

1 improvements that he then released the
2 November rent to Mr. Bensch.

3 MR. CLABAUGH: The November payment,
4 which was due on the 15th was finally paid on
5 December 15th. The payment that was due on
6 December 15th --

7 COURT: Was not paid.

8 MR. CLABAUGH: -- was not paid.

9 COURT: Resulting in the letter and then
10 ejectment we're talking about here. So back
11 to the question: is the question you
12 objected to and your question is, did the
13 corporation have the ability to pay the rent
14 -- again I think the valuation of the
15 corporation is what they owed and what was
16 owed to them is relevant in the case, so I
17 overrule the objection. You may answer the
18 question Mr. Passaloukas.
19

20 A. Tell me again Frank the question, please.
21

22 Q. Did you have the ability to pay the rent that had been
23 demanded for December?

24 A. Of course, yes, yes. We had a second mortgage from our
25 house. We had the ability to run the restaurant another
year with my money.

1 COURT: Now, Mr. Pape just to help me
2 out, when you are referring to the "you", I
3 thought the question had to do with Zorbas,
4 but you were referring to Mr. Passaloukas
5 personally, is that correct?

6 MR. PAPE: Yeah, whether or not Mr.
7 Passaloukas had money to pay the rent that
8 was owed on behalf of Zorbas.

9 MR. CLABAUGH: Your Honor, I would renew
10 my objection.

11 COURT: Okay, that -- that I would
12 sustain if the question is did -- did Zorbas
13 have the ability to pay the rent, I think
14 that is relevant. Did Mr. Passaloukas --
15

16 MR. PAPE: I take your point.

17 BY MR. PAPE:

18 Q. Did Zorbas have the ability to pay the rent?

19 A. Yes.

20 Q. And how would Zorbas have obtained the money to pay the
21 rent?

22 A. Because I was the only one that was injecting money to
23 build this business. We was still -- we were still building
24 the business and every problem we had that we fixed it, it
25 would come out of my pocket, but Zorbas is the one we was

1 building it. I mean we were still -- that's the way of this
2 business. It can take years and you can still put money in
3 it. The ability to -- the ability to pay the bills it was
4 from up to me and Gary.

5 Q. Had there been any discussion at the December 15th
6 meeting about the December rent?

7 A. No. No, and I was hoping that we would correct all
8 that stuff. That's one reason I did not pay him, because I
9 thought he was going to finish that would make him finish
10 all these problems we had with the building. Then they took
11 off on vacation for Christmas and I think just before they
12 leave, he brought me a bill from some kind of patio stuff he
13 had and some other bills and I say Gary I don't want to pay
14 for the stuff and we need to finish the building and all
15 that and when you come back we talk again. And the next
16 thing I know they left the grandbaby or somewhere they went
17 out of town and the next thing I know, this thing came, this
18 notice of default of lease. So I was waiting for them to
19 come back from town so see what they was going to do with
20 the building and fixing the problems we had and carry on.
21

22 Q. Okay, at the time you all were evicted from the
23 premises, did you and Mrs. Passaloukas have any personal
24 belongings in the property?
25

A. Yes, we did.

1 A. We used the collateral owing the bank so we got some
2 money cause we had our house paid for so we can put it to
3 start Zorbas. Then we trust them that they are going to
4 back us up and be our good partners and when we need them,
5 they was not there. So I used whatever money we had. I
6 ended up taking a second mortgage and we had money to
7 survive for awhile and make it good. This was the slow
8 season for all the restaurants, but the problem it was from
9 the beginning they weren't behind us, and we end up losing
10 our house. We went back, you know, we survived, whatever we
11 --

12 Q. I need to ask one more question. Were you ever paid
13 the wages that you testified that you were owed?
14

15 A. No.

16 Q. And I think you have testified you were owed wages of
17 \$3,000 a month and for how many months are you looking to
18 recover those wages?

19 A. Well, I don't want to put from the beginning that I was
20 working to help him build the building. I put in from
21 August.
22

23 Q. From August 15?

24 A. From August 15th to January whatever.

25 Q. Until January 8th?

A. Of course my kids worked for free.

1 A. It was the beginning of January or the first week of
2 January, I don't know exactly the date.

3 Q. And what were you proposing at that time? What did you
4 want them to do?

5 A. I was offering to have a Greek restaurant and I was
6 looking for a back up partner and since they owned the
7 building, of course, they would be my landlords, but also
8 they would be my partners and since I would do all the work
9 I do not need them to work; that's what I wanted from my
10 partners when I need them to be behind me and back me up.
11 Like every restaurant the first year or two you need a back
12 up; somebody to loan money and get the business until they
13 build up.
14

15 Q. Okay, let me -- isn't it a fact that you actually
16 contacted them several months before that and your initial
17 proposal was that you wanted them to put up the money for
18 the restaurant and you would run it as a Greek restaurant?

19 A. No, sir. I never met them until that day. That's a big
20 lie.
21

22 Q. Your first proposal wasn't you wanted them to put up
23 the money and you wanted -- and you would run it?

24 A. No, sir.

25 Q. Okay. So your very first proposal to them was you
wanted them to go in 50/50 with you?

1 MR. PAPE: I object, Your Honor. The
2 document speaks for itself.

3 COURT: He's not being asked to
4 interpret the document, as I understand it.
5 As I understand your case, Mr. Pape, there
6 were issues outside the contract that have a
7 bearing on the claim. I think I allowed a
8 good bit of testimony on that, so I think
9 probably he at least can ask the question. I
10 don't know what the answer is, but I will
11 allow it.
12

13 BY MR. CLABAUGH:

14 Q. If Zorbas didn't pay the rent, what was your
15 understanding of what would happen?

16 A. Like every lease if you don't pay the rent, they would
17 kick you out.

18 Q. Okay. And you not only had to pay the rent but you had
19 to pay it by a certain date, is that correct?

20 A. I don't remember. I remember every month about the 15th
21 Cynthia would come and pick up the rent from the restaurant.

22 Q. Now directing your attention to the November 15th rent,
23 Zorbas did not pay the November 15th rent on the 15th, did
24 they?
25

A. Not on the 15th.

1 that today. Please let -- he can go play
2 golf or whatever.

3 MR. CLABAUGH: Can we all go? Can we
4 make it a foursome?

5 COURT: It suits me.

6 (A Brief Recess Was Taken.)

7 COURT: All right, ready when you are,
8 Mr. Clabaugh.

9 MR. CLABAUGH: Okay.

10 BY MR. CLABAUGH:

11 Q. Mr. Passaloukas, would you look again at Plaintiffs'
12 Exhibit No. 7? The -- I am sorry, I think it's No. 11, I am
13 sorry. Would you turn to the -- I think it's the back page
14 where again this is the document that was prepared after you
15 and the Bensches had already made, had already done the
16 majority of your work for the corporation, is that correct?
17 I think we've already covered the fact that by August the
18 15th the -- in fact the restaurant was open at that point in
19 time, so --
20

21 A. I think so.

22 Q. Okay. Earlier you testified though that pursuant to
23 that document that it was your understanding that the
24 Bensches had to make loans of \$20,000. Was that your
25 testimony?

1 A. I told you the truth, I don't even remember that we had
2 talked about numbers. I remember that they was supposed to
3 be my back up partners to help when we needed them. So all
4 that stuff, the figure -- we talked about it. I think I
5 went over and we signed it right quick and I didn't even
6 read most of the stuff. I had to run to get back to work.

7 Q. Okay, even if there was a --

8 A. If it is there, I guess it is there. Whatever it is.

9 Q. Even if they were required to make loans, there's
10 nothing in there that says when any loans have to be made is
11 there?

12 A. Well, it say here they are supposed to have a \$20,000
13 loan.

14 Q. But it doesn't say when, does it?

15 A. When we need them, I guess.

16 Q. That's not what it says.

17 A. I know.

18 Q. There's no date there at all. Now if you would look at
19 Plaintiffs' Exhibit No. 7 and turn to page 6 of that
20 document.
21

22 A. Go ahead.

23 Q. Look at -- do you see Paragraph 2.3 on Page 6?

24 A. Yes.
25

1 restaurant. I knew that they went out of town for awhile
2 because one of their daughters had a baby and I was
3 expecting them -- I was expecting them. It was holidays, I
4 was expecting them to come back to sit down and find a
5 solution for all the problems we had."

6 Q. Okay, now eight days later -- I am sorry, on January 8th
7 that's the day you went to the restaurant and you found the
8 eviction letter -- the notice of eviction on the premises?

9 A. Eight days from what?

10 Q. No, I said on January 8th, Plaintiffs' Exhibit No. 9?

11 A. That's correct. Whatever is the date.

12 Q. Okay, and you found that at the restaurant?

13 A. Yea, I found it at the restaurant.

14 Q. Okay, now when you got there and you found that, did
15 you attempt to contact Mr. Bensch?

16 A. Yes. I still think it was Sunday though when I found
17 that paper. It might say -- maybe they was talking about
18 the 8th, but the 8th we was open and anyway, it doesn't
19 matter. Whatever it says, it says.

20 Q. When you got there and you found that, did you attempt
21 to contact Mr. Bensch?

22 A. Yes. Yes, I called him and I went to his office. He
23 was not there. I tried to call him and we left a couple of
24 messages at their house. We knew they was out of town and
25

1 then hopefully -- you say after we had that? When did you
2 say when we tried to --

3 Q. When you go to the restaurant and you found this --

4 A. No, I never tried to contact them after. I went to see
5 my lawyer.

6 Q. Okay, you never did contact them?

7 A. No, not after that.

8 Q. And you didn't go back?

9 A. No.

10 Q. Because I thought you had previously testified that you
11 had attempted to contact them?

12 A. I tried to contact them after I had the letter -- after
13 I received the letter. But after we went over there and we
14 saw the papers, of course it would be illegal for them, for
15 us to try to do anything else so we went to our lawyer.

16 Q. Now you were -- pursuant to your agreement you were to
17 be the Manager of the restaurant. You were to run it, is
18 that correct?

19 A. That's correct.

20 Q. Okay. And for running the restaurant you were to be
21 paid a salary?

22 A. Right.

23 Q. Didn't you hire another manager for the restaurant?
24
25

BILL PASSALOUKAS - CROSS EXAMINATION BY MR. CLABAUGH

1 A. I hired a guy to help me with cooking and -- he was a
2 manager at some other jobs he did. He was a good cook, so -
3 - He was Greek, and that what I hired him for to help me
4 with the cooking and the management for the future.
5 Whatever we needed to do.

6 Q. So you hired somebody else to be a manager and paid him
7 a salary?

8 A. I just say what I hired him for. Don't say words I
9 haven't said.

10 Q. And during that time -- during that time in addition,
11 instead of paying yourself a salary, you paid yourself back
12 monies from the corporation, did you not?
13

14 A. I haven't got paid a penny for any of my work.

15 Q. I'm sorry you took back -- you paid yourself back what
16 you had said were loans to the corporation.

17 A. I was reimbursed some money.

18 Q. About \$9,500.00, correct?

19 A. Exactly.

20 Q. And do you recall testifying as to why you took the
21 money back as repayment of loans rather than as salary?
22

23 A. I was directed by Gil Fisher to do that.

24 Q. Okay, and Gil Fisher was the accountant?

25 A. Exactly.

MR. CLABAUGH: Yeah, that's what I am
saying.

A. I don't even know if the numbers are right. I can't
remember how much it was worth.

MR. PAPE: Mr. Passaloukas, I think he
is just asking you to go and compare the
items and the numbers and the identity as
best you can.

A. No, wrong numbers. The walk-in cooler -- I am sorry.
That's the same. Yeah, it is 90 cents off. Other than
that, it's good.

Q. Okay, so my understanding of your testimony is that the
Defendants' Exhibit No. 5 is a listing of the kitchen
equipment and restaurant equipment that you purchased for
Zorbas and it totals \$26,229.90?

A. Let me see again.

MR. PAPE: Do you have an extra copy of
that?

MR. CLABAUGH: I don't unfortunately.

A. I don't know if I have missed anything, but I want to
be careful. I know it is close, I don't know if anything
else missing. I have to spend more time on it.

Q. Well, take whatever time you need.

BILL PASSALOUKAS - CROSS EXAMINATION BY MR. CLABAUGH

1 Q. Why don't you tell us what equipment, kitchen equipment
2 is and refer to it if you would by on the left-hand side
3 Exhibit Numbers so we can all look at it.

4 A. What I am saying some stuff that I have here on my list
5 that is not on your list.

6 Q. And I am asking you if you will look over to the left-
7 hand side of the Exhibit you have in your hand which is
8 Plaintiffs' Exhibit No. 2, and tell me which numbered item
9 on the left-hand side you say is missing. I am not trying
10 to trick you.

11 A. Number 29. It's not here.

12 Q. Number 29 an item of \$703.

13 A. And fifty cents.

14 Q. And fifty cents.

15 A. Okay and it is very hard to say what was new and what's
16 used because some of that is just kitchen equipment and I
17 know for a fact that the walk-in cooler it was used and I
18 got a good deal on it.

19 Q. Okay, well, we'll get to that question in just a
20 moment. Anything other than the item number 29?

21 A. Let me see. Some equipment 241.68 I don't see it.
22 Number 18. Number 18, 241.68 I don't see that.

23 Q. Do you know what that was for. It just says -- it says
24 kitchen equipment, any idea what it is?
25

BILL PASSALOUKAS - CROSS EXAMINATION BY MR. CLABAUGH

1 MR. PAPE: Is that question -- the
2 steel?

3 MR. CLABAUGH: No.

4 MR. PAPE: And you are testifying not
5 Mr. Clabaugh.

6 A. Yeah, I thought it was part of the kitchen stuff.

7 COURT: Mr. Clabaugh, are you referring
8 to like steel --

9 MR. CLABAUGH: The equipment, yeah.

10 A. The 50.47 is there. \$1,000 is there. \$19.47. Yeah,
11 looks like. Whatever that brings it to.

12 Q. Okay, my understanding is that there were three items
13 you think that should be added there?
14

15 MR. CLABAUGH: Frank, can you add these
16 three items, 703.50, 241.68 and 8.90?

17 MR. PAPE: \$8.90?

18 MR. CLABAUGH: Yeah and then may I have
19 that, Mr. Passaloukas, for a moment. And
20 then add, so we have a total here, add that
21 number and then \$26,229.94.
22

23 MR. PAPE: Let me see the number again.

24 MR. CLABAUGH: Add the amount that we
25 added to it there so that --

A. That's all I see.

1 Q. Okay, Mr. Passaloukas, we have added those three items
2 in there so the total is now \$27,184.02 and what I would
3 like you to do is to take a highlighter first of all and
4 highlight those items which to your recollection were
5 purchased used.

6 A. Highlight here?

7 Q. Yeah, just highlight all the way across so that --

8 A. I think that is -- I can't remember.

9 MR. CLABAUGH: Your Honor, while he is
10 doing that, this is off the record. I
11 suggested to Mr. Pape that what I would like
12 to do or what I suggest we do, is we stop the
13 cross-examination of Mr. Passaloukas at this
14 point. Frank has an expert witness that he
15 wishes to tender - are you going to just read
16 it in or are you going to just tender it or
17 what are you going to do?
18

19 MR. PAPE: Your Honor, at this point in
20 time I needed to take my expert witness'
21 deposition and preserve it for use at trial
22 because he was going to be unavailable either
23 yesterday or today. And I would prefer to
24 have him testify live so if we are going to
25 adjourn until April of next year, I would

1 BENSCH - PASSALOUKAS (EXAMINATION)

2 as counsel and that was granted. So
3 here today the Bensches are proceeding
4 pro se.

5 All right; Mr. Passaloukas, please
6 answer any questions.

7 MRS. BENSCH: Does he need to be
8 sworn in?

9 THE COURT: Yes.

10 BILL PASSALOUKAS,
11 having been produced and first duly sworn as a
12 witness, testified as follows:

13 EXAMINATION

14 BY MRS. BENSCH:

15 Q Mr. Passaloukas, could you tell the
16 Court where you met the Bensches; how you met
17 the Bensches?

18 A Susan and I, we saw your unit was for
19 rent and we talked to one of your tenants over
20 there and subsequent you owned this place. We
21 got your phone and we called you. And the first
22 meeting I think was at your home.

23 Q Where is the Bensches' home? Is it
24 apartment, townhouse? Where is their home?

25 A It's a house in Windmill Harbor.

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 And I don't believe there's any
3 information to the contrary that I've
4 been shown. And based on that
5 representation, I understand Mr. Pape is
6 not proceeding to seek any of the
7 remaining equitable claims against Towne
8 Center, LLC.

9 MR. PAPE: That is correct, Your
10 Honor.

11 THE COURT: Does anyone have any
12 information to the contrary that in
13 fact Towne Center, LLC did own the
14 property?

15 MRS. BENSCH: No.

16 THE COURT: Can I get both of you
17 to put up your right hands back up
18 again.

19 GARY BENSCH AND CYNTHIA BENSCH,
20 having been produced and first duly sworn as a
21 witness, testified as follows:

22 EXAMINATION

23 THE COURT: Mrs. Bensch, is that
24 true, Towne Center, LLC did not own the
25 real estate at all times relevant to

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 this with regard to Zorba's?

3 MRS. BENSCH: I guess it didn't,
4 Your Honor.

5 THE COURT: Off the record.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 THE COURT: Any comments,
9 questions, Mr. Pape?

10 MR. PAPE: Your Honor, the only
11 lingering matter is that Towne Center,
12 LLC had filed some sort of cross claim
13 or counter claim and the pleading was
14 filed by Young Clement. And I'd ask to
15 strike that because for lack of
16 prosecution by Towne Center, LLC. It
17 hasn't appeared by counsel here today.

18 THE COURT: I would deem that to
19 be abandon.

20 The LLC was, and I guess, is owned
21 by the Bensches; is that correct?

22 MR. PAPE: It is.

23 THE COURT: And are one of you or
24 both of you registered agents for
25 process for Towne Center, LLC.

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 MR. BENSCH: We are.

3 THE COURT: And as both
4 individually and representatives for
5 Towne Center, LLC were you aware that
6 this trial was going on?

7 MR. BENSCH: Yes.

8 THE COURT: Yes, I'll deem those
9 abandon and strike those cross and
10 counter claims, whatever they were.

11 While we have poor sick Frank on
12 the phone here, are there any questions
13 that we can ask from Frank?

14 MR. PAPE: None from me, Your
15 Honor. And thank you Frank Clabaugh for
16 assisting us.

17 MR. CLABAUGH: Okay. Good luck
18 everybody.

19 THE COURT: Hopefully that record
20 makes some sense.

21 We are now proceeding without Towne
22 Center, LLC and Zorba's Incorporation as
23 defendants. Zorba's is still a
24 defendant; they are just in default,
25 right?

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 MR. PAPE: Yes.

3 THE COURT: And have been in
4 default at all times relevant as far as
5 I can tell.

6 Mrs. Bensch, you were cross
7 examining Mr. Passaloukas, there was an
8 objection which I overruled. I'll give
9 you some latitude and you can continue.

10 BY MRS. BENSCH:

11 Q Okay; at the first meeting did you ask
12 the Benschers to fund the restaurant completely?

13 A I can't remember.

14 Q Okay; what was their answer -- did you
15 have another meeting several months later with
16 the Benschers?

17 A We had many meetings.

18 Q Did you ever ask Mr. Bensch to just
19 up-fit this restaurant and fund this restaurant
20 for you, and did he ever tell you he wouldn't do
21 that, but he'd be a partner?

22 A The understanding was that I'm going to
23 put the money -- he's going to put the money to
24 fix the building and cash later to help us get
25 going with the business. That was the

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1 PAPE - STEINBERG (EXAMINATION)

2 go off the record.

3 (Whereupon, a brief recess was
4 taken.)

5 MR. PAPE: First of all, Your
6 Honor, I believe we have a stipulation
7 that the restaurant seating capacity was
8 50.

9 THE COURT: Is that correct,
10 Mrs. Bensch?

11 MRS. BENSCH: Yes.

12 ROBERT STEINBERG,
13 having been produced and first duly sworn as a
14 witness, testified as follows:

15 EXAMINATION

16 BY MR. PAPE:

17 Q What is your name, sir?

18 A Robert Steinberg.

19 Q And where do you live, Mr. Steinberg?

20 A Hilton Head Island, South Carolina.

21 Q What business are you in?

22 A Hilton Head business brokers.

23 Q You are a business broker?

24 A Correct.

25 Q And how long have you been in that

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1 PAPE - STEINBERG (EXAMINATION)

2 business?

3 A Since 1979.

4 Q Have you ever been involved in a
5 purchase or sale of a restaurant business?

6 A Quite often.

7 Q Over the time you've been involved in
8 sale or the purchase of restaurants, how many
9 restaurants would you estimate you've sold?

10 A Probably about 150.

11 Q About 150; Okay?

12 MR. PAPE: Your Honor, I'd like to
13 offer Mr. Steinberg as an expert to
14 evaluate the value of the restaurant
15 business located at Suite 101 Towne
16 Center occupied by Zorba's, Inc. On
17 January 8th, 2000.

18 THE COURT: Mrs. Bensch.

19 EXAMINATION

20 BY MRS. BENSCH:

21 Q Mr. Steinberg, are you a licensed
22 appraiser?

23 A A licensed appraiser.

24 Q Yes?

25 A No, I'm not a --

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1 BENSCH - STEINBERG (EXAMINATION)

2 Q Commercial appraiser?

3 A No, I'm not a licensed appraiser.

4 Q And how many restaurants have
5 appraised?

6 A How many restaurants have I appraised.

7 Q Uh-huh?

8 A Every restaurant that I've listed. If
9 I don't get the proper information and data, and
10 if I can't price it, I won't have anything to do
11 with it. So just about every restaurant that
12 we've represented I've evaluated.

13 Q That would be approximately?

14 A Well, we've sold about 150 and I've
15 listed more than that. Some of them we haven't
16 been able to sell.

17 MRS. BENSCH: Okay; thank you.

18 MR. PAPE: Again, I offer Mr.
19 Steinberg.

20 THE COURT: Any objections, Mrs.
21 Bensch?

22 MRS. BENSCH: No objection, Your
23 Honor.

24 EXAMINATION

25 BY MR. PAPE:

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1 PAPE - STEINBERG (EXAMINATION)

2 Q Mr. Steinberg, do you remember early in
3 2000 -- I know it's been 9 years ago what I've
4 did I ask you to evaluate a restaurant for me?

5 A I believe so, yes.

6 Q And did I ask you to go down to the
7 location where the restaurant was and take a
8 look at it? Do you remember going down there?

9 A Yes.

10 Q I'm going to give you a hypothetical
11 question and then ask you to tell me the
12 approximate value of the restaurant as of
13 January 8th, 2000. I'm going to give you some
14 details and here we go; and if you have any
15 questions about any of these details let me
16 know?

17 On or about May 2nd, 2000 a
18 restaurant that was located at Suite 101
19 where the Zorba's restaurant was located,
20 was sold to a company, a Mexican restaurant
21 by the name of Mi Terra for the sum of
22 \$75,000. Mi Terra's subsequently opened a
23 Mexican restaurant there. Of that \$75,000
24 sales price, \$37,500 was allocated for
25 furnishings and equipment. \$37,500 was

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1 PAPE - STEINBERG (EXAMINATION)

2 allocated for goodwill. The size of the
3 premises where the restaurant was located
4 was about 1600 square feet, and there was a
5 patio that had about another 308 square
6 feet.

7 The restaurant was originally opened by a
8 company by the name of Zorba's, Inc. In
9 approximately mid August of 1999. The cost
10 of the furnishing and the equipment at that
11 time were about -- I remember one of the
12 list that's already been presented into
13 evidence about \$27,000 -- \$26-\$27,000 and
14 most of the equipment at that time when
15 Zorba's, Inc. Was originally opened it was
16 used equipment.

17 From mid August of 1999 to the end of
18 December, gross receipts were about 19 to
19 \$20,000 a month. About \$16,600 from mid
20 August through the end of August; about
21 \$26,000 in September; \$26,000 roughly in
22 October; \$21,000 roughly in November;
23 \$17,630 in December.

24 The restaurant was -- some time on or about
25 January 8th or 9th the landlord evicted the

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1 PAPE - STEINBERG (EXAMINATION)

2 tenant from the restaurant and took over the
3 operation. And from about February or so,
4 up until May 2nd, the landlord, Mr. And
5 Mrs. Bensch, operated that facility as a
6 restaurant. It changed the cuisine from a
7 Greek restaurant to an Italian American
8 restaurant and it changed the name from
9 Zorba's to Nicolai's. There were some
10 slight changes in the decor; landlord added
11 a new stove, put a new sign on the premises,
12 and eventually sold it.

13 Based upon those assumptions do you have an
14 opinion as to the value of the restaurant as
15 it was owned and operated by Zorba's, Inc.
16 As a Greek Restaurant as of January 8th,
17 2000?

18 A Actually, I want to ask a question.

19 Q Okay?

20 A The restaurant was opened for business
21 for about what -- four or five months.

22 Q About four and-a-half months, yes?

23 A Okay; my knowledge of a facility of
24 that size and whatever the basic FF&E, that's
25 furniture, fixtures, and equipment, and

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1 PAPE - STEINBERG (EXAMINATION)

2 improvements if you were to go in four walls,
3 floor, ceiling, whatever would be anywhere from
4 70 to 80, \$85,000 just to replace just to do
5 what you were doing.

6 Now, basically you've made a
7 mention that it was priced at 75 with half
8 for FF&E and the other half for goodwill.

9 Q Right?

10 A Realistically, there's no goodwill.
11 When you have a restaurant that's open four or
12 five months, the only reason you apply a number
13 for goodwill is realistically for accounting for
14 tax reasons because it has a solid depreciable
15 number applied to that number. But in order to
16 utilize a number for goodwill, realistically in
17 food and beverage, you'll take a cashful
18 analysis over a three year period, times a
19 percentage and a solid number that's on the tax
20 return and that gives you a legitimate goodwill
21 number.

22 But to open that restaurant from
23 day one, furniture, fixtures, equipment, and
24 lease holdings I think \$75,000 is a very
25 fair number.

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1 BENSCH - STEINBERG (EXAMINATION)

2 irrelevant.

3 MRS. BENSCH: No, it won't be,
4 Your Honor.

5 THE COURT: It seems irrelevant,
6 but if you can tie it in, go ahead.

7 BY MRS. BENSCH:

8 Q So are you basing your information on
9 the fact that -- if you were selling a
10 restaurant or showing you would base the
11 value -- would the lease have any value?

12 A Would the lease have value.

13 Q Uh-huh?

14 A In most situations when you are selling
15 the restaurant one of the contingencies is that
16 you can assume an existing lease and have the
17 landlord give you an extension because most of
18 the time there's only a short period of time
19 left on the lease.

20 Q Okay?

21 A Now, as far as the value, you can't
22 sell the business without a lease. But as far
23 as putting a value on the lease, realistically
24 on a facility that's been opened for four or
25 five months there's no real value on the lease.

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1 BENSCH - STEINBERG (EXAMINATION)

2 going to go down unless you get a lease.

3 Q Yeah, that's what I'm saying?

4 A But it has nothing to do with a value.

5 Q Okay; so in other words if you walked
6 into a restaurant and I said I want you to sell
7 you my restaurant for \$75,000. I have a lease
8 for 18 months remaining you can extend it with
9 my landlord. I can get him to give you a letter
10 of commitment for that and here's all the
11 equipment and furnishing in here and I'm asking
12 you for \$75,000, and/or I took you next door and
13 I said now here is a building I have no lease
14 on, I don't know the landlord, I don't know if
15 you can ever get a lease here and here is some
16 equipment, furnishing, they're exactly the same
17 value?

18 A Yes. Because the deal is not going to
19 consummate unless the purchaser can acquire a
20 lease that they feel comfortable with the
21 landlord.

22 Q But Mr. Steinberg, are you
23 understanding what I'm saying that without the
24 lease the value -- there is no value. That's
25 what you just said, right?

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1 BENSCH - STEINBERG (EXAMINATION)

2 A You're trying to put words in my mouth.

3 Q I'm sorry?

4 A Whether it's the facility, the hard
5 assets of the facility plus the improvements are
6 valued at \$75,000; okay. Whether there's a
7 lease in place now or not, it's still valued at
8 \$75,000 and the purchaser will sit down with the
9 landlord if there is not a lease and acquire a
10 lease that they feel comfortable with. If they
11 can't acquire a lease there's no sale.

12 Q All right?

13 A But I don't know of any landlord on
14 Earth that has a facility that's fully equipped
15 that is not going to give someone a lease.

16 Q Okay?

17 MRS. BENSCH: There's an exhibit,
18 Your Honor, it was a general contractor
19 agreement for Gary Bensch for the
20 expansions of the Mi Terra Restaurant
21 was actually part of the agreement with
22 Nicolai's and Mi Terra that Mr. Bensch
23 would do all of these things for the --
24 really under the goodwill issues and as
25 well as the sale of equipment and

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1 BENSCH - STEINBERG (EXAMINATION)

2 THE COURT: Assume the deal had to
3 consummate, what's the restaurant
4 worth? Assume the sellers had passed
5 away and the estate were liquidating
6 the restaurant and had there's no
7 balance on the restaurant, all things
8 being equal; what's it worth?

9 THE WITNESS: Again, it depends how
10 long the restaurant has been in
11 business, which is very, very
12 important. It depends on the size of
13 the restaurant, the location of the
14 restaurant.

15 THE COURT: Okay; but the one you
16 testified to today --

17 THE WITNESS: That restaurant -- if
18 someone owned it for four months and
19 passed away or whatever, and there was
20 two months left on the lease, someone
21 would come -- and I would bring a client
22 in to buy the restaurant, that's the
23 assets of the restaurant. But, again, it
24 will be contingent on the landlord
25 giving a new lease or extension of the

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1 BENSCH - STEINBERG (EXAMINATION)

2 lease.

3 THE COURT: What if that were
4 impossible? What if the shopping center
5 was being leveled to make an interstate?

6 THE WITNESS: Then there's no value.
7 What you will have to do, you'll call a
8 wholesaler up that buys used restaurant
9 equipment and he'll give you "x" amount
10 of dollars for it what it is.

11 THE COURT: What I'm trying to
12 understand is your testimony here today
13 on the value of the restaurant is based
14 on how much lease left?

15 THE WITNESS: No. My estimate of
16 the value of what is in there is the
17 furniture, fixtures, equipment, and the
18 leasehold improvements are valued
19 proximately \$75,000 because that's
20 what -- if you were going to do it today
21 you'd have to give somebody pretty close
22 to that number.

23 THE COURT: But you're basing that
24 on the ability of a buyer to continue to
25 lease in the same spot, right?

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1 BENSCH - STEINBERG (EXAMINATION)

2 THE COURT: What if you can't?

3 THE WITNESS: Most of the time if
4 there's only a short period of time;
5 someone is going to buy it no matter
6 what.

7 THE COURT: So what is its worth?

8 THE WITNESS: Again, it's really
9 not salable.

10 THE COURT: Okay; I'm sorry, I
11 didn't mean to interrupt.

12 THE WITNESS: And I don't know of
13 any landlord on Hilton Head Island
14 that -- unless, like you said, they're
15 going to tear the building down.

16 THE COURT: That's was a
17 hypothetical because I was trying to
18 understand your answer to Mrs. Bensch's
19 question from earlier which confused
20 me.

21 But anyway, go again, Mrs. Bensch.

22 MRS. BENSCH: Your Honor, I'd like
23 to submit a permit from Benchmark
24 Builders for that restaurant to do all
25 the up-fitting and changes for it to

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1 PAPE - STEINBERG (EXAMINATION)

2 Q So you don't even know if it was a
3 covered area or an open area?

4 A No.

5 THE COURT: Your question was you
6 don't remember if it was a covered area
7 or an opened area and he said he don't
8 remember.

9 MRS. BENSCH: Yes.

10 MR. PAPE: Your Honor, if you'll
11 permit me.

12 EXAMINATION

13 BY MR. PAPE:

14 Q Mr. Steinberg, you're charging me a fee
15 today for this appearance, and what is the
16 amount of that fee?

17 A Can I give an answer that won't get me
18 in trouble? Whatever you want to give me; okay.

19 Q Is \$250 okay?

20 A That's fine.

21 Q Let me ask you if there was an option
22 to renew for an additional five year term would
23 that affect the value of the restaurant, of
24 \$75,000?

25 A No. I think I've answer that in many

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1 PAPE - STEINBERG (EXAMINATION)

2 objection is trying to assume what some
3 landlord would do for whatever
4 50 million reasons he might want to do
5 something for; applies to everything.

6 MR. PAPE: My question is
7 reasonable.

8 THE COURT: I mean, you can answer
9 it if you know.

10 THE WITNESS: The only reason a
11 landlord would turn it down is, number
12 one, maybe he checked the people out
13 and they weren't solid enough, number
14 one, in credit; and number two maybe he
15 didn't feel comfortable with what they
16 wanted to do in the facility.

17 MR. PAPE: I don't have any
18 further questions.

19 THE COURT: Anything else, Mrs.
20 Bensch?

21 MRS. BENSCH: No.

22 THE COURT: I don't have anything
23 else. Thank you very much, sir.
24 You're excused.

25 (Whereupon, the questioning of

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 MRS. BENSCH: Yes, sir.

3 BY MRS. BENSCH:

4 Q Would you take a look at that, Mr.
5 Passaloukas, please?

6 A I believe we have talked about all
7 these things and they were not taken care of it
8 and it seems like we presented a letter like
9 that to -- in the shareholder's meeting if I
10 remember correctly. It's been so long, so I
11 cannot --

12 Q Well, the chronology is I believe that
13 shareholder's meeting was December the 8th?

14 A I don't know. I don't even remember.

15 MR. PAPE: I apologize. You're
16 testifying your way in and forgive me,
17 but the record has already stated it was
18 December 15th. We have a stipulation
19 from the previous hearing.

20 BY MRS. BENSCH:

21 Q So you gave him this December the 15th
22 at the shareholder's meeting?

23 Would you look at that list, Mr.
24 Passaloukas? Again, you're saying that you
25 wrote this list 10/16/99, or there is a date

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 A No, he was not a waiter.

3 Q He was the cook; okay?

4 And you had him as a signee on the
5 bank account checks?

6 A Yes, I did.

7 Q Okay; who made up the daily orders for
8 food and what was missing and things like that?
9 I mean, what was needed to be reordered or
10 whatever?

11 A Who made it.

12 Q Yeah?

13 A Usually me and Susie in the morning and
14 sometimes when I was not there Nick.

15 Q Okay; Nick, the cook; okay?

16 For tax purposes at the end of '91,
17 did you do -- since this was a new
18 restaurant and didn't have a real record and
19 all did you do an inventory report for the
20 accountant at the end of December '99?

21 A I don't remember. I know we did a
22 couple of inventories. I cannot remember what
23 and when.

24 Q Do you have a copy of any inventories
25 that were done for that restaurant?

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 A How would I, Cynthia? You took
3 everything.

4 Q Sir, I'm talking about for the
5 accountant?

6 A I don't have anything.

7 MR. PAPE: We've already had some
8 evidence in the record, Your Honor, of
9 some inventories.

10 MRS. BENSCH: Well, I'm asking did
11 he give the accountant an inventory list
12 for tax reason as the manager.

13 THE WITNESS: I cannot remember. I
14 must have given him something, whatever
15 it should be in the records. How can I
16 remember after ten years?

17 BY MRS. BENSCH:

18 Q Well, we're trying to establish
19 inventory is the reason why I'm asking you that.
20 And you can't remember; okay?

21 At the shareholder's meeting, do
22 you remember the issues that were discussed?

23 A We discussed the problems that -- with
24 the unit, the stuff that was supposed to be
25 fixed that was not fixed. We discussed about

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 would, Mrs. Bensch.

3 MRS. BENSCH: A large part of
4 their claim, Your Honor, is that the
5 Bensch's in somehow, in some way, are
6 responsible for the failure of this
7 organization -- this corporation
8 because they refused to put money in
9 the corporation, so that's why I'm
10 going there.

11 BY MRS. BENSCH:

12 Q Mr. Passaloukas, did Mr. Bensch -- did
13 you ask him to give you more money for this
14 corporation to exist?

15 A Yes, we did.

16 Q Do you remember how much you asked him
17 for?

18 A No, I don't remember.

19 Q You don't have any idea whether it was
20 \$50 or --

21 A I remember that we were asking for help
22 for money to put in the business from the day we
23 opened. That's the only reason I needed Gary.
24 I did not need him to come there and cook or
25 tell me how to do. I knew how to do the thing.

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 A To pay my bills? You don't pay my
3 bills --

4 Q To pay the bills of Zorba's?

5 A It would keep Zorba's going.

6 Q And you don't remember if your partner
7 when asked to give you more money refused or
8 said yes?

9 A I cannot remember if he refused or not.

10 Q Okay?

11 A Whatever is in the records. I'm sure
12 he refused because you didn't put in any more
13 money.

14 Q If he had given you 20 or \$30,000
15 should he have gotten more stock?

16 MR. PAPE: Your Honor, I object.

17 That's calls for legal conclusion and
18 it's a hypothetical. It's not based on
19 any facts in the record or in any of the
20 agreements.

21 THE COURT: Sustained.

22 BY MRS. BENSCH:

23 Q So when Mr. Bensch asked you for
24 more -- I mean, when you wanted more money to be
25 given to you by Mr. Bensch do you think he

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 A You know it. You couldn't come to my
3 face. You had to come and go on Sunday when I
4 was not there and change the locks. You did it;
5 you and him.

6 Q You testified that there were personal
7 items left in the restaurant of some value, and
8 you knew you had not paid the December rent,
9 right? Through the whole month of December you
10 didn't write a check, right?

11 A I cannot remember.

12 Q You didn't pay it all the way through
13 January the 8th; the Bensches never got a check
14 all the way through January the 8th?

15 And you knew your lease said if you
16 didn't pay your rent that that was a default
17 of the lease and it would be terminated?

18 A You used to come there and pick up the
19 check every month.

20 Q No sir; my question was you knew --

21 A I was waiting for you to come there.

22 Q -- you had not paid -- no, sir, that's
23 not what you're supposed to --

24 A Every check.

25 THE COURT: Allow her to ask her

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 Cynthia.

3 Q But you didn't put in it for December?

4 MR. PAPE: Your Honor, it's already
5 been asked and answered.

6 THE COURT: Yes, no rent from
7 December.

8 BY MRS. BENSCH:

9 Q So when you were in possession of all
10 of these things in there and you were aware that
11 your wife's medicine and some rings and things
12 were there, and that your landlord could
13 possibly evict you, why didn't you move your
14 personal items out of there?

15 A Because I would never imagine that you
16 were going to do something dirty like that,
17 Cynthia.

18 Q Oh, you never thought the landlord
19 would evict you for nonpayment of rent?

20 A Exactly. Not like that.

21 Q For nonpayment of rent?

22 A We had issues to take care like
23 partners that you did not take care of.

24 Q Did you have any of those items
25 insured?

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 A No.

3 Q Do you know where you bought that
4 diamond ring from?

5 A I don't have diamond ring like you.

6 Q Do you know where you bought that ring?

7 A No, I don't.

8 Q Do you have any idea if you paid
9 10,000, 2,000, 500; you don't have any idea what
10 you paid for that ring?

11 A No.

12 Q Okay; were any of the checks to any of
13 your vendors returned because the money wasn't
14 in the account in December?

15 A I cannot remember. You have my
16 records, Cynthia. You took everything.

17 Q You don't remember any vendor checks?

18 A No.

19 Q Did you eventually pay taxes and
20 withholdings, etc. On Zorba's at some date for
21 the final --

22 A Whatever you have.

23 Q Well, sir, this was after the
24 restaurant closed. You don't remember --

25 A You took everything. How am I going to

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 pay taxes, Cynthia.

3 Q No this was after the restaurant was
4 closed?

5 A Exactly you took everything.

6 THE COURT: Well, I think the
7 question is did you make any payments on
8 any Zorba's bills after the close of the
9 restaurant.

10 THE WITNESS: No.

11 THE COURT: Okay.

12 THE WITNESS: They had my -- they
13 took my checkbook. They took
14 everything.

15 MRS. BENSCH: Okay.

16 Your Honor, for now I'd like to
17 ask the Court if I can call this
18 witness later for rebuttal if I need
19 to.

20 THE COURT: Certainly.

21 MRS. BENSCH: Okay; thank you.

22 That's all I have, Mr. Passaloukas.

23 (Whereupon, the questioning of Bill
24 Passaloukas concluded at 3:00 p.m.)

25 MR. PAPE: Your Honor, I will

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1 BENSCH - PASSALOUKAS (EXAMINATION)

2 probably have some more questions, but I
3 got a witness outside, an expert witness
4 and I need to put in some foundation
5 evidence before I can call him and if I
6 can step outside just to speak with him
7 for two minutes, I would appreciate it.

8 THE COURT: No problem.

9 (Whereupon, a brief recess was
10 taken.)

11 MR. PAPE: Your Honor, I'd like to
12 call Mr. Warco. I don't believe I don't
13 need any further foundation information.
14 Let me get Mr. Warco.

15 THE COURT: Raise your right hand,
16 please, sir.

17 RAYMOND WARCO,
18 having been produced and first duly sworn as a
19 witness, testified as follows:

20 EXAMINATION

21 BY MR. PAPE:

22 Q What is your name, please, sir?

23 A My name is Raymond E. Warco.

24 Q And what is your job, please, Mr?

25 Warco?

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1 PAPE - WARCO (EXAMINATION)

2 A I'm a certified public accountant.

3 Q And where did you get your training?

4 A I went to Clarion University of
5 Pennsylvania.

6 Q And are you licensed in the State of
7 South Carolina?

8 A Yes, I am.

9 Q How many years have you been
10 practicing?

11 A I'm in my 39th year.

12 Q And where are you employed?

13 A I'm employed at the firm Cherry,
14 Bekaert & Holland.

15 Q In Beaufort?

16 A Actually, we opened up a new office.
17 We're in Bluffton now.

18 Q I've asked you to prepare a
19 complication of certain assets and liabilities
20 of a corporation called Zorba's, Inc.; is that
21 correct?

22 A Yes, sir.

23 Q And have you done that?

24 A I have.

25 MR. PAPE: Your Honor, I'd like to

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1 BENSCH - WARCO (EXAMINATION)

2 offer Mr. Ray Warco as an expert witness
3 to testify to this compilation of assets
4 and liabilities that he's prepared to
5 present to the Court today.

6 THE COURT: You're offering him as
7 an expert accountant?

8 MR. PAPE: Yes, sir.

9 THE COURT: Mrs. Bensch?

10 MRS. BENSCH: Where did he get his
11 information from for this consultation?

12 THE COURT: Well, right now we're
13 at the stage as to whether or not he's
14 qualified to testify as an expert
15 witness of accounting.

16 EXAMINATION

17 BY MRS. BENSCH:

18 Q So you've done a restaurant before?

19 A I have.

20 Q And how many have you done?

21 A Over the years probably 50.

22 Q And that was based on --

23 MRS. BENSCH: Well, go ahead?

24 That's fine, Your Honor.

25 THE COURT: Okay.

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1 PAPE - WARCO (EXAMINATION)

2 EXAMINATION

3 BY MR. PAPE:

4 Q Your Honor, and Mr. Warco I'm going to
5 give you a lengthily list of assumptions and
6 then ask you for your opinion?

7 A Okay.

8 Q Did I ask you to compile a report which
9 shows how the net equity in the company to be
10 distributed among shareholders; shareholders
11 being Mr. And Mrs. Bensch, who are 50 percent
12 shareholders, and Mr. And Mrs. Passaloukas, who
13 are 50/50 shareholders; is that right?

14 A Yes, sir.

15 Q Did I give you a list of assets that I
16 have told you belong to the assets of the
17 corporation?

18 A You did.

19 Q And did I ask you to calculate interest
20 on assets as of a certain date?

21 A Yes, you did.

22 Q And I've asked you to assume the
23 following things: I've asked you to assume that
24 a restaurant belonging to Zorba's was worth
25 \$75,000 as of January 2000 -- and by the way, if

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1 PAPE - WARCO (EXAMINATION)

2 any of those assumptions are incorrect -- they
3 might need clarification -- I want you to stop
4 me if there's any of those assumptions -- I've
5 advised you that the restaurant was subsequently
6 sold on May 2nd, 2000 for the sum of \$75,000 and
7 that interest is owed on that --

8 A You said May 2nd -- repeat that date
9 again, please.

10 Q May 2nd, 2000?

11 A Okay.

12 Q That interest is owned on that amount
13 at a legal rate at 8 3/4 percent from May 2nd,
14 2000?

15 I'd ask you to assume on
16 January 8th Zorba's owned leasehold
17 improvements which were valued at 60,344.99
18 on January 9th, 2000 and that interest is
19 owned on that amount of the legal rate of 8
20 3/4 percent per annum from January 9th,
21 2000.

22 I've asked you to assume also that
23 Zorba's owned an insurance policy on
24 January 9th, 2000 and that the premium paid
25 for the policy was reimbursed by the

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1 PAPE - WARCO (EXAMINATION)

2 insurance company in the sum of \$1,281 and
3 that interest is owned on that amount of a
4 legal rate at 8 3/4 percent on January 9th,
5 2000.

6 I've asked you to assume that Zorba's
7 owned stock and trade inventory, consumable
8 items, as of January 8th or 9th 2000, which was
9 valued at \$6,000 and that interest is owned on
10 that amount at the legal rate of 8 3/4 percent
11 per annum from January 9th, 2000?

12 I've advised you that Zorba's, Inc.
13 Had interest in a security deposit on
14 January 8th or 9th 2000, the sum of \$1,000
15 and that interest is owed on that amount of
16 a legal rate of 8 3/4 percent from January
17 9th, 2000.

18 I've asked you to assume that
19 Zorba's, Inc. Owned an interest in a
20 security deposit made to its landlord on
21 January 9th, 2000 in the sum of \$1,885 and
22 that interest is owed on that amount at the
23 legal rate of 8 3/4 percent per annum from
24 January 9th, 2000.

25 I've asked you to assume that Bill

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1 PAPE - WARCO (EXAMINATION)

2 Passaloukas, who is one of the shareholders,
3 is owned the sum of \$14,400 in salary for
4 work performed on behalf of Zorba's, Inc.
5 For a period of from August 15, 1999 through
6 January 8th, 2000 and that interest is owned
7 on that amount of a legal rate of 8 3/4
8 percent per annum from January 9th, 2000.

9 I've asked you to assume that Bill
10 Passaloukas and Susie Passaloukas, who are
11 the Plaintiffs in this lawsuit, are
12 shareholders of Zorba's, Inc. Jointly owning
13 50 percent of the shares of Zorba's, Inc.
14 I've asked you to assume that Gary Bensch
15 and Cynthia Bensch, who were two Defendants
16 in this lawsuit, are shareholders of
17 Zorba's, Inc. Jointly owning 50 percent of
18 the shares.

19 I've asked you to assume that Gary
20 Bensch and Cynthia Bensch made contributions
21 to Zorba's, Inc. Totaling the sum of
22 \$62,995.09 and of the \$62,995.09
23 contribution which they made \$30,000 was at
24 risk capital contributions for which they
25 purchased their 50 percent shares of

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1 PAPE - WARCO (EXAMINATION)

2 Zorba's, Inc.

3 I've asked you to assume that of
4 the contributions the Bensches were
5 reimbursed the sum of \$6,288.32 by Zorba's,
6 Inc. The remaining portion of their capital
7 contributions was considered as a loan to
8 Zorba's, Inc. And that the amount of that
9 loan is 26 -- doing the math, the amount of
10 that loan is \$26,076.77. And I've asked you
11 to assume that interest is owned on that
12 amount to the Bensches at the legal rate of
13 8 3/4 percent per annum from January 9th,
14 2000.

15 I've asked you to assume that Bill
16 Passaloukas and Susie Passaloukas made
17 contributions to Zorba's, Inc. Totaling the sum
18 of \$68,875.16. That of that \$68,875.16 the
19 contributions made by the Passaloukas' \$30,000
20 was at risk capital contribution for which they
21 purchased their 50 percent for Zorba's, Inc.
22 I'd asked you to assume that the Passaloukas'
23 where reimbursed the sum of \$9,500 by Zorba's,
24 Inc. I've asked you to assume that the
25 remaining portion of their capital contributions

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1 PAPE - WARCO (EXAMINATION)

2 was considered a loan of Zorba's, Inc, and that
3 that sum is 29,375.16. And that interest is
4 owned to the Passaloukas' on that money from the
5 legal rate of 8.75 percent per annum from
6 January 9th, 2000.

7 Have you prepared a report based on
8 those assumptions?

9
10 A I have.

11 Q And let's go ahead and mark that report
12 as a Plaintiff's exhibit?

13 MR. PAPE: And I believe this will
14 be Plaintiff's Exhibit Number 27.

15 THE COURT: Have the Benschers seen
16 all this?

17 MR. PAPE: Not yet.

18 (Whereupon, Plaintiff's Exhibit
19 Number 27 was marked for
20 identification.)

21 BY MR. PAPE:

22 Q Now, will you please explain to the
23 Judge how to read that report?

24 A I will. I broke this report down into
25 various sections. One being the assets -- one

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1 PAPE - WARCO (EXAMINATION)

2 being the assets, and that was at the value of
3 the date of the inception; the other being the
4 liabilities.

5 The assets are shown as positive
6 numbers. The liabilities are shown as a
7 negative number, and equity is shown as a
8 negative number. And that first column of
9 numbers you will see that they balance; the
10 assets equal the liabilities and the equity.

11 I also used an additional column to
12 reflect the amount of interest on all of the
13 assets and all the liabilities to come over
14 to a total net at the very end of -- that's
15 through today -- of 260,941.71.

16 The last section that I have here
17 shows the amounts payable to the
18 individuals. Wherein, I show the salary
19 being payable plus interest to
20 Mr. Passaloukas; the loan repayable to
21 Mr. Bensch with interest; the loan repayable
22 to Mr. Passaloukas with interest, and then
23 their respective shares of the equity as of
24 today, which is split 50/50.

25 Q Okay; does your report comply with

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1 PAPE - WARCO (EXAMINATION)

2 general accepted accounting standards assuming
3 that the assumptions which I have described to
4 you are accurate?

5 A That is correct.

6 Q Based upon your calculations, what is
7 the amount that's owed to the Passaloukas' out
8 of Zorba's, Inc. As their share of equity, loan
9 repayments owed to them, interest owed, the loan
10 to them, for salary owed to Mr. Passaloukas, and
11 for interest on that salary?

12 A That number is in the fourth column of
13 my body of numbers, and that number is
14 145,938.50.

15 Q Okay; if the Court were to award any
16 additional items of damages such as attorney's
17 fees to the corporation or punitive damages, how
18 would that affect the share owed to the
19 Passaloukas'?

20 A That would increase.

21 Q So let me ask you, if the Court would
22 award \$50,000 in attorney's fees, how much would
23 that increase the award to the Passaloukas'?

24 A Well, I have to look to see the way the
25 \$50,000 is allocated, but I'll presume that's

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1 PAPE - WARCO (EXAMINATION)

2 all going to the Passaloukas'.

3 Q Well, the \$50,000 in attorney's fee,
4 assume that would all go to the corporation?

5 A Okay; so then it's going to get split
6 50/50.

7 Q And that would be split 50/50?

8 A Right.

9 Q So a \$50,000 award for attorney's fees
10 for the corporation would yield another \$25,000
11 going to the Passaloukases?

12 A That's correct.

13 Q And would that also be true with
14 respect for any award that the Judge might
15 consider with respect to punitive damages, if
16 assuming the Judge would consider an item like
17 that?

18 A That's correct.

19 Q So a \$50,000 award to Zorba's, Inc.
20 Having been wrongfully evicted would result in a
21 net yield to the Passaloukases of \$25,000?

22 A Additional \$25,000, correct.

23 Q When restaurants are set up, are there
24 normally several different types of accounts
25 that they set up including an upbringing account

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1 PAPE - WARCO (EXAMINATION)

2 and a payroll account?

3 A Are you referring to bank accounts.

4 Q Yes?

5 A Yes. Yes, sir.

6 Q Tell the Judge what role payroll
7 accounts play in an enterprise like this
8 restaurant?

9 A Typically a payroll account is used
10 wherein all the payroll checks are written out
11 of the payroll account, and typically only
12 payroll checks are written out of the payroll
13 account and money is transferred into the
14 payroll account from the general operating
15 account which is the second account to cover the
16 payroll.

17 So typically the day of the payroll
18 there maybe for instances, \$14,000 worth of
19 checks written to cover payroll, but there's
20 a \$14,000 transfer into the account to cover
21 that payroll. When all those checks clear,
22 we have \$1,000 left.

23 Q I want to be quite frank with you; the
24 Judge has raised an issue about the payroll
25 account in this case. What should he be -- in

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1 BENSCH - WARCO (EXAMINATION)

2 trying to determine how to account for the
3 assets of this corporation and to be sure we've
4 identified all the assets and that they have
5 properly been distributed to the shareholders,
6 after doing the accounting what concerns should
7 the Court have?

8 A On the payroll account itself.

9 Q Yes, with respect to the payroll
10 account itself?

11 A Just balance of the account as of any
12 given date and time.

13 Q So if this corporation stopped existing
14 on January 8th, 2000 all we need to look at is
15 the balance that was in that account is of that
16 date?

17 A That's correct.

18 MR. PAPE: I don't have any further
19 questions.

20 THE COURT: Mrs. Bensch?

21 EXAMINATION

22 BY MRS. BENSCH:

23 Q Okay; Mr. Warco, did you see the lease
24 for Zorba's; this restaurant that you're -- that
25 we're involved in?

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1 PAPE - WARCO (EXAMINATION)

2 up interest, etc. And came up with what
3 Mr. Pape asked him to.

4 Is that right, Mr. Pape?

5 MR. PAPE: Yes, sir; that's
6 correct.

7 MRS. BENSCH: Thank you. No
8 further questions.

9 MR. PAPE: Your Honor, I do have
10 one.

11 EXAMINATION

12 BY MR. PAPE:

13 Q Do you intend to charge the
14 Passaloukases a fee for your appearance?

15 A I do.

16 Q What's that fee?

17 A It's approximately \$1,500.

18 Q All right; thank you?

19 MR. PAPE: I don't have any further
20 questions.

21 THE COURT: Okay. I don't have
22 any questions. Thank you.

23 (Whereupon, the trial concluded at
24 4:00 p.m. and was postponed until
25 the following day.)

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1 COURT: Okay, good morning everyone. We
2 are back on the record in 00-CP-07-524. I
3 think when we left we were having cross-
4 examination of Mr. Passaloukas. Is that
5 where we were?

6 MR. PAPE: I think we had completed the
7 cross-examination. We never did get a moment
8 for reply, Your Honor.

9 COURT: All right, go ahead sir. Mr.
10 Passaloukas, you are still under oath.

11 MR. PASSALOUKAS: Yes.

12 BY MR. PAPE:

13 Q. Mr. Passaloukas let me have you identify Plaintiffs'
14 Exhibit No. 13. It is already in the record and tell the
15 Court what that is.

16 A. It's the pay '06.

17 Q. Well, first is that the contents of the so-called cash
18 bag that was left in Zorbas when you all were locked out?

19 A. I believe so.

20 Q. I believe the contents of the cash bag were marked as
21 Plaintiffs' Exhibit 11 from the earlier trial and what
22 Plaintiffs' Exhibit 13 is, Your Honor, is just photocopies
23 of these documents. And let me look, have you flip through
24
25

1 Q. Okay, all right, did you ever have access to the
2 payroll checking account book?

3 A. No.

4 Q. Have you tried to locate the payroll records?

5 A. I have tried. All that -- all that was inside in the
6 office when they locked us out so they should have
7 possession for the books, all the records, all the
8 statements was there and Gil Fisher had, I believe, all the
9 records of the restaurant, payroll, all the records of the
10 business in his computer in his possession and like I say,
11 he was their accountant so they had access of every -- of
12 every record of the restaurant they had access because he
13 was their accountant. Our accountant for the restaurant was
14 their accountant, so anything they wanted to ask, they would
15 ask. They were saying yesterday we were hiding things; we
16 never had a chance. Anything they want, they could ask Gil
17 Fisher.
18

19 Q. Did they have keys to the restaurant?

20 A. The Benschs?

21 Q. Yes.

22 A. I believe so.

23 Q. Okay, all right. Did you -- were any payroll checks
24 ever written payable to you?
25

A. Never.

BILL PASSALOUKAS - RE-CROSS EXAMINATION BY MRS. BENSCH

A. Everything was in the office when they took over.

1 Q. That wasn't my question. Did you and Mr. Fisher, you
2 all were the ones that received all of this information?

3 A. I received all of the information, yes and everything -
4 - everything, all the statements and everything was in the
5 office.
6

7 Q. And Mr. Fisher received all the information on -- from
8 employees from you only or the Benschs?

9 A. I was preparing the hours for the payroll and he would
10 do everything else.

11 Q. So whatever was owed to who was only given to Mr.
12 Fisher from you, not the Benschs in any way.
13

14 A. Yes.

15 Q. Why did you not pay yourself a salary?

16 MR. PAPE: Your Honor, all that's new
17 information, that's already been explored
18 numerous times.

19 COURT: Let me ask you all this before
20 we move on just so I can be sure. Is it
21 correct to say that there's nothing in the
22 record at this point as to what the balance
23 of that account was at the time the business
24 closed?
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 COURT: All right, 1 through 27 of
2 Plaintiffs' are in.

3 MR. PAPE: I was just remembering
4 yesterday when I offered some Exhibit and I
5 thought I understood you to be accepting them
6 into the record, but I was --

7 COURT: Certainly it was possibly late
8 in the day, so --

9 MR. PAPE: I just wanted the record to
10 be clear about that.

11 COURT: Thank you, thanks for doing
12 that.

13 MR. PAPE: Your Honor, I would like to
14 read from deposition testimony of the
15 deposition of Cynthia Bensch and Gary Bensch
16 and remember these were joint depositions by
17 agreement of the parties. The depositions
18 were taken October 23, 2001. Do you all have
19 a copy of that so you can follow me?
20

21 COURT: Just out of curiosity, how many
22 pages are you going to read?
23

24 MR. PAPE: It's going to be about five
25 or six pages total, Judge. Not a whole lot.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MS. BENSCH: I am sorry, what page is
2 it?

3 MR. PAPE: Actually that's the trial
4 transcript. It is a deposition dated October
5 23, 2001. It's a thicker deposition unless
6 you've got one of those smaller versions of
7 it.

8 MS. BENSCH: Is this the one done by
9 Mike Mogil, is that what you are talking
10 about?

11 MR. PAPE: It's one dated October 23,
12 2001.

13 MS. BENSCH: No, this is 2002.

14 MR. PAPE: Here is a miniature copy of
15 it. Well I can read from the miniature copy
16 just -- I will give you the big one. This is
17 the original one. Beginning at Page 4, Your
18 Honor, at line 4 I was questioning Mr. Bensch
19 about leasehold improvements. My question to
20 Mr. Bensch is and I will just title these
21 answers and questions by stating Mr. Pape or
22 for a question Mr. Bensch for the answer.
23
24

25 "MR. PAPE: Mirrors and light fixtures
are those leasehold improvements?

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. BENSCH: Yes. Of course you realize
2 that Benchmark is the one who did all the
3 leasehold improvements not Town Center.
4 Benchmark and myself, me.

5 MR. PAPE: They were your capital
6 contributions to the corporation, right?

7 MR. BENSCH: Correct. This was my part
8 of the partnership with Bill. My in-put.

9 MR. PAPE: That is what you were
10 obligated to contribute to the corporation?

11 MR. BENSCH: Correct.

12 MR. PAPE: Then Your Honor I would like
13 to read from the same deposition testimony of
14 Mr. Bensch beginning -- Mrs. Bensch at Page
15 104, line 10 and I am going to read to Page
16 107, line 7.

17 "MR. PAPE: And what else have you had
18 to buy that you believe that should have been
19 his responsibility beside? We talked about
20 the grease trap and the hot water heater.

21 MR. BENSCH: That's all that really
22 comes to mind at this point in time.

23 MR. PAPE: Let us go back to the Exhibit
24 that talks about these contributions. What
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 is the purpose and use of these contributions
2 for shares that are shown on the agreement
3 here?" And Your Honor, I need to make a side
4 note, in the Agreement that I was asking Mr.
5 Bensch to examine at that time is what has
6 now been marked as Plaintiffs' Exhibit No.
7 11, the written consent in lieu of an
8 organizational meeting for Zorbas, Inc." You
9 want to see that Ms. Bensch?

10 MS. BENSCH: No, I have got it. Thank
11 you.

12 MR. BENSCH: Well, we had initially
13 expected that we would spend approximately
14 the same amount of money and as a result of
15 construction modifications and improvements,
16 mostly that Bill recommended that we needed,
17 and I agreed that it would be a better thing
18 for the restaurant and I continued to spend
19 money in there including adding things for
20 Bill in the back.

21 MR. PAPE: What does it mean here on
22 Page 4?" And as an aside, Your Honor, I am
23 referring to Page 4 of Plaintiffs' Exhibit
24
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

11." Ms. Bensch do you agree that's that is
what that is referring to?

MS. BENSCH: Let me see that. Okay,
yes, good.

COURT: Which is the written consent?

MR. PAPE: Which is the written consent
at Page 4 and you might want to follow along
with that as you got to that.

"MR. PAPE: What does it mean here on
Page 4 that leasehold improvements to be
provided utilizing these funds? What does
that mean? Does that mean that your
consideration that you paid are the leasehold
improvements that you put into the building
or does it mean something else?

MR. BENSCH: I would think it would,
yes.

MR. PAPE: So what that means is that
your leasehold improvements that you have
already put in the building count toward that
\$30,000 stock consideration?

MR. BENSCH: I think that is what this
says and probably what it meant.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. PAPE: So do I also understand that
2 when you get \$30,000 worth of stock from the
3 company, then the company owns the leasehold
4 improvements, is that right? How do you
5 understand the way a corporation works?

6 MR. BENSCH: Yes, that would be correct?

7 MR. PAPE: That is correct.

8 MR. BENSCH: The corporation would
9 actually own that.

10 MR. PAPE: So the corporation actually
11 owns the leasehold improvements?

12 MR. BENSCH: It had to furnish them, so
13 at that point in time it would own them.

14 MR. PAPE: The corporation owns the
15 leasehold improvements as of that time?

16 MR. BENSCH: I would think so, yes.

17 MR. PAPE: And in fact there is some
18 language down at the bottom of Page 4 that
19 says and look at it and read along with me.
20 "The undersigned by execution of this Exhibit
21 A do hereby transfer, grant and convey the
22 assets and interest referenced above." The
23 assets referenced above were the leasehold
24 improvements, right?
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

MR. BENSCH: Correct.

1 MR. PAPE: And so that grant and
2 transfer and conveyance is of those leasehold
3 improvements to the corporation?
4

5 MR. BENSCH: I believe it is saying
6 that.

7 MR. PAPE: And that is the way you
8 understand it?

9 MR. BENSCH: Yes.

10 MR. PAPE: And let's go to Page 5. Mrs.
11 Bensch, incidentally, do you agree with that
12 view of it?
13

14 MRS. BENSCH: Yes."

15 COURT: Let me clarify something real
16 quick. Yesterday, I had asked I think a
17 couple of times I got the same answer. I
18 just want to make sure; both parties
19 stipulate that the agreements are
20 unambiguous, is that correct?
21

22 MR. PAPE: Your Honor, for the last nine
23 years there's been an effort by the Benschs
24 to say that its unambiguous, but yet every
25 time they make an argument to the Court, they
try to assert that they have contributed

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 out asked, but anyway you may continue on
2 sir.

3 MR. PAPE: Thank you, Your Honor. I
4 need to gather my thoughts. I think there
5 was some more -- And from the trial
6 transcript Your Honor, Page 10, Mrs. Bensch,
7 that would be this document. And it is
8 actually Page 55 by using the big numbers
9 from the Court of Appeals record. I would
10 like to begin reading it, Line 6. Have you
11 found that?

12 MS. BENSCH: Yes.

13 MR. PAPE: Okay, and this is direct
14 examination by Mr. Pape, examination of Gary
15 Bensch and again I will use the same methods.
16

17 "MR. PAPE: Okay, and sometime between
18 February of 1999 and August 15th roughly of
19 1999, you contributed leasehold improvements
20 to the corporation, is that right?

21 MR. BENSCH: That's correct.

22 MR. PAPE: What was your obligation
23 during that period of time?
24

25 MR. BENSCH: Yes, to -- yes.

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. PAPE: All right, and although there
2 were other incidental terms, that was the
3 central feature of your obligations to what
4 was to eventually become the corporation,
5 isn't that correct?

6 MR. BENSCH: It was the primary reason,
7 yea, the primary part, yea.

8 MR. PAPE: And during that period of
9 time Mr. Passaloukas' obligation to the
10 eventual corporation was to contribute
11 restaurant equipment and furnishings, is that
12 right?

13 MR. BENSCH: Yes, and an expertise
14 certainly because I had never been in the
15 restaurant business."

16 MR. PAPE: Your Honor, there have been
17 some requests to admit and I would like to --
18 - Your Honor, we had filed a document
19 entitled Plaintiffs' Request to Defendants to
20 Admit Authenticity and that was served on --
21 these were filed with the Court, that's the
22 Court's original copy and these Requests to
23 Admit were served on Mr. Clabaugh on the date
24 that is specified in the Certificate of
25

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 Service. They were served by mail to him at
2 his address on February 10, 2007 and the
3 Defendants never responded. Now, at the
4 earlier hearing back in September I attempted
5 to offer another set of Requests to Admit and
6 Mr. Clabaugh and in all deference to him, he
7 denied that he had ever received it and the
8 Court refused to allow me to admit, but at
9 that hearing he did admit to the Court that
10 he received this document and if you would
11 like for me to pull that record, I would be
12 happy to.

13
14 COURT: Well let me ask you this. Are
15 any of these not already in evidence?

16 MR. PAPE: There's only one of them here
17 that I want to tender, Your Honor, and it's
18 the document that's referred to in Request to
19 Admit No. 18 and that is an invoice of myself
20 to Bill and Susie Passaloukas. The Request
21 to Admit states this: The document attached
22 hereto as Plaintiffs' Exhibit No. 12 Pages
23 418-419 is authentic and a true and correct
24 copy of the original of the invoice of Frank
25 F. Pape, Jr. directed to Bill Passaloukas and

1 Susie Passaloukas for professional services
2 rendered on their behalf in defending a
3 lawsuit against them and Zorbas, Inc. by an
4 employee of Zorbas, Inc. with respect to
5 wages which the employee claimed was owed to
6 him by Zorbas, Inc. Now during the course of
7 the trial I had attempted to get this into
8 evidence, but -- and there was some
9 objections to it because I think Mr. Clabaugh
10 was stating it wasn't authentic or perhaps it
11 wasn't relevant and maybe you will still be
12 persuaded by the argument. But nevertheless,
13 no decision was ever made. I think we had
14 then gone on to take a lunch break and we
15 never picked up the issue again.

17 COURT: So basically it's an invoice
18 from you to the Passaloukas for attorney's
19 fees?

20 MR. PAPE: Associated with them having
21 to defend a lawsuit by an employee for
22 collection of wages that were owed by Zorbas,
23 Inc.

24 COURT: And this was before or after the
25 place was closed?

GARY BENSCH - CROSS EXAMINATION BY MR. PAPE

1 MR. PAPE: This was after the closure of
2 the restaurant, Your Honor, and I think that
3 was Mr. Clabaugh's point and I don't want to
4 make his argument, but he's a much better
5 lawyer than me, but his argument was that
6 it's irrelevant because it was after, but you
7 see Mr. --

8 COURT: Well I think it's relevant
9 because the -- half of the case is what
10 happened to the money and things --

11 MR. PAPE: -- afterwards, right.

12 COURT: So, it was in response to the
13 Request to Admit anyway, but --

14 MS. BENSCH: That's fine. Can we also
15 submit attorney fees?

16 COURT: You can submit, yes, whatever
17 you like. I don't know whether or not
18 attorney fees are relevant or will be ordered
19 here, but it --

20 MS. BENSCH: Yes, right.

21 COURT: But understand that the
22 attorney's fees -- this has to do with a
23 Zorbas issues that had to do with tying up
24
25

SUZIE PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

I tender Plaintiff's Exhibit 28.

COURT: All right, without objection.

(WHEREUPON, PLAINTIFF'S
EXHIBIT NUMBER 28 WAS
MARKED AND ENTERED INTO
EVIDENCE.)

MR. PAPE: I call Mrs. Passaloukas.

SUE ELLEN HENDRICKS PASSALOUKAS,
after being duly sworn, testified as follows:

BY MR. PAPE:

Q. State your full name, Mrs. Passaloukas.

A. Sue Ellen Hendricks Passaloukas.

Q. And you are married to Bill Passaloukas.

A. Yes.

Q. Where do you live?

A. Bluffton, South Carolina.

Q. Describe the home you live in.

A. We live in a single wide mobile home in Bluffton. We
lost our home on Able Street after we were evicted from the
restaurant.

Q. Tell me about the home you lived in on Hilton Head.

A. We bought that home and paid it off in six and a half
years. It was on Able Street kind of behind the Piggly

SUZIE PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 Q. Would you have had more income if you had been able to
2 serve lunch?

3 A. Absolutely. Absolutely.

4 Q. How many hours a day were you working in the
5 restaurant?

6 A. We went there for morning and we left at nine. I am
7 not exactly sure of the closing time and we tried to
8 regulate for -- when you run a business you try to see what
9 nights are better and things like that. It's been so long,
10 I can't remember if we closed at 8, 9, 10, I can't remember,
11 but I generally closed up and we cleaned up and we took home
12 the leftovers and that's how we survived.

13 Q. Did you ever get paid for your work?

14 A. No.

15 Q. Never got paid?

16 A. No, but we did have our meals out of the restaurant.
17 If we needed to get reimbursed like Bill has done, then
18 that's what we did. That's how we were directed to do.

19 Q. Okay, directed by?

20 A. Mr. Fisher.

21 Q. Mr. Fisher, the accountant?

22 A. Yes.

23 Q. Okay, did there come a time when you had a disagreement
24 with the Benschs about your being at the restaurant?
25

SUZIE PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 A. Yes, we had a meeting, I believe it was out on the
2 patio I think and they didn't want me there because I do
3 have some disabilities and I think that later at one of
4 these other things I think it came out that they were afraid
5 that I was going to get hurt or something and sue the
6 insurance or something. I had no idea that they were
7 thinking that, but Mr. Bensch pointed his finger at me and
8 told me that I needed to go home. When in fact if I went
9 home, the shift that we had wouldn't know how to fix the
10 first recipe I got.

11 Q. Who was on that shift?

12 A. It was John Nicoli.

13 Q. John Nicoli, the later restaurant, the second
14 restaurant, Nicoli's?

15 A. Yes.

16 Q. Did he know how to cook Greek food?

17 A. He knew how to make a white sauce and I said okay, what
18 do you do to it to make it Greek and he didn't know.

19 Q. Okay.

20 A. You can find it in a book, but if you don't know that
21 secret you are not going to get it done.

22 Q. You said Mr. Bensch pointed his finger in your face?

23 A. Yes.

24 Q. And what was his attitude?

SUZIE PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

1 A. It was very abrasive. It was very -- it was very scary
2 and I mean things could happen and he -- but it was
3 unexpected. I didn't know anybody didn't want me there, you
4 know, and he was very close to my face.

5 Q. You were a shareholder, right?

6 A. Yes.

7 Q. You and Mr. Passaloukas were depending on that
8 restaurant?

9 A. Hook, line and sinker; Hook, line and sinker.

10 Q. Was there anything else that might have provoked him
11 other than your ---

12 A. It was a meeting to try to add things to the -- if my
13 memory is right, Nick Eliferio was there and Jerry was
14 across from me and I believe Bill was here, it could have
15 been here or it could have been here I am not sure and I am
16 not real sure if Cynthia was there. I can't -- the
17 placement, I can't remember if she was there or not and we
18 were going to add some things to the menu and they wanted to
19 add more quicker things. That sort of went against the word
20 authentic Greek and -- I don't know -- that's the idea of
21 the restaurant we presented to them. That's what we wanted
22 to try to stay with and Bluffton was enveloping us. That
23 was their restaurants and we had workers coming for lunch
24 with big orders because lunchtime you know you have a lot to
25

1 go stuff and all and they were supporting us and I think
2 that we would have stayed that way. If you get your foot in
3 the door, you know you are -- We fed them. We took care of
4 them and we charged them a good price. And they could bring
5 their girlfriend back for a nicer night, you know, with
6 tablecloths on and -- but I mean it was just taken away.

7 Q. When you all were locked out, was there any personal
8 properties that --

9 A. Yes.

10 Q. And you all have never been able to retrieve from the
11 Benschs.

12 A. Well, yes. It's just like if you rented an apartment
13 from me and I didn't fix the shutters and I held the rent
14 and you said well, I am not going to pay these people or
15 whatever and you lock me out. Well you can't get to your
16 stuff and the reason I had things there, because we did stay
17 from daylight until dusk and when you make things, I take my
18 jewelry off and I had a little white gold marquis like
19 little diamond and sapphire. It was special to me. You
20 know my Mom gave it to me; that's my birthstone. Sapphire
21 is my birthstone. And - but it's not worth a million
22 dollars, it's not worth \$5,000 but it's mine and it was left
23 there. And other things. You know, there's a list.

24 Q. Do you have any idea what it might be --

1 for bigger amounts and stuff. Little creamers, my mother
2 loved to collect creamers and I had a really special one
3 that I put up there because I thought it was really nice. I
4 mean I wanted it to feel like home. I wanted it to feel
5 that way and it was just the way it was.

6 Q. Well the Judge wants to know what the value of all of
7 these things and I remember Mr. Passaloukas went through
8 items 10, 5, 15 dollars. The Judge kept notes and
9 everything. What's your estimate of the value of all those
10 things that were left behind that you all were never able to
11 retrieve that you have demanded and you haven't been able to
12 get back from them. You have a --

13 A. I am not a licensed appraiser; I am not. I mean if I
14 was to say something, I would be thinking of the things that
15 I know what we paid, I would say somewhere between \$2500 to
16 \$3,000 something like that and again, I am just estimating.

17 Q. Do you remember there came a point in time where a
18 notice of default was sent to you all and I don't know if
19 you have ever seen this or not, Plaintiffs' Exhibit A it's a
20 letter dated December 28, 1999 addressed to Zorbas
21 Restaurant and Bill Passaloukas signed by Gary Bensch?
22

23 A. Yes.

24 Q. And it says this letter is notification that Zorbas is
25 in default and it says some other things?

SUZIE PASSALOUKAS - DIRECT EXAMINATION BY MR. PAPE

A. Yes.

1 Q. Do you remember you all received that?

2 A. Yes.

3 Q. Do you remember how it was received?

4 A. We got it at the post office box.

5 Q. Okay. All right. When you all got that, did you and
6 Mr. Passaloukas attempt to contact Mr. and Mrs. Bensch?

7 A. Yes, yes.

8 Q. And what kind of efforts did you make to contact them?

9 A. Well their office was right there. It was a two story
10 building, we could walk out on the patio and be right there.
11 And there was no one there and we tried calling that number
12 and we tried calling the home and I think we -- I think all
13 we had was Gary's cell phone, I think, I am not sure. I
14 don't think we had Ms. Bensch's. We left messages and we
15 wanted to talk which I thought that's what you do in a
16 business and because we had the previous problem with the
17 check and escrow and still the list of things that we needed
18 done and all that kind of stuff, I thought we would talk and
19 no return.
20

21 Q. You all never were able to reach them?

22 A. No. It was the holidays and I think, I am not real
23 sure but I think they had a grandbaby born or was going to
24 see a new grandbaby or going to see family.
25

1 produce company and another local produce company because
2 they have better cabbage and things like that. I had things
3 prepared because you can't run in there and do them at the
4 last minute, so I had some casseroles prepared. I had fresh
5 eggs. In the freezer I had legs of lamb, shanks, steaks,
6 lamb shanks also. I guess we had fresh milk, the milk man
7 came around too. The bread man came around. So we had a
8 lot of stock and well -- I have no access to the invoices.
9 The invoices would show when they were delivered. If they
10 got to that point, it was because they allowed it to. And
11 the things in the freezer, unless they turned the
12 electricity off, they would have been fine. So somewhere
13 all the stock went. Whether they dumped it in the dumpster
14 or whatever, but there was a large amount of money in the
15 stock.
16

17 Q. Why didn't you have access to the invoices?

18 A. It was locked in the office in the old metal desk I am
19 telling you had stuff in things and he had a box and he had
20 a couple of ways he did it, that's it. That's the way he
21 did it. Plastic to go things, all that stuff. All that
22 stuff was there.
23

24 Q. How has this all affected your and your family's life?

25 A. Well it devastated us. We were trying to make this go.
Anytime in a business it's going to take awhile to get

SUZIE PASSALOUKAS - CROSS EXAMINATION BY MRS. BENSCH

1 A. Yes. The restaurant idea was always on the back of our
2 minds. That was our dream. That was what we wanted to do
3 and it was a prime time.

4 Q. Did you finance the house in order to raise capital to
5 get the restaurant?

6 A. Exactly.

7 Q. And as a result of this eviction, you weren't able to
8 pay for your house and you lost your house?

9 A. Exactly.

10 Q. Okay, I don't have any further questions.
11

12
13
14 BY MS. BENSCH:

15 Q. Mrs. Passaloukas, what's P. O. Box 1667, is that your
16 personal PO Box?

17 A. We don't have that anymore.

18 Q. I mean was that your --

19 A. At the time, yes. Well we opened it so that everything
20 would go there and together with the business.

21 Q. And it was under your name, though?

22 A. I guess it had mine and Bill's name I guess but it also
23 had --
24

25 Q. Did it have the Benschs name?

A. No, it had our name and the restaurant.

SUZIE PASSALOUKAS - CROSS EXAMINATION BY MRS. BENSCH

1 Q. Okay, you said that you were on the checking account so
2 you could look at the bank statements and see how much
3 money, if it was making or losing money?

4 A. Right.

5 Q. Were the profits going down considerably in October and
6 November?

7 A. I don't know if we can say going down. You are
8 approaching October, you are approaching holiday times and
9 things and actually we were open Thanksgiving and had a very
10 profitable Thanksgiving in a Greek restaurant, but it is
11 touch and go. I would say that it was -- that it was
12 starting to decline but a lot of that was expected.

13 Q. So the Benschs asked you to consider changing some of
14 the things on the menus at that meeting?

15 A. To drop a few things and to add a few things -- and the
16 answer is yes.

17 Q. If your profits are going down, what are the two main
18 things that a restaurateur can control to improve their
19 profit?

20 A. Quality, as you are saying if that's what you want me
21 to agree to, cutting some hours, cutting some people,
22 improving, things like that.

23 Q. So you think possibly changing the menu a little bit
24 and maybe reducing the cost of food?

MR. PAPE: No, sir.

COURT: Mr. Mogil thank you very much.

Have a good afternoon, sir.

MRS. BENSCH: Thank you, Mike.

MR. PAPE: Thank you, Mike, nice to see
you.

MR. MOGIL: First time I am walking out
of here, not visiting for awhile.

COURT: If you want to take a free
bottle of water or Diet Coke, go ahead.

COURT: Let's see we had some Motions I
had taken under advisement and then I tried
to remember who we -- where were we?

MRS. BENSCH: Today I was going to call
Mr. Passaloukas and then myself.

COURT: Okay, all right.

BILL PASSALOUKAS, called as a
witness, after being duly sworn, testified as
follows:

BY MRS. BENSCH:

Q. Good morning. Mr. Passaloukas, when we were
asking you questions before, one of the questions I
failed to ask was what your fiduciary responsibilities
were as the manager for the Shareholders' Agreement?

1 objects, just stop at that point, if you
2 would, and then I will deal with
3 whatever the objection is and either
4 sustain it or overrule it or -- and
5 certainly happy to hear from you on
6 whatever it is and then we will go on so
7 -- but you are welcome to tell me a
8 narrative or whatever it is you are
9 going to tell me. So first let's swear
10 you in if you don't mind. Hold you
11 right hand up.

12 CYNTHIA BENSCH, called as a
13 witness, after being duly sworn, testified as
14 follows:
15

16 COURT: Okay, put your hand down.
17 All right, happy to hear from you.

18 MRS. BENSCH: A brief history, my
19 personal history. I am -- like the
20 Passaloukases, I am not from a
21 privileged background. My mother got
22 ill when I was young and I have paid
23 every bill I ever had since I was 16
24 years old. And that's part of the
25 reason why we met with these people and

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

EXHIBIT NUMBER 31 WAS
MARKED AND ENTERED INTO
EVIDENCE.)

BY MR. PAPE:

Q. You complained earlier that you didn't have some particular document that Mr. Fisher had and you believed to have been provided to my office, is that correct?

A. No, sir. Mr. Fisher gave us a letter yesterday that he said was given to you along with a computation of the daily sales of Zorbas and I've asked where were those daily sales of Zorbas that he said were given to you.

Q. And you were complaining that we had not -- that I had personally not provided those documents to you, is that your complaint?

A. No, sir, I was asking you what these -- where are these records, what are they?

Q. So you have no complaint that I had failed to produce those documents to you?

A. I don't know what he's talking about.

Q. Okay. Mr. Mogil told you to -- when you -- you had a conversation with your attorney at that time, Mike Mogil, about your intention to evict Zorbas and

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 the Passaloukases you recall any conversations with
2 him?

3 A. I know we had a conversation about -- at the
4 shareholders thing. I don't remember any detail. No,
5 I don't remember any conversations with anybody about
6 evicting the tenants.

7 Q. Didn't Mr. Mogil at that time tell you to go to
8 the Magistrates Court to get the --

9 A. No, he didn't.

10 Q. -- Zorbas -- he didn't?

11 A. I don't remember that.

12 Q. Do you remember giving your deposition in this
13 case?

14 A. No.

15 Q. That's fair, Ms. Bensch. You have a copy of the
16 deposition dated October 23, 2001? Look at Page 77
17 please ma'am.

18 A. Okay.

19 Q. Look at line 24.

20 A. Uh huh.

21 Q. Didn't I ask you what advice Mr. Mogil had given
22 you about the eviction? Is that what it says there?

23 A. On Page 77?

24 Q. Page 77, line 24.

CYNTHIA BENSCH - CROSS EXAMINATION BY MR. PAPE

1 A. Where does it say about eviction? I don't know.

2 Q. Perhaps you have the wrong deposition. Let me see
3 the document you have.

4 A. Oh, okay, all right. Back on Page 76 --

5 Q. May I see the document that you are looking at?
6 Well you got to turn to Page 77.

7 A. I did. I just didn't see any reference to
8 eviction.

9 Q. Look at line 24. Doesn't it -- didn't I ask you
10 there what advice he had given you about the eviction?

11 A. Your question was yeah, what advice had he given
12 you about the eviction.

13 Q. Right, so and then you said he said to go to talk
14 with Magistrate Smith. Is that what you said?
15

16 A. That's what I said.

17 Q. Okay, thank you. Mr. Elliferio, by the way,
18 worked for a time with Benschmark, didn't he?

19 A. No, he never worked for Benschmark.

20 Q. When you gave your opinion to the Judge a little
21 while ago about the value of some fixtures, you were
22 actually referring to the letter of this appraiser,
23 weren't you? I think I saw you making -- looking at
24 quite close detail at that document and making notes
25 from it?

TOWNE CENTER 27 MELLICHAMP DR. BLUFFTON, S.C.

EVICTIION NOTICE

JANUARY 8, 2000

**IN ACCORDANCE WITH
PRIOR CERTIFIED NOTICE
ZORBA'S IS IN DEFAULT OF
LEASE AGREEMENT FOR
FAILURE TO PAY RENT.**

NO TRESPASSING

VIOLATORS WILL BE

PROSECUTED !!!!

**DO NOT REMOVE THIS
NOTICE!** *Plaintiff's #9*

PLAINTIFF'S
EXHIBIT

DEFENDANT'S
EXHIBIT

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

AGREEMENT OF PURCHASE
AND SALE OF BUSINESS ASSETS

AGREEMENT made this 2 day of May, 2000, by and between MI TIERRA BLUFFTON, INC, its successors and assigns, (hereinafter referred to as "Purchaser"), and NICOLI'S CAFÉ, L.L.C. (hereinafter referred to as "Seller").

WHEREAS, Seller owns and operates in Bluffton, Beaufort County, South Carolina, a restaurant operating under the name of Nicoli's Restaurant (hereinafter referred to as "Business"); and

WHEREAS, Purchaser desires to purchase from Seller the assets of Seller's business (hereinafter referred to as "Business"), inclusive of restaurant equipment, furnishings and fixtures, but free of any obligations for accounts payable or other liabilities of Seller.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Sale of Business. Seller shall sell to Purchaser and Purchaser shall purchase and acquire from Seller the restaurant business owned and operated by Seller. Such sale shall include the assets of the Business as set forth in the attached Schedule "A" -- Business Assets.

2. Collection of Accounts Receivable. All checks or other proceeds received by Purchaser in payment of accounts receivable due the Business at the date of closing shall be immediately turned over to Seller in the form in which they are received. A complete listing of these accounts receivable, listed by client and amount due, is attached hereto at Schedule "B" -- Accounts Receivable.

3. Obligations of Seller. Unless otherwise noted, all accounts payable and other liabilities incurred by the Business up to the date of closing, including liabilities for or in connection with advertising placed before the date of closing, shall be paid by Seller, who shall indemnify and hold Purchaser harmless against all such accounts payable and other liabilities. Unless specifically provided in this agreement, Purchaser is not acquiring, directly or indirectly, any of Seller's liabilities, and no such assumption shall accrue to Purchaser by operation of law or otherwise.

4. Purchase Price. The total purchase price shall be SEVENTY-FIVE THOUSAND and NO/100 (\$75,000.00) DOLLARS, FIFTY THOUSAND and NO/100 (\$50,000.00) DOLLARS of which is payable to Seller upon closing, in cash or by certified check or by attorney's trust check, and TWENTY-FIVE THOUSAND and NO/100 (\$25,000.00) DOLLARS of which is to be financed by Seller and due and payable on May 16, 2000.

5. Deposits/Default. No money has been deposited hereunder.

6. Conduct of Business Subsequent to Closing. GARY BENSCH shall at closing enter into a Consulting Agreement (Exhibit "C" -- Consulting Agreement) whereby GARY BENSCH shall be available for not less than ten (10) hours during the first month following the Closing Date, at such times during normal operating hours as may be mutually agreeable to Purchaser

PLAINTIFF'S
EXHIBIT

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and Seller. The expertise required of the Consultant must include the use of the equipment of the Business.

7. Representations and Warranties of Seller. Seller, to the best of Seller's knowledge, represents and warrants as of the date hereof and as of closing to Purchaser as follows:

7.1 Organization. Seller is duly qualified to do business in the Town of Bluffton, the County of Beaufort and the State of South Carolina and has full power and authority to carry on the current business and to own, use and sell the business assets and properties.

7.2 Authority. The execution and delivery of this Agreement to Purchase and the carrying out of the provisions hereof have been duly authorized by the Seller.

7.3 Tax Returns and Tax Audits. Seller has filed with the appropriate governmental agencies all federal, state, county, local and foreign tax returns and tax reports required to be filed by it, including but not limited to income, property and payroll tax liabilities, and such returns are true and correct. Seller has not executed any waiver or waivers which would have the effect of extending any applicable statute of limitations with respect to its income tax liabilities. Seller has paid all taxes, assessments, fees and other governmental charges levied upon its assets and income, other than those not yet due and payable or delinquent. Seller has not had its federal income tax returns audited by the Internal Revenue service, nor has it had a South Carolina Sales Tax audit within the three years preceding this Agreement.

7.4 Environmental Hazards. Seller has complied with all applicable federal, state, county and local environmental laws and regulations. Seller has not been charged with violating any environmental laws or regulations.

7.5 Indemnification. Seller shall indemnify Purchaser and hold Purchaser harmless from and against all actions, regulatory actions, suits, damages, judgments, costs, charges, expenses and attorney's fees in consequence of any liability of whatsoever nature arising regarding the Business prior to the Closing Date.

7.6 Good Title. Seller has and shall transfer to Purchaser at Closing good and marketable title to Seller's Assets being sold and transferred hereunder, free and clear of any and all security interests, encumbrances or liens. Zorba's, Inc., an entity 50% owned by the Seller's principal, Gary Bensch, was terminated as a tenant at Towne Center on January 8, 2000 by written notice and that as of the date of this Purchase and Sale Agreement, no lawsuits or claims have been asserted by the remaining shareholders with respect to the leasehold interest or tenant improvements and that no action has been taken to liquidate or dissolve Zorba's, Inc.

7.7 Representations and Warranties. No representation or warranty by Seller in this Agreement or any documents provided hereunder contains or will contain any untrue statement or omits or will omit to state any material fact necessary to make the statements contained herein not misleading. All representations and warranties made by Seller in this

Agreement and any documents provided hereunder shall be true and correct as of the date of Closing with the same force and effect as if they had been made on and as of such date.

8. Purchaser's Obligations. Purchaser acknowledges that certain books of the Seller and data relating to the Seller's business have been or will be inspected or have been or will be opened to inspection by the Purchaser and/or Purchaser's agents or employees. Purchaser agrees to keep confidential such information about Seller with the exception of disclosures which could become reasonably necessary in the ordinary course of business. Confidential information includes information ordinarily known only to company personnel.

8.1 Authority. The Purchaser has full power and authority to enter into this Agreement and the other documents referenced herein, to which it is or will be a party, to perform its obligations hereunder and thereunder, and to carry out the transactions contemplated hereby and thereby. Before the Closing Date, Purchaser shall take all actions required by law, its Articles of Incorporation, its Bylaws or otherwise to authorize (i) the execution and delivery of this Agreement and the other documents referenced herein and (ii) the performance of its obligations hereunder and thereunder. This Agreement has been duly executed and delivered by the Purchaser and all remaining documents referenced herein will be duly executed and delivered by the Purchaser, and this Agreement is, and such other documents will be, upon due execution and delivery thereof, the legal, valid, and binding obligations of the Purchaser, enforceable in accordance with their terms.

8.2 No Violation. Neither (i) the execution and delivery of this Agreement or any other of the documents referenced herein by the Purchaser, (ii) the performance by the Purchaser of its obligations hereunder or thereunder, or (iii) the consummation of the transactions contemplated hereby or thereby will (A) violate any provisions of the Purchaser's Articles of Incorporation or Bylaws, (B) violate, or be in conflict with, or permit the termination of, or constitute a default under or breach of, or cause the acceleration of the maturity of, any contract, debt, or other obligation of the Purchaser, which violation, conflict, default, breach, termination or acceleration would have a material adverse affect on the financial condition of the Purchaser, (C) require the consent of any other party to, or result in the creation or imposition of any liens or encumbrances upon any property or assets of the Purchaser under any agreement or commitment to which the Purchaser is a party or by which the Purchaser is bound, or (D) to the best knowledge and belief of the Purchaser, violate any statute or law or any judgment, decree, order, regulation, or rule of any court or governmental authority to which the Purchaser is subject.

8.3 Litigation. There is no action pending or, to the best knowledge and belief of the Purchaser, threatened against the Purchaser, or any of its properties or rights, that questions or challenges the validity of this Agreement or any of the documents referenced herein, nor any action taken or to be taken by the Purchaser pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby and the Purchaser does not know of any such action, proceeding or investigation that may be asserted, except that concerning Zorba's, Inc. referenced hereinabove.

8.4 Due Disclosure. No representation or warranty by the Purchaser in this Agreement contains or will contain any untrue statement of material fact or omits or will omit to state any material fact necessary to make the statements herein not misleading.

9. Representations of Seller. Seller represents and warrants to Purchaser:

9.1 The assets to be transferred to Purchaser under the Agreement, whether tangible or intangible, shall be at the time of transfer, free of all liens, security interests, claims, and encumbrances and in good operating condition.

9.2 Seller is not in breach or default of any contract, agreement, or arrangement to be assigned under this contract, and Seller shall duly perform such contracts, agreements, and arrangements until closing.

9.3 There are no oral or written employment agreements with any employee which are not terminable at will without penalty, and salaries and wages are not in arrears.

9.4 Seller has and shall continue to make current and timely payment of federal and South Carolina withholding taxes, South Carolina sales taxes, and all other taxes, which are due or may become due by reason of the operation of the business to be transferred.

9.5 There are no actions or proceedings pending or threatened against Seller or the business.

9.6 Seller represents and warrants that no broker or agent is involved in this transaction.

9.7 Neither Seller nor the Business is insolvent, and neither will be rendered insolvent by this sale.

9.8 Seller has complied with all applicable federal, state, and local laws in any way related to the conduct and operation of the business, including but not limited to environmental laws and regulations.

9.9 No special third party consents are required to carry out the transaction contemplated by this agreement.

10. Seller's Obligations at Closing. At the closing, Seller shall execute and deliver to Purchaser:

10.1 All instruments that Purchaser's attorney may reasonably request in connection with the transfer of assets, including but not limited to a bill of sale, assignments, and certificates of ownership, as applicable.

10.2 Appropriate original instruments of consent or waiver executed by third parties with respect to all contracts, leases, agreements, etc. being transferred to Purchaser hereunder and which require third party consent in order more fully to effect any such transfer of Seller's Assets hereunder.

10.3 To the extent not previously furnished to Purchaser, all of the Business' records and papers relating to the restaurant equipment and furniture. The parties shall make all of such documents available to each other upon request at any reasonable time hereafter.

10.4 An agreement executed and entered into by Seller whereby Seller shall provide consulting services to the business for a period of two months pursuant to Paragraph 6 above.

11. Seller's Implied Obligations. From time to time at Purchaser's request and expense, whether at or after the Closing and without further consideration, Seller shall:

11.1 Execute and deliver to Purchaser all instruments that are reasonably required to carry out the intent and purpose of this Agreement;

11.2 Deliver to Purchaser all other data and papers that are reasonably requested to assist in the operation of the business; and

11.3 Take all other actions that Purchaser may request more effectively to convey and transfer to Purchaser any of the property sold to it hereunder or to assist Purchaser in the collection and reduction of such property to its possession.

12. Conditions Precedent. Notwithstanding any of the foregoing stated conditions, Purchaser's obligations under this agreement are, at its option, subject to fulfillment before or at the closing of the following additional conditions:

12.1 The Seller's representations and warranties contained in this agreement shall be true at the time of closing as if they were made at such time.

12.2 The Seller shall have performed and complied with all required agreements and conditions under this agreement.

12.3 The Agreement of Purchase and Sale between Purchaser and Towne Center, L.L.C. dated May 2, 2000 for 27 Mellichamp Drive has closed or is closing simultaneously herewith. (Purchaser, at its option, may choose to close this Agreement of Purchase and Sale of Business Assets without the closing of the Agreement of Purchase and Sale for 27 Mellichamp Drive.)

12.4 If the Agreement of Purchase and Sale between Purchaser and Towne Center, LLC dated May 2, 2000 for 27 Mellichamp Drive does not close prior to or simultaneous herewith, then there must be an executed Lease agreement between the landlord, Towne Center, L.L.C., and Purchaser which is acceptable to Purchaser.

13. Allocation of Purchase Price. For the express purpose of tax allocations, \$37,500.00 of the purchase price referred to in Paragraph 4 is attributable to the goodwill and \$37,500.00 shall be attributable to the tangible assets such as equipment, furnishings and fixtures.

14. Closing. The closing shall take place at the offices of Minor, Haight & Arundell, P.C., attorneys for the Purchaser, on April 28, 2000 (the "Closing Date"). Upon the payment of the portion of the purchase price then due Seller, it shall execute and deliver a bill of sale and other instruments of transfer, covering all the assets referred to in paragraph 1. All such instruments shall contain the usual covenants and warranties, and all other provisions that are

necessary, in the opinion of Purchaser's counsel, to convey to Purchaser title to all such assets, free and clear of all liens, security interest, and encumbrances.

15. Indemnification by Seller. Seller shall indemnify and hold Purchaser harmless of and from all liabilities, losses, or damages, including reasonable attorney's fees, arising out of any misrepresentation, breach of warranty, or nonfulfillment of any provision of this Agreement including, but not limited to, any error or omission in any statement delivered to Purchaser or any claim, liability, or obligation of Seller including, but not limited to, the obligations imposed on Seller under paragraph 3.

16. Indemnification by Purchaser. Purchaser shall indemnify and hold Seller harmless of and from all liabilities, losses, or damages, including reasonable attorney's fees, arising out of any misrepresentation, breach of warranty, or nonfulfillment of any provision of this Agreement including, but not limited to, any error or omission in any statement delivered to Seller or any claim, liability, or obligation of Purchaser.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of both the parties hereto and their respective heirs, successors, and assigns. All representations and warranties contained herein are expressly intended to survive closing and the delivery of the bill of sale and assignment.

18. Non-waiver. No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

19. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

22. Time of Essence. Time is of the essence of this Agreement.

23. Entire Agreement. This Agreement supersedes all prior agreements and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

24. Notices. All notices hereunder shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the respective parties at their last known addresses.

IN WITNESS WHEREOF, the parties have signed this agreement on the day and date first above written.

WITNESSES:

Elliott H. [Signature]
Michael [Signature]

WITNESSES:

Elliott H. [Signature]
Michael [Signature]

PURCHASER:

MI TIERRA BLUFFTON, INC.

By:

[Signature]
Juan Campos, President

SELLER:

NICOLI'S CAFÉ, L.L.C.

By:

[Signature]
Gary Bensch

Its: Manager

By executing this Agreement individually, GARY BENSCH, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, agrees to be personally bound by Paragraph 6 of the Agreement, the Representations and Warranties of Seller set forth in Paragraphs 3, 7, and 9 of this Agreement and by the Indemnification by Seller set forth in Paragraph 15 of this Agreement, all of the same to survive closing.

[Signature]
GARY BENSCH

EXHIBITS

SCHEDULE A-	Business Assets
SCHEDULE B-	Accounts Receivable
SCHEDULE C-	Consulting Agreement

SCHEDULE "A" - BUSINESS ASSETS

1. Equipment/ Furnishings/Fixtures List

2. Other Assets

- 1) Seller records and files relating to the restaurant equipment, furnishings and fixtures.
- 2) All supplier lists

LIST OF NICOLI'S RESTAURANT EQUIPMENT & INTERIOR FURNISHINGS

1. One four burner griddle
2. Two deep fryers Commercial (gas) pitco/ frialator
3. Dreako 12' Hood w/fans & make-up air w/ fire extinguisher system
4. Six burner unit w/convection oven (gas) new American range
5. 30" x 30" stainless steel table w/rollers
6. Chronomatic Gyro machine
7. One Whirlpool microwaves
8. Two compartment stainless steel sinks
9. Commercial stainless sink w/drainboard at dishwasher
10. Commercial dishwasher /Diversey
11. Arti-Air 30" refrigerator
12. 7 1/2' Commercial stainless steel refrigerated Randel prep table
13. Three compartment stainless steel sinks w/ drainboards
14. 8 x 3' stainless steel table w/pot & pan rack above
15. Two steam pan units by Nemco
16. TRUE Commercial deli refrigeration unit
17. Walk-In cooler unit / Module lab

18. Commercial dishes, glasses, silverware
19. Coke refrigerated unit
20. Ice machine
21. Ice cream freezer unit (inoperative)
22. Pots/ pans/ utensels
23. Coffee machine by Kronos
24. Side by side Freezer Raetone
25. Tea brewer machine
26. Seventeen Tables & fifty-four chairs
27. Audio six ceiling speakers
28. Gas commercial hot water heater
29. Miscellaneous serving pieces trays etc.
30. Window decorations
31. Gold wall Valance brackets & curtains
32. Patio stone surface & white wooden picket fence
33. Cast aluminum tables & chairs (patio) & umbrellas
34. Interior columns w/ header
35. Separated Wine/ soft drink & Food inventory to be determined
36. Two Commercial fire extinguishers
37. Credit card machine for Lynx system T7P SN 100000970919

38. Palmetto security alarm system
39. Miscellaneous stainless steel & wire shelving
40. Coffee & Tea pitchers, Champagne server
41. Telephone
42. Commercial mops & buckete
43. Table cloths & padding
44. Server sink (kitchen) soap dispensers & paper towel dispenser
46. Three slot vinyl menus (appx. 30) leather check holders
47. Miscellancous take-out boxes, silverware, cups & tops
48. Table candle holders, salt & pepper shakers & silk plants
49. Royal Timemaster time clock TC100
50. Turbo Vection II (Savory)

As agreed by purchaser and seller all of the "FOR SALE"
wall Art will not be included in sale and all Easter decorations,
entry foyer table & flower arrangement & lamp not included.
Certain miscellaneous decorations & Two pickled wood mirrors
bathroom art (pictures) and baskets and chair in ladies bathroom.

SCHEDULE "B" - ACCOUNTS RECEIVABLE

None

MICHAEL W. MOGIL, ESQ.
303 Professional Building
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676

Admitted in SC, NY, PA

December 8, 1999

James O. Hale
Hale and Hale, P.A.
1555 Fording Island Road, Suite E
Post Office Box 22561
Hilton Head Island SC 29925-2561
By Mail and Fax: 837-3001

Re: Zorba's Inc.

Dear Jim:

I am in receipt of the Notice of Shareholders Meeting from your office on behalf of Zorba's. Per my phone message, I am representing the Bensch's in this matter.

The Bensch's are requesting that the following matters be addressed and voted upon at the meeting:

1) That a seven person board of directors be voted with the following persons as Directors

Bill Passaloukas
Susie Passaloukas
Gary Bensch
Cynthia Bensch
Gil Fisher
Tom Jackson
A neutral director

2) That the corporation issue the initial stock set forth in the pre-incorporation agreements and additional stock in direct proportion to the financial investments made into the corporation to date;

3) That the corporation pay all current and past due rent, and further, that the Passaloukas' indemnify the corporation for any legal and court costs occasioned by their failure to pay rent on a timely basis.

PLAINTIFF'S
EXHIBIT

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4) That the Bensch's be added as signatory parties to the business checking account and other bank accounts and that all checks in excess of \$ 50.00 require one of the Bensch's signatures;

5) That Bill Passaloukas make a full accounting for all monies, including cash monies, withdrawn by him or his family from the bank accounts or cash receipts of the corporation, whether they be characterized by him as salary, expense reimbursement, loan reimbursement, or fees.

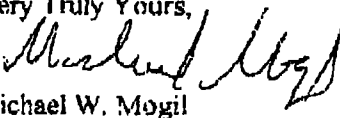
6) That the Bensch's be provided a copy of the mail box key and that business mail box be established .

The above measures reflect a significant change in the way the business is being operated. However, my clients have invested significant sums of money and have received no return on their investment to date, the business continues to lose money, and the present management has taken the extraordinary and offensive measures of excluding my clients from the finances and mail of the business. We now believe these changes are necessary to protect their investment and ensure their ownership and control.

My clients have attempted to work out their differences amicably with Mr. Passaloukas but that meeting resulted in an outrage with explicatives and verbal abuse from Mr. Passaloukas. This shareholders meeting represents the last opportunity to restructure this business without court supervision.

Additionally, please disburse the rent check that Mr. Griffis claims has been paid to your office. The Bensch's are not recognizing any rent credits for the water heater because 1) that issue was resolved months ago and 2) the costs for that equipment had been allocated by contract to Bill Passaloukas.. Moreover the Bensch's as landlords are not waiving any late fees.

Very Truly Yours,

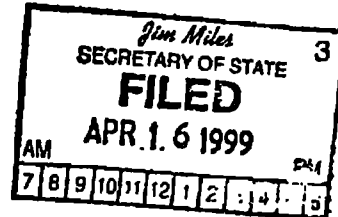


Michael W. Mogil

cc: Tony Griffis, Esq. By fax: 837-3778

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
FOR A
STATUTORY CLOSE CORPORATION



1. The name of the proposed corporation is Zorba's, Inc.
2. This corporation is a statutory close corporation, pursuant to Chapter 18, Title 33 of the 1976 South Carolina Code, as amended.
3. The initial registered office of the corporation is 27 Able Street, Bluffton, SC 29910, and the initial registered agent at such address is Bill Passaloukas.
4. The corporation is authorized to issue shares of stock as follows. Complete a or b, whichever is applicable:
 - a. X If the corporation is authorized to issue a single class of shares, the total number of shares authorized is 100,000 common.
 - b. The corporation is authorized to issue more than one class of shares:

Class of Shares

Authorized No. of Each Class

If shares are divided into two or more classes or if any class of shares is divided into series within a class, the relative rights, preferences, and limitations of the shares of each class, and of each series within a class, are as follows:

N/A

PLAINTIFF'S
EXHIBIT

5. The existence of the corporation shall begin as of the

1

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

OCT 23 2001

PLAINTIFF'S
EXHIBIT

99-014523CC

SECRETARY OF STATE OF SOUTH CAROLINA

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filing date with the Secretary of State unless otherwise indicated (See §33-1-230(b)):

6. Unless specified otherwise below, the transfer of shares of stock of the corporation shall be subject to the restrictions set out in §§33-18-110 through 33-18-130 of the 1976 South Carolina Code, as amended. Specify any variations in the statutory format in §§33-18-110 through 33-18-130:

The Shareholders by written agreement may adopt a Shareholders' Agreement and/or Shareholders' Management Agreement modifying and/or superceding any and/or all restrictions contained in the foregoing sections.

7. Unless otherwise specified below the corporation shall have a board of directors (See §33-18-210 of the 1976).

— This corporation elects not to have a board of directors.

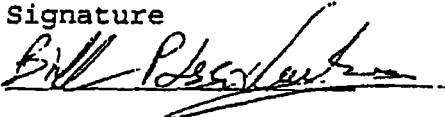
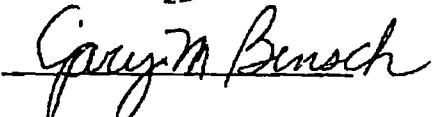
8. Check, if applicable:

— This corporation elects to have the provisions of §§33-18-140 thru 33-18-170 of the 1976 Code, which give the estate of a deceased shareholder the right to compel the corporation to purchase the deceased shareholder's shares, apply. Specify any variations in the statutory format in §§33-18-140 through 33-18-170:

9. The optional provisions which the corporation elects to include in the articles of incorporation are as follows (see §33-2-102 and the applicable comments thereto; and §§33-18-330, 35-2-105, and 35-2-221 the 1976 South Carolina Code):

The provisions contained in these Articles of Incorporation may be modified by a written agreement entered into by the Shareholders subsequent to the date of these Articles of Incorporation and may also include provisions relative to the management of the Corporation and the rights, duties and obligations of the Shareholders.

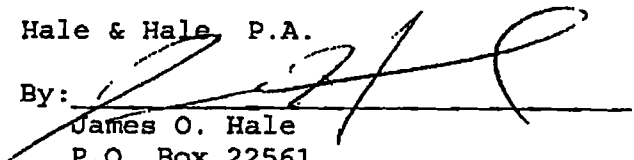
10. The name and address and signature of each incorporator is as follows (only one is required);

Name	Address	Signature
Bill Passaloukas	27 Able St. Bluffton, SC 29910	
Gary Bensch	6 Fantail Lane Hilton Head, SC 29926	

11. I, James O. Hale, an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 2, Title 33 of the 1976 South Carolina Code relating to the articles of incorporation.

Date 4/14/99

Hale & Hale, P.A.

By: 

James O. Hale
P.O. Box 22561
Hilton Head Island, SC 29925

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
3. Schedule of Fees - Payable at time of filing the Articles with the Secretary of State

Fee for filing Articles of Incorporation (payable to Secretary of State) \$ 10.00

Filing Tax (payable to Secretary of State) 100.00

Minimum License Fee (payable to S.C. Tax Commission) 25.00

4. THIS FORM MUST BE ACCOMPANIED BY THE FIRST REPORT OF CORPORATIONS (See §12-19-20) AND CHECK IN THE AMOUNT OF \$25.00 PAYABLE TO THE SOUTH CAROLINA TAX COMMISSION FOR THE INITIAL LICENSE FEE.

SPECIAL NOTE

All share certificates issued by a statutory close corporation must contain the following conspicuous notice:

THE RIGHTS OF SHAREHOLDERS IN A STATUTORY CLOSE CORPORATION MAY DIFFER MATERIALLY FROM THE RIGHTS OF SHAREHOLDERS IN OTHER CORPORATIONS. COPIES OF THE ARTICLES OF INCORPORATION AND BY-LAWS, SHAREHOLDERS' AGREEMENTS AND OTHER DOCUMENTS, ^{any} OF WHICH MAY RESTRICT TRANSFERS AND AFFECT VOTING AND OTHER RIGHTS, MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.

Form Approved by South Carolina
Secretary of State 1/89

\\Pserver\pserver_c\Client Files\W to R Clients\Passaloukas\Incorporation of Forba\articles of incorporation.wpd

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Bensch-mark for
Towne Center
P.O. Box 22242
Hilton Head Isl, SC
29925

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ZORSA'S RESTAURANT
P.O. Box 1467
Bluffton, SC 29910

4a. Article Number

12 31 99

4b. Service Type

- ☐ Registered ☒ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

Towne Center
P.O. Box 72240
Hickory Hill, SC 29125

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

102595-08-9-0229

Domestic Return Receipt

30-Jan-2002

AMOUNT

PLAINTIFF'S
EXHIBIT

12

4404

PLAINTIFF'S
EXHIBIT

-11

Received \$404.00 for
escrow account of Kiker & Dadds, P.A.
fbo Clerk of Ct. re: Passaloukas v. Bensch.
1/31/02

J. Brent Kuh

DEFENDANT'S
EXHIBIT
36

PLAINTIFF'S
EXHIBIT

13

TOWNE CENTER
COMMERCIAL
LEASE AGREEMENT

Towne Center, L.L.C.

THIS LEASE AGREEMENT ("Lease") is made effective this 2 day of May 2000 by and between Gay M. and Cynthia M. Bensch whose address is _____ ("Landlord") and Ms. Trisha Bluffton, Inc. and Juan Campos whose address is _____ ("Tenant").

WHEREAS, Landlord is the owner of a parcel of real property with certain improvements located in Bluffton, Beaufort County, South Carolina; and

WHEREAS, Tenant wishes to lease Landlord's improved real property under certain terms and conditions.

NOW, THEREFORE, in consideration of the sum of the rent to be paid by Tenant to Landlord, the covenants and agreements herein, and for other good and valuable consideration, the receipt and legal sufficiency of which both parties acknowledge, the Landlord and Tenant agree as follows:

1. Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases and takes from Landlord, for the term and upon conditions hereinafter set forth, all that real property and improvements located thereon at 27 Dr. Mellichamp Drive, South Carolina ("Leased Premises"), more particularly described as follows:

Suite 101 Towne Center (@ 1600 s.f.) with patio space (300 s.f.)

See also addendum "A" relating to Suite 102.

Tax Map Reference 610-39A-14

1. Occupancy and Use of the Leased Premises. Tenant shall use and occupy the Leased Premises for the operation of a restaurant, subject to the terms and conditions in this Lease, and for all such uses as may be customarily incidental to Tenant's business.

2. Term.

a) Initial Term. The term of this Lease shall be for a period of 60 months (5) years commencing on the 2 day of May, 2000, and ending on the 1 day of May, 2005 at midnight, unless sooner terminated as hereinafter provided (the "Lease Term"). (Five)

b) Renewal Options. Upon the expiration of the initial term, Tenant shall have 5-year renewal options which, if exercised, may extend the Lease Term of this Lease until the 1 day of May or the 1 day of May, as applicable. Tenant shall notify Landlord in writing not less than thirty (30) days before the expiration of the initial term and, if applicable, the first renewal term. Tenant chooses to exercise

PLAINTIFF'S
EXHIBIT

PLAINTIFF'S
EXHIBIT

420

Tenant's renewal options. The agreements, covenants and provisions provided in this Lease shall control and apply to any renewal term.

Rent.

a) Base Rent. During the Lease Term, Tenant covenants and agrees to pay to Landlord, at Landlord's office or at such other place as Landlord may designate, annual base rent of 1100 DOLLARS (\$30516.00) in equal monthly installments of two thousand five hundred forty three 1100 DOLLARS (\$2543.00), due and payable on or before the first and last day of each month in advance. The initial installment of two thousand three hundred ninety 1100 DOLLARS (\$4393.00) is due and payable the 2 day of May 2000, and subsequent installments shall be payable on the same day of each month thereafter during the Lease Term. Rent for May and June 2000 shall only be \$1370.00 per month. Base rent shall increase at 4% per annum to take effect each year of the lease term on May 1st of said year.

b) Additional Rent. Tenant shall, for so much of the calendar year as Tenant has occupied the Leased Premises during the Lease Term and any renewals hereof, pay as additional rent all of Landlord's operating/ownership costs payable with respect to real property and improvements of which the Leased Premises are a part. Landlord's operating/ownership costs shall be defined to include the cost and expense of operating and maintaining the Leased Premises and include the following: \$130.00 common area maintenance charge per month

- (i) All costs and expenses of operating, repairing, heating, cooling, lighting, cleaning, painting, stripping, policing, trash removal and security;
- (ii) Insurance, including appropriate liability insurance for personal injury, death and property damage, insurance against fire, extended coverage, flood, theft, or other casualties;
- (iii) ~~Cost and expense of landscaping, planting, replanting and replacing trees, shrubbery and grass and the cost and expense of irrigation of same.~~
- (iv) All water and sewer user fees;
- (v) All taxes assessed or imposed at any time by any municipal, county or state government upon or against Leased Premises; and
- (vi) Any fees and assessments imposed upon the Leased Premises.

Tenant's obligation to pay additional rent for the final month shall survive the expiration of the Lease Term.

(vii) Tenant shall provide his own trash dumpster and shall arrange for his own waste disposal service.

(viii) Tenant shall pay his yearly pro rata share of the shipping center's general liability, hazard, and fire insurance within 30 days of receipt of bill for same from landlord.

(ix) Tenant shall pay his yearly pro rata share of the County property taxes within 30 days of receipt of bill from landlord.

2.2 Personal Property Taxes. tenant shall be liable for and shall pay before delinquency (and, upon demand by Landlord, tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property and any other personal property of whatsoever kind and to and whomsoever belonging, situate or installed in and upon the Premises, whether or not affixed to the realty.

2.3 Taxes on or in Respect of Rent. In the event of the enactment, adoption or enforcement by any governmental authority, including the United States, any state or political or governmental subdivision, or any assessment, levy or tax, whether sales, use or otherwise, on or in respect to the rentals set forth herein, or on or in respect to the right to lease, use or occupy the Premises, Tenant shall pay such assessment, levy or tax to Landlord, or, at Landlord's option, Tenant shall pay such assessment, levy or tax directly to the governmental authority. Notwithstanding the foregoing, this Section 2.3 shall not impose upon Tenant the obligation to reimburse Landlord for any income, gift, inheritance, or estate tax.

2.4 Security Deposit. Tenant agrees to pay Landlord a security deposit in the amount of One Thousand and 00/100 (\$1,000.00) Dollars upon execution of the Lease. Deposit shall be paid to Landlord and may be commingled and/or utilized with other operating funds of Landlord. The security deposit is not to be used as payment of the last month's rent, but is held as security against tenant's performance of all obligations and covenants pursuant to this agreement. Within thirty (30) days after the termination of this Agreement, Landlord shall pay the deposit amount to tenant, minus offsets for damages or unreimbursed expenses incurred by Landlord which are Tenant's responsibility or monies owed and unpaid under Lease. Application of the security deposit to any damages or costs incurred by Landlord shall be in addition to and not in lieu of any remedies available to Landlord. Any rent unpaid after the date due shall be subject to a 5% late fee.

3. USE AND CARE OF PREMISES.

3.1 During the continuance of this Lease Agreement, the Demised Premises shall be used and occupied as a restaurant.

3.2 Tenant agrees to comply with all applicable recorded covenants and restrictions, laws, ordinances and valid rules and regulations of any Federal, state, municipal or other public authorities having jurisdiction over the Demised Premises. Tenant agrees to maintain the Demised Premises in a clean, orderly and sanitary condition, to perform or cause to be performed at its expenses all ordinary and normal maintenance and servicing of all plumbing, electrical, heating and air conditioning equipment and fixtures associated with the Demised Premises, including but not limited to the replacement of light bulbs and air filters, and the replacement of any and all damaged or broken glass, plate or otherwise, from any cause whatsoever.

CMB CUB
7-11-02

For definition purposes, repairs, of any one incident, in the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars or more should be considered major repairs and shall be covered by Landlord. Repairs, of any one incident, in amounts less than Two Hundred Fifty and 00/100 (\$250.00) Dollars should be considered to be minor repairs and covered as Tenant's responsibility.

3.3 Landlord shall keep the foundation, the exterior walls and roof of the Demised Premises in good repair, and shall be responsible for any major repairs of the plumbing, electrical, heating and air conditioning equipment serving the Demised Premises, except where such repairs are occasioned by the act of negligence of Tenant, its agents, employees, invitees or licensees, or where such repairs are a result of Tenant's misuse and/or failure to provide ordinary and regular maintenance in accordance with paragraph 3.2 herein. Landlord shall not be required to make any other improvements or repairs of any kind to the Demised Premises and appurtenances.

3.4 Tenant, at its own expense, shall install and maintain original fire extinguishers and other fire protection devices as may be required by any governmental agency having jurisdiction thereof or the insurance underwriters insuring the building of which the Demised Premises form a portion. Tenant is responsible for insuring that the extinguishers and other fire protection devices remain on the premises and are maintained.

3.5. Tenant shall clean the restaurant exterior, walkways, and parking area on a daily basis prior to 8:00 AM.

4. UTILITY SERVICES AND CHARGES.

4.1 All accounts for such services shall be maintained in Tenant's name. Landlord shall not be liable in damages or otherwise should the furnishing of any service to the Demised Premises be interrupted by fire, accident, riot, strike, Act of God or the making of necessary repairs or improvements or other causes beyond the control of Landlord.

5. SIGNS AND ALTERATIONS.

5.1 Tenant shall not erect or install any exterior or interior signs or advertising media or window or door lettering, or placards without the previous written consent of Landlord. Nor shall Tenant use any displays or advertising media which shall be deemed objectionable to Landlord or other tenants, such as flashing lights, loudspeakers or phonographs or other noise creating devices in a manner to be heard outside the Demised Premises. No exterior lighting or plumbing fixtures, shades or awnings or any exterior decorations or painting shall be installed without the prior written consent of Landlord. In the event Tenant shall erect or install any signs, exterior lighting, plumbing fixtures, shades, awnings or exterior decorations, or other items not having been approved in writing in advance by Landlord, Landlord may remove them without notice and the cost of such removal and restoration of the Demised Premises to its original condition shall be paid by Tenant to Landlord as additional rent within ten (10) days after receipt by Tenant of written demand for same from Landlord. Public notices required by law are exempt from the provisions of this section.

Carla
[Signature]

5.2 Tenant shall not make or cause to be made any alterations, additions or improvements to the Demised Premises, whether structural or non-structural, or cause to be installed any exterior sign, floor covering, interior or exterior lighting, plumbing fixtures, shades, canopies or awnings or make changes in the exterior appearance of the Demised Premises without Landlord's prior written approval. Tenant shall submit to Landlord plans and specifications for such work at the time approval is sought, which plans and specifications must be sufficient in detail to accurately inform Landlord of the alterations proposed. Before commencement of any work, all plans and specifications shall be filed with and approved by all governmental departments or authorities having jurisdiction, and the necessary permits, must be obtained.

5.3 All alterations, additions, improvements and fixtures, other than trade fixtures, which may be made or installed by either of the parties hereto upon the Demised Premises and which in any manner are attached to the floors, walls or ceilings shall be the property of Landlord and at the termination of this Lease Agreement shall remain upon and be surrendered with the Demised Premises as a part thereof, without disturbance or removal. Any floor covering which may be cemented or otherwise adhesively affixed to the floor of the Demised Premises shall be and becomes the property of Landlord absolutely. Landlord may, however, designate by written notice to Tenant those alterations and/or additions which shall be removed by Tenant at the expiration or termination of this Lease Agreement, and Tenant shall promptly remove the same and repair any damage to the Demised Premises caused by such removal or by removal of trade fixtures.

6. USE OF PREMISES.

6.1 The Demised Premises are hereby leased to Tenant for the purpose set forth in 3.1 hereinabove, Tenant agrees not to materially alter such use without the prior written consent of Landlord and Tenant covenants and agrees not to use the Demised Premises for any unlawful or immoral purpose or in such a manner as to create a nuisance.

6.2 During the term of this lease at any reasonable time and upon reasonable notice to Tenant, Landlord may show the Demised Premises to prospective purchasers. Such inspections shall be conducted so as not to unreasonably interfere with the business activities of Tenant.

6.3 Tenant shall permit Landlord, its agents, employees and contractors to enter the Demised Premises and all parts thereof at any reasonable time to inspect the same and to enforce or carry out any provisions of this Lease. Such inspections shall be conducted so as not to unreasonably interfere with the business activities of Tenant.

7. LIENS

7.1 Tenant covenants that during the term of this Lease it shall promptly discharge any and all claims of materialmen's, artisan's, laborer's, contractor's, or subcontractor's liens which may be

C. M. G. O'NEILL

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 6.1 If, in the opinion of Landlord, Tenant is creating a nuisance or unreasonably interfering with the quiet use and enjoyment of the premises by other tenant Landlord shall provide written notice to Tenant allowing tenant five days to cure actions creating a nuisance or interfering with enjoyment. Failure of Tenant to cure within five days shall be deemed a breach of the lease agreement.

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filed, created, recorded or imposed with respect to the Demised Premises or any addition or improvement thereto for which Tenant or anyone claiming through Tenant is responsible. Tenant shall have the right and duty to contest, at its sole expense, any attempt to create, record or impose such a lien or encumbrance upon the said Demised Premises. Tenant covenants that it will indemnify and save harmless the Landlord from any liability or alleged liability by reason of Tenant's failure to perform the covenants of this paragraph. Tenant will not alienate, encumber, mortgage or otherwise pledge or hypothecate its leasehold estate herein created or any addition thereto without the written consent of Landlord; provided, however, that nothing herein shall prevent Tenant from creating liens, chattel mortgages, purchase money indebtedness or other encumbrances upon its personal property located in or upon the Demised Premises or from participating in customary inventory financing.

8. SURRENDER OF PREMISES.

8.1 At the expiration of the tenancy hereby created, Tenant shall surrender the Demised Premises in the same condition as the Demised Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall surrender all keys for the Demised Premises to Landlord at the place then fixed for the payment of rent. Tenant shall remove all its trade fixtures and any alterations or improvements made by Tenant which Landlord requests to be removed before surrendering the Demised Premises as aforesaid and shall repair any damage to the Demised Premises caused thereby. If the Tenant fails to remove such items from the Demised Premises prior to the date of termination of this Lease, all such alterations, decorations, additions and improvements shall become the property of the Landlord unless the Landlord elects to require their removal in which case Tenant shall promptly remove same and restore the Demised Premises to its prior condition normal wear and tear excluded. Should Tenant not effectuate timely removal, Landlord may effectuate the same whereupon Tenant agrees to pay for the expenses incurred therefore. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

9. ASSIGNMENT AND SUBLETTING, CONCESSIONS, CORPORATE OWNERSHIP.

9.1 Consent Required. Tenant will not assign, mortgage, pledge, hypothecate or sublet this Lease in whole or in part nor all or any part of the Demised Premises, without the prior written consent of Landlord in each instance which consent shall not be unreasonably withheld. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning, subletting, mortgaging and pledging shall be construed to include a prohibition against any assignment or subletting by operation of law, legal process, receivership, bankruptcy or otherwise. If this Lease be assigned or if the Demised Premises or any part thereof be underlet by anyone other than Tenant,

Cmb. CMB
[Signature]

Landlord may collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy, or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Notwithstanding any assignment of sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request by Tenant for Tenant's consent pursuant to this section.

9.2 Benefits and Burdens of Assignment. This Lease Agreement and the covenants and conditions herein contained, shall inure to the benefit of and be binding upon Landlord, its successor and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been consented to in writing by Landlord. Nothing contained in this Lease shall in any manner restrict Landlord's right in its sole discretion to assign or encumber this Lease.

10. EMINENT DOMAIN

10.1 Total Condemnation. If the whole of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to that date and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

10.2 Partial Condemnation. If any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Demised Premises unsuitable for the business of the Tenant (as determined by Landlord), then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease. In the event of a partial taking of condemnation which is not extensive enough to render the Demised Premises unsuitable for the business of the Tenant, then Landlord shall promptly restore the Demised Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, the Lease shall continue in full force and effect, and the rent shall be reduced proportionately as to the portion lost in the taking.

10.3 Landlord's Damages. In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, the Tenant shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and the Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right of claim to any part thereof.

10.4 Tenant's Damages. Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Demised Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost of loss to which Lessee might be put in removing Tenant's merchandise, furniture, leasehold improvements and equipment.

11. MISCELLANEOUS.

11.1 Documentary Stamps. Should any documentary stamps be required to be affixed to this Lease Agreement under the laws of the State of South Carolina or any other state, such stamps shall be at the sole expense of Tenant.

11.2 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such a waiver be in writing by Landlord.

11.3 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy afforded under this Lease.

11.4 Subordination and Attornment. The Lease Agreement shall be subordinate to any mortgage or deed of trust that may be placed upon the Demised Premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. Upon written request or notice from Landlord, Tenant agrees to execute written acknowledgment of the subordination of its rights under this Lease Agreement to the lien or liens of any mortgage that may be or hereafter be placed upon the Demised Premises. Tenant shall, in the event any proceedings are brought for the foreclosure of any mortgage covering the Demised Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under the Lease Agreement.

C.B. Allen
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12. TAXES ON LEASEHOLD

12.1 Taxes on Leasehold: Tenant shall be responsible for and shall pay before delinquency all municipal, county, state or federal taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind placed in, upon or about the Demised Premises by Tenant.

12.2 Notice. Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be deemed given when such notice or consent is mailed by registered or certified mail, return receipt requested, addressed to Landlord as Post Office Box 22242 Hilton Head Island, South Carolina; and to Tenant at Hilton Head Island, 29926 or any other address as may be specified from time to time in writing sent to the other party by registered or certified mail, return receipt requested.

12.3 Loss and Damage. Except for Landlord's negligence, Landlord shall not be liable for any damage to property of Tenant or of others entrusted to Tenant or to employees or invitees of Tenant, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Except for Landlord's negligence, Landlord shall not be liable for any injury (including death) or damage to persons or property resulting from fire, explosion, falling objects, steam, gas, electricity, water, rain or snow or leaks from any part of the Demised Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause whatsoever or any nature. Except for Landlord's negligence, Landlord shall not be liable for any such damage caused by occupants of adjacent property, or the public, or caused by operations in construction of any private, public, or quasi-public work. Landlord shall not be liable for any latent defect in the Demised Premises. All property of Tenant kept or stored on the Demised Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act of gross neglect of Landlord.

13. FORCE MAJEURE, RELEASE AND EXCULPATION

13.1 Excuse of Landlord's Performance--Force Majeure. Nothing to the contrary herein withstanding, Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease Agreement to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, and the time for performance by Landlord shall be extended by the period of delay resulting from or due to any of said causes.

Handwritten signature and initials

13.2 Release from Liability: Tenant agrees not to hold Landlord or its agents responsible or liable in damages by abatement of rent or otherwise for any damage sustained by Tenant or any other person, due to the Demised Premises or any part thereof or any appurtenances thereof being or becoming out of repair, or due to the happening of any accident (unless resulting from negligence on Landlord's part) especially, but not exclusively, any damage caused by water, snow, ice, windstorm, tornado, gas, steam, electric wiring, plumbing, or heating apparatus; and not to hold Landlord or its agents liable for losses by theft.

14. DEFAULT OF THE LEASE

14.1 Right to Re-enter, Acceleration: In the event of any failure of Tenant to pay any rental due hereunder within (5) days after written notice of said default, or in the event of any failure to perform any other of the terms, conditions or covenants of this Lease Agreement to be observed or performed by Tenant within (5) days after written notice, or if Tenant or any guarantor of this Lease Agreement shall become bankrupt or insolvent, or file any debtor proceeding or file or have filed against Tenant or any guarantor of this Lease Agreement in any court pursuant to any statute either of the United States or any state a petition in bankruptcy or for insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or any such guarantor's property, or if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon said Demised Premises, or suffer this Lease Agreement to be taken under any writ of execution, then Landlord in addition to other rights of remedies it may have: (1) shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service or notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be trespass; or becoming liable for any loss or damage which may be occasioned thereby; and/or (2) shall have the right to declare any and all rent and other amounts due under this Lease Agreement at once due and payable and may proceed by attachment, suit or otherwise, to collect all such amounts in the same manner, as if by the terms of this Lease Agreement all such amounts due or to become due during the entire term were payable in advance, and neither the acceleration by Landlord of such amounts nor the payment by Tenant of such acceleration amounts shall constitute a waiver by Landlord or any breach, existing or in the future, of any of the terms or provisions of this Lease Agreement by Tenant or of any rights or remedies which the Landlord may have with respect to any such breach. In the event Landlord elects to accelerate as herein set forth and subsequently leases the Demised Premises to a third party prior to the end of the period for which this Lease Agreement would run if there had been no breach of this Lease Agreement, Landlord shall, at the end of said period, refund to Tenant that portion of the accelerated sum paid by Tenant which represents the accelerated rent for that part of said period during which said third party shall pay rent to Landlord; provided, however, that should said accelerated sum exceed rental payments actually received from said third party during said period Landlord shall not be required to refund to Tenant the amount which represents the excess of said accelerated sum over the rental payments actually received from said third party during said period.

Handwritten signature and initials

14.2 Tenant's Lien: To the fullest extent allowable by law, the Landlord shall have a lien for the rent payable hereunder, on the goods, furniture, equipment and effects belonging to Tenant and all other charges due Landlord hereunder, which lien shall be superior to all other liens of any kind or character whatsoever except as hereinafter set out. No goods, furniture, equipment or effects shall be removed from the Demised Premises without the written consent of Landlord, except in the ordinary course of business, until all rent and other applicable charges have been paid.

14.3 Right to Relet: Should Landlord elect to reenter as herein provided or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease Agreement or it may from time to time without terminating this Lease Agreement, make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease Agreement) and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable; upon each such reletting all rentals received by the Landlord from such reletting shall apply first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any reasonable costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease Agreement unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Should Landlord at any time terminate this Lease Agreement for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Demised Premises, reasonable attorneys' fees and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease Agreement for the remainder of the stated term over the then reasonable rental value of the Demised Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord. Without limitation of Landlord's other rights and remedies, and regardless of whether Landlord shall have re-entered, relet or terminated this Lease Agreement, in the event of default or breach by Tenant, at the election of Landlord (i) the entire rent for the whole term of this Lease Agreement and any other indebtedness of Tenant to Landlord hereunder shall be immediately due and payable, or (ii) Landlord may proceed for past due installments and indebtedness only, reserving Landlord's right to proceed later for the remaining installments and subsequently maturing indebtedness.

Cpb. Cms
[Signature]

14.4 Non-Exclusive Remedies: The mention in this Lease Agreement of any specific right of remedy shall not preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either by law or in equity

14.5 Legal Expenses: In case suit shall be brought, or an attorney shall be employed, for recovery of possession of the Demised Premises, for the recovery of rent or any other amounts due under the provisions of this Lease Agreement, or for the enforcement of, or because of the breach of, any covenant herein contained on the part of tenant to be kept or performed, and a breach shall be established, the prevailing party shall be reimbursed for all costs and expenses incurred, including a reasonable attorneys' fee.

15. PARTIAL INVALIDITY.

15.1 If any term, covenant or condition of this Lease Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement shall not be affected thereby, and each term, covenant or condition of this Lease Agreement shall be remainder of this Lease Agreement shall not be affected thereby, and each term, covenant or condition of this Lease Agreement shall be valid and enforced to the fullest extent permitted by law.

16. INSURANCE AND INDEMNITY

16.1 Indemnity: Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the term of this Lease from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Tenant or any other person thereon or holding under said Tenant, and that Tenant will indemnify and save harmless Landlord from all liability whatsoever, on account of any such real, or claimed damage or injury and from all liens, claims and demands arising out of the use of the Premises and its facilities, or any repairs or alterations which Tenant may make upon said Premises, but Tenant shall not be liable for damage or injury occasioned by the negligence of Landlord and its designated agents, servants or employees unless and only to the extent such negligence unless is covered by insurance Tenant is required to provide. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made or may be made.

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[Signature]

16.2 Subrogation: Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damaged occasioned by Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents or to other portions of the Shopping Center, arising from any risk generally covered by fire and extended coverage insurance, and the parties each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be, if such waiver is permitted by, or obtainable from, the respective insurance company.

16.3 Tenant Insurance. Tenant further covenants and agrees that from and after the delivery of the Premises by Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(1) Public Liability and Property Damage: Public liability and property damage insurance with a combined single limit of One Million and (\$1,000,000.00) 00/100 Dollars insuring against any and all liability of the insured with respect to said Premises or arising out of the maintenance, use or occupancy thereof. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions as to liability for injury or death of persons an injury or damage to property contained in this Article.

(2) Plate Glass: Tenant shall be responsible for the maintenance of the plate glass on the Premises and shall insure the risk.

(3) Tenant Improvements: Insurance covering all of the Tenants leasehold improvements, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and personal property of others in Tenants Possession in an amount not less than the full replacement cost without deduction for depreciation from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions hereof.

(4) Policy Form: All policies of insurance provided for herein shall be issued by insurance companies with general policyholders' rating not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of South Carolina, and shall be issued in the names of Landlord, Tenant and such other persons or firms as Landlord specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after

Craig, CUB
[Signature]

delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be produced and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give to Landlord twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amount of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry.

(5) Failure of Tenant to Obtain: In the event that Tenant fails to procure and/or maintain any insurance required by this Article, or fails to carry insurance required by law or governmental regulation, Landlord may, but without obligation to do so, at any time or from time to time, and without notice, procure such insurance and pay the premiums therefore, in which event Tenant shall repay Landlord all sums so paid by Landlord, together with interest thereon as provided in Article 23 hereof, and any incidental costs or expenses incurred by Landlord in connection therewith, within ten (10) days following Landlord's written demand to Tenant for such payment.

16.4 Blanket Policy: Notwithstanding anything to the contrary contained within this Article 16, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of

a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that Landlord and others hereinabove mentioned shall be named as an additional insured thereunder as their interests may appear and that the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. Tenant agrees to permit Landlord at all reasonable times to inspect the policies of insurance of Tenant covering risks upon the Premises for which policies or copies thereof are not required to be delivered to Landlord.

16.5 Other:

(1) Increased Insurance Risks: Tenant agrees that it will not at any time during the term of this Lease carry any stock or goods or do anything in or about the Premises which will in any way tend to increase the insurance rates upon the building of which the Premises are a part. Tenant agrees to pay the Landlord forthwith upon demand the amount of any increase in premiums for insurance against loss by fire that may be charged during the term of this Lease on the amount of insurance carried by it on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about said Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of Tenant.

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If Tenant installs upon the Premises any electrical equipment which constitutes an overload on the electrical lines of the Premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading.

(2) If Tenant shall not comply with the covenants made in this Article, Landlord may cause insurance as aforesaid to be issued, and in such event, Tenant agrees to pay, as additional rent, the premium for such insurance upon Landlord's demand.

17. OPTION TO RENEW

17.1 Option to renew. Tenant has the option at the end of this year Lease Agreement period to negotiate for renewal of this Lease Agreement.

18. LEASE PROVISIONS CONCERNING HAZARDOUS MATERIAL.

18.1 Tenant shall not cause or permit any Hazardous Material to be brought upon, or used in or about the Premises by Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord (which landlord shall not unreasonably withhold as long as tenant demonstrates to landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises). If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which tenant is legally liable to landlord for damage resulting therefrom, then tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by tenant results in any contamination of the premises, tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that landlord's approval of:

such actions shall be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

18.2 Landlord represents and warrants that to Landlord's knowledge any handling, transportation, storage, treatment or usage of toxic or Hazardous Material that has occurred On the Lease premises to date has been in compliance with all applicable federal, state and local laws, regulations, and ordinances. Landlord further represents and warrants that no leak, spill, release, discharge, emission, or disposal of toxic or Hazardous Material has occurred on the Leased Premises to date and that the soil, groundwater, and soil vapor on or under the Leased Premises is free of toxic or Hazardous Material as of the date that the term of this Lease Agreement commences.

18.3 Landlord shall indemnify, defend (with counsel selected by Landlord) and hold Tenant and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims) or loss including attorneys' fees, consultant fees, and expert fees (consultants and experts to be selected by Tenant) that arise during or after the term of this lease from or in connection with presence or suspected presence of toxic or Hazardous Material in the soil, groundwater, or soil vapor on or under the Leased premises which existed on the property at the commencement of the Lease term, unless the toxic or Hazardous Material are present solely as a result of the negligence or willful misconduct of Tenant, its officers, employees or agents. Without limiting the generality of the foregoing, the indemnification provided by this paragraph shall specifically cover costs incurred in connection with any investigation of site conditions or annum cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence or suspected presence of toxic or Hazardous Materials in the soil, groundwater, or soil vapor on or under the Leased premises, unless the toxic or Hazardous Materials are present solely as a result of the negligence or willful misconduct of tenant, its officers, employees, or agents. Without limiting the generality of any of the foregoing the indemnification provided by this paragraph shall also specifically cover cost incurred in the connection with:

(1) toxic or Hazardous Materials present or suspected to be present in the soil, groundwater, or soil vapor on or under the Leased Premises before the term of this Lease Agreement commences; or

(2) toxic or Hazardous Materials present on or under the Leased Premises as a result of any discharge, dumping, or spilling (accidental or otherwise) onto the Leased Premises during or after the term of this Lease Agreement by any person, corporation, partnership or entity other than the tenant.

AmB. QMB
[Signature]

18.4 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of South Carolina or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under state law provisions, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. in Section 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conversation and reconvert Act, 42 U.S.C. in Section 6901 et seq. (42 U.S.C. in Section 69030, (vi) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and liability Act, 42 U.S.C. in section 9601 et seq. (42 U.S.C. in Section in Section 9601), or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (regulated of Underground Storage tanks) 42 U.S.C in Section 6991 et. seq.

19. CAPTIONS AND NUMBERS.

19.1 The captions, paragraph numbers and article numbers appearing in this Lease Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs or articles of this Lease Agreement, nor in any way affect this Lease Agreement.

20. ENTIRE AGREEMENT.

20.1 This Lease Agreement and exhibits hereto, if any, set forth all the covenants, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Premises, and there are no covenants, promises, conditions, agreements or understandings, either oral or written, between them other than as herein set forth. No alterations, amendments, changes or additions to this Lease Agreement shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

21. RECORDING.

21.1 Tenant shall not record this Lease Agreement without the express written consent of Landlord.

22. BINDING EFFECT.

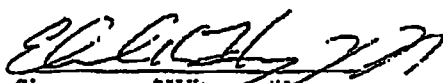
22.1 This Lease Agreement and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

13. Severability. Should any provision of this Lease be void or become unenforceable at law or in equity, the remaining provisions hereof shall remain in full and effect.

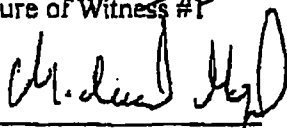
~~A. Legal Cost. Tenant and Landlord agree that all costs, including reasonable attorney's fees, of any legal action or suit in law or equity arising out of the mutual covenants, promises and agreements of this Lease shall be paid by the Tenant.~~

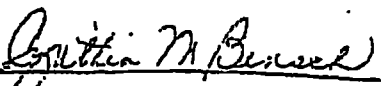
B. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have set their hands and seal as of the day and year first mentioned above.

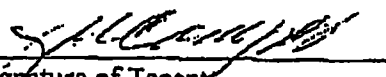

Signature of Witness #1

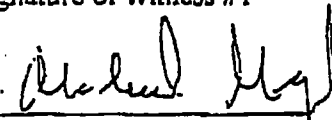

Signature of Landlord


Signature of Witness #2


Signature of Cynthia M. Bensch

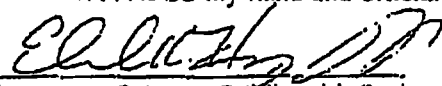

Signature of Witness #1


Signature of Tenant

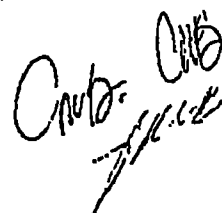

Signature of Witness #2

I, the undersigned notary, do hereby certify that Gary M. Bensch and Cynthia M. Bensch (Landlord) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 2nd day of May, 2000.


Signature of Notary Public with Seal

My Commission Expires: 8/1/2007



ADDENDUM A TO LEASE

Upon written notice by Landlord that Suite 102 is available and offered to Tenant for lease, Tenant shall have thirty (30) days to accept said offer and immediately upon acceptance Landlord shall lease to Tenant and Tenant shall lease from Landlord Suite 102 of Towne Center (approximately 1200 square feet) at a base rent of TWELVE and 50/100 (\$12.50) DOLLARS per square foot and otherwise under the same terms and conditions of the Lease.

WITNESSES:

Elkhart
Michael May

TENANT:

[Signature]

WITNESSES:

Elkhart
Michael May

LANDLORD:

Coryn Bensch
Coryn M Bensch

TOWNE CENTER
COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made effective this April 11th 2005, by and between ("Landlord") TOWNE CENTER LLC) whose address is 6 Fantail Lane, Hilton Head Isl, SC, 29926 and ("Tenant") Mi Tierra Restaurant, Compos Silva Inc, whose address is, 27 Dr. Mellicamp Drive, Suite 100, Bluffton SC, 29910.

WHEREAS, Landlord is the owner of a parcel of real property with certain improvements located in Beaufort County, South Carolina and

WHEREAS, Tenant wishes to lease Landlord's improved real property under certain terms and conditions.

NOW, THEREFORE, in consideration of the sum of the rent to be paid by Tenant to Landlord, the covenants and agreements herein, and for other good and valuable consideration, the receipt and legal sufficiency of which both parties acknowledge, the Landlord and Tenant agree as follows:

1. **Leased Premises.** Landlord hereby leases to Tenant and Tenant hereby leases and takes from Landlord, for the term and conditions herein after set forth, all that real property and improvements located thereon at 27 Dr. Mellicamp Drive, Bluffton, South Carolina 29910 ("Leased Premises"), more particularly described as follows:
Suite 101, Suite 102, and Covered Patio.

2. **Occupancy and Use of The Leased Premises.** Tenant shall use and occupy the Leased Premises for the operation of a Restaurant, subject to the terms and conditions in this lease, and for all such uses as may be customarily incidental to Tenant's business.

3. **TERM.**

a) **Initial Term.** The term of this Lease shall be for a period of Five (5) years commencing on the 1st day of May, 2005 and ending on the 30th day of April, 2010, at midnight, unless sooner terminated as hereinafter provided ("the Lease Term").

b) **Renewal Option.** Upon the expiration of the initial term, Tenant shall have first Right to renew at the prevailing rate. Tenant shall notify Landlord in writing not less than sixty (60) days before the expiration of the term of the Lease to insure the renewal option. Tenant must be in compliance with all terms of this lease for renewal options.

PLAINTIFF'S
EXHIBIT

15



3. **RENT.**

a) **Base Rent.** During the Lease Term, Tenant covenants and agrees to pay to Landlord, at Landlord's office or at such other place as Landlord may designate. Annual base rent of Fifty Two Thousand Five Hundred sixteen \$52,516. Base rent shall be paid in unequal payments as follows: April through November the rent will be \$4,593.00 and December through March the rent will be \$4,243.00 payable on the 1st day of each month during the Lease Term.

b) **Additional Rent.** Tenant shall, for so much of the calendar year as Tenant has occupied the Leased premises during the Lease Term and any renewals hereof, pay as additional rent all of Landlord's operating/ownership costs payable with respect to real property and improvements of which the Leased premises are a part. Landlord's operating/ownership costs shall be defined to include the cost and expense of operating and maintaining the Leased premises and include the following:

1. **Maintenance :** Tenant will pay all expenses to operating, repairing, heating Cooling, interior painting, trash removal, equipment maintenance, and security.
2. **Insurance :** Tenant will furnish and maintain fire, health, Public liability and property damage, insurance and name Landlord as additionally insured. Tenant will pay pro rata share of Landlord's fire, wind and Liability insurance as billed annually.
3. **Utilities :** Tenant will furnish all water, sewer, electricity and telephone. and will keep all accounts current.
4. **Taxes :** Tenant will pay all taxes levied or imposed by county or state government upon or against Leased premises;
5. **Fees :** Tenant will pay all fees or assessments made on the leased premises.
6. **Grounds Maintenance Fee :** Tenant will pay a \$100. per month for the Towne Center grounds maintenance.
7. **Dumpster :** Tenant will provide and maintain a separate dumpster for the restaurant exclusively.

Tenant's obligation to pay additional rent for the final month shall survive the expiration of the Lease Term.

2.2 Personal Property Taxes. tenant shall be liable for and shall pay before delinquency (and, upon demand by Landlord, tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property and any other personal property of whatsoever kind and to and whomsoever belonging, situate or installed in and upon the Premises, whether or not affixed to the realty.

2.3 Taxes on or in Respect of Rent. In the event of the enactment, adoption or enforcement by any governmental authority, including the United States, any state or political or governmental subdivision, or any assessment, levy or tax, whether sales, use or otherwise, on or in respect to the rentals set forth herein, or on or in respect to the right to lease, use or occupy the Premises, Tenant shall pay such assessment, levy or tax to Landlord, or, at Landlord's option, Tenant shall pay such assessment, levy or tax directly to the governmental authority. Notwithstanding the foregoing, this Section 2.3 shall not impose upon Tenant the obligation to reimburse Landlord for any income, gift, inheritance, or estate tax.

2.4 Security Deposit. Tenant agrees to pay Landlord a security deposit in the amount of One Thousand and 00/100 (\$1,000.00) Dollars upon execution of the Lease. Deposit shall be paid to Landlord and may be commingled and/or utilized with other operating funds of Landlord. The security deposit is not to be used as payment of the last month's rent, but is held as security against tenant's performance of all obligations and covenants pursuant to this agreement. Within thirty (30) days after the termination of this Agreement, Landlord shall pay the deposit amount to tenant, minus offsets for damages or unreimbursed expenses incurred by Landlord which are Tenant's responsibility or monies owed and unpaid under Lease. Application of the security deposit to any damages or costs incurred by Landlord shall be in addition to and not in lieu of any remedies available to Landlord. Any rent unpaid after the date due shall be subject to a 5% late fee.

3. USE AND CARE OF PREMISES.

3.1 During the continuance of this Lease Agreement, the Demised Premises shall be used and occupied as a ~~restaurant~~

3.2 Tenant agrees to comply with all applicable recorded covenants and restrictions, laws, ordinances and valid rules and regulations of any Federal, state, municipal or other public authorities having jurisdiction over the Demised Premises. Tenant agrees to maintain the Demised Premises in a clean, orderly and sanitary condition, to perform or cause to be performed at its expenses all ordinary and normal maintenance and servicing of all plumbing, electrical, heating and air conditioning equipment and fixtures associated with the Demised Premises, including but not limited to the replacement of light bulbs and air filters, and the replacement of any and all damaged or broken glass, plate or otherwise, from any cause whatsoever.

3.3 Landlord shall keep the foundation, the exterior walls and roof of the Demised Premises in good repair, and shall be responsible for any major repairs of the walls and roof. Landlord shall not be required to make any other improvements or repairs of any kind to the Demised Premises and appurtenances.

3.4 Tenant, at its own expense, shall install and maintain original fire extinguishers and other fire protection devices as may be required by any governmental agency having jurisdiction thereof or the insurance underwriters insuring the building of which the Demised Premises form a portion. Tenant is responsible for insuring that the extinguishers and other fire protection devices remain on the premises and are maintained.

4. UTILITY SERVICES AND CHARGES.

4.1 All accounts for such services shall be maintained in Tenant's name. Landlord shall not be liable in damages or otherwise should the furnishing of any service to the Demised Premises be interrupted by fire, accident, riot, strike, Act of God or the making of necessary repairs or improvements or other causes beyond the control of Landlord.

5. SIGNS AND ALTERATIONS.

5.1 Tenant shall not erect or install any exterior or interior signs or advertising media or window or door lettering, or placards without the previous written consent of Landlord. Nor shall Tenant use any displays or advertising media which shall be deemed objectionable to Landlord or other tenants, such as flashing lights, loudspeakers or phonographs or other noise creating devices in a manner to be heard outside the Demised Premises. No exterior lighting or plumbing fixtures, shades or awnings or any exterior decorations or painting shall be installed without the prior written consent of Landlord. In the event Tenant shall erect or install any signs, exterior lighting, plumbing fixtures, shades, awnings or exterior decorations, or other items not having been approved in writing in advance by Landlord, Landlord may remove them without notice and the cost of such removal and restoration of the Demised Premises to its original condition shall be paid by Tenant to Landlord as additional rent within ten (10) days after receipt by Tenant of written demand for same from Landlord. Public notices required by law are exempt from the provisions of this section.

5.2 Tenant shall not make or cause to be made any alterations, additions or improvements to the Demised Premises, whether structural or non-structural, or cause to be installed any exterior sign, floor covering, interior or exterior lighting, plumbing fixtures, shades, canopies or awnings or make changes in the exterior appearance of the Demised Premises without Landlord's prior written approval. Tenant shall submit to Landlord plans and specifications for such work at the time approval is sought, which plans and specifications must be sufficient in detail to accurately inform Landlord of the alterations proposed. Before commencement of any work, all plans and specifications shall be filed with and approved by all governmental departments or authorities having jurisdiction, and the necessary permits, must be obtained.

5.3 All alterations, additions, improvements and fixtures, other than trade fixtures, which may be made or installed by either of the parties hereto upon the Demised Premises and which in any manner are attached to the floors, walls or ceilings shall be the property of Landlord and at the termination of this Lease Agreement shall remain upon and be surrendered with the Demised Premises as a part thereof, without disturbance or removal. Any floor covering which may be cemented or otherwise adhesively affixed to the floor of the Demised Premises shall be and becomes the property of Landlord absolutely. Landlord may, however, designate by written notice to Tenant those alterations and/or additions which shall be removed by Tenant at the expiration or termination of this Lease Agreement, and Tenant shall promptly remove the same and repair any damage to the Demised Premises caused by such removal or by removal of trade fixtures.

6. USE OF PREMISES.

6.1 The Demised Premises are hereby leased to Tenant for the purpose set forth in 3.1 hereinabove, Tenant agrees not to materially alter such use without the prior written consent of Landlord and Tenant covenants and agrees not to use the Demised Premises for any unlawful or immoral purpose or in such a manner as to create a nuisance.

6.2 During the term of this lease at any reasonable time and upon reasonable notice to Tenant, Landlord may show the Demised Premises to prospective purchasers. Such inspections shall be conducted so as not to unreasonably interfere with the business activities of Tenant.

6.3 Tenant shall permit Landlord, its agents, employees and contractors to enter the Demised Premises and all parts thereof at any reasonable time to inspect the same and to enforce or carry out any provisions of this Lease. Such inspections shall be conducted so as not to unreasonably interfere with the business activities of Tenant.

7. LIENS

7.1 Tenant covenants that during the term of this Lease it shall promptly discharge any and all claims of materialmen's, artisan's, laborer's, contractor's, or subcontractor's liens which may be

filed, created, recorded or imposed with respect to the Demised Premises or any addition or improvement thereto for which Tenant or anyone claiming through Tenant is responsible. Tenant shall have the right and duty to contest, at its sole expense, any attempt to create, record or impose such a lien or encumbrance upon the said Demised Premises. Tenant covenants that it will indemnify and save harmless the Landlord from any liability or alleged liability by reason of Tenant's failure to perform the covenants of this paragraph. Tenant will not alienate, encumber, mortgage or otherwise pledge or hypothecate its leasehold estate herein created or any addition thereto without the written consent of Landlord; provided, however, that nothing herein shall prevent Tenant from creating liens, chattel mortgages, purchase money indebtedness or other encumbrances upon its personal property located in or upon the Demised Premises or from participating in customary inventory financing.

8. SURRENDER OF PREMISES.

8.1 At the expiration of the tenancy hereby created, Tenant shall surrender the Demised Premises in the same condition as the Demised Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall surrender all keys for the Demised Premises to Landlord at the place then fixed for the payment of rent. Tenant shall remove all its trade fixtures and any alterations or improvements made by Tenant which Landlord requests to be removed before surrendering the Demised Premises as aforesaid and shall repair any damage to the Demised Premises caused thereby. If the Tenant fails to remove such items from the Demised Premises prior to the date of termination of this Lease, all such alterations, decorations, additions and improvements shall become the property of the Landlord unless the Landlord elects to require their removal in which case Tenant shall promptly remove same and restore the Demised Premises to its prior condition normal wear and tear excluded. Should Tenant not effectuate timely removal, Landlord may effectuate the same whereupon Tenant agrees to pay for the expenses incurred therefore. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

9. ASSIGNMENT AND SUBLETTING, CONCESSIONS, CORPORATE OWNERSHIP.

9.1 Consent Required. Tenant will not assign, mortgage, pledge, hypothecate or sublet this Lease in whole or in part nor all or any part of the Demised Premises, without the prior written consent of Landlord in each instance which consent shall not be unreasonably withheld. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning, subletting, mortgaging and pledging shall be construed to include a prohibition against any assignment or subletting by operation of law, legal process, receivership, bankruptcy or otherwise. If this Lease be assigned or if the Demised Premises or any part thereof be underlet by anyone other than Tenant,

Landlord may collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy, or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Notwithstanding any assignment of sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request by Tenant for Tenant's consent pursuant to this section.

9.2 Benefits and Burdens of Assignment. This Lease Agreement and the covenants and conditions herein contained, shall inure to the benefit of and be binding upon Landlord, its successor and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been consented to in writing by Landlord. Nothing contained in this Lease shall in any manner restrict Landlord's right in its sole discretion to assign or encumber this Lease.

10. EMINENT DOMAIN

10.1 Total Condemnation. If the whole of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to that date and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

10.2 Partial Condemnation. If any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Demised Premises unsuitable for the business of the Tenant (as determined by Landlord), then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease. In the event of a partial taking of condemnation which is not extensive enough to render the Demised Premises unsuitable for the business of the Tenant, then Landlord shall promptly restore the Demised Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, the Lease shall continue in full force and effect, and the rent shall be reduced proportionately as to the portion lost in the taking.

10.3 Landlord's Damages. In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, the Tenant shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and the Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right of claim to any part thereof.

10.4 Tenant's Damages. Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Demised Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost of loss to which Lessee might be put in removing Tenant's merchandise, furniture, leasehold improvements and equipment.

11. MISCELLANEOUS.

11.1 Documentary Stamps. Should any documentary stamps be required to be affixed to this Lease Agreement under the laws of the State of South Carolina or any other state, such stamps shall be at the sole expense of Tenant.

11.2 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such a waiver be in writing by Landlord.

11.3 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy afforded under this Lease.

11.4 Subordination and Attornment. The Lease Agreement shall be subordinate to any mortgage or deed of trust that may be placed upon the Demised Premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. Upon written request or notice from Landlord, Tenant agrees to execute written acknowledgment of the subordination of its rights under this Lease Agreement to the lien or liens of any mortgage that may be or hereafter be placed upon the Demised Premises. Tenant shall, in the event any proceedings are brought for the foreclosure of any mortgage covering the Demised Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under the Lease Agreement.

12. TAXES ON LEASEHOLD

12.1 Taxes on Leasehold: Tenant shall be responsible for and shall pay before delinquency all municipal, county, state or federal taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind placed in, upon or about the Demised Premises by Tenant.

12.2 Notice. Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and shall be deemed given when such notice or consent is mailed by registered or certified mail, return receipt requested, addressed to Landlord as Post Office Box 22242 Hilton Head Island, South Carolina; and to Tenant at 27 Dr. Mellicamp Drive, Suite 100, Bluffton Hilton Head Island, 29910 or any other address as may be specified from time to time in writing sent to the other party by registered or certified mail, return receipt requested.

12.3 Loss and Damage. Except for Landlord's negligence, Landlord shall not be liable for any damage to property of Tenant or of others entrusted to Tenant or to employees or invitees of Tenant, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Except for Landlord's negligence, Landlord shall not be liable for any injury (including death) or damage to persons or property resulting from fire, explosion, falling objects, steam, gas, electricity, water, rain or snow or leaks from any part of the Demised Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause whatsoever or any nature. Except for Landlord's negligence, Landlord shall not be liable for any such damage caused by occupants of adjacent property, or the public, or caused by operations in construction of any private, public, or quasi-public work. Landlord shall not be liable for any latent defect in the Demised Premises. All property of Tenant kept or stored on the Demised Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subjugation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act of gross neglect of Landlord.

13. FORCE MAJEURE, RELEASE AND EXCULPATION

13.1 Excuse of Landlord's Performance--Force Majeure. Nothing to the contrary herein withstanding, Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease Agreement to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, and the time for performance by Landlord shall be extended by the period of delay resulting from or due to any of said causes.

13.2 Release from Liability: Tenant agrees not to hold Landlord or its agents responsible or liable in damages by abatement of rent or otherwise for any damage sustained by Tenant or any other person, due to the Demised Premises or any part thereof or any appurtenances thereof being or becoming out of repair, or due to the happening of any accident (unless resulting from negligence on Landlord's part) especially, but not exclusively, any damage caused by water, snow, ice, windstorm, tornado, gas, steam, electric wiring, plumbing, or heating apparatus; and not to hold Landlord or its agents liable for losses by theft.

14. DEFAULT OF THE LEASE

14.1 Right to Re-enter, Acceleration: In the event of any failure of Tenant to pay any rental due hereunder within (5) days after written notice of said default, or in the event of any failure to perform any other of the terms, conditions or covenants of this Lease Agreement to be observed or performed by Tenant within (5) days after written notice, or if Tenant or any guarantor of this Lease Agreement shall become bankrupt or insolvent, or file any debtor proceeding or file or have filed against Tenant or any guarantor of this Lease Agreement in any court pursuant to any statute either of the United States or any state a petition in bankruptcy or for insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or any such guarantor's property, or if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon said Demised Premises, or suffer this Lease Agreement to be taken under any writ of execution, then Landlord in addition to other rights of remedies it may have: (1) shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service or notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be trespass; or becoming liable for any loss or damage which may be occasioned thereby; and/or (2) shall have the right to declare any and all rent and other amounts due under this Lease Agreement at once due and payable and may proceed by attachment, suit or otherwise, to collect all such amounts in the same manner, as if by the terms of this Lease Agreement all such amounts due or to become due during the entire term were payable in advance, and neither the acceleration by Landlord of such amounts nor the payment by Tenant of such acceleration amounts shall constitute a waiver by Landlord or any breach, existing or in the future, of any of the terms or provisions of this Lease Agreement by Tenant or of any rights or remedies which the Landlord may have with respect to any such breach. In the event Landlord elects to accelerate as herein set forth and subsequently leases the Demised Premises to a third party prior to the end of the period for which this Lease Agreement would run if there had been no breach of this Lease Agreement, Landlord shall, at the end of said period, refund to Tenant that portion of the accelerated sum paid by Tenant which represents the accelerated rent for that part of said period during which said third party shall pay rent to Landlord; provided, however, that should said accelerated sum exceed rental payments actually received from said third party during said period Landlord shall not be required to refund to Tenant the amount which represents the excess of said accelerated sum over the rental payments actually received from said third party during said period.

14.2 Tenant's Lien: To the fullest extent allowable by law, the Landlord shall have a lien for the rent payable hereunder, on the goods, furniture, equipment and effects belonging to Tenant and all other charges due Landlord hereunder, which lien shall be superior to all other liens of any kind or character whatsoever except as hereinafter set out. No goods, furniture, equipment or effects shall be removed from the Demised Premises without the written consent of Landlord, except in the ordinary course of business, until all rent and other applicable charges have been paid.

14.3 Right to Relet: Should Landlord elect to reenter as herein provided or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease Agreement or it may from time to time without terminating this Lease Agreement, make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease Agreement) and at such rental or rentals and upon such other terms and conditions as Landlord may deem advisable; upon each such reletting all rentals received by the Landlord from such reletting shall apply first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any reasonable costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease Agreement unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Should Landlord at any time terminate this Lease Agreement for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Demised Premises, reasonable attorneys' fees and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease Agreement for the remainder of the stated term over the then reasonable rental value of the Demised Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord. Without limitation of Landlord's other rights and remedies, and regardless of whether Landlord shall have re-entered, relet or terminated this Lease Agreement, in the event of default or breach by Tenant, at the election of Landlord (i) the entire rent for the whole term of this Lease Agreement and any other indebtedness of Tenant to Landlord hereunder shall be immediately due and payable, or (ii) Landlord may proceed for past due installments and indebtedness only, reserving Landlord's right to proceed later for the remaining installments and subsequently maturing indebtedness.

14.4 Non-Exclusive Remedies: The mention in this Lease Agreement of any specific right of remedy shall not preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either by law or in equity.

14.5 Legal Expenses: In case suit shall be brought, or an attorney shall be employed, for recovery of possession of the Demised Premises, for the recovery of rent or any other amounts due under the provisions of this Lease Agreement, or for the enforcement of, or because of the breach of, any covenant herein contained on the part of tenant to be kept or performed, and a breach shall be established, the prevailing party shall be reimbursed for all costs and expenses incurred, including a reasonable attorneys' fee.

15. PARTIAL INVALIDITY.

15.1 If any term, covenant or condition of this Lease Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement shall not be affected thereby, and each term, covenant or condition of this Lease Agreement shall be remainder of this Lease Agreement shall not be affected thereby, and each term, covenant or condition of this Lease Agreement shall be valid and enforced to the fullest extent permitted by law.

16. INSURANCE AND INDEMNITY

16.1 Indemnity: Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the term of this Lease from any cause whatsoever, by reason of the use, occupancy and enjoyment of the Premises by Tenant or any other person thereon or holding under said Tenant, and that Tenant will indemnify and save harmless Landlord from all liability whatsoever, on account of any such real or claimed damage or injury and from all liens, claims and demands arising out of the use of the Premises and its facilities, or any repairs or alterations which Tenant may make upon said Premises, but Tenant shall not be liable for damage or injury occasioned by the negligence of Landlord and its designated agents, servants or employees unless and only to the extent such negligence is covered by insurance Tenant is required to provide. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made or may be made.

Handwritten initials and a rectangular stamp are visible in the bottom right corner of the page.

16.2 Subrogation: Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damaged occasioned by Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents or to other portions of the Shopping Center, arising from any risk generally covered by fire and extended coverage insurance, and the parties each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be, if such waiver is permitted by, or obtainable from, the respective insurance company.

16.3 Tenant Insurance. Tenant further covenants and agrees that from and after the delivery of the Premises by Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(1) Public Liability and Property Damage: Public liability and property damage insurance with a combined single limit of One Million and (\$1,000,000.00) 00/100 Dollars insuring against any and all liability of the insured with respect to said Premises or arising out of the maintenance, use or occupancy thereof. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions as to liability for injury or death of persons an injury or damage to property contained in this Article.

(2) Plate Glass: Tenant shall be responsible for the maintenance of the plate glass on the Premises and shall insure the risk.

(3) Tenant Improvements: Insurance covering all of the Tenants leasehold improvements, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and personal property of others in Tenants Possession in an amount not less than the full replacement cost without deduction for depreciation from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions hereof.

(4) Policy Form: All policies of insurance provided for herein shall be issued by insurance companies with general policyholders' rating not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of South Carolina, and shall be issued in the names of Landlord, Tenant and such other persons or firms as Landlord specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after

delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be produced and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing said policy will give to Landlord twenty (20) days' notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amount of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry.

16.4 Blanket Policy: Notwithstanding anything to the contrary contained within this Article 16, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of

a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that Landlord and others hereinabove mentioned shall be named as an additional insured thereunder as their interests may appear and that the coverage afforded Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. Tenant agrees to permit Landlord at all reasonable times to inspect the policies of insurance of Tenant covering risks upon the Premises for which policies or copies thereof are not required to be delivered to Landlord.

16.5 Other:

(1) Increased Insurance Risks: Tenant agrees that it will not at any time during the term of this Lease carry any stock or goods or do anything in or about the Premises which will in any way tend to increase the insurance rates upon the building of which the Premises are a part. Tenant agrees to pay the Landlord forthwith upon demand the amount of any increase in premiums for insurance against loss by fire that may be charged during the term of this Lease on the amount of insurance carried by it on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about said Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of Tenant.

If Tenant installs upon the Premises any electrical equipment which constitutes an overload on the electrical lines of the Premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and any governmental authority having jurisdiction thereof, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading.

(2) If Tenant shall not comply with the covenants made in this Article, Landlord may cause insurance as aforesaid to be issued, and in such event, Tenant agrees to pay, as additional rent, the premium for such insurance upon Landlord's demand.

18. LEASE PROVISIONS CONCERNING HAZARDOUS MATERIAL.

18.1 Tenant shall not cause or permit any Hazardous Material to be brought upon, or used in or about the Premises by Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord (which landlord shall not unreasonably withhold as long as tenant demonstrates to landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises). If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which tenant is legally liable to landlord for damage resulting therefrom, then tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by tenant results in any contamination of the premises, tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that landlord's approval of

Kinghorn INSURANCE

Established 1898

1160 Fording Island Road
PO Box 2170
Bluffton, SC 29910
(843) 837-8000

INVOICE

Zorba's, Inc.
P.O. Box 1667
Bluffton, SC 29910

Invoice Date 06/28/00
Invoice No. 45125
Bill-To Code ZORBAS
Client Code ZORBAS
Inv Order No. 1*39007

Named Insured: Zorba's, Inc.

Amount Remitted: \$

Please return this portion with your payment.

Make checks payable to: Kinghorn Insurance Agency

Effective Date	Policy Period	Coverage Description	Transaction Amount
06/01/00	08/24/99 to 08/24/00	Preferred Markets Policy No. RMP105223 *Cancelled - Package - C/L	-481.00
		Invoice Number: 45125 Amount Due:	-481.00



*Premiums Due and Payable on Effective Date

REDLAND INSURANCE COMPANY

535 W. BROADWAY, COUNCIL BLUFFS, IA 51503

POLICY CANCELLATION TICKET

INSURED: ZORBA'S INC.

POLICY NUMBER: RMP105223 **DATE CANCELLED:** 6/1/00

EFFECTIVE DATE: 8/24/99 **EXPIRATION DATE:** 8/24/00

CANCELLATION REASON: INSUREDS REQUEST

CANCEL METHOD: ☒ **PRO-RATE** ☐ **90% PRO-RATE** ☐ **FLAT** ☐ **SHORT RATE**

NUMBER OF DAYS IN FORCE: 281

% EARNED: 77.3

% UNEARNED: 22.7

COVERAGE	ORIGINAL PREMIUM	RETURN PREMIUM
CPP	\$ 2121.00	\$ 481.00
	\$	\$
	\$	\$
	\$	\$
<i>TOTAL</i>	\$ 2121.00	\$ 481.00

AGENCY NAME: PREFERRED MARKETS, INC

AGENCY #: 01901

DATE ISSUED: 6/21/00

ISSUED BY: MLR

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Kinghorn INSURANCE

Established 1898

June 28, 2000

Mr. Gary M. Bensch
6 Fantail Lane
Hilton Head Island, SC 29926

RE: Zorba's Inc.
Policy #: RMP105223
Policy Term: 08/24/99- 06/01/00

Dear Mr. Bensch:

Attached is our agency check #014763 in the amount of \$481.00 which represents the return premium due you from the cancellation of the above policy.

If we can be of service to you in the future, please don't hesitate to call us.

Sincerely,
Kinghorn Insurance Agency


Cheryl T. Stolte
Account Manager

Enclosure

CHR/146638

P.O. Box 5189
32 Palmetto Bay Road
Hilton Head Island, SC 29938
Tel. 843-785-2101
Fax 843-686-5986

P.O. Box 2170
1160 Fording Island Road
Bluffton, SC 29910
Tel. 843-837-8000
Fax 843-837-4600

P.O. Drawer 1088
910 Carteret Street
Beaufort, SC 29901
Tel. 843-521-4000
Fax 843-521-4004

P.O. Box 1209
100 S. Jacob Smart Blvd.
Ridgeland, SC 29936
Tel. 843-717-2020
Fax 843-717-2698

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PAYMENTS FROM ZORBA's ACCOUNT FOR ITEMS THAT SHOULD HAVE BEEN PAID BY BENSCH'S

DATE	ZORBA ACCT CHECK#	PAYABLE TO	DESCRIPTION	AMOUNT
7/12/99	1001	Home Depot	wood trim for restaurant interior	\$ 223.81
7/17/99	1002	Grayco	4 tubes of caulking for floors	\$ 22.75
7/23/99	1004	Home Depot	sheet rock for interior wall	\$ 33.08
7/23/99	1005	Home Depot	counter top permanent installation	\$ 42.51
7/28/99	1008	Campbell Electric	interior electrical work	\$ 315.00
8/19/99	1035	Campbell Electric	interior electrical work	\$ 150.00
9/7/99	1080	Campbell Electric	interior electrical work	\$ 247.50
9/6/99	1082	Grayco	hardware for Zorba's	\$ 57.85
9/7/99	1083	Greene's Ace Hardware	hardware for Zorba's	\$ 65.42
9/16/99	1112	Home Depot	hardware for Zorba's	\$ 304.25
10/18/99	1192	Home Depot	hardware for Zorba's	\$ 386.99
11/3/99	1232	Greene's Ace Hardware	hardware for Zorba's	\$ 15.76
SUBTOTAL				\$ 1,864.92
PAYMENT BY BILL PASSALOUKAS TO CAMPBELL ELECTRIC FOR LEASEHOLD IMPROVEMENT				
12/22/99	INVOICE#1661	Campbell Electric	Breaker added and sign lights	\$ 126.00
Paid as a result of court ruling in 1st Quarter, 2000				
TOTAL				\$ 1,990.92

PLAINTIFF'S
EXHIBIT

18

PLAINTIFF'S
EXHIBIT

19

ZORBA'S INC 434162 6
120072124 07-01-99 0722 0732 27 07-238/132
6-24-99
PAY TO THE ORDER OF LYNNA 10304800 06-30-99 0071 \$438.05
Seventy Eight 970279669 3429 3416 00 06-30-99 DOLLARS
Palmetto STATE BANK
BLUFFTON, SOUTH CAROLINA
FOR Dana's Payment of Interest Bill P. [Signature]
#053202596# #0000007880#

0 78.00 07/01/99

ZORBA'S INC
757-843-757-6495 6-25-99 07-238/132
Pay to the order of [Signature] \$300.00
Three hundred + 00 DOLLARS
Palmetto STATE BANK
BLUFFTON, SOUTH CAROLINA
FOR [Signature] Bill P. [Signature]
#053202596# #0000030000#

0 300.00 07/01/99

ZORBA'S INC
843-7576495 7-2-99 07-238/132
Pay to the order of Souvenir Metal \$1,700.00
One thousand and seven hundred + 00 DOLLARS
Palmetto STATE BANK
BLUFFTON, SOUTH CAROLINA
FOR [Signature] Bill P. [Signature]
#053202596# #0000170000#

0 1700.00 07/08/99

ZORBA'S INC
14041593007594-69-08-050278220745 27 07-238/132
PAY TO THE ORDER OF SC Electric & Gas \$500.00
Five hundred + 00 DOLLARS
Palmetto STATE BANK
BLUFFTON, SOUTH CAROLINA
FOR [Signature] Bill P. [Signature]
#053202596# #0000050000#

0 500.00 07/15/99

ZORBA'S INC RESTAURANT
757-6495 7-12-99 07-238/132
PAY TO THE ORDER OF ISLAND PACKET \$65.01
Sixty five + 01 DOLLARS
Palmetto STATE BANK
BLUFFTON, SOUTH CAROLINA
FOR 2 Zorba's ads 59.01 [Signature]
#053202596# #0000006501#

0 65.01 07/16/99

ZORBA'S INC
P.O. BOX 1807 BLUFFTON, SC 29910 1001
PAY TO THE ORDER OF Home DEPOT \$223.81
Two hundred and twenty three + 81 DOLLARS
Palmetto STATE BANK
BLUFFTON, S.C. 29906
FOR [Signature] Bill P. [Signature]
#00001001# #0000022381#

1001 223.81 07/16/99

27 Hethercampdr SCOL 2516247 1002
Turn Center ZORBA'S, INC.
P.O. BOX 1807 BLUFFTON, SC 29910
PAY TO THE ORDER OF [Signature] \$22.75
Twenty two + 75 DOLLARS
Palmetto STATE BANK
BLUFFTON, S.C. 29906
FOR [Signature] Bill P. [Signature]
#00001002# #0000002275#

1002 22.75 07/20/99

ZORBA'S, INC.
P.O. BOX 1807 BLUFFTON, SC 29910 1003
PAY TO THE ORDER OF [Signature] \$75.00
Twenty and five dollars and 00 DOLLARS
Palmetto STATE BANK
BLUFFTON, S.C. 29906
FOR [Signature] Bill P. [Signature]
#00001003# #0000007500#

1003 75.00 07/26/99

-337-

1004

ZORBA'S, INC.
P.O. BOX 1187 843-700 2282
SLUPTON, SC 29153

DATE 7-23-99

PAY TO THE ORDER OF House Depot \$ 38.08

Thirty eight + 08 DOLLARS

FOR Shed Rock

PALMETTO STATE BANK
SLUPTON, S.C. 29153

#00001004#

1004 38.08 07/28/99

1005

ZORBA'S, INC.
P.O. BOX 1187 843-700 2282
SLUPTON, SC 29153

DATE 7-23-99

PAY TO THE ORDER OF House Depot \$ 42.51

Forty two + 51 DOLLARS

FOR Carner top + Plating

PALMETTO STATE BANK
SLUPTON, S.C. 29153

#00001005#

1005 42.51 07/28/99

1006

ZORBA'S, INC.
P.O. BOX 1187 843-700 2282
SLUPTON, SC 29153

DATE 7-28-99

PAY TO THE ORDER OF House Depot \$ 115.89

One hundred and fifteen + 89 DOLLARS

FOR Flyer + 2x4 + 4x6 + 4x8 + 4x10 + 4x12 + 4x14 + 4x16 + 4x18 + 4x20 + 4x22 + 4x24 + 4x26 + 4x28 + 4x30 + 4x32 + 4x34 + 4x36 + 4x38 + 4x40 + 4x42 + 4x44 + 4x46 + 4x48 + 4x50 + 4x52 + 4x54 + 4x56 + 4x58 + 4x60 + 4x62 + 4x64 + 4x66 + 4x68 + 4x70 + 4x72 + 4x74 + 4x76 + 4x78 + 4x80 + 4x82 + 4x84 + 4x86 + 4x88 + 4x90 + 4x92 + 4x94 + 4x96 + 4x98 + 4x100

PALMETTO STATE BANK
SLUPTON, S.C. 29153

#00001006#

1006 115.89 07/29/99

1008

ZORBA'S, INC.
P.O. BOX 1187 843-700 2282
SLUPTON, SC 29153

DATE 7-28-99

PAY TO THE ORDER OF Carroll Electric \$ 315.00

Three hundred and fifteen + 00 DOLLARS

FOR Plumbing

PALMETTO STATE BANK
SLUPTON, S.C. 29153

#00001008#

1008 315.00 07/30/99

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 8416315 1077

150082330 09-10-99 0791 5057 27

DATE 9-6-99

PAY TO THE ORDER OF Roma \$305.43

Three hundred and five and 43/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Haskins

#000010771 #0000080543

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 8416315 1077

150082330 09-10-99 0791 5057 27

DATE 9-6-99

PAY TO THE ORDER OF Zorba's Payroll \$3,000.00

Three thousand and no/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Payroll Department

#000010794 #0000030000

1077 \$305.43 09/10/99

1079 \$3,000.00 09/07/99

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 383495 1081

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF Cummins & Elmer \$247.50

Two hundred and forty seven and 50/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Elmer

#000010807 #0000024750

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 383495 1081

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF NATIONAL \$60.06

Sixty and 6/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR WINE

#000010814 #0000006006

1080 \$247.50 09/10/99

1081 \$60.06 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. E15231 1082

150082330 09-10-99 0791 5057 27

DATE 9-14-99

PAY TO THE ORDER OF Granger \$57.85

Fifty seven and 85/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Handwritten

#00001082 #0000005785

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 1670 1083

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF Greene's Ace Hardware \$65.42

Sixty five and 42/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Handwritten

#00001083 #0000006542

1082 \$57.85 09/14/99

1083 \$65.42 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 77313 1084

150082330 09-10-99 0791 5057 27

DATE 9-9-99

PAY TO THE ORDER OF Carmichael Mountain News \$61.60

Sixty one and 60/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Advertising

#00001084 #0000006160

ZORBA'S, INC.
P.O. BOX 1887 243-700-2222
BLUFFTON, SC 29910

INV. N. 47827-47959-47960 1085

150159782 09-14-99 0720 5052 27

DATE 9-9-99

PAY TO THE ORDER OF Carpenter Creek Inc \$353.00

Three hundred and fifty three and no/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Haskins

#00001085 #0000035300

1034

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF JOHN NICOLA \$300.00

Three hundred and no 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Pleschke

#000010

#0000030000

1034 \$300.00 08/20/99

1035

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF Campbell Electric \$150.00

One hundred and fifty 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Electric work in Zorba's Fall House

#000010

#0000015000

1035 \$150.00 08/23/99

1036

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF Syco 130421018 08-23-99 0748 5053.27 \$112.68

One hundred and twelve 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Fuel

#00001036

#0000011268

1036 \$112.68 08/23/99

1037

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE August 26, 1999

PAY TO THE ORDER OF Kitchen Collection \$95.40

Ninety five 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Pleschke

#00001037

#0000009540

1037 \$95.40 08/24/99

1038

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Palmetto State Bank \$200.00

Two hundred 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Check

#00001038

#0000020000

1038 \$200.00 08/20/99

1039

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Sudhama Wine \$790.47

Seven hundred and ninety 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Wine

#00001039

#0000079047

1039 \$790.47 08/25/99

1040

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Ray's Kool 20820529 08-25-99 0701 0701 27 \$1,497.08

One thousand four hundred and ninety seven 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR work on truck

#000010

#0000149708

1040 \$1,497.08 08/25/99

1041

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF SYSCO 150002450 08-24-99 0850 5387.04 \$387.04

Three hundred and eighty seven 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Fuel

#00001041

#0000038704

1041 \$387.04 08/24/99

ZORBA'S INC. INV. N. 577273 009374 1112
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

120317531, 09-27-99 9761 2809 27-0-28/99
DATE 9-18-99

PAY TO THE ORDER OF HOMC DEPOT \$ 304.25
Three hundred and four + 25 DOLLARS

FOR Wine + beer Bill [Signature]
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆0000030425⑆

ZORBA'S INC. INV. N. 6013289 1113
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-20-99

PAY TO THE ORDER OF SOUTHERN WINE \$ 195.84
One hundred and ninety five + 84 DOLLARS

FOR Wine + beer Bill [Signature]
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆0000019584⑆

1112 \$304.25 09/27/99

1113 \$195.84 09/24/99

ZORBA'S INC. INV. N. 13027622 09-28-99 0056 0013 25 1114
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-28-99

PAY TO THE ORDER OF East Coast \$ 66.76
Fifty-six and 76/100 DOLLARS

FOR produce 418917 Tracie Passaloukas
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆00001114⑆

ZORBA'S INC. INV. N. 13027622 09-28-99 0056 0013 25 1115
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-20-99

PAY TO THE ORDER OF ZORBA'S \$ 4,000.00
Four thousand DOLLARS

FOR payroll Bill [Signature]
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆0000400000⑆

1114 \$66.76 09/24/99

1115 \$4,000.00 09/21/99

ZORBA'S INC. INV. N. 13027622 09-28-99 0056 0013 25 1116
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-21-99

PAY TO THE ORDER OF Charlotte Distributors Inc. \$ 80.89
Eighty dollars and 89/100 DOLLARS

FOR Beer Tracie Passaloukas
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆00008089⑆

ZORBA'S INC. INV. N. 13027622 09-28-99 0056 0013 25 1117
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-21-99

PAY TO THE ORDER OF C & D Poultry Co. \$ 121.77
One hundred and twenty-one and 77/100 DOLLARS

FOR poultry Tracie Passaloukas
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆000012177⑆

1116 \$80.89 09/23/99

1117 \$121.77 09/23/99

ZORBA'S INC. INV. N. 307210531 1118
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-27-99

PAY TO THE ORDER OF S&S CO. \$ 189.24
One hundred and eighty nine + 24/100 DOLLARS

FOR Feed Bill [Signature]
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆000018924⑆

ZORBA'S INC. INV. N. 386051 1119
P.O. BOX 1887 243-708-2222
SLUPTON, SC 29150

DATE 9-21-99

PAY TO THE ORDER OF NATIONAL \$ 168.06
One hundred and sixty-eight + 06/100 DOLLARS

FOR Wine Bill [Signature]
PALMETTO STATE BANK
SLUPTON, S.C. 29150
⑆000016806⑆

1118 \$189.24 09/23/99

1119 \$168.06 09/27/99

-341-

ZORBA'S INC. REF: T0254515098 1187
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Island Packet DATE 10-20-99 \$ 54.21
Fifty-four + 21 DOLLARS

FOR Advertiser Bill Phelan
PALMETTO STATE BANK
#00001 #0000005421

1187 \$54.21 10/26/99

ZORBA'S INC. INV.N. 393165 1188
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF NATIONAL DATE 10-20-99 \$ 70.56
Seventy + 56 DOLLARS

FOR Wine Bill Phelan
PALMETTO STATE BANK
#0000 #0000007056

1188 \$70.56 10/25/99

ZORBA'S INC. 1189
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Bill PASSALUNGO DATE 10-21-99 \$ 500.00
Five hundred + 00 DOLLARS

FOR Business Bank Bill Phelan
PALMETTO STATE BANK
#00001189 #000050000

1189 \$500.00 10/21/99

ZORBA'S INC. A.C.N. 8-2100-4611-5/76 1190
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF SLE R G DATE 10-25-99 \$ 708.07
Seven hundred and eight + 07 DOLLARS

FOR Electric Bill Phelan
PALMETTO STATE BANK
#00001 #000070807

1190 \$708.07 10/29/99

ZORBA'S INC. REF: T0313427098 1191
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Island Packet DATE 10-26-99 \$ 32.30
Thirty-two + 30 DOLLARS

FOR Advertiser Bill Phelan
PALMETTO STATE BANK
#0000 #0000003230

1191 \$32.30 10/26/99

ZORBA'S INC. A.C.N. 5172790093743 1192
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Home Depot DATE 10-18-99 \$ 386.99
Three hundred and eighty-six + 99 DOLLARS

FOR Home Depot Bill Phelan
PALMETTO STATE BANK
#00001 #000038699

1192 \$386.99 10/25/99

ZORBA'S INC. 1193
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Harpoon DATE 10-15-99 \$ 167.29
One hundred and sixty-seven + 29 DOLLARS

FOR Harpoon Bill Phelan
PALMETTO STATE BANK
#0000 #0000016729

1193 \$167.29 10/29/99

ZORBA'S INC. 1194
P.O. BOX 187 843-700-222
SLUFTON, SC 29153

PAY TO THE ORDER OF Pearlstone DATE 10-21-99 \$ 17.05
Seventeen + 05 DOLLARS

FOR Bill Bill Phelan
PALMETTO STATE BANK
#00001 #00000017

1194 \$17.05 10/25/99

-342-

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1225

DATE 11-3-99

PAY TO THE ORDER OF Perdine \$32.32

THIRTY TWO + 32/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Perdine R. D. P. [Signature]

#00001225

1225 \$32.32 11/05/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1226

INV. N. 31103034

DATE 11-8-99

PAY TO THE ORDER OF 5450 \$241.60

TWO HUNDRED AND FORTY ONE + 60/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Frank Bill [Signature]

#00001226

1226 \$241.60 11/08/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1227

INV. N. 255968

DATE 11-4-99

PAY TO THE ORDER OF Movsovi + 2 \$18.00

EIGHTEEN + 00/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Palmetto Bill [Signature]

#00001227

1227 \$18.00 11/08/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1228

DATE 11-4-99

PAY TO THE ORDER OF Zorba's Payroll \$200.00

TWO HUNDRED + 00/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Payroll Bill [Signature]

#00001228

1228 \$200.00 11/05/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1229

INV. N. 256003

DATE 11-4-99

PAY TO THE ORDER OF Movsovi \$39.00

THIRTY NINE + 00/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Palmetto Bill [Signature]

#00001229

1229 \$39.00 11/08/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1230

DATE 11-4-99

PAY TO THE ORDER OF Cycle \$209.03

TWO HUNDRED AND NINE DOLLARS AND 03/100

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR food products Bill [Signature]

#00001230

1230 \$209.03 11/08/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1231

DATE 11-3-99

PAY TO THE ORDER OF S.C. Department of Revenue \$212.05

TWO HUNDRED AND TWELVE + 05/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Food car Bill [Signature]

#00001231

1231 \$212.05 11/10/99

ZORBA'S, INC.
P.O. BOX 1987 84370-2222
SLUPTON, SC 29150

1232

AC. N. 1670

DATE 11-3-99

PAY TO THE ORDER OF Greene's ACE Hardware \$15.76

FIFTEEN + 76/100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29150

FOR Food car Bill [Signature]

#00001232

1232 \$15.76 11/12/99

346

-343-



CAMPBELL ELECTRIC

New Construction • Remodeling • Repairs

P.O. Box 4113

BURTON, SOUTH CAROLINA 29903

(843) 846-4664 • Mobile 986-2913

CUSTOMER'S ORDER NO.		PHONE		DATE	
				12/22/99	
NAME <i>ZORBA'S</i>					
ADDRESS <i>27 Mellichamp Dr. Suite 101</i>					
<i>Bluffton, S.C. 29910</i>					
SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RETD.
PAID OUT					
QTY.	DESCRIPTION			PRICE	AMOUNT
	<i>Service Call</i>				<i>72.00</i>
	<i>check 1000w. wiring</i>				
	<i>circuit & sign lts.</i>				
<i>1</i>	<i>90 amp breaker</i>			<i>6.00</i>	
<i>2</i>	<i>Flood bulbs</i>			<i>10.00</i>	
	<i>material</i>				
	<i>& labor</i>				<i>90.00</i>
RECEIVED BY <i>J. Campbell</i>				TAX	
				TOTAL	<i>178.00</i>

B PRODUCT 610

All claims and returned goods must be accompanied by this bill.

1661



To Reorder Call
1-800-225-6360

Thank You



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC



P.O. Box 219 Beaufort, SC 29902 (803) 524-3300
P.O. Drawer 327 Bluffton, SC 29910 (803) 757-3747
Box 158 Hampton, SC 29924 (803) 943-2671

ZORBA'S INC.

000 70 05

PAGE:

3

DATE: 08/31/99 ACCOUNT

BUSINESS CHECKING ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
CHECK # 1060	201.14		08/31/99	6,697.11
CHECK # 1059	369.80		08/31/99	6,327.31
SERVICE CHARGE	11.12		08/31/99	6,316.19
BALANCE THIS STATEMENT			08/31/99	6,316.19
TOTAL CREDITS (26)	16,641.47			
TOTAL DEBITS (53)	13,033.77			
TAX ID NUMBER				

YOUR CHECKS SEQUENCED

DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
08/06 1007* 400.00	08/23 1027 259.03	08/25 1044 116.00
08/03 1009 720.00	08/24 1028 920.78	08/27 1045 110.54
08/11 1010 201.25	08/20 1029 1,043.66	08/27 1046 125.62
08/10 1011 73.00	08/23 1030 84.58	08/27 1047 212.58
08/13 1012* 250.00	08/27 1031 64.48	08/24 1048 200.00
08/13 1014 129.82	08/23 1032 119.65	08/25 1049 505.65
08/16 1015 62.80	08/24 1033 95.72	08/26 1050 138.71
08/13 1016 150.00	08/20 1034 300.00	08/26 1051 95.00
08/12 1017 33.08	08/23 1035 150.00	08/27 1052 31.92
08/26 1018 251.22	08/23 1036 112.68	08/26 1053 150.00
08/16 1019 300.00	08/24 1037 95.40	08/26 1054 100.00
08/17 1020 264.81	08/20 1038 200.00	08/27 1055 60.02
08/20 1021 257.27	08/25 1039 790.47	08/26 1056* 124.50
08/18 1022 708.00	08/25 1040 1,497.08	08/27 1058 50.00
08/20 1023 20.00	08/24 1041 387.04	08/31 1059 369.80
08/20 1024* 60.00	08/25 1042 150.00	08/31 1060 201.14
08/20 1026 125.56	08/25 1043 100.00	

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

292

PLAINT
EXHIBIT-345-

22

NOTICE: SEE REVERSE FOR IMPORTANT INFORMATION



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

P.O. Box 219 Beaufort, SC 29902 (803) 524-3300
 P.O. Drawer 927 Bluffton, SC 29910 (803) 767-3747
 Box 168 Hampton, SC 29924 (803) 843-2671

ZORBA'S INC

000 70 05

PAGE:

4

DATE: 09/30/99

ACCOUNT

BUSINESS CHECKING ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
NOV SERVICES SETTLEMENT 601101079010359		49.13	09/28/99	2,774.84
NOV SERVICES SETTLEMENT 601101079010359		54.00	09/28/99	2,828.84
AM N EXPRESS SETTLEMENT 4392411500		150.39	09/28/99	2,979.23
DEP		447.92	09/28/99	3,427.15
LYN STEMS, INC BNKCRD DEP LK109998 000030		457.37	09/28/99	3,884.52
LYN STEMS, INC BNKCRD DEP LK109998 000028		689.19	09/28/99	4,573.71
LYN STEMS, INC BNKCRD DEP LK109998 000029		880.28	09/28/99	5,453.99
CH 1124 ✓	192.40		09/28/99	5,261.59
CH 1126 ✓	1,150.00		09/28/99	4,111.59
AM N EXPRESS SETTLEMENT 4392411500		76.91	09/29/99	4,188.50
DEP		157.00	09/29/99	4,345.50
LY STEMS, INC BNKCRD DEP LK109998 000031		368.75	09/29/99	4,714.25
CH 1125 ✓	154.26		09/29/99	4,559.99
CH 1132 ✓	414.22		09/29/99	4,145.77
CH 1133 ✓	2,561.00		09/29/99	1,584.77
NOV SERVICES SETTLEMENT 601101079010359		37.06	09/30/99	1,621.83
DEP		340.61	09/30/99	1,962.44
LY STEMS, INC BNKCRD DEP LK109998 000032		847.20	09/30/99	2,809.64
CH 1127 ✓	41.67		09/30/99	2,767.97
CH 1131 ✓	47.72		09/30/99	2,720.25
CH 1128 ✓	83.90		09/30/99	2,636.35
CH 1130 ✓	318.37		09/30/99	2,317.98
SE CHARGE	5.89		09/30/99	2,312.09
BAL THIS STATEMENT			09/30/99	2,312.09

T CREDITS (71)
 T DEBITS (73)
 T NUMBER

26,636.17
 30,640.27

YOUR CHECKS SEQUENCED

CHECK #	AMOUNT	DATE	CHECK #	AMOUNT	DATE	CHECK #	AMOUNT
1057*	117.77	09/07	1070	50.06	09/10	1080	247.50
1061	80.60	09/07	1071	142.05	09/10	1081	60.06
1062*	144.20	09/14	1072	143.70	09/14	1082	57.85
1064	306.43	09/07	1073	143.29	09/10	1083	65.42
1065	4,539.65	09/08	1074	64.40	09/10	1084	61.60
1066	99.75	09/09	1075	124.60	09/14	1085	353.00
1067	322.44	09/08	1076	173.00	09/13	1086	85.02
1068	1,000.00	09/10	1077*	305.43	09/10	1087	139.21
1069	300.00	09/07	1079	3,000.00	09/20	1088	60.00

* * * C O N T I N U E D * * *



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

P.O. Box 219
Beaufort, SC 29902
(803) 624-3300

P.O. Drawer 327
Bluffton, SC 29910
(803) 757-3747

Box 168
Hampton, SC 29924
(803) 943-2671

000 70 05

DATE: 10/29/99

PAGE:

ACCOUNT:

5



ZORBA'S INC

BUSINESS CHECKING ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
SERVICE CHARGE	14.17		10/29/99	244.81
BALANCE THIS STATEMENT			10/29/99	244.81
TOTAL CREDITS (84)		26,625.02		
TOTAL DEBITS (83)	28,692.30			
TAX ID NUMBER				

YOUR CHECKS SEQUENCED

DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
10/12 1078* 61.56	10/14 1157 38.46	10/25 1183 19.25
10/05 1102* 518.00	10/14 1158 2,560.04	10/22 1184 167.92
10/01 1129* 2,499.58	10/13 1159 119.88	10/21 1185 148.81
10/04 1134 134.47	10/14 1160 1,300.00	10/26 1186 45.81
10/07 1135 715.14	10/14 1161 47.00	10/26 1187 54.21
10/06 1136 92.28	10/14 1162 257.01	10/25 1188 70.56
10/04 1137 189.16	10/15 1163 237.78	10/21 1189 500.00
10/05 1138 50.05	10/13 1164 288.91	10/29 1190 708.07
10/04 1139 130.69	10/14 1165 90.48	10/26 1191 32.30
10/07 1140 63.73	10/14 1166 49.88	10/25 1192 386.99
10/06 1141 509.80	10/29 1167 1,019.00	10/29 1193 167.29
10/07 1142 21.18	10/20 1168 201.40	10/25 1194 17.05
10/07 1143 51.51	10/18 1169 89.34	10/26 1195 424.64
10/12 1144 119.88	10/18 1170 28.80	10/27 1196 71.05
10/07 1145 81.65	10/18 1171 283.81	10/28 1197 287.37
10/08 1146 112.85	10/22 1172 81.43	10/27 1198 34.75
10/05 1147 1,500.00	10/21 1173 463.15	10/26 1199 94.00
10/05 1148 600.00	10/27 1174 250.00	10/28 1200 47.90
10/06 1149 700.00	10/20 1175 43.25	10/29 1201 218.71
10/08 1150 49.88	10/20 1176 1,500.00	10/28 1202 29.62
10/13 1151 224.17	10/25 1177 164.15	10/28 1203 20.00
10/12 1152 1,500.00	10/20 1178 500.00	10/28 1204 120.40
10/08 1153 140.54	10/20 1179 500.00	10/29 1205 477.89
10/12 1154 85.65	10/22 1180 93.80	10/29 1206 325.78
10/12 1155 255.84	10/20 1181 200.00	10/28 1207* 74.81
10/13 1156 37.50	10/26 1182 2,561.00	10/29 1210 252.46

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

324

NOTICE: SEE REVERSE SIDE FOR IMP

347-



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

000 70 05

DATE: 11/30/99

PAGE:

ACCOUNT



P.O. Box 218 P.O. Drawer 327 Box 168
Beaufort, SC 29902 Bluffton, SC 29910 Hampton, SC 29924
(803) 624-3300 (803) 757-3747 (803) 943-2671

ZORBA'S INC

BUSINESS CHECKING ACCOUNT

TOTAL CREDITS (90) 21,007.40
TOTAL DEBITS (74) 17,519.29
TAX ID NUMBER

YOUR CHECKS SEQUENCED

DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
11/01 — 1208 175.82	11/12 — 1232 15.76	11/17 — 1256 22.55
11/01 — 1209* 60.06	11/15 — 1233 54.21	11/17 — 1257 75.00
11/01 — 1211 52.25	11/15 — 1234 295.44	11/18 — 1258 33.50
11/02 — 1212 82.16	11/10 — 1235 28.30	11/18 — 1259 242.35
11/03 — 1213 200.39	11/10 — 1236 13.50	11/17 — 1260 2,000.00
11/01 — 1214 632.65	11/10 — 1237 286.33	11/18 — 1261 253.42
11/03 — 1215 209.36	11/10 — 1238 42.35	11/18 — 1262* 49.88
11/03 — 1216 116.05	11/15 — 1239 225.60	11/22 — 1264 42.30
11/05 — 1217 107.74	11/12 — 1240 500.00	11/18 — 1265 500.00
11/03 — 1218 1,000.00	11/15 — 1241 105.80	11/24 — 1266 153.67
11/04 — 1219 19.25	11/16 — 1242* 126.00	11/24 — 1267 76.50
11/04 — 1220 88.65	11/16 — 1244 60.00	11/22 — 1268 900.00
11/04 — 1221 34.25	11/16 — 1245 289.58	11/24 — 1269 331.12
11/05 — 1222 24.00	11/15 — 1246 240.58	11/26 — 1270 54.03
11/04 — 1223 1,000.00	11/15 — 1247 20.00	11/24 — 1271 30.20
11/08 — 1224 38.75	11/15 — 1248 330.00	11/23 — 1272 500.00
11/05 — 1225 32.32	11/15 — 1249 74.95	11/24 — 1273 500.00
11/08 — 1226 241.60	11/17 — 1250 119.88	11/26 — 1274 250.54
11/08 — 1227 18.00	11/12 — 1251 2,300.00	11/24 — 1275 33.50
11/05 — 1228 200.00	11/17 — 1252 43.90	11/23 — 1276 300.00
11/08 — 1229 39.00	11/16 — 1253 592.89	11/29 — 1277 15.75
11/08 — 1230 209.03	11/19 — 1254 100.21	11/29 — 1278 20.80
11/10 — 1231 212.05	11/24 — 1255 24.56	

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

P.O. Box 219 P.O. Drawer 327 Box 158
Beaufort, SC 29902 Bluffton, SC 29910 Hampton, SC 29924
(803) 524-2300 (803) 757-3747 (803) 943-2671

000 70 05

DATE: 12/31/99

PAGE:

ACCOUNT:

5

ZORBA'S INC

BUSINESS CHECKING ACCOUNT

TOTAL CREDITS (97) 17,630.31
TOTAL DEBITS (64) 21,084.86
TAX ID NUMBER [REDACTED]

YOUR CHECKS SEQUENCED

DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
12/16 -1243* 2,561.00	12/06 -1297 500.00	12/23 -1317 1,183.00
12/10 -1263* 1,121.00	12/09 -1298 360.20	12/20 -1318 1,000.00
12/07 -1279 35.28	12/09 -1299 66.25	12/22 -1319 29.10
12/01 -1280 49.10	12/09 -1300 202.81	12/22 -1320 250.00
12/01 -1281 71.05	12/10 -1301 28.30	12/21 -1321 1,000.00
12/01 -1282 14.75	12/14 -1302 932.86	12/23 -1322 54.05
12/01 -1283 1,000.00	12/13 -1303 500.00	12/23 -1323 255.71
12/02 -1284 595.58	12/13 -1304 59.75	12/24 -1324 49.88
12/02 -1285 31.95	12/15 -1305 2,300.00	12/30 -1325 1,204.54
12/01 -1286 141.96	12/15 -1306 34.90	12/27 -1326 35.35
12/03 -1287 28.55	12/22 -1307 72.00	12/31 -1327 235.48
12/03 -1288 74.81	12/17 -1308 129.09	12/31 -1328 60.00
12/06 -1289 58.03	12/15 -1309 37.20	12/31 -1329 119.88
12/07 -1290 90.00	12/16 -1310 14.45	12/31 -1330 1,000.00
12/02 -1291 1,000.00	12/16 -1311 304.26	12/31 -1331 233.61
12/03 -1292 58.11	12/22 -1312 285.98	12/30 -1332 36.25
12/08 -1293 33.25	12/17 -1313 57.75	12/30 -1333 37.50
12/08 -1294 201.49	12/16 -1314 24.94	12/30 -1334* 19.25
12/13 -1295 119.98	12/17 -1315 500.00	12/31 -1336* 16.16
12/08 -1296 41.20	12/20 -1316 83.55	12/31 -1338 68.60

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

-349-

0.00 *

C

108,540.37 +

21,500.00 -

87,040.37 *

0.00 *

0.00 *

0.00 *

16,641.47 +

26,636.17 +

26,625.02 +

21,007.40 +

17,630.31 +

108,540.37 *

0.00 *

0.00 *

0.00 *

0.00 *

0.00 *

3,000.00 +

3,000.00 +

100.00 +

2,000.00 +

500.00 +

3,000.00 +

900.00 +

500.00 +

1,500.00 +

2,000.00 +

2,000.00 +

3,000.00 +

21,500.00 *

0.00 *

0.00 *

AUGUST

201.25 +
 129.82 +
 52.10 +
 33.8 +
 251.22 +
 254.21 +
 257.17 +
 708.90 +
 125.55 +
 259.13 +
 920.78 +
 1,043.61 +
 119.65 +
 95.72 +
 112.69 +
 790.67 +
 387.04 +
 100.10 +
 116.0 +
 110.54 +
 125.62 +
 212.58 +
 505.65 +
 138.71 +
 95.01 +
 31.92 +
 60.12 +
 124.50 +
 50.10 +
 359.80 +
 117.77 +
 80.60 +
 143.20 +
 306.63 +
 4,553.60 +
 90.75 +
 322.04 +
 13,413.93 *

13,413.98 *

SEPTEMBER

50.6 +
 142.15 +
 143.70 +
 147.29 +
 56.6 +
 121.6 +
 305.15 +
 60.6 +
 85.2 +
 139.21 +
 116.0 +
 56.82 +
 137.8 +
 123.61 +
 72.59 +
 328.24 +
 147.21 +
 159.50 +
 87.19 +
 41.12 +
 60.13 +
 49.83 +
 34.94 +
 195.84 +
 66.76 +
 80.69 +
 121.77 +
 139.24 +
 158.05 +
 80.45 +
 55.60 +
 192.40 +
 154.26 +
 41.64 +
 93.90 +
 318.67 +
 47.72 +
 410.22 +
 51.55 +
 153.47 +
 92.24 +
 150.1 +
 50.15 +
 50.15 +
 5,539.26 *

5,539.26 *

OCTOBER

63.73 +
 509.80 +
 21.18 +
 51.51 +
 119.88 +
 81.65 +
 49.88 +
 224.17 +
 140.54 +
 85.65 +
 255.84 +
 37.50 +
 38.46 +
 2,560.04 +
 119.88 +
 47.00 +
 257.01 +
 237.78 +
 288.91 +
 90.48 +
 49.83 +
 89.39 +
 28.80 +
 283.81 +
 81.43 +
 463.15 +
 43.25 +
 164.15 +
 93.80 +
 19.25 +
 167.92 +
 70.56 +
 17.05 +
 71.05 +
 287.37 +
 34.75 +
 94.00 +
 47.90 +
 20.00 +
 120.40 +
 325.78 +
 74.81 +
 252.46 +
 175.82 +
 60.06 +
 52.25 +
 82.16 +
 200.39 +
 209.36 +
 116.05 +
 9,077.94 *

PLAINTIFF'S
 EXHIBIT

23

-353-

NOVEMBER

19.25 +
 88.65 +
 34.25 +
 38.75 +
 32.32 +
 241.60 +
 18.00 +
 39.00 +
 209.03 +
 28.30 +
 13.50 +
 286.33 +
 42.35 +
 225.60 +
 105.80 +
 126.00 +
 60.00 +
 289.58 +
 240.58 +
 20.00 +
 74.95 +
 119.88 +
 43.90 +
 592.89 +
 100.21 +
 24.56 +
 22.55 +
 33.50 +
 242.35 +
 253.42 +
 49.88 +
 42.30 +
 153.67 +
 76.50 +
 331.12 +
 54.03 +
 30.20 +
 250.54 +
 33.50 +
 15.75 +
 28.80 +
 35.28 +
 49.10 +
 71.05 +
 14.75 +
 31.85 +
 28.55 +
 74.81 +
 58.03 +
 5,096.81 *

DECEMBER

90.00 +
 58.11 +
 33.25 +
 201.49 +
 119.88 +
 41.20 +
 66.25 +
 202.81 +
 28.30 +
 932.86 +
 59.75 +
 34.90 +
 72.00 +
 129.09 +
 37.20 +
 14.45 +
 304.26 +
 57.75 +
 24.94 +
 83.55 +
 29.10 +
 54.05 +
 255.71 +
 49.88 +
 1,204.54 +
 35.35 +
 60.00 +
 119.88 +
 233.61 +
 36.25 +
 37.50 +
 19.25 +
 16.16 +
 68.60 +
 34.75 +
 34.75 -
 4,811.92 *
 0.00 *

JANUARY

34.75 +
 68.84 +
 103.59 +
 44.00 +
 347.86 +
 97.00 +
 42.00 +
 946.94 +
 1,684.98 *
 0.00 *

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1007

02008516

DATE 7-27-99

PAY TO THE ORDER OF S.C. Department of Revenue \$400.00

Four hundred and no/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000040000⑈

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1009

DATE 7-30-99

PAY TO THE ORDER OF Campbell's Electric \$720.00

Seven hundred and twenty/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000072000⑈

1007 \$400.00 08/06/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1010

140289377 08-11-99 0701 0208 27

DATE 8-5-99

PAY TO THE ORDER OF Coke-Cola \$201.25

Two hundred and one/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000020125⑈

1009 \$720.00 08/03/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1011

DATE 8-6-99

PAY TO THE ORDER OF Campbell's Electric \$73.00

Seventy three/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000073000⑈

1010 \$201.25 08/11/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1012

DATE 8/9/99

PAY TO THE ORDER OF Island Packet \$250.00

Two hundred and fifty and no/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000025000⑈

1011 \$73.00 08/10/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1014

DATE 8-11-99

PAY TO THE ORDER OF PEARLSTINE DISTRIBUTORS, INC. \$129.82

One hundred and twenty nine and 82/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000012982⑈

1012 \$250.00 08/13/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1016

DATE 8-11-99

PAY TO THE ORDER OF NATIONAL \$62.80

Sixty two and 80/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000006280⑈

1014 \$129.82 08/13/99

ZORBA'S, INC.
P.O. BOX 1877 843-700-2223
BLUFFTON, SC 29910

1016

120250901 08-13-99 8050 0310 27

DATE 8-13-99

PAY TO THE ORDER OF John Harts \$150.00

One hundred and fifty/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. Lee

⑈0000015000⑈

1015 \$62.80 08/16/99

1016 \$150.00 08/13/99

1017

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 08/11/99

PAY TO THE ORDER OF: CJS

\$ 33.08

THIRTY-THREE AND 08/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001010 #0000001308

1018

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-12-99

PAY TO THE ORDER OF: AMERICAN

\$ 251.22

TWO HUNDRED AND FIFTY AND 22/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001018 #0000002512

1017 \$33.08 08/12/99

1018 \$251.22 08/26/99

1019

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-13-99

PAY TO THE ORDER OF: JOHN NICOLA

\$ 300.00

THREE HUNDRED AND 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001019 #0000003000

1020

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 08/15/99

PAY TO THE ORDER OF: WY MART

\$ 264.81

TWO HUNDRED SIXTY AND 81/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001020 #0000002648

1019 \$300.00 08/16/99

1020 \$264.81 08/17/99

1021

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-16-99

PAY TO THE ORDER OF: R.O.H.

\$ 257.27

TWO HUNDRED AND FIFTY SEVEN AND 27/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001021 #0000002572

1022

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-18-99

PAY TO THE ORDER OF: SYSCO

\$ 708.00

SEVEN HUNDRED AND EIGHT 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001022 #0000007080

1021 \$257.27 08/20/99

1022 \$708.00 08/18/99

1023

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-17-99

PAY TO THE ORDER OF: Clyde Sheppard

\$ 20.00

TWENTY AND 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001023 #0000002000

1024

ZORBA'S, INC.
P.O. BOX 187 243-700-2223
BLUFFTON, SC 29910

DATE: 8-17-99

PAY TO THE ORDER OF: DHEC

\$ 60.00

SIXTY AND 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR: Bill P. Pledge

#00001024 #0000006000

1023 \$20.00 08/20/99

1024 \$60.00 08/20/99

1026

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF COCA COLA \$125.56

One hundred and twenty five and 56/100 DOLLARS

FOR CASH

BILL P. [Signature]

00001026

1027

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF NATIONAL \$259.03

Two hundred and fifty nine and 3/100 DOLLARS

FOR WIDE

BILL P. [Signature]

0000025903

1026 \$125.56 08/20/99

1027 \$259.03 08/23/99

1028

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF SYSCO \$920.78

Nine hundred and twenty and 78/100 DOLLARS

FOR EQUIPMENT

BILL P. [Signature]

00001028

1029

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF SYSCO \$1,043.66

One thousand and forty three and 66/100 DOLLARS

FOR FUEL

BILL P. [Signature]

0000104366

1028 \$920.78 08/24/99

1029 \$1,043.66 08/20/99

1030

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF FRS \$84.58

Eighty four and 58/100 DOLLARS

FOR KITCHEN

R. P. [Signature]

00001030

1031

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-18-99

PAY TO THE ORDER OF Peter Kratz \$64.48

Sixty four and 48/100 DOLLARS

FOR HAVE DEPOT REPAIRS

BILL P. [Signature]

00001031

1030 \$84.58 08/23/99

1031 \$64.48 08/27/99

1032

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-19-99

PAY TO THE ORDER OF Public \$119.65

One hundred nineteen and 65/100 DOLLARS

FOR

K. M. [Signature]

00001032

1033

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
SUFFOLK, SC 29160

DATE 8-19-99

PAY TO THE ORDER OF Poulstine \$95.72

Ninety five and 72/100 DOLLARS

FOR

B. [Signature]

000009572

1032 \$119.65 08/23/99

1033 \$95.72 08/24/99

1034

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF JOHN NICOLAI \$ 300.00

Three hundred & no DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR cash on hand R. M. Plesch

#000010 #0000030000

1035

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF Campbell Electric \$ 150.00

One hundred and fifty & no DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Electric Bill Plesch

#0000 #000001500

1034 \$300.00 08/20/99

1035 \$150.00 08/23/99

1036

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-19-99

PAY TO THE ORDER OF Sysco \$ 112.68

One hundred and twelve & 68/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR food R. M. Plesch

#0000 #0000011268

1037

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE August 20, 1999

PAY TO THE ORDER OF Kitchen Collection \$ 95.40

Ninety five & 40/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Plesch

#0000 #0000009540

1036 \$112.68 08/23/99

1037 \$95.40 08/24/99

1038

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Palmetto State Bank \$ 200.00

Two hundred & no DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Chase R. M. Plesch

#000010 #0000020000

1039

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Southern Wine \$ 790.47

Seven hundred and ninety & 47/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Wine & Beer Bill Plesch

#000010 #0000079047

1038 \$200.00 08/20/99

1039 \$790.47 08/25/99

1040

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF Ray's Kool \$ 1,497.08

One thousand four hundred and ninety seven & 8/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR work on equipment R. M. Plesch

#00001040 #0000149708

1041

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 8-20-99

PAY TO THE ORDER OF SYSO \$ 387.04

Three hundred and eighty seven & 4/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Food R. M. Plesch

#000010 #0000038704

-358-

1040 \$1,497.08 08/25/99

1041 \$387.04 08/24/99

1042

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-21-99

PAY TO THE ORDER OF Gill Fisher \$150.00

One hundred and fifty + 00 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Account R. D. Fisher

#00001500

1043

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-21-99

PAY TO THE ORDER OF C. R. H. Lombard \$100.00

One hundred + 00 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR W. H. H. Lombard B. H. Lombard

#00001000

1042 \$150.00 08/25/99

1043 \$100.00 08/25/99

1044

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-27-99

PAY TO THE ORDER OF MOVSDVTZ \$116.00

One hundred and sixteen + 00 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Protein Bull Head

#00001044

1045

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8/24/99

PAY TO THE ORDER OF Same Club \$110.54

One hundred ten + 54/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR isill Head

#00001045

1044 \$116.00 08/25/99

1045 \$110.54 08/27/99

1046

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-23-99

PAY TO THE ORDER OF Bo man \$125.62

One hundred and twenty-five + 62/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Food Bull Head

#00001046

1047

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-23-99

PAY TO THE ORDER OF Rama \$212.58

Two hundred and twelve + 58/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Food Bull Head

#000021258

1046 \$125.62 08/27/99

1047 \$212.58 08/27/99

1048

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-23-99

PAY TO THE ORDER OF Palmetto State Bank \$200.00

Two hundred + 00 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Palmetto Bull Head

#00001048

1049

ZORBA'S, INC.
P.O. BOX 1887 843-708-223
SULPHUR, SC 29906

DATE 8-23-99

PAY TO THE ORDER OF S450 \$505.65

Five hundred and five + 65/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29906

FOR Food Bull Head

#000050565

1048 \$200.00 08/24/99

1049 \$505.65 08/25/99

1050

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF SSSCO 140115247 08-28-99 0700 0749 FE 138.71

DATE 8-24-99

One hundred and thirty eight 138.71

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR cash Bill Hester

000010

1051

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF Coca-Cola 110104773 08-28-99 0724 8071 27

DATE 8-24-99

Ninety five 95.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR Coca-Cola Bill Hester

00001051

1050 \$138.71 08/26/99

1051 \$95.00 08/26/99

1052

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF David S. Hester 1531.92

DATE 8-25-99

Thirty one 31.92

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR cash Bill Hester

0000105

1053

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF John Nicolai 150.00

DATE 8-25-99

One hundred and fifty 150.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR Wine Bill Hester

00001

1052 \$31.92 08/27/99

1053 \$150.00 08/26/99

1054

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF Bonnie Nicolai 100.00

DATE 8-25-99

One hundred 100.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR Propane Bill Hester

000010

1055

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF NATIONAL 60.02

DATE 8-25-99

Sixty 60.02

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR Wine Bill Hester

00001

1054 \$100.00 08/26/99

1055 \$60.02 08/27/99

1056

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF CJ 124.50

DATE 8-26-99

One hundred twenty four 124.50

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR cash Bill Hester

00001054

1058

ZORBA'S, INC.
P.O. BOX 1887 84-706-2725
BLUFFTON, SC 29918

PAY TO THE ORDER OF John Nicolai 50.00

DATE 8-26-99

Fifty 50.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29918

FOR cash Bill Hester

00001

-360-

1056 \$124.50 08/26/99

1058 \$50.00 08/27/99

1059

ZORBA'S, INC.
P.O. BOX 1887 843-755-2223
BLUFFTON, SC 29910

120324367 08-31-99 0843 5072 27 8-31/99

PAY TO THE ORDER OF Sycca \$ 369.80

Three hundred and sixty nine and 80/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Food

00000105

1059 \$369.80 08/31/99

1061

ZORBA'S, INC.
P.O. BOX 1887 843-755-2223
BLUFFTON, SC 29910

DATE 8-26-99

PAY TO THE ORDER OF SC E & G \$ 201.14

Two hundred and one and 14/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Elect

00000105

1060 \$201.14 08/31/99

1057

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8-26-99 09-01-99 0850 0748 27

PAY TO THE ORDER OF MAYSOVITZ \$ 117.77

One hundred and Seventeen and 77/100 DOLLARS

FOR Palmetto

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001

00011777

1057 \$117.77 09/01/99

1062

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE August 28, 1999 09-01-99 0850 0748 27

PAY TO THE ORDER OF East Coast Fruit Co. Inc. \$ 144.20

One hundred forty four and 20/100 DOLLARS

FOR pro

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001062

480160122 4632 4618 02 09-01-99

R. D. Pascauskas

0000014420

1062 \$144.20 09/02/99

1065

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8-31-99 09-02-99 0401 0061 27

PAY TO THE ORDER OF PYB \$ 4,539.65

Four thousand five hundred and thirty nine and 65/100 DOLLARS

FOR Food

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001

120229686 4632 4618 02 09-02-99

R. D. Pascauskas

00000453965

1065 \$4,539.65 09/07/99

1067

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8-31-99 09-02-99 0850 0851 93

PAY TO THE ORDER OF SYS CO \$ 322.44

Three hundred and twenty two and 44/100 DOLLARS

FOR Food

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001067

150289010 4632 4618 02 09-02-99

R. D. Pascauskas

0000032244

1067 \$322.44 09/02/99

1061

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE August 27, 1999 09-03-99 5055 5087 27

PAY TO THE ORDER OF Sullivan Wine & Spirits \$ 80.60

Eighty dollars and 60/100 DOLLARS

FOR Palmetto

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001061

000008060

1061 \$80.60 09/07/99

1063

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8/30/99 09-03-99 5055 5087 27

PAY TO THE ORDER OF Apria Health Enterprises of Ill. \$ 306.43

Three hundred six dollars and 43/100 DOLLARS

FOR Palmetto

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001063

0000030643

1064 \$306.43 09/03/99

1066

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8-31-99 09-02-99 0401 0061 27

PAY TO THE ORDER OF Coke & Cola \$ 99.75

Ninety nine and 75/100 DOLLARS

FOR Can

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001

440005584 4632 4618 02 09-02-99

Bill Pascauskas

0000009975

1066 \$99.75 09/02/99

1068

ZORBA'S, INC.
P.O. BOX 1807 843-700-2222
SLUPTON, SC 29151

DATE 8-1-99 09-01-99 0850 0851 93

PAY TO THE ORDER OF BILL PASCAUSKAS \$ 1,000.00

One thousand DOLLARS

FOR Palmetto

PALMETTO STATE BANK
SLUPTON, S.C. 29150

*00001068

0000010000

1068 \$1,000.00 09/01/99

1089

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF Cash DATE 9-1-99 \$ 300.00

Three hundred and no/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Ball Head

#0000 70000030000

1070

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF Perfection DATE 9-7-99 \$ 50.06

Fifty + 06/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Ball Head

#0000 70000030000

1069 \$300.00 09/01/99

1071

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF C & H Country Co. DATE 9/1/99 \$ 142.05

One hundred forty two and 05/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR meats

#0000 70000014205

1070 \$50.06 09/07/99

1072

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF National Distributing Co. DATE 9-1-99 \$ 143.70

One hundred forty three and 70/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Wine

#0000 70000014370

1071 \$142.05 09/07/99

1072 \$143.70 09/14/99

Inv. N. 909020307 1073

13021034 09-07-99 0004 8052 27

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF SYSCO DATE 9-2-99 \$ 143.29

One hundred and forty three and 29/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Food

#0000 70000014329

Inv. N. 169968 1074

9-4-99

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF C & H COUNTRY DATE 9-4-99 \$ 64.40

Sixty four + 40/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR CHEESE

#0000 70000006440

1073 \$143.29 09/07/99

1074 \$64.40 09/08/99

140308428 09-09-99 0701 8089 27

DATE Sept 4, 1999

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF East Coast Fruit Company DATE Sept 4, 1999 \$ 124.60

One hundred twenty four and 60/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR produce

#0000 70000012460

1076

ZORBA'S, INC.
P.O. BOX 1887 843-700-2223
BLUFFTON, SC 29910

PAY TO THE ORDER OF PETR KRAIKY DATE 9-6-99 \$ 173.00

One hundred and seventy three

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Work

#0000 70000017300

1075 \$124.60 09/09/99

1076 \$173.00 09/08/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 8416315 1077

150082330 09-10-99 0791 5057 27

DATE 9-6-99

PAY TO THE ORDER OF Home \$305.43

Three hundred and five and 43/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1077 \$305.43 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 8416315 1077

150082330 09-10-99 0791 5057 27

DATE 9-6-99

PAY TO THE ORDER OF Zorba's Payroll \$3,000.00

Three thousand

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1079 \$3,000.00 09/07/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 383495 1080

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF Cumulative Earnings \$247.50

Two hundred and forty seven and 50/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1080 \$247.50 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 383495 1081

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF NATIONAL \$60.06

Sixty and 6/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1081 \$60.06 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. E15231 1082

150082330 09-10-99 0791 5057 27

DATE 9-14-99

PAY TO THE ORDER OF George \$57.85

Fifty seven and 85/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1082 \$57.85 09/14/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 1670 1083

150082330 09-10-99 0791 5057 27

DATE 9-7-99

PAY TO THE ORDER OF Greene's Ace Hardware \$65.42

Sixty five and 42/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1083 \$65.42 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 77313 1084

150082330 09-10-99 0791 5057 27

DATE 9-10-99

PAY TO THE ORDER OF Caroline's Mountain News \$61.60

Sixty one and 60/100

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1084 \$61.60 09/10/99

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SALFORD, NC 28510

INV. N. 47837-47959-47960 1085

150159752 09-14-99 0720 5052 27

DATE 9-9-99

PAY TO THE ORDER OF Carroll Creek Inc \$353.00

Three hundred and fifty three

PALMETTO STATE BANK
SALFORD, N.C. 28510

FOR Bill Hester

00001077 *000030143*

1085 \$353.00 09/14/99

1086

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-8-99

PAY TO THE ORDER OF EAST COAST

\$ 85.02

Eighty five and 02/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Cash

Bill Chambers

000000582

1086 \$85.02 09/13/99

INV. N. 170029 1087

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-8-99

PAY TO THE ORDER OF C & H POULTRY CO

\$ 139.21

One hundred and thirty nine and 21/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Meat

Bill Chambers

000001392

1087 \$139.21 09/10/99

1088

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-9-99

PAY TO THE ORDER OF Techniques

\$ 60.00

Sixty and 00/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Public Safety Agency

Bill Chambers

000000600

1088 \$60.00 09/20/99

INV. N. 5062092 1089

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-9-99

PAY TO THE ORDER OF Ben Arnold

\$ 116.00

One hundred and sixteen and 00/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Wine

Bill Chambers

000001160

1089 \$116.00 09/16/99

1090

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-9-99

PAY TO THE ORDER OF Pearlina

\$ 56.82

Fifty six and 82/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR beer + products

Juan Pascualoukas

000000568

1090 \$56.82 09/13/99

1091

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-9-99

PAY TO THE ORDER OF East Coast

\$ 134.08

One hundred thirty seven and 08/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR produce

Juan Pascualoukas

000001370

1091 \$137.08 09/16/99

2086'S Rest Inv. N. 31492 1092

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-9-99

PAY TO THE ORDER OF D. H. FRASER

\$ 120.31

One hundred and twenty and 31/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Steaks

Bill Chambers

000001203

1092 \$120.31 09/16/99

1093

ZORBA'S, INC.
P.O. BOX 1887 243-708-2223
SLIPPTON, SC 29153

DATE 9-10-99

PAY TO THE ORDER OF Bill PASCALOUKAS

\$ 1,000.00

One thousand and 00/100

PALMETTO STATE BANK
SLIPPTON, SC 29153

FOR Rest Exp. + Insurance

Bill Chambers

00001000

1093 \$1,000.00 09/10/99

-365-

1084

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-10-99

PAY TO THE ORDER OF C & S Poultry Co. \$123.61

One hundred twenty three and 61/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000012361

1095

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-10-99

PAY TO THE ORDER OF Simply Wiggly \$72.59

Seventy two and 59/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000007259

1094 \$123.61 09/14/99

1096

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-15-99

PAY TO THE ORDER OF SXSCO \$328.24

Three hundred and twenty eight and 24/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000032824

1095 \$72.59 09/14/99

1097

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-16-99

PAY TO THE ORDER OF NATIONAL \$147.21

One hundred and forty seven and 21/100 DOLLARS

PALMETTO STATE BANK

FOR cash

00014721

1096 \$328.24 09/16/99

1098

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-17-99

PAY TO THE ORDER OF CJS \$139.00

One hundred thirty nine and 00/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000013900

1097 \$147.21 09/17/99

1099

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-17-99

PAY TO THE ORDER OF EAST COAST \$87.09

Eighty seven and 09/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000008709

1098 \$139.50 09/20/99

1100

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-13-99

PAY TO THE ORDER OF GAST COAST \$41.12

Forty one and 12/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000004112

1099 \$87.09 09/20/99

1101

ZORBA'S, INC.
P.O. BOX 1887 843-708-2222
BLUFFTON, SC 29910

DATE 9-13-99

PAY TO THE ORDER OF GILFISHER \$325.00

Three hundred and twenty five and 00/100 DOLLARS

PALMETTO STATE BANK

FOR cash

0000032500

-366-

1100 \$41.12 09/20/99

1101 \$325.00 09/21/99

311

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1103

DATE 9-14-99

PAY TO THE ORDER OF ZORBA'S PARRAIL \$1,000.00

One thousand + 00/100 DOLLARS

PALMETTO STATE BANK

FOR JAY

0000100000

1103 \$1,000.00 09/14/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1105

DATE 9-14-99

PAY TO THE ORDER OF BILL PASSELOHARS \$500.00

Five hundred + 00/100 DOLLARS

PALMETTO STATE BANK

FOR ZORBA'S

0000000000

1105 \$500.00 09/14/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1106

DATE 9-17-99

PAY TO THE ORDER OF HAZAY COMMUNICATIONS \$304.82

Three hundred and four + 82/100 DOLLARS

PALMETTO STATE BANK

FOR JAY

000030482

1106 \$304.82 09/21/99

ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

INV. N. 385042

1107

DATE 9-17-99

PAY TO THE ORDER OF NATIONAL \$60.03

Sixty + 03/100 DOLLARS

PALMETTO STATE BANK

FOR JAY

0000000003

1107 \$60.03 09/23/99

ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1108

DATE 9-18-99

PAY TO THE ORDER OF SAVANNAH COCA-COLA BOTTLING CO. \$49.88

Forty nine and 88/100 DOLLARS

PALMETTO STATE BANK

FOR JAY

0000004988

1108 \$49.88 09/22/99

ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1109

DATE 9-18-99

PAY TO THE ORDER OF LAST COAST FRUIT CO. \$34.94

Thirty four and 94/100 DOLLARS

PALMETTO STATE BANK

FOR PRODUCER

0000000349

1109 \$34.94 09/24/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1110

DATE 9-15-99

PAY TO THE ORDER OF GARY FRANKS \$676.00

Six hundred and seventy six + 00/100 DOLLARS

PALMETTO STATE BANK

FOR REBEL

0000057600

1110 \$676.00 09/21/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1087 803-700-2222
BLUFFTON, SC 29910

1111

DATE 9-18-99

PAY TO THE ORDER OF GARY FRANKS \$2,151.00

Two thousand one hundred and fifty one + 00/100 DOLLARS

PALMETTO STATE BANK

FOR REBEL

0002151

1111 \$2,151.00 09/21/99

-367-

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

AC.N. 57 7273 009 374 1112

120317831, 09-27-99 0781, 0809 27 0-20/99

DATE 9-16-99

PAY TO THE ORDER OF HONG DO POT \$304.25

Three hundred and four + 25 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Hong Do Pot R. B. 11- Q

000030425

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

INV. N. 6013289 1113

DATE 9-20-99

PAY TO THE ORDER OF SOUTHERN WINE \$135.84

One hundred and thirty five + 84 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Wine + Beer Bill Meade

0000013584

1112 \$304.25 09/27/99

1113 \$195.84 09/24/99

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

130827522, 09-28-99 0758 0423 25

DATE 9-20-99

PAY TO THE ORDER OF East Coast \$66.76

Fifty six and 76/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Beer 11782

000006676

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

DATE 9-20-99

PAY TO THE ORDER OF Zorba's \$4,000.00

Four thousand DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Supplies Bill Meade

000040000

1114 \$66.76 09/24/99

1115 \$4,000.00 09/21/99

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

DATE 9-21-99

PAY TO THE ORDER OF Charlotte Distributors Inc. \$80.89

Eighty dollars and 89/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Beer 08089

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

DATE 9-21-99

PAY TO THE ORDER OF C & D Poultry Co. \$121.77

One hundred and twenty one and 77/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR pts. Tim D. Salomon

0000012177

1116 \$80.89 09/23/99

1117 \$121.77 09/23/99

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

INV. N. 507210531 1118

140355176 09-23-99 0810 0817 27

DATE 9-21-99

PAY TO THE ORDER OF STSCO \$189.24

One hundred and eighty nine + 24 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Food Bill Meade

0000018924

2088'S
ZORBA'S, INC.
P.O. BOX 1987 843-700-2223
BLUFFTON, SC 29910

INV. N. 586031 1119

DATE 9-21-99

PAY TO THE ORDER OF NATIONAL \$168.06

One hundred and sixty eight + 06 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Wine Bill Meade

000016806

-368-

1118 \$189.24 09/23/99

1119 \$168.06 09/27/99

313

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

1120

DATE 9-22-99

PAY TO THE ORDER OF ZORBA'S PAVOL

FIVE HUNDRED +

\$ 500.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

70000050000

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 413601

1121

DATE 9-24-99

PAY TO THE ORDER OF EAST COAST

EIGHTY EIGHT +

\$ 88.45

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

70000008845

1120 \$500.00 09/22/99

1121 \$88.45 09/24/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 413990

1122

DATE 9-23-99

PAY TO THE ORDER OF EAST COAST

SIXTY FIVE +

\$ 65.60

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

70000006560

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 414001

1124

DATE 9-23-99

PAY TO THE ORDER OF SXS

ONE HUNDRED AND NINETY TWO +

\$ 192.40

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

70000019240

1122 \$65.60 09/27/99

1124 \$192.40 09/28/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 6015715

1125

DATE 9-23-99

PAY TO THE ORDER OF SUTTON WINE

ONE HUNDRED AND FIFTY FIVE +

\$ 154.26

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

00015426

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 414001

1126

DATE 9-24-99

PAY TO THE ORDER OF Adventure Radio

ONE THOUSAND ONE HUNDRED AND FIFTY +

\$ 1,150.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

000115000

1125 \$154.26 09/29/99

1126 \$1,150.00 09/28/99

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 414422

1127

DATE 9-24-99

PAY TO THE ORDER OF EAST COAST

Forty one +

\$ 41.67

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

00004167

ZORBA'S
ZORBA'S, INC.
P.O. BOX 1807 240-700-2222
BLUFFTON, SC 29910

INV. N. 414594

1128

DATE 9-25-99

PAY TO THE ORDER OF EAST COAST

Eighty three +

\$ 83.90

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR PAID

000008390

1127 \$41.67 09/30/99

1128 \$83.90 09/30/99

314

-369-

INV. N. 8420935 1130

ZORBA'S, INC.
P.O. BOX 1807 24370-2229
BLUFFTON, SC 29910

140166655 09-30-99 5083 5060 27

DATE 9-27-99

PAY TO THE ORDER OF ROMA

Three hundred and eighteen 37

\$ 318.37

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

0000031837

INV. N. 415006 1131

ZORBA'S, INC.
P.O. BOX 1807 24370-2229
BLUFFTON, SC 29910

130072858 09-30-99 5083 5060 27

DATE 9-27-99

PAY TO THE ORDER OF EAST COAST

Forty seven 72

\$ 47.72

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

0000004772

1130 \$318.37 09/30/99

1131 \$47.72 09/30/99

INV. N. 909270223 1132

ZORBA'S, INC.
P.O. BOX 1807 24370-2229
BLUFFTON, SC 29910

140379957 09-29-99 0493 0804 27

DATE 9-27-99

PAY TO THE ORDER OF Syso

Four hundred and fourteen 22

\$ 414.22

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Go

0000041422

INV. N. 909270223 1133

ZORBA'S, INC.
P.O. BOX 1807 24370-2229
BLUFFTON, SC 29910

140379957 09-29-99 0493 0804 27

DATE 9-15-99

PAY TO THE ORDER OF Gary Borsch

Two thousand four hundred sixty one 00

\$ 2,561.00

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR R

00000256100

1132 \$414.22 09/29/99

1133 \$2,561.00 09/29/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

1078

DATE 9-7-99

PAY TO THE ORDER OF Southern \$ 61.56

Sixty one and 56/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0006156

1078 \$61.56 10/12/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

03412404 1102

DATE 9-13-99

PAY TO THE ORDER OF Si Department of Avenue \$ 518.00

Five hundred and eighteen + 00/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000051800

1102 \$518.00 10/05/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

INV. N. 5810 1129

DATE 9-25-99

PAY TO THE ORDER OF Gray Republic gas \$ 2,499.58

Two thousand four hundred and ninety nine + 58/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000049958

1129 \$2,499.58 10/01/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

INV. N. 415718 1134

DATE 10-04-99

PAY TO THE ORDER OF East Coast \$ 134.47

One hundred and thirty four + 47/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000013447

1134 \$134.47 10/04/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

1135

DATE 9-30-99

PAY TO THE ORDER OF SCE & G \$ 715.14

Seven hundred and fifteen + 14/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000071514

1135 \$715.14 10/07/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

INV. N. 5066848 1136

DATE 9-30-99

PAY TO THE ORDER OF Ben Arnold \$ 92.28

Ninety two + 28/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000009228

1136 \$92.28 10/06/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

INV. N. 909300313 1137

DATE 9-30-99

PAY TO THE ORDER OF S&S \$ 189.16

One hundred and eighty nine + 16/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

0000018916

1137 \$189.16 10/04/99

ZORBA'S, INC.
P.O. BOX 1807 SALT SPRING ISLAND, FL 32955

INV. N. 398119 1138

DATE 9-29-99

PAY TO THE ORDER OF NATIONAL \$ 50.05

Fifty + 05/100

PALMETTO STATE BANK
SALT SPRING ISLAND, FL 32955

FOR Bill

00500500

1138 \$50.05 10/05/99

INV. N. 766521 1139

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 9-3-99

PAY TO THE ORDER OF Pearl's Fine
One hundred and thirty and 69/100 \$130.69
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR Bill P...
⑈0000013069⑈

1140

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-1-99

PAY TO THE ORDER OF EAST COAST FRUIT CO
Certified
\$63.73
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR MOBILE INVOICE # 46356 Neil P...
⑈0000006373⑈

1139 \$130.69 10/04/99

1140 \$63.73 10/07/99

1141

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-1-99

PAY TO THE ORDER OF MONARCH
Three hundred and fifty and 88/100 \$509.88
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR INV # 41724 Y. Davis
⑈0000050988⑈

1142

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-1-99

PAY TO THE ORDER OF EAST COAST PRODUCE
TWENTY ONE \$21.18
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR INV # 41122
⑈0000002118⑈

1141 \$509.80 10/06/99

1142 \$21.18 10/07/99

1143

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-2-99

PAY TO THE ORDER OF EAST COAST FRUIT CO.
Fifty and 51/100 \$51.51
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR INV # 416931
⑈0000005151⑈

INV. N. 602-328 1144

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-4-99

PAY TO THE ORDER OF Southern
One hundred and nineteen and 88/100 \$119.88
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR INV # 416931
⑈0000011988⑈

1143 \$51.51 10/07/99

1144 \$119.88 10/12/99

INV. N. 417170 1145

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-4-99

PAY TO THE ORDER OF EAST COAST
Eighty and 65/100 \$81.65
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR RAINE 417170
⑈000008165⑈

INV. N. 8422818 1146

ZORBA'S, INC.
P.O. BOX 187 247-700-2223
BLUFFTON, SC 29910

DATE 10-4-99

PAY TO THE ORDER OF ROMA
One hundred and twelve and 85/100 \$112.85
PALMETTO STATE BANK
BLUFFTON, S.C. 29910
FOR
⑈0000011285⑈

-372-

1145 \$81.65 10/07/99

1146 \$112.85 10/08/99

1147

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF ZORBA'S PAYROLL \$1,500.00

Five hundred + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

000150000

1147 \$1,500.00 10/05/99

1148

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF ZORBA'S PAYROLL \$600.00

Six hundred + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

000006000

1148 \$600.00 10/05/99

1149

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF ZORBA'S PAYROLL \$700.00

Seven hundred + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

000007000

INV. N. 03096921150

110029489 10-08-99 0722 0493 27

DATE 10-5-99

PAY TO THE ORDER OF COCA-COLA 450084266 4505 4513 15 10-07-99

Forty nine + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Co

000000498

1150 \$49.88 10/08/99

INV. N. 259502

1151

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF P Y A \$224.17

Two hundred and twenty four + 17 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

0000022417

1152

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-6-99

PAY TO THE ORDER OF Bill Passalunhoe \$1,500.00

One thousand and five hundred + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

000150000

1151 \$224.17 10/13/99

1152 \$1,500.00 10/12/99

INV. N. 910060477

1153

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF SYSCO \$140.54

One hundred and forty + 54 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

0000014054

INV. N. 417801

1154

ZORBA'S, INC.
P.O. BOX 1887 241-700-2222
SLUPTON, SC 29153

DATE 10-5-99

PAY TO THE ORDER OF EAST COAST 150103248 10-08-99 4005 4019 US

Eighty five + no 100 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29153

FOR Pay

000008565

1153 \$140.54 10/08/99

1154 \$85.65 10/12/99

INV. N. 38922 1155

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-5-99

PAY TO THE ORDER OF NATIONAL

Two hundred and fifty five + 84 DOLLARS

FOR Wine 12.02

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000025584

INV. N. 1156

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-7-99

PAY TO THE ORDER OF Ben Arnold

Thirty seven + 50 DOLLARS

FOR Wine 2548547

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000003750

1155 \$255.84 10/12/99

1156 \$37.50 10/13/99

INV. N. 418169 1157

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-7-99

PAY TO THE ORDER OF EAST COAST

Thirty eight thousand four hundred and thirty eight + 46 DOLLARS

FOR Wine

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000003846

INV. N. 1158

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-7-99

PAY TO THE ORDER OF CYS

Two thousand, five hundred and sixty + 4 DOLLARS

FOR Wine

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000025604

1157 \$38.46 10/14/99

1158 \$2,560.04 10/14/99

INV. N. 6028442 1159

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-7-99

PAY TO THE ORDER OF Southern Wine

One hundred and nine + 88 DOLLARS

FOR Wine

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000011488

INV. N. 1160

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-12-99

PAY TO THE ORDER OF ZORBA'S

One thousand and three hundred + 00 DOLLARS

FOR Wine

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000130000

1159 \$119.88 10/13/99

1160 \$1,300.00 10/14/99

INV. N. 1161

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE 10-8-99

PAY TO THE ORDER OF Coast Coast

Forty seven and 7/8 DOLLARS

FOR produce 418643

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000004700

INV. N. 1162

ZORBA'S, INC.
P.O. BOX 1827 843-708-2223
BLUFFTON, SC 29910

DATE Oct 8, 1999

PAY TO THE ORDER OF PMA/March, Inc.

Two hundred fifty seven and 1/2 DOLLARS

FOR food products 267599

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

0000025701

-374-

1161 \$47.00 10/14/99

1162 \$257.01 10/14/99

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

1163

110149400 10-15-99 0770 9065 27

DATE 10-11-99

PAY TO THE ORDER OF Bona \$257.98

Two hundred thirty seven and 9/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR food

0000023778

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

1164

120118722 10-13-99 0770 0702 27

DATE 10-11-99

PAY TO THE ORDER OF Super \$288.91

Two hundred eighty eight and 9/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR for

0000028891

1163 \$237.78 10/15/99

1164 \$288.91 10/13/99

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

1165

140343866 10-14-99 0700 0214 27

DATE 10-11-99

PAY TO THE ORDER OF East Coast \$90.48

Ninety and 4/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR produce

0000009048

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

1166

130448559 10-14-99 0401 5854 27

DATE 10-12-99

PAY TO THE ORDER OF Coca-Cola \$584.38

Five hundred eighty four and 38/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR C

0000005854

1165 \$90.48 10/14/99

1166 \$49.88 10/14/99

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

03552528 1167

140392131 10-18-99 0715 9055 27

DATE 10-12-99

PAY TO THE ORDER OF SC Department of Revenue \$1,019.00

One thousand and nineteen and 0/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR S

0000010190

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

1168

140121554 10-19-99 0710 0712 27

DATE 10-13-99

PAY TO THE ORDER OF F.P.P. \$201.40

Two hundred and one and 40/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR line

0000020140

1167 \$1,019.00 10/29/99

1168 \$201.40 10/20/99

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

INV. N. 419782 1169

140392131 10-18-99 0715 9055 27

DATE 10-12-99

PAY TO THE ORDER OF EAST COAST \$89.34

Eighty nine and 34/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Prod

0000008934

ZORBA'S, INC.
P.O. BOX 1887 343-700-2223
BLUFFTON, SC 29910

INV. N. 420121 1170

140392127 10-18-99 0715 9055 27

DATE 10-14-99

PAY TO THE ORDER OF EAST COAST \$28.80

Twenty eight and 80/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Prod

0000002880

1169 \$89.34 10/18/99

1170 \$28.80 10/18/99

-375-

INV. N. 910140345 1171

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-18-99

PAY TO THE ORDER OF SYSCO

120399304 10-18-99 15283.91

Two hundred and eighty three and 9/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

01111111

1028301

1171 \$283.81 10/18/99

INV. N. 15318 1172

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-18-99

PAY TO THE ORDER OF NATIONAL

81.43

Eighty one and 43/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Wine

00000081131

1172 \$81.43 10/22/99

INV. N. 282188 1173

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-15-99

PAY TO THE ORDER OF P.Y.A.

463.15

Four hundred and sixty three and 15/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

115

1173 \$463.15 10/21/99

INV. N. 10-16-99 1174

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-16-99

PAY TO THE ORDER OF Gill Fishbein

250.00

Two hundred and fifty DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

0000025000

1174 \$250.00 10/27/99

INV. N. 252967 1175

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-20-99

PAY TO THE ORDER OF MOVSO

43.25

Forty three and 25/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

000004325

1175 \$43.25 10/20/99

INV. N. 10-18-99 1176

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-18-99

PAY TO THE ORDER OF Zorba Pagnall

1500.00

One thousand and five hundred DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

0000150000

1176 \$1,500.00 10/20/99

INV. N. 842612 1177

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-18-99

PAY TO THE ORDER OF Roma

164.15

One hundred and sixty four and 15/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

0000016415

1177 \$164.15 10/25/99

INV. N. 10-13-99 1178

ZORBA'S, INC.
P.O. BOX 187 247-70-223
BLUFFTON, SC 29910

DATE 10-13-99

PAY TO THE ORDER OF Zorba Pagnall

500.00

Five hundred DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Cash

0000050000

1178 \$500.00 10/20/99

-376-

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1179

DATE 10-19-99

PAY TO THE ORDER OF Zorba's Payroll \$500.00

Five hundred and no/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Payroll

0000030000

1179 \$500.00 10/20/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1180

DATE 10-19-99

PAY TO THE ORDER OF Movsavit \$93.80

Ninety three and 80/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

00000255100

1180 \$93.80 10/22/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1181

DATE 10-19-99

PAY TO THE ORDER OF Zorba's Payroll \$200.00

Two hundred and no/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Pay

000000000

1181 \$200.00 10/20/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1182

DATE 10-16-99

PAY TO THE ORDER OF Gary Branch \$2,561.00

Two thousand five hundred and sixty one and no/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

00000255100

1182 \$2,561.00 10/26/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1183

DATE 10-20-99

PAY TO THE ORDER OF Movsavit \$19.25

Nineteen and 25/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

000000000

1183 \$19.25 10/25/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1184

DATE 10-20-99

PAY TO THE ORDER OF Paul \$167.92

One hundred and sixty seven and 92/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

000000000

1184 \$167.92 10/22/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1185

DATE 10-18-99

PAY TO THE ORDER OF Harry \$148.81

One hundred and forty eight and 81/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Paul

000000000

1185 \$148.81 10/21/99

ZORBA'S, INC.
P.O. BOX 1887 84-700-223
BLUFFTON, SC 29910

1186

DATE 10-18-99

PAY TO THE ORDER OF Isa packet \$45.81

Forty five and 81/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Adrian

000000000

1186 \$45.81 10/26/99

202841's REF: T0254515098 1187
ZEDRAG, INC.
P.O. BOX 1997 BOX 700 0203
BURLINGTON, NC 28019
DATE 10-20-99 07-108702
PAY TO THE ORDER OF Island Packet \$54.21
Fifty-four & 21
PALMETTO STATE BANK
BURLINGTON, N.C. 28019
FOR Advice R. D. D. - D
#01 6216

1187 \$54.21 10/26/99

ZOBRA'S, INC.
 P.O. BOX 1887 602-708 5280
 ALBUQUERQUE, NM 87103

INV. N. 393165 1184

DATE 10-28-97 07-28/97--

PAY TO THE ORDER OF NATIONAL \$70.56

Seventy + 56 DOLLARS 00/100

PALMETTO STATE BANK
 ALBUQUERQUE, N. M. 87103

FOR W.I.

07056

1188 \$70.56 10/25/99

1188

ZOBRA'S, INC.
P.O. BOX 1487 BOZABEN
BLYTHE, CA 92225

DATE 10-21-94

PAY TO THE ORDER OF BILL PASSALONKOS \$ 500.00

Five hundred NO DOLLARS

 **PALMETTO STATE BANK**
BLYTHE, CA 92225

FOR BUSINESS BANKING C Bob [Signature]

11.00500000

1189 \$500.00 10/21/99

25888'S
ZOBRAZ, INC.
P.O. BOX 187, EGYPT, ILL.
ELECTRON 6-6-62

A.C.N. 8-2100-4611-5/76 1180

DATE 10-25-99 10-25/99

FOR DEPOSIT OR S.C.E. - R.C. \$ 708.07

Series hundred and eight 1 07.00 DOLLARS ONLY

 **PALMETTO
STATE BANK**
ELECTRON 6-6-62

FOR Electron 11 00 26

FD-500 (10-6-67)

1190 \$708.07 10/29/99

20287's
20287's, INC.
P.O. BOX 1177 (404-706-2252)
BLUFFTON, SC 29910

Ref: To 3124 27098 1181

PAY TO THE ORDER OF Island Packet DATE 10-26-82 9-10-82

Party Two \$ 32.30

 **PALMETTO STATE BANK**
BLUFFTON, S.C. 29910

FOR Ad 2.11 Pl

⑈0000003230⑈

1191 \$32.30 10/26/99

ZORRA'S
ZORRA'S, INC.
P.O. BOX 1087 GIG-HARBOUR
ELEVATION 90 0000

ALN-51 72 73 009374 3 1192

PAY TO THE ORDER OF Haniel D. \$ 386.71

DATE 10-18-99 A-DATED

Three hundred and eighty six DOLLARS & CENTS

Suppl. for fund for Alex

PALMETTO STATE BANK
GULFPORT - FLA 33508

V. 00 0

B
00438300

1192 \$386.99 10/25/99

1193

ROBB'S
STORAGE INC.
P.O. BOX 1487 EASTON, ILL
EASTON, ILL 62020

DATE 10-15-79

PAY TO THE ORDER OF *Harmon* \$ 167.29

One hundred and sixty seven & 29/100 DOLLARS

PALMETTO
STATE BANK
1167A-777716

FOR *Fair* 11-1-1980

⑈0000016729⑈

1193 \$167.29 10/29/99

1194

ZOBRA'S, INC.
P.O. BOX 1987 843-705-4275
SUFFOLTON, CO. 80751

PAY TO THE ORDER OF Pearlstein DATE 70-21-99 P-21419 -
Seventeen and 09/100 \$ 17.05
DOLLARS 00/100

 PALMETTO
STATE BANK
SUFFOLTON S.C. 29750

FOR cash ... in (enclosed)

000177

1194 \$17.05 10/25/99

-378-

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 05231 - 057962- 1195

DATE 10-22-99

PAY TO THE ORDER OF People's 130314886 10-26-99 0840 0847 27 \$ 424.64

Four hundred and twenty four / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR See 10-10-99 20592 Ch. 10 Person

142464

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 140091192 15-27-99 0720 0720 27 1196

DATE 10-27-99

PAY TO THE ORDER OF MOVSOVITZ OF GA. 140091192 10-27-99 0720 0720 27 \$ 71.05

Seventy one / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR INV. N. 15347

1000007105

1195 \$424.64 10/26/99

1196 \$71.05 10/27/99

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 140091197 10-27-99 0720 0720 27 1197

DATE 10-22-99

PAY TO THE ORDER OF HONALCH, INC. 140091197 10-27-99 0720 0720 27 \$ 287.37

Two hundred and eighty seven / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR PA

0028737

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 254075 1198

DATE 10-27-99

PAY TO THE ORDER OF MOVSOVITZ 140091197 10-27-99 0720 0720 27 \$ 34.75

Thirty four / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR PA

0000003475

1197 \$287.37 10/28/99

1198 \$34.75 10/27/99

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 170991 1199

DATE 10-23-99

PAY TO THE ORDER OF C & H PAULTRY CO. 150360405 10-26-99 0728 0733 27 \$ 94.00

Ninety four / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR C.H.

19400

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

INV. N. 25430 1200

DATE 10-28-99

PAY TO THE ORDER OF MOVSOVITZ 150360405 10-26-99 0728 0733 27 \$ 47.90

Forty seven / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR PA

000004790

1199 \$94.00 10/26/99

1200 \$47.90 10/28/99

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

AC-N. 0524963 1201

DATE 10-24-99

PAY TO THE ORDER OF Republic Waste Serv. 140178988 10-26-99 0721 0729 27 \$ 218.71

Two hundred and eighteen / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR Waste Serv. Sect. Del. Bill Rogers

00021871

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLIPTON, SC 29159

AC-N. 12273701 1202

DATE 10-28-99

PAY TO THE ORDER OF PALMETTO ELECTRIC COOP. 140178988 10-26-99 0721 0729 27 \$ 29.62

Twenty nine / 100 DOLLARS

PALMETTO STATE BANK
SLIPTON, S.C. 29159

FOR Alperin Bill Rogers

002962

1201 \$218.71 10/29/99

1202 \$29.62 10/28/99

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 254326 1203

DATE 10-25-99

PAY TO THE ORDER OF Mervyn L. Tiscoutz \$20.00

180350404 10-28-99 0725 0733 27

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Call Book

0002000

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 8427889 1204

DATE 10-25-99

PAY TO THE ORDER OF Rona \$120.40

120335721 10-28-99 5056 5053 27

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Rona

0000012040

1203 \$20.00 10/28/99

1204 \$120.40 10/28/99

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 1205

DATE 10-25-99

PAY TO THE ORDER OF R S T \$477.89

110110512 10-29-99 0411 5057 477.89

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Aug + Sept

00020530 4860 4800 10-29-99

007894

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 1206

DATE 10-25-99

PAY TO THE ORDER OF Suzanne \$325.78

140120775 10-28-99 0246 0252 72.99

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR for

00032578

1205 \$477.89 10/29/99

1206 \$325.78 10/29/99

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 1207

DATE 10-26-99

PAY TO THE ORDER OF Suzanne C. C. C. \$74.81

120340735 10-28-99 5056 5051 27

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR for

007481

ZORBA'S, INC.
P.O. BOX 1887 240-705-2223
BLUFFTON, SC 29910

INV. N. 1210

DATE 10-26-99

PAY TO THE ORDER OF Suzanne C. C. C. \$252.46

140120775 10-28-99 0246 0252 72.99

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR for

00025246

1207 \$74.81 10/28/99

1210 \$252.46 10/29/99

INV. N. 9502203871208

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

120333587 11-01-99 0724 5058 27
DATE 10-26-99
170078232 4225 4225 03 11-01-99

PAY TO THE ORDER OF S.Y.S.C.O. \$175.82
One hundred and seventy five DOLLARS 82
FOR Palmetto State Bank
100017582

INV. N. 394239 1209

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-26-99
PAY TO THE ORDER OF NATIONAL \$60.06
Sixty DOLLARS 06
FOR WINE
Bill [Signature]
05006

1208 \$175.82 11/01/99

1209 \$60.06 11/01/99

INV. N. 254615 1211

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

150148834 11-01-99 0750 0761 27
DATE 10-27-99

PAY TO THE ORDER OF MOVSOVITS \$52.25
Fifty two DOLLARS 25
FOR Palmetto State Bank
000008215

INV. N. 5073999 1212

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-27-99
PAY TO THE ORDER OF Brian Arnold \$82.16
Eighty two DOLLARS 16
FOR WINE
Bill [Signature]
000008215

1211 \$52.25 11/01/99

1212 \$82.16 11/02/99

INV. N. 6043766 1213

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-28-99
PAY TO THE ORDER OF Smashers Wine \$200.39
Two hundred DOLLARS 39
FOR WINE
Bill [Signature]

INV. N. 140264665 1214

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-27-99
PAY TO THE ORDER OF R.S.T. \$632.65
Six hundred and thirty two DOLLARS 65
FOR Palmetto State Bank
Bill [Signature]

1213 \$200.39 11/03/99

1214 \$632.65 11/01/99

INV. N. 255159 1215

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-29-99
PAY TO THE ORDER OF PFA/Morarch, Inc \$209.36
Two hundred and nine dollars DOLLARS 36
FOR food products
#3055 Julie Passalacqua

INV. N. 255159 1216

ZORBA'S, INC.
P.O. BOX 1987 843-706-2223
BLUFFTON, SC 29910

DATE 10-30-99
PAY TO THE ORDER OF MOVSOVITS \$116.05
One hundred and sixteen DOLLARS 05
FOR Produce
Bill [Signature]
0000011605

344

1215 \$209.36 11/03/99

1216 \$116.05 11/03/99

-381-

1217

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

07052078

DATE 10-30-99

PAY TO THE ORDER OF SC Department of Revenue \$107.74

One hundred and seven + 74 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR A. J. C.

010774

1218

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 10-30-99

PAY TO THE ORDER OF Zorba's Payroll \$1,000.00

One thousand and 00 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Payroll

00100000

1217 \$107.74 11/05/99

1218 \$1,000.00 11/03/99

INV.N. 25544219

1219

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-1-99

PAY TO THE ORDER OF MOVSOVITZ \$19.25

Nineteen + 25 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Palmetto

110032887 11-04-99 0737 5058 27

010774

INV.N. 2429541

1220

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-04-99

PAY TO THE ORDER OF Bonus \$88.65

Eighty eight + 65 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Bonus

150152944 11-04-99 0737 5058 27

150030668 11-04-99 0737 5058 27

18865

1219 \$19.25 11/04/99

1220 \$88.65 11/04/99

INV.N. 255582

1221

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-2-99

PAY TO THE ORDER OF MOVSOVITZ \$34.25

Thirty four + 25 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Palmetto

110032885 11-05-99 0737 5058 27

010774

INV.N. 12273701

1222

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-05-99

PAY TO THE ORDER OF Palmetto Electric Corporation \$24.00

Twenty four + 00 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Alma

150326910 11-05-99 0737 5058 27

010774

1221 \$34.25 11/04/99

1222 \$24.00 11/05/99

1223

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-2-99

PAY TO THE ORDER OF Zorba's payroll \$1,000.00

One thousand and 00 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Payroll

000100000

Bill H. H. H.

INV.N. 255806

1224

ZORBA'S, INC.
P.O. BOX 1887 843-708-2223
SLUPTON, SC 29152

DATE 11-3-99

PAY TO THE ORDER OF MOVSOVITZ \$38.75

Thirty eight + 75 DOLLARS

PALMETTO STATE BANK
SLUPTON, S.C. 29152

FOR Palmetto

120162062 11-08-99 0810 0811 27

010774

-382-

1223 \$1,000.00 11/04/99

1224 \$38.75 11/08/99

345

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1225

DATE 11-3-99

PAY TO THE ORDER OF Perd Stine \$ 32.22

Thirty two 32 100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Bank

038322

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1226

DATE 11-4-99

PAY TO THE ORDER OF Syco \$ 241.60

Two hundred and forty one 60/100 241 60 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Bank

000024160

1225 \$32.32 11/05/99

1226 \$241.60 11/08/99

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1227

DATE 11-4-99

PAY TO THE ORDER OF Movsovi + 2 \$ 18.00

Eighteen 18 00 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Bank

00001800

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1228

DATE 11-4-99

PAY TO THE ORDER OF Zorba's Payroll \$ 200.00

Two hundred 200 00 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Payroll

00020000

1227 \$18.00 11/08/99

1228 \$200.00 11/05/99

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1229

DATE 11-4-99

PAY TO THE ORDER OF Movsovi \$ 39.00

Thirty nine 39 00 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Bank

00003900

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1230

DATE 11-4-99

PAY TO THE ORDER OF Syco \$ 209.03

Two hundred nine dollars and 03/100 209 03 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Payroll

000020903

1229 \$39.00 11/08/99

1230 \$209.03 11/08/99

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1231

DATE 11-3-99

PAY TO THE ORDER OF SC Department of Revenues \$ 212.05

Two hundred and twelve 05/100 212 05 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Postal Order 0A130

00021205

ZORBA'S, INC.
P.O. BOX 187 430 700 223
BLUFFTON, SC 29915

1232

DATE 11-3-99

PAY TO THE ORDER OF Greene's ACE Hardware \$ 15.76

Fifteen 76/100 15 76 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29915

FOR Bank

00001576

346

1231 \$212.05 11/10/99

1232 \$15.76 11/12/99

-383-

1233

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-3-99

PAY TO THE ORDER OF Island Packet \$54.21

Fifty four and 21/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Advertiser Bill Hazel

0000005421

1234

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-3-99

PAY TO THE ORDER OF Island Packet \$295.44

Two hundred and ninety five and 44/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Advertiser Bill Hazel

00000029544

1233 \$54.21 11/15/99

1234 \$295.44 11/15/99

1235

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-10-99

PAY TO THE ORDER OF Mossie of Georgia \$28.30

Twenty eight and 30/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR produce Bill Hazel

0000002830

1236

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-10-99

PAY TO THE ORDER OF Mossie of Georgia \$13.50

Thirteen and 50/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR produce Bill Hazel

0000001350

1235 \$28.30 11/10/99

1236 \$13.50 11/10/99

1237

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-5-99

PAY TO THE ORDER OF PPA/Monarch, Inc. \$286.33

Two hundred eighty six and 33/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Julie Passaloukas

00000028633

1238

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-10-99

PAY TO THE ORDER OF MOVSOVITZ \$42.35

Forty two and 35/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR P. 1

0000004235

1237 \$286.33 11/10/99

1238 \$42.35 11/10/99

1239

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-8-99

PAY TO THE ORDER OF Rapuma \$225.60

Two hundred and twenty five and 60/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Frank Bill Hazel

00000022560

1240

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

DATE 11-8-99

PAY TO THE ORDER OF BILL PASSALOUKAS \$500.00

Five hundred and 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Passaloukas Bill Hazel

00000050000

-384-

1239 \$225.60 11/15/99

1240 \$500.00 11/12/99

INV. N. 256694 1241

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

130240421 11-15-99 0750 0799 27

DATE 11-15-99

PAY TO THE ORDER OF Movsovit \$105.80

One hundred and five + 80 DOLLARS

FOR Produce Bill Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000010580

INV. N. 5077814 1242

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

130240421 11-15-99 0750 0799 27

DATE 11-15-99

PAY TO THE ORDER OF Armed \$126.00

One hundred and twenty six DOLLARS

FOR Armed Bill Armed

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000012600

1241 \$105.80 11/15/99

1242 \$126.00 11/16/99

1244

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

140198861 11-15-99 0730 5080 27

DATE 11-15-99

PAY TO THE ORDER OF National Distributing Co. \$60.00

Sixty and 00 DOLLARS

FOR Produce Julie Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000006000

1245

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

130238562 11-15-99 0750 0799 27

DATE 11-16-99

PAY TO THE ORDER OF Produce \$289.58

Two hundred eighty nine + 58/100 DOLLARS

FOR Produce Julie Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000028958

1244 \$60.00 11/16/99

1245 \$289.58 11/16/99

1246

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

140198861 11-15-99 0730 5080 27

DATE 11-15-99

PAY TO THE ORDER OF Super \$240.58

Two hundred forty and 58/100 DOLLARS

FOR Produce Julie Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000024058

INV. N. 256851 1247

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

130238562 11-15-99 0750 0799 27

DATE 11-15-99

PAY TO THE ORDER OF Movsovit \$20.00

Twenty DOLLARS

FOR Produce Bill Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000002000

1246 \$240.58 11/15/99

1247 \$20.00 11/15/99

1248

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

150110482 11-15-99 0781 0800 27

DATE 11-15-99

PAY TO THE ORDER OF Will Fithen \$330.00

Three hundred and thirty + 00 DOLLARS

FOR Produce Bill Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

0000033000

1249

ZORBA'S, INC.
P.O. BOX 1867 843-708-2223
BLUFFTON, SC 29910

130238566 11-15-99 0750 0798 27

DATE 11-15-99

PAY TO THE ORDER OF Movsovit \$74.95

Seventy four + 95/100 DOLLARS

FOR Produce Bill Produce

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

00007495

348

1248 \$330.00 11/15/99

1249 \$74.95 11/15/99

-385-

1250

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-17-99

PAY TO THE ORDER OF Southern Wine \$ 119.88

One hundred nineteen and 88/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

00000011988

1251

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-12-99

PAY TO THE ORDER OF Zorbi's Payroll \$ 2,300

Two thousand and three hundred DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

00000230000

1250 \$119.88 11/17/99

1251 \$2,300.00 11/12/99

INV. N. 257239 1252

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-12-99

PAY TO THE ORDER OF Movson + 2 \$ 43.90

Forty three and 90/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

0000004390

INV. N. 911120585 1253

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-12-99

PAY TO THE ORDER OF SYSCO \$ 592.89

Five hundred and ninety two and 89/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

0000059289

1252 \$43.90 11/17/99

1253 \$592.89 11/16/99

1254

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-12-99

PAY TO THE ORDER OF NATIONAL \$ 100.21

One hundred and 21/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

0000010021

INV. N. 6055064 1255

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-12-99

PAY TO THE ORDER OF Scrubbers \$ 24.56

Twenty four and 56/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

0000002456

1254 \$100.21 11/19/99

1255 \$24.56 11/24/99

1256

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-13-99

PAY TO THE ORDER OF Monsieur of Georgia \$ 22.55

Twenty two and 55/100 DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

0000002255

1257

ZORBA'S, INC.
P.O. BOX 1887 643-708-5223
SULPHUR, SC 29150

DATE 11-17-99

PAY TO THE ORDER OF Sherriff & Police Press \$ 75.00

Seventy five DOLLARS

PALMETTO STATE BANK
SULPHUR, S.C. 29150

FOR [Signature]

00000075

-386-

1256 \$22.55 11/17/99

1257 \$75.00 11/17/99

349

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

1258

130389168 11-18-99 0731 0734 27

DATE 11-15-99

PAY TO THE ORDER OF Messervitz \$33.50

Thirty three and 50/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000003350

1258 \$33.50 11/18/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

INV. N. 8433023 1259

130376880 11-18-99 5071 5055 27

DATE 11-15-99

PAY TO THE ORDER OF Roma \$242.35

Two hundred and 35/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000024235

1259 \$242.35 11/18/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

1260

130421187 11-18-99 0645 5007 27

DATE 11-15-99

PAY TO THE ORDER OF Carol's Payroll \$2,000.00

Two thousand and 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000200000

1260 \$2,000.00 11/17/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

INV. N. 1261

130355163 11-18-99 0764 0729 27

DATE 11-16-99

PAY TO THE ORDER OF 545.42 \$253.42

Two hundred fifty three and 42/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000025342

1261 \$253.42 11/18/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

INV. N. 03203366 1262

130421187 11-18-99 0645 5007 27

DATE 11-16-99

PAY TO THE ORDER OF Coca Cola \$49.88

Forty nine and 88/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000004988

1262 \$49.88 11/18/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

INV. N. 257984 1264

140411286 11-22-99 0722 0707 27

DATE 11-17-99

PAY TO THE ORDER OF Messervitz \$42.30

Forty two and 30/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

0000004230

1264 \$42.30 11/22/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

1265

130421187 11-18-99 0645 5007 27

DATE 11-17-99

PAY TO THE ORDER OF Bill Beale \$500.00

Five hundred and 00/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

00500000

1265 \$500.00 11/18/99

ZORBA'S, INC.
P.O. BOX 1887 34370-2223
BLUFFTON, SC 29910

346384 1266

130421187 11-18-99 0645 5007 27

DATE 11-17-99

PAY TO THE ORDER OF PYA \$153.67

One hundred and fifty three and 67/100

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill Beale

000015367

1266 \$153.67 11/24/99

-387-

1267

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

150257097 11-24-99 0777 0411 27 11-24/99

PAY TO THE ORDER OF MONSOVITZ \$ 76.50

Seventy six and 50/100 DOLLARS

FOR Palmetto State Bank Bill Black

1268

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

11-18-99 11-18/99

PAY TO THE ORDER OF Zorba's Passwall \$ 900.00

Nine hundred and 00/100 DOLLARS

FOR Palmetto State Bank Bill Black

1267 \$76.50 11/24/99

1268 \$900.00 11/22/99

1269

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

INV. N. 91190370 11-24-99 0777 0218 27 11-24/99

PAY TO THE ORDER OF SYSCO \$ 331.12

Three hundred and thirty one and 12/100 DOLLARS

FOR Palmetto State Bank Bill Black

1270

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

INV. N. 400692 11-26-99 0777 0540 03 11-26/99

PAY TO THE ORDER OF NATIONAL \$ 54.03

Fifty four and 03/100 DOLLARS

FOR Palmetto State Bank Bill Black

1269 \$331.12 11/24/99

1270 \$54.03 11/26/99

1271

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

INV. N. 258557271 11-24-99 0777 0411 27 11-24/99

PAY TO THE ORDER OF MONSOVITZ \$ 30.20

Thirty and 20/100 DOLLARS

FOR Palmetto State Bank Bill Black

1272

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

11-22-99 11-22/99

PAY TO THE ORDER OF BILY PASSALOUKAS \$ 500.00

Five hundred and 00/100 DOLLARS

FOR Palmetto State Bank Bill Black

1271 \$30.20 11/24/99

1272 \$500.00 11/23/99

1273

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

11-23-99 11-23/99

PAY TO THE ORDER OF BILY PASSALOUKAS \$ 500.00

Five hundred and 00/100 DOLLARS

FOR Palmetto State Bank Bill Black

1274

ZORBA'S, INC.
P.O. BOX 1807 843-700-0223
SLUPTON, SC 29153

INV. N. 8434687 11-26-99 0777 2505 54 11-26/99

PAY TO THE ORDER OF R.O.M.A. \$ 250.54

Two hundred and fifty and 54/100 DOLLARS

FOR Palmetto State Bank Bill Black

-388-

1273 \$500.00 11/24/99

1274 \$250.54 11/26/99

351

1275

ZORBA'S, INC.
P.O. BOX 1857 24-728-2223
BLUFFTON, SC 29910

150249881 11-24-99 0777 0411 27

DATE 11-23-99

PAY TO THE ORDER OF MOVSOVITZ \$33.50

Thirty three and 50/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Head

⑈0000003350⑈

1276

ZORBA'S, INC.
P.O. BOX 1857 24-728-2223
BLUFFTON, SC 29910

130407304 11-29-99 0782 0703 27

DATE 11-23-99

PAY TO THE ORDER OF Zorba's Payroll \$300.00

Three hundred and 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Head

⑈0000003000⑈

1275 \$33.50 11/24/99

1276 \$300.00 11/23/99

INV. N. 25889 01277

ZORBA'S, INC.
P.O. BOX 1857 24-728-2223
BLUFFTON, SC 29910

130407304 11-29-99 0782 0703 27

DATE 11-23-99

PAY TO THE ORDER OF MOVSOVITZ \$15.75

Fifteen and 75/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Bill Head

⑈0000001575⑈

1278

ZORBA'S, INC.
P.O. BOX 1857 24-728-2223
BLUFFTON, SC 29910

130407305 11-29-99 0782 0703 27

DATE 11-23-99

PAY TO THE ORDER OF Massachusetts of Georgia \$20.80

Twenty and 80/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29909

FOR Lucie Pascualson

⑈0000002080⑈

1277 \$15.75 11/29/99

1278 \$20.80 11/29/99

1243

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-16-99

PAY TO THE ORDER OF Gary Bond

Two thousand five hundred and sixty one DOLLARS \$2,561.00

PALMETTO STATE BANK

FOR [REDACTED]

00000256100

03697481 126

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-15-99

PAY TO THE ORDER OF SC Department of REVENUE

One thousand one hundred and twenty one DOLLARS \$1,121.00

PALMETTO STATE BANK 03697482

FOR [REDACTED]

00000112100

1243 \$2,561.00 12/16/99

INV. N. 5021609 1278

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-24-99

PAY TO THE ORDER OF Bess Arnold

Twenty five and 20/100 DOLLARS \$25.20

PALMETTO STATE BANK

FOR [REDACTED]

0000002520

1263 \$1,121.00 12/10/99

INV. N. 259274 1280

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-23-99

PAY TO THE ORDER OF M. V. [REDACTED]

One thousand one hundred and twenty one DOLLARS \$1,121.00

PALMETTO STATE BANK

FOR [REDACTED]

0000000112100

1279 \$35.28 12/07/99

1281

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-27-99

PAY TO THE ORDER OF MOVSOVIZ OF GA

Thirty five and 20/100 DOLLARS \$35.20

PALMETTO STATE BANK

FOR [REDACTED]

0000007105

1280 \$49.10 12/01/99

1282

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-27-99

PAY TO THE ORDER OF Monowitz of Georgia

Forty nine and 10/100 DOLLARS \$49.10

PALMETTO STATE BANK

FOR [REDACTED]

00000001475

1281 \$71.05 12/01/99

1283

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-29-99

PAY TO THE ORDER OF Zorba's Payroll

Seven hundred and ten DOLLARS \$710.00

PALMETTO STATE BANK

FOR [REDACTED]

00000100000

1282 \$14.75 12/01/99

HC.N. 8-2100-4611-570284 1284

ZORBA'S, INC.
P.O. BOX 1487 843-706-2223
BLUFFTON, SC 29910

DATE 11-29-99

PAY TO THE ORDER OF S.C.E. 8 G

Five hundred and ninety five DOLLARS \$595.50

PALMETTO STATE BANK

FOR [REDACTED]

00000059550

-390-

1283 \$1,000.00 12/01/99

1284 \$595.50 12/02/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 259715 1285

DATE 11-23-99

PAY TO THE ORDER OF M. O. S. V. I. T. Z. 110103378 12-02-99 0730 076331.95

Thirty one 95 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000003195

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 3235862 1286

DATE 11-23-99

PAY TO THE ORDER OF Hargrove 11-23-99 \$141.96

One hundred and fourty one 96 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000001496

1285 \$31.95 12/02/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 259861 1287

DATE 11-30-99

PAY TO THE ORDER OF M. O. S. V. I. T. Z. 12-03-99 0734 0762.27

Thirty eight 55 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000002855

1286 \$141.96 12/01/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 3235862 1288

DATE 11-30-99

PAY TO THE ORDER OF Cash 11-30-99 \$74.81

Seventy four 81 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000007481

1287 \$28.55 12/03/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 402828 1288

DATE 11-30-99

PAY TO THE ORDER OF NATIONAL 12-03-99 \$58.03

Fifty eight 03 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000005803

1288 \$74.81 12/03/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 86698 1289

DATE 12-1-99

PAY TO THE ORDER OF B. N. ARNOLD SUNBELT 12-01-99 \$90.00

Ninety dollars 00 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000009000

1289 \$58.03 12/06/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 86698 1291

DATE 12-2-99

PAY TO THE ORDER OF One thousand 12-02-99 \$1,000.00

One thousand 00 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000100000

1290 \$90.00 12/07/99

ZORBA'S, INC.
P.O. BOX 1487 843-700-2323
BLUFFTON, SC 29910

INV. N. 86698 1292

DATE 12-2-99

PAY TO THE ORDER OF One hundred and eight 12-02-99 \$58.11

One hundred and eight 11 100 DOLLARS

PALMETTO STATE BANK

FOR [REDACTED]

0000005811

1291 \$1,000.00 12/02/99

1292 \$58.11 12/03/99

INV. N. 260019 1293

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130033959 12-08-99 0701 0220 27
DATE 12-1-99

PAY TO THE ORDER OF MAYSON T2 \$ 33.25
Thirty three and 25/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Bill [redacted]

#0000003325

1293 \$33.25 12/08/99

INV. N. 260019 1293

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130178336 12-08-99 5081 0738 27
DATE 12-2-1999

PAY TO THE ORDER OF PYA/Minarch, Inc. \$ 201.49
Two hundred and one and 49/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR food products [redacted] Luis Pascual [redacted]

#0000001014

1294 \$201.49 12/08/99

INV. N. 6069588 1295

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130178336 12-08-99 5081 0738 27
DATE 12-3-99

PAY TO THE ORDER OF Sanitation \$ 119.88
One hundred and nineteen and 88/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Bill [redacted]

#00000011988

1295 \$119.88 12/13/99

INV. N. 260334 1296

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130178336 12-08-99 5081 0738 27
DATE 12-3-99

PAY TO THE ORDER OF MAYSON T2 \$ 41.20
Forty one and 20/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Bill [redacted]

#0000004120

1296 \$41.20 12/08/99

1297

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130178336 12-08-99 5081 0738 27
DATE 12-3-99

PAY TO THE ORDER OF Zorba's Payroll \$ 500.00
Five hundred and no/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Bill [redacted]

#00000050000

1297 \$500.00 12/06/99

1298

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130178336 12-08-99 5081 0738 27
DATE 12-6-99

PAY TO THE ORDER OF Camacho's Creek \$ 360.20
Three hundred and sixty and 20/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Mem + [redacted] Bill [redacted]

#00000036020

1298 \$360.20 12/09/99

INV. N. 260622 1299

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

120362251 12-09-99 0422 0087 27
DATE 12-9-99

PAY TO THE ORDER OF MAYSON T2 \$ 66.25
Sixty six and 25/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR Bill [redacted]

#0000006625

1299 \$66.25 12/09/99

1300

ZORBA'S, INC.
P.O. BOX 1967 SAS-700-0223
SLIPFICK, SC 2916

130450095 12-09-99 0422 0087 27
DATE 12-6-99

PAY TO THE ORDER OF Rome \$ 202.81
Two hundred and two and 81/100

PALMETTO STATE BANK
SAS-700-0223
SLIPFICK, S.C. 2916

FOR food products [redacted] Luis Pascual [redacted]

#00000020281

1300 \$202.81 12/09/99

ZORBA'S, INC. 1301
P.O. BOX 1867 SALTATION, SC 29116
140104233 12-10-99 0730 0762 27
DATE 12/10/99
PAY TO THE ORDER OF Monmouth of Georgia \$28.30
Twenty-eight and 3/100
PALMETTO STATE BANK
FOR [Signature] 0000002830

ZORBA'S, INC. 1302
P.O. BOX 1867 SALTATION, SC 29116
120157718 12-14-99 0721 0728 27
DATE 12/14/99
PAY TO THE ORDER OF SYSCO \$932.86
Nine hundred and thirty two + 86/100
PALMETTO STATE BANK
FOR [Signature] 00000093286

1301 \$28.30 12/10/99

1302 \$932.86 12/14/99

ZORBA'S, INC. 1303
P.O. BOX 1867 SALTATION, SC 29116
120362603 12-13-99 0703 0703 27
DATE 12/13/99
PAY TO THE ORDER OF Bill Cassinakis \$500.00
Five hundred + NO
PALMETTO STATE BANK
FOR [Signature] 0000050000

ZORBA'S, INC. 1304
P.O. BOX 1867 SALTATION, SC 29116
120362603 12-13-99 0703 0703 27
DATE 12/13/99
PAY TO THE ORDER OF Mary VITZ \$59.75
Fifty nine + 75/100
PALMETTO STATE BANK
FOR [Signature] 0000005975

1303 \$500.00 12/13/99

1304 \$59.75 12/13/99

ZORBA'S, INC. 1305
P.O. BOX 1867 SALTATION, SC 29116
120362603 12-15-99 0725 0725 27
DATE 12-14-99
PAY TO THE ORDER OF 2nd's personal \$2,300.00
Two thousand and three hundred + 00/100
PALMETTO STATE BANK
FOR [Signature] 00000230000

ZORBA'S, INC. 1306
P.O. BOX 1867 SALTATION, SC 29116
120362603 12-15-99 0725 0725 27
DATE 12-10-99
PAY TO THE ORDER OF MOVSOVITZ OF GA. \$34.90
Thirty four + 90/100
PALMETTO STATE BANK
FOR [Signature] 0000003490

1305 \$2,300.00 12/15/99

1306 \$34.90 12/15/99

ZORBA'S, INC. 1307
P.O. BOX 1867 SALTATION, SC 29116
INV. N. 5095629
DATE 12-10-99
PAY TO THE ORDER OF Ben Arnold \$72.00
Seventy two + 00/100
PALMETTO STATE BANK
FOR [Signature] 0000007200

ZORBA'S, INC. 1308
P.O. BOX 1867 SALTATION, SC 29116
INV. N. 405385
DATE 12-10-99
PAY TO THE ORDER OF N. Jones \$129.09
One hundred and twenty nine + 09/100
PALMETTO STATE BANK
FOR [Signature] 0000012909

1307 \$72.00 12/22/99

1308 \$129.09 12/17/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1309

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-11-99 \$ 37.20

Palmetto State Bank

FOR INVOICE # 211417

000003720

1309 \$37.20 12/15/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1310

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-11-99 \$ 14.45

Palmetto State Bank

FOR INVOICE # 211417

0000001445

1310 \$14.45 12/16/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1311

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-16-99 \$ 304.26

Palmetto State Bank

FOR INVOICE # 211417

030426

1311 \$304.26 12/16/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1312

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-13-99 \$ 285.90

Palmetto State Bank

FOR INVOICE # 211417

0000028590

1312 \$285.90 12/22/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1313

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-14-99 \$ 57.25

Palmetto State Bank

FOR INVOICE # 211417

05775

1313 \$57.75 12/17/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1314

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-16-99 \$ 24.94

Palmetto State Bank

FOR INVOICE # 211417

0000002494

1314 \$24.94 12/16/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1315

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-15-99 \$ 500.00

Palmetto State Bank

FOR INVOICE # 211417

000050000

1315 \$500.00 12/17/99

ZORBA'S, INC.
P.O. BOX 1487 243-700-2222
SALFORD, NC 28135

1316

PAY TO THE ORDER OF MOVSOVITZ OF GA. DATE 12-16-99 \$ 93.55

Palmetto State Bank

FOR INVOICE # 211417

0000009355

1316 \$93.55 12/20/99

-394-

INV. N. 263440 1333

ZORBA'S, INC.
P.O. BOX 1807 843-706-2320
BLANTON, SC 29910

110050987 12-30-99 0784 0784 27

DATE 12-28-99

PAY TO THE ORDER OF Mrs. LITZ \$37.50

Three seven + 50 100 DOLLARS

PALMETTO STATE BANK

FOR [Redacted] 0000003750

INV. N. 263440 1334

ZORBA'S, INC.
P.O. BOX 1807 843-706-2320
BLANTON, SC 29910

110050988 12-30-99 0784 0784 27

DATE 12-28-99

PAY TO THE ORDER OF Mrs. LITZ \$19.25

Nineteen and 25/100 100 DOLLARS

PALMETTO STATE BANK

FOR [Redacted] 000000192

1333 \$37.50 12/30/99

1334 \$19.25 12/30/99

INV. N. 263705 1336

ZORBA'S, INC.
P.O. BOX 1807 843-706-2320
BLANTON, SC 29910

120218803 12-31-99 0722 0722 27

DATE 12-31-99

PAY TO THE ORDER OF Mrs. LITZ \$16.16

Sixteen and 16/100 100 DOLLARS

PALMETTO STATE BANK

FOR [Redacted] 0000001616

INV. N. 263705 1338

ZORBA'S, INC.
P.O. BOX 1807 843-706-2320
BLANTON, SC 29910

120218803 12-31-99 0722 0722 27

DATE 12-31-99

PAY TO THE ORDER OF Mrs. LITZ \$68.60

Sixty eight + 60/100 100 DOLLARS

PALMETTO STATE BANK

FOR [Redacted] 0000006860

1336 \$16.16 12/31/99

1338 \$68.60 12/31/99

INV. N 2645521345

ZORBA'S, INC.
P.O. BOX 1847 245-105-2222
BLUFFTON, SC 29910

150119683 01-07-00 0750 674 82-00

PAY TO THE ORDER OF MAVSOVITZ \$ 34.75

Thirty four and 75/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill M...

0000003475

1345 \$34.75 01/07/2000

1344

ZORBA'S, INC.
P.O. BOX 1847 245-105-2222
BLUFFTON, SC 29910

DATE 1-4-00

PAY TO THE ORDER OF National Distributing Co. \$ 68.84

Eighty eight and 84/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR ...

0000006884

1344 \$68.84 01/07/2000

1335

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 12-28-99

PAY TO THE ORDER OF Philip C. ... \$ 796.65

Seven hundred and sixty-six + 65/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000079665

1337

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 12-29-99

PAY TO THE ORDER OF Zorba's Personal \$ 2,000.00

Two thousand + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000010000

1335 796.65 01/03/2000

1337 1000.00 01/06/2000

1339

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 12-29-99

PAY TO THE ORDER OF C & H POULTRY \$ 44.00

Forty-four + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000004400

1340

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 1-4-00

PAY TO THE ORDER OF B. ... \$ 347.86

Three hundred and forty-seven + 86/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000034786

1339 44.00 01/03/2000

1340 347.86 01/06/2000

1341

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 1-4-00

PAY TO THE ORDER OF MOROVITZ \$ 97.00

Ninety-seven + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000009700

1342

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 1-4-00

PAY TO THE ORDER OF Bill P. ... \$ 1,000.00

One thousand + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000010000

1341 97.00 01/06/2000

1342 1000.00 01/06/2000

1343

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 1-4-00

PAY TO THE ORDER OF Coca Cola \$ 42.00

Forty-two + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000004200

1347

ZORBA'S, INC.
P.O. BOX 1887 843-706-2223
BLUFFTON, SC 29910

DATE 1-7-00

PAY TO THE ORDER OF ZORBA'S Personal \$ 200.00

Two hundred + 00/100 DOLLARS

PALMETTO STATE BANK
BLUFFTON, S.C. 29910

FOR Bill P. ...

0000020000

1343 42.00 01/06/2000

1347 200.00 01/06/2000

InventoryPrice

3 compartment to go boxes, single compartments party trays, paper bags, napkins, plastic forks knives + spoons, drink cups to go	-	300.00
Saltenee crackers	-	20.00
Hot chocolate packets	-	30.00
Marsh mellow's	-	15.00
Desserts / ice cream	-	250.00
Wine, Beer, Champagne, Soft drinks	-	1,000.00
OFFICE SUPPLIES	-	100.00
AIR FILTERS -	-	20.00
MINTS -	-	20.00
Candles - refills	-	30.00
Food on prep table	-	100.00
Bacon + Sausage	-	100.00
Cooked Food in single white refrigerator	-	200.00

PLAINTIFF'S
EXHIBIT

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PRICE

Calamari	-	50.00
Salmon	-	30.00
Lobster	-	20.00
Shrimp	-	40.00
Scallops	-	40.00
Chicken Fingers	-	100.00
Prouper	-	50.00
Fillo pastry dough	-	30.00
Ground meat	-	150.00
Rib-eye	-	100.00
Sirloin	-	50.00
Spanakopita	-	100.00
APPLES	-	20.00
-400- Lycopius	-	100.00

PRICE

Biscuit and Pizza dough	-	30.00
French Fries	-	20.00
Leg of Lamb	-	150.00
Lamb CHOPS	-	100.00
Tender Loin	-	100.00
Aluminum and Plastic and paper wrap	-	130.00
Dry and Can goods	-	200.00
SPICES	-	200.00
1 negan + oil (OLIVE)	-	150.00
Cleaning products	-	100.00
Grease Filters	-	100.00
Trash bags	-	40.00
Dishwasher detergent	-	250.00
Vegetables	-	200.00

-401-

PRICE

Meat in walk-in cooler + prepared food	--	150.00
Eggs	-	20.00
Mayonaisse + Mustard	-	20.00
Open jars + goods	-	100.00
Butter	-	15.00
Feta	-	75.00
Ppperocini and Olives	-	50.00
Ketchup	-	50.00
Variety of steak sauce	-	40.00
Variety of salad dressing	-	50.00
Syrups + Honey	-	20.00
Jelly	-	30.00
Sugar and Equal	-	75.00
-402- Tea and Coffee	-	250.00
n	-	10.00

From TORBA's Restaurant to Gary Bensch

10-16-99

List of items to be finished and or repaired -

Side patio windows - side door - back door

All leaks to be fixed and all doors to open properly
(In order to be fixed - all these items need some kind of canopy - for protection from rain and future problems and rotting.)

Front door to be fixed properly

Closet door to be fixed properly

Kitchen floor to be fixed properly

Carpet in the dining room to be fixed properly

Smell in ladies' bathroom to be eliminated

✓ ~~Sufficient air flow in office~~

Side door to have self-closure

Patio to be fixed properly

✓ ~~Water leaks in kitchen ceiling to be fixed~~
More dirt on back

Mens' bathroom paint job to be finished

Base boards in bath rooms to be finished cov. ^{Possible smell coming from}

PLAINTIFF'S
EXHIBIT

7

PLAINTIFF'S
EXHIBIT
63

PLAINTIFF'S
EXHIBIT

25

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275

Items still missing

9

- Personal) 1. some CD's & cassette tapes
- " 2. Keep sake 20.00 bill that had been in money clip
- " 3. lid to Dutch oven
- " 4. container, blades, and press to Moulinex food processor
- " 5. large glass lasagna pan
- " 6. rolling pin
- " 7. not missing (box to EKco scale)
- " 8. not missing (scale)
- " 9. french fry tongs
- " 10. CD player
- " 11. tape player
- 12. 3 or 4 GREEK cook books
- " 13. not missing (spices)
- " 14. small creamer (this was very special to me)
- " 15. ~~no~~ cordless telephone (black)
- " 16. 2 or 3 muffin pans
- " 17. 3 thin wooden trays
- " 18. statue of Hermes (Mercury) hollow metal
- " 19. silver bud vase
- " 20. wooden tooth pick box not missing
- " 21. several decorative candles
- " 22. bag of plastic flowers
- " 23. set of plastic bowl w/lids
- " 24. silver statue of Achilles
- " 25. 2 wood pictures of greek god (male & female)
- 404- " 26. 2 greek plates (on tripods)
- " 27 & 28. yellow & white can type bucket

- Personal 29. Clay type vase
30. desk - many papers, files, computer software
31. wires to stereo system
32. 2 photo notebooks of GREEK photo
33. 1 book of GREEK pictures + text
34. Thick pamphlet in GREEK
35. sapphire + diamond ring
36. almost full bottle of Dilantin medicine
37. 2 stools - one wooden, one rusty metal stool
38. chair w/cushion
39. brown rattan screen
40. aquarium, stand, fish . . . etc not missing
41. Rolodex - not missing
42. Steamer
43. Mixer
44. Knives
45. frying pans

I had indicated at the time of picking these items up at M. Magill's office, there may be more things missing or were returned broken. Bill and I have not returned to that building since JAN 8, 2000

April 20, 2009

Mr. Frank Pape
P O Box 190009
Atlanta, GA 31119

Dear Frank:

In accordance with your request, I have summarized the financial aspects of the assumptions made relating to the course of events that transpired between Mr. Passaloukas and Mr. Bensch, which are summarized as follows:

	Value at Inception	Interest	Total	Allocation to:	
				Passaloukas	Bensch
Assets:					
Proceeds of sale of MI Tierra	\$ 75,000.00	\$ 58,864.73	\$ 133,864.73		
Leasehold improvements at 1-8-00	60,344.09	49,025.44	109,369.53		
Insurance premium refund	481.00	390.78	871.78		
Inventory	6,000.00	4,874.59	10,874.59		
Cash awaiting deposit -not deposited	404.00	328.22	732.22		
Security deposit	1,000.00	812.43	1,812.43		
Advance rent at lease inception	1,885.00	1,531.43	3,416.43		
Total assets	145,114.09	115,827.62	260,941.71		
Liabilities					
Salary to Mr. Passaloukas through 1-8-00	(14,400.00)	(11,699.01)	(26,099.01)		
Loan repayable to Mr. Bensch	(26,706.77)	(21,697.42)	(48,404.19)		
Loan repayable to Mr. Passaloukas	(29,375.16)	(23,865.31)	(53,240.47)		
Total liabilities	(70,481.93)	(57,261.74)	(127,743.67)		
Equity	(74,632.16)	(58,565.88)	(133,198.04)		
Total liabilities and equity	\$ (145,114.09)	\$ (115,827.62)	\$ (260,941.71)		
Payable to Individuals:					
Salary to Mr. Passaloukas through 1-8-00	\$ (14,400.00)	\$ (11,699.01)	\$ (26,099.01)	\$ (26,099.01)	\$ 0.00
Loan repayable to Mr. Bensch	(26,706.77)	(21,697.42)	(48,404.19)	0.00	(48,404.19)
Loan repayable to Mr. Passaloukas	(29,375.16)	(23,865.31)	(53,240.47)	(53,240.47)	0.00
Equity	(74,632.16)	(58,565.88)	(133,198.04)	(66,599.02)	(66,599.02)
Total payable	\$ (145,114.09)	\$ (115,827.62)	\$ (260,941.71)	\$ (145,938.50)	\$ (115,003.21)

The assumptions used are summarized as follows:

- 1 The value at inception of the assets and liabilities as of January 8, 2000 were provided by Mr. Frank Pape.
- 2 Interest was computed from January 8, 2000 through April 20, 2009 at 8.75 percent without compounding.

I trust the above will satisfy your request. Should you need any additional information, please do not hesitate to contact me.

Sincerely,



Raymond E. Warco, CPA
Partner

**PLAINTIFF'S
EXHIBIT**

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FRANK F. PAPE, JR. ATTORNEY AT LAW

P.O. Box 95310, Atlanta, Georgia 30347



DATE OF INVOICE: October 22, 2001

CLIENT: Bill and Suzie Passaloukas
P.O. Box 716
Bluffton, SC 29910

IN REFERENCE TO: Suit by Eleftheriou vs Passaloukas and Zorba's, Inc.

PROFESSIONAL SERVICES RENDERED

	<u>HOURS</u>	<u>AMOUNT</u>
3/7/00- CONFERENCE WITH MR. PASSALOUKAS; PREPARE ANSWER AND COUNTERCLAIM IN NICK'S SUIT OF WAGES; LETTER TO JUDGE SMITH; TELEPHONE CALL FROM MR. PASSALOUKAS.	1.50	150.00
3/15/00- LETTER TO JUDGE SMITH; LETTER TO MR. ELEFThERIOU FOR SERVICE OF ANSWER AND COUNTERCLAIM; DRAFT CERTIFICATE OF MAILING; CONFERENCE WITH MR. PASSALOUKAS.	0.50	50.00
4/3/00- TELEPHONE MESSAGE FROM MR. JOE MIXON OF LABOR BOARD; TELEPHONE CALL TO MR. MIXON OF LABOR BOARD RE: NICK ELEFThERIOU CLAIMS FOR WAGES; FAX MESSAGE TO MR. MIXON RE: NICK ELEFThERIOU'S CLAIMS FOR WAGES.	0.50	50.00
4/13/00- CONFERENCE WITH MR. PASSALOUKAS AND WITNESSES; HEARING BEFORE MAGISTRATE SMITH IN BLUFFTON; CONFERENCE WITH MR. AND MRS. PASSALOUKAS AND WITNESSES.	1.50	150.00
5/24/00- TELEPHONE CALL FROM MR. PASSALOUKAS; CONFERENCE WITH MR. PASSALOUKAS RE; SUIT BY ELECTRICIAN; ASSIST MR. PASSALOUKAS IN PREPARING AN ANSWER.	0.50	50.00
7/6/00- CONFERENCE WITH MR. PASSALOUKAS RE; SUIT BY MR. ELEFThERIOU; TELEPHONE CALL TO MARY KAY SIREN.	0.50	50.00
7/10/00- TELEPHONE CALL FROM SHELBA	0.17	17.00
8/2/00- STUDY FILE; DRAFT ANSWER ON BEHALF OF ZORBA'S, INC.; LETTER TO MR. MOBIL; DRAFT AFFIDAVIT OF DEFAULT; DRAFT APPLICATION OF DEFAULT; LETTER TO JUDGE SMITH; LETTER TO MS. SIREN.	1.75	175.00
8/22/00- TELEPHONE CALL TO MR. MOBIL RE: NICK'S SUIT FOR WAGES AND NEED FOR TIME TO ANSWER DISCOVERY.	0.17	17.00
8/30/00- COURT HEARING BEFORE JUDGE SMITH IN BLUFFTON RE: SUIT AGAINST ZORBAS, INC.; TELEPHONE CALL TO MOBIL.	2.50	250.00

PLAINTIFF'S
EXHIBIT

28

PLAIN
EXH-407-

12

Bill and Suzle Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
10/2/00- TELEPHONE CALL TO MRS. PASSALOUKAS; LEGAL RESEARCH RE: TREBLE DAMAGES; STUDY CHECKING ACCOUNT AND PAYROLL RECORDS; TELEPHONE CALL TO MRS. PASSALOUKAS; TELEPHONE CALL FROM MR. PASSALOUKAS RE: NICK'S WAGES.	1.50	150.00
10/3/00- COURT HEARING BEFORE JUDGE SMITH IN BLUFFTON; CONFERENCES WITH MR. AND MRS. PASSALOUKAS AND WITNESSES.	4.00	400.00
10/12/00- CONFERENCE WITH MR. PASSALOUKAS; LETTER TO MS. BIREN.	0.17	17.00
10/24/00- LETTER TO JUDGE SMITH.	0.50	50.00
TOTAL FEE THIS INVOICE:	15.76	\$1,576.00

UNPAID BALANCE NOW DUE --\$1,576.00

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IN THE COURT OF COMMON PLEAS

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CIVIL ACTION NO. 00-CP-07-524

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PERSONALLY appeared before me the undersigned, who, upon solemn affirmation, deposes and says that:

1. He is licensed to practice law in the states of South Carolina and Georgia; and practices law in Atlanta, Georgia, and Hilton Head Island, South Carolina. He has been licensed to practice in South Carolina since 1978 and in Georgia since 2001.

2. He is the attorney representing the Plaintiffs.

3. His current hourly fee ranges from \$160.00 to \$250.00 per hour. He is informed and believes that attorneys who practice law in Beaufort County, South Carolina, charge fees ranging from \$125 per hour to \$200 per hour.

4. The Plaintiffs entered into a "Legal Representation Agreement" dated March 27, 2000. The "Legal Representation Agreement" was for the purpose of representing the Plaintiffs in the lawsuit which is

referenced above. By the terms of the said agreement the Plaintiffs agreed that the undersigned would be paid the sum of one-third (1/3) of any amount offered and accepted prior to trial. In the event there is a settlement after trial has begun, or upon judgment, the undersigned would receive the sum of forty (40%) of the amount recovered from the Defendants. In addition to the attorney fees, the Plaintiffs agreed to reimburse the undersigned for all expenses attributable to the lawsuit. Because the undersigned had to undertake an appeal of the trial court's original ruling in this case, the Plaintiffs agreed to pay the undersigned 50% of the recovery.

5. As of the date of this affidavit, he has spent in excess of six hundred (600) hours in the preparation and presentation of the Plaintiffs' claims. The undersigned has also incurred costs in the sum of \$8,381.26 for the expenses, including court costs, service of process costs, cost of depositions, cost of the trial transcript and expert witness fees.

6. Attached hereto is a copy of the detailed invoice for attorneys fees, based upon an hourly rate of \$125 per hour.

7. Further attorneys time will be incurred from and after the date of this affidavit. He expects the additional time will be at least 5 hours to prepare for unresolved issues which must be addressed by the parties, such as dealing with third party claims.

8. The Defendants have made this prosecution of this lawsuit

especially difficult because of their failure to produce documents in a timely manner and because of their failure to fully account and document their claims for contributions made to the corporation. Three depositions of the Defendants were required in an attempt by the undersigned to understand how the Defendants' accounted for their contributions. The Defendants did not produce any accounting of their contributions to until the trial of this lawsuit on January 31, 2002, in spite of reasonable and timely requests therefor. Among the complications and problems which arose as a result of the Defendants' conduct in this case:

a. The Defendants did not produce a copy of their agreements for the sale of the restaurant until October, 2001, in spite of a request which was made on them on August 3, 2000, 14 months earlier.

b. The Defendants failed to fully respond to the Plaintiff's Request for Production of Documents dated February 21, 2005, requiring the undersigned to file a motion to compel and resulting in an Order dated May 19, 2005, requiring the Defendants to respond.

c. This case required a full accounting of the contributions of both parties. The Plaintiffs were unable to afford to pay for an accountant to examine the records. In a recent case which required examination of the records of a business, the accountant charged the client approximately \$15,000. It therefore required the undersigned to inspect each and every invoice and check of both parties to assure that an accurate accounting was completed. Because the Defendants never

did present their accounting until right before the first trial, the undersigned was unable to know what their records would prove. It required to undersigned to analyze each item of expense allegedly incurred by the Defendants.

d. The undersigned was required to file a motion to compel the production of photographs which the Defendants had previously promised to provide to the undersigned. The Court granted the motion but the Defendants never produced the photographs, stating, instead, that the photographs were lost.

e. The undersigned had to respond to a motion filed by the Defendants asking the Court to refuse a "new trial" and argued that the Court could only conduct an accounting. However, after the Defendants obtained the services of a new attorney, the new attorney argued that a trial de novo was required.

f. The Defendants filed a motion asking the Court to appoint a receiver. The motion was denied. But, the Defendants filed a second motion to appoint a receiver. After that was filed, the Defendants changed attorneys. The new attorney withdrew the second motion to appoint a receiver.

g. The Defendants filed a motion to reconsider a previous order of the court.

h. The Defendants' made a claim against an insurer to provide certain coverage. The undersigned had to handle that matter.

9. A great deal of legal research has been required to deal with

the complications of the derivative nature of this lawsuit; the legal principles which apply to duties of fiduciaries; the misappropriation of property by a fiduciary; the law related to fixtures; principles governing interpretation of contracts; the law related to the appointment of receivers; the law related to the nature of a "strict accounting"; the law related to the meaning and intent of the Court of Appeals ruling for a "review de novo"; and complications engendered by the Master's failure to make complete findings of facts, especially the failure to fully identify and account for the assets of the corporation and his failure to fully address the applicable law with respect thereto. It is so very complicated that the South Carolina Court of Appeals reversed the Master's order in this case and returned it to the trial court for a full and complete accounting so that the legal issues can be resolved. The Plaintiff's were successful in their appeal to the Court of Appeals.

10. The undersigned points to the following authority for guidance in determining a reasonable attorney's fee:

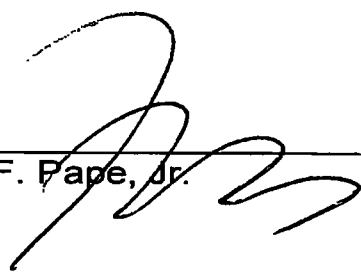
- a. the nature, extent, and difficulty of the case;
- b. the time necessarily devoted to the case;
- c. the professional standing of counsel;
- d. the contingency of compensation;
- e. the beneficial results obtained; and
- f. the customary legal fees for similar services.

Taylor v. Medenica, 503 S.E.2d 458, 461, 331 S.C. 575

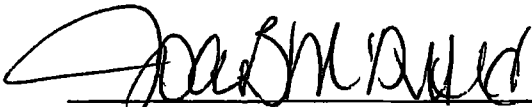
(1998)(Consideration should be given to all six factors; none of

the factors is controlling).

AFFIRMED before me this 21
day of April, 2009.



Frank F. Pape, Jr.



Notary Public for South Carolina

My Commission Expires: 9/25/2012

FRANK F. PAPE, JR. ATTORNEY AT LAW

P.O. Box 190009, Atlanta, Georgia 31119

DATE OF INVOICE: April 18, 2009

CLIENT: Mr. and Mrs. Bill Passaloukas
P.O. Box 716
Bluffton SC 29910

IN REFERENCE TO: Claim vs Bensch and Zorba's, Inc.

PROFESSIONAL SERVICES RENDERED

	<u>HOURS</u>	<u>AMOUNT</u>
1/15/00- TELEPHONE CALL FROM MRS PASSALOUKAS RE: CORPORATE DISPUTE.	0.50	62.50
1/17/00- CONFERENCE WITH MR. AND MRS. PASSALOUKAS RE: CLAIMS VS MR. AND MRS. BENSCH.	1.50	187.50
1/18/00- LEGAL RESEARCH RE: WRONGFUL EVICTION, EXERCISE OF INTERESTS ADVERSE TO CORPORATION; STUDY LEASE AND SHAREHOLDER AGREEMENTS; TELEPHONE CALL TO MR. GRIFFIS; TELEPHONE CALL TO MR. PASSALOUKAS; TELEPHONE MESSAGE TO MR. MOGIL; TELEPHONE MESSAGE TO MR. HALE.	2.00	250.00
1/19/00- TELEPHONE CALL TO MR. MOGIL; FAX MESSAGE FROM MR. MOGIL; TELEPHONE CALL TO MRS. PASSALOUKAS AND MR. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL.	1.00	125.00
1/21/00- TELEPHONE CALL TO MR. MOGIL; TELEPHONE CALL TO MR AND MRS. PASSALOUKAS; FAX MESSAGE FROM MR. MOGIL; FAX MESSAGE TO MR. MOGIL; TELEPHONE CALL FROM MR. MOGIL.	0.75	93.75
1/26/00- TELEPHONE CALL TO MR. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL; LETTER TO MR. AND MRS. PASSALOUKAS.	0.50	62.50
1/31/00- TELEPHONE CALL FROM MR. HALE RE: CORPORATE RECORDS DELIVERED TO HIS OFFICE BY MRS. BENSCH; FAX MESSAGE FROM MR. MOGIL; TELEPHONE CALL FROM MR. AND MRS. PASSALOUKAS.	0.67	83.75
2/1/00- CONFERENCE WITH MR. PASSALOUKAS; TELEPHONE CALL FROM MR. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL.	0.50	62.50

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
2/4/00- TELEPHONE CALL FROM MR. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL; TELEPHONE MESSAGE TO MR. FISCHER; MESSAGE FROM MR. MOGIL; FAX MESSAGE TO MR. MOGIL.	0.42	52.50
2/5/00- TELEPHONE CALL FROM MR. FISCHER RE: FINANCIAL RECORDS.	0.08	10.00
2/11/00- TELEPHONE CALL FROM MR. FISCHER; TELEPHONE CALL TO MRS. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL.	0.33	41.25
2/16/00- CONFERENCE WITH MR. PASSALOUKAS; FAX MESSAGE TO MR. MOGIL.	1.00	125.00
2/23/00- CONFERENCE WITH MR. PASSALOUKAS; TELEPHONE CALL TO MR. STEINBERG.	1.00	125.00
2/25/00- CONFERENCE WITH MR. STEINBERG; TELEPHONE CALL TO MR. MOGIL.	0.50	62.50
2/28/00- TELEPHONE CALL TO MR. MOGIL; TELEPHONE CALL TO MR. STEINBERG.	0.08	10.00
2/29/00- TELEPHONE CALL TO MR. STEINBERG RE: INITIAL IMPRESSIONS OF VALUE OF RESTAURANT.	0.08	10.00
3/23/00- TELEPHONE CALL TO MR. DAVIDSON RE: HIS EXPERIENCE WITH BENSCH; TELEPHONE CALL TO MRS. LOPER RE: HER EXPERIENCE WITH MR. BENSCH; WORK ON FILE.	1.00	125.00
3/25/00- LEGAL RESEARCH RE: DURESS AND CONVERSION AND CORPORATE ISSUES; WORK ON COMPLAINT.	3.00	375.00
3/26/00- CONTINUE WORK ON COMPLAINT; LEGAL RESEARCH RE: SLANDER, SHAREHOLDER DERIVATIVE SUITS AND UNFAIR TRADE PRACTICES.	4.00	500.00
3/27/00- COMPLETE WORK ON COMPLAINT; CONFERENCE WITH MR. AND MRS. PASSALOUKAS.	2.00	250.00
3/28/00- COMPLETE WORK ON COMPLAINT; LETTER TO CLERK OF COURT.	0.50	62.50
5/4/00- TELEPHONE CALL FROM MRS. PASSALOUKAS RE: BILL FOR RESTAURANT TELEPHONE FROM HARGRAY TELEPHONE.	0.08	10.00
6/7/00- STUDY ANSWER AND COUNTER-CLAIMS; DRAFT REPLY; TELEPHONE CALL TO MRS. PASSALOUKAS; TELEPHONE CALL FROM MRS. PASSALOUKAS; TELEPHONE CALL TO MR. MOGIL.	0.50	62.50
8/3/00- DRAFT INTERROGATORIES AND REQUEST FOR PRODUCTION; LETTER TO MR. MOGIL.	2.00	250.00
7/28/01- WORK ON RESPONSES TO REQUEST TO PRODUCE; WORK ON ANSWERS TO INTERROGATORIES; TELEPHONE MESSAGE TO MR. PASSALOUKAS.	1.00	125.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
7/30/01- CONFERENCE WITH MR. AND MRS. PASSALOUKAS RE: PREPARATION OF ANSWERS TO INTERROGATORIES AND REQUEST TO PRODUCE; COMPLETE WORK ON ANSWERS TO INTERROGATORIES; DRAFT NOTICE OF DEPOSITIONS; LETTER TO MR. MOGIL.	2.00	250.00
9/4/01- TELEPHONE CALL TO MR. MOGIL RE: DISCOVERY AND DEPOSITIONS.	0.17	21.25
9/10/01- CONFERENCE WITH MR. AND MRS. PASSALOUKAS RE: DOCUMENT PRODUCTION.	2.50	312.50
10/3/01- STUDY DOCUMENTS; TELEPHONE CALL TO MR. STEINBERG; FAX MESSAGE TO MR. STEINBERG; TELEPHONE CALL FROM MR. STEINBERG; DRAFT SUPPLEMENTAL ANSWERS TO DEFENDANTS' INTERROGATORIES; FAX MESSAGE TO MR. MOGIL; LETTER TO MR. MOGIL.	1.75	218.75
10/14/01- PREPARE FOR BENSCH DEPOSITION.	1.00	125.00
10/15/01- DEPOSITION OF MR. AND MRS. BENSCH.	3.50	437.50
10/17/01- STUDY FILES AT MR. HALE'S OFFICE; CONFERENCE WITH MR. HALE.	3.00	375.00
10/21/01- LEGAL RESEARCH RE: VARIOUS LEGAL ISSUES.	1.00	125.00
10/22/01- ROSTER MEETING IN BEAUFORT BEFORE JUDGE MCKELLAR; CONFERENCE WITH MS. TEVIS; LEGAL RESEARCH RE: RIGHT TO JURY TRIAL; TELEPHONE CALL FROM MR. MOGIL; PREPARE FOR DEPOSITIONS; WORK ON PRETRIAL BRIEF.	6.00	750.00
10/23/01- DEPOSITION OF MR. AND MRS. BENSCH; CONFERENCE WITH MR. AND MRS. PASSALOUKAS.	6.50	812.50
10/25/01- DEPOSITION OF MR. AND MRS. PASSALOUKAS AT MR. MOGIL'S OFFICE.	6.50	812.50
10/26/01- STUDY DOCUMENTS AT MR. MOGIL'S OFFICE; CONFERENCE WITH MR. MOGIL.	1.50	187.50
10/29/01- ROSTER MEETING IN BEAUFORT; WORK ON ACCOUNTING OF BENSCH CONTRIBUTIONS; TELEPHONE CALL FROM MR. PASSALOUKAS RE: CHECKS AND CREDIT CARD STATEMENTS.	3.50	437.50
10/30/01- STUDY BENSCH ACCOUNTING OF CONTRIBUTIONS; WORK ON ACCOUNTING SPREADSHEETS.	2.50	312.50
10/31/01- STUDY BENSCH DOCUMENTS FOR EVALUATION OF ACCOUNTING.	1.50	187.50
11/5/01- STUDY FILE; TELEPHONE CALL TO MR. BAUER RE: STATUS OF CASE, ESPECIALLY ACCOUNTING OF CONTRIBUTIONS AND DISPOSITION OF ASSETS.	0.17	21.25

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
11/13/01- TELEPHONE CALL TO MR. BAUER RE: \$20,000 OFFER OF SETTLEMENT AND STATUS OF CASE AND TRANSFER TO KEMMERLIN; TELEPHONE CALL TO MR. PASSALOUKAS RE: OFFER.	0.33	41.25
11/19/01- TELEPHONE CALL TO JUDGE KEMMERLIN'S OFFICE RE: DATE FOR TRIAL; TELEPHONE CALL TO MR. BAUER RE: TRIAL DATE; TELEPHONE CALL TO JUDGE KEMMERLIN'S OFFICE; DRAFT NOTICE OF TRIAL DATE; LETTER TO MR. BAUER AND MR. MOGIL.	1.00	125.00
11/29/01- CONFERENCE WITH MRS. PASSALOUKAS; STUDY DOCUMENTS; TELEPHONE MESSAGE TO MR. BAUER.	1.00	125.00
12/20/01- LETTER TO MR. BAUER AND MR. MOGIL TO SEND ADDITIONAL TRIAL DOCUMENTS.	0.50	62.50
1/4/02- TELEPHONE MESSAGE TO MR. BAUER; FAX MESSAGE TO MR. BAUER AND MR. MOGIL; DRAFT MOTION TO COMPEL, ETC.; LETTER TO CLERK OF COURT; FAX MESSAGE TO MR. BAUER AND MR. MOGIL.	1.00	125.00
1/7/02- CONFERENCE WITH MR. BAUER; CONFERENCE WITH MR. KIKER.	0.50	62.50
1/8/02- TELEPHONE CALL TO JUDGE KEMMERLIN'S OFFICE; FAX MESSAGE TO MR. KIKER, MR. BAUER AND MR. MOGIL; DRAFT MOTION FOR PROTECTION; LETTER TO CLERK OF COURT; FAX MESSAGE TO KIKER, MERRIFIELD, BAUER AND MOGIL; STUDY DOCUMENTS PRODUCED BY MR. PASSALOUKAS IN NOVEMBER; WORK ON MR. PASSALOUKAS' ACCOUNTING AND BENSCHES' ACCOUNTING.	5.50	687.50
1/9/02- CONTINUE WORK ON ACCOUNTING; STUDY BENSCH 3RD DEPOSITION; DRAFT MEMORANDUM OF BENSCH 3RD DEPOSITION; STUDY 1ST BENSCH DEPOSITION; DRAFT MEMORANDUM OF 1ST BENSCH DEPOSITION.	6.00	750.00
1/10/02- WORK ON ACCOUNTING; TELEPHONE CALL TO MR. KIKER'S OFFICE; TELEPHONE CALL TO MR. HALE'S OFFICE; TELEPHONE CALL TO MR. STEINBERG.	2.50	312.50
1/11/02- CONFERENCE WITH MR. KIKER IN BEAUFORT RE: NEED FOR DOCUMENTS AND ACCOUNTING; HEARING BEFORE JUDGE KEMMERLIN.	3.00	375.00
1/14/02- TELEPHONE CALL FROM MR. KIKER RE: NEED FOR COPY OF PASSALOUKAS' CONTRIBUTIONS AND COPY OF EXHIBIT 53; FAX MESSAGE TO MR. KIKER.	0.17	21.25

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
1/17/02- TELEPHONE CALL FROM MR. KIKER AND MR. BAUER RE: NEED TO POSTPONE TRIAL; TELEPHONE CALL TO MR. PASSALOUKAS RE: POSTPONEMENT; TELEPHONE CALL FROM MR. MARX RE: DOCUMENT PRODUCTION; STUDY NOCOLI'S TAX RETURN.	0.50	62.50
1/24/02- STUDY MR. KIKER'S ACCOUNTING AND COMPARE IT WITH THE CHECKS, EXHIBIT 35.	4.00	500.00
1/26/02- PREPARE TRIAL NOTEBOOK; DRAFT MEMORANDA; OUTLINE TESTIMONY.	4.00	500.00
1/27/02- CONTINUE TRIAL PREPARATION; STUDY SECOND BENSCH DEPOSITION; DRAFT MEMORANDUM OF BENSCH SECOND DEPOSITION.	1.00	125.00
1/28/02- LEGAL RESEARCH AT EMORY LAW SCHOOL RE: ATTORNEYS FEES, SHAREHOLDER STATUS, FIDUCIARY OBLIGATIONS, ACCOUNTING AND DAMAGES.	3.00	375.00
1/29/02- CONFERENCE WITH MR. AND MRS. PASSALOUKAS; CONFERENCE WITH MR. ROB MITRO; TELEPHONE CALL CALLS TO AND FROM MR. KIKER CONCERNING SETTLEMENT, PROPOSALS FOR STIPULATIONS; STUDY NEEW DOCUMENTS PRODUCED BY THE DEFENDANTS; CONTINUE WORK ON ACCOUNTING; FAX MESSAGE TO OPPOSING COUNSEL RE: FAILURE TO PRODUCE DOCUMENTS.	9.00	1,125.00
- GATHER EXHIBITS FOR TRIAL; WORK ON TRIAL TESTIMONY; TELEPHONE CALL FROM MR. KIKER; ORGANIZE DOCUMENTS AND TESTIMONY; CONTINUE PREPARATIONS FOR TRIAL; CONFERENCE WITH MR. AND MRS. PASSALOUKAS.	9.00	1,125.00
1/31/02- CONFERENCE WITH MR. AND MRS. PASSALOUKAS; TRIAL BEFORE JUDGE KEMMERLIN IN BEAUFORT; PREPARE FOR SECOND DAY OF TRIAL; WORK ON TRIAL BRIEF; ORGANIZE EXHIBITS AND TESTIMONY.	10.00	1,250.00
2/1/02- CONFERENCE WITH MR. AND MRS. PASSALOUKAS; INTERVIEW WITNESSES; TRIAL BEFORE JUDGE KEMMERLIN IN BEAUFORT.	8.00	1,000.00
5/1/02- TELEPHONE CALL FROM MR. PASSALOUKAS; TELEPHONE CALL TO MRS. ANDERSEN; TELEPHONE MESSAGE TO MRS. CRISCITIELLO.	0.25	31.25
5/22/02- STUDY TRANSCRIPT OF TRIAL TESTIMONY; DRAFT MEMORANDUM.	3.00	375.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
5/23/02- STUDY TRIAL TESTIMONY; DRAFT MEMORANDUM OF TESTIMONY.	2.00	250.00
5/30/02- STUDY TRIAL TRANSCRIPT; DRAFT MEMORANDUM.	2.00	250.00
5/31/02- STUDY TRIAL TRANSCRIPT; DRAFT MEMORANDUM; LEGAL RESEARCH RE: ACCOUNTING FOR PROFITS; LEGAL RESEARCH RE: ATTORNEYS FEES.	5.00	625.00
6/10/02- WORK ON DRAFT OF FINAL BRIEF.	1.00	125.00
6/13/02- WORK ON FINAL BRIEF	0.50	62.50
6/15/02- WORK ON BRIEF; LEGAL RESEARCH RE: FIRST IN BREACH RULES.	7.00	875.00
6/16/02- CONTINUE WORK ON BRIEF; LEGAL RESEARCH RE: BURDEN OF PROOF AS TO ACCOUNTING, DISGORGEMENT OF PROFITS, ATTORNEYS FEES.	5.00	625.00
6/17/02- CONTINUE WORK ON BRIEF.	6.00	750.00
6/18/02- CONTINUE WORK ON BRIEF; LETTER TO JUDGE KEMMERLIN.	1.75	218.75
7/30/02- BEGIN WORK ON MOTION FOR RECONSIDERATION; LEGAL RESEARCH RE: CONSTRUING CONTRACTS.	0.50	62.50
8/4/02- STUDY JUDGE KEMMERLIN'S ORDER; STUDY PLEADINGS AND DOCUMENTS; DRAFT MOTION TO CORRECT RECORD; LETTER TO JUDGE KEMMERLIN; LETTER TO CLERK OF COURT; LETTER TO MR. BAUER, MR. MOGIL AND MR. KIKER; WORK ON MOTION TO RECONSIDER;	5.50	687.50
8/5/02- CONTINUE WORK ON MOTION TO RECONSIDER.	3.00	375.00
8/6/02- WORK ON MOTION TO ALTER OR AMEND; TELEPHONE CALL TO MRS. PASSALOUKAS; TELEPHONE CALL TO MR. HOOKAYLO; FAX MESSAGE TO MR. HOOKAYLO; LETTER TO MR. KIKER, MR. BAUER AND MR. MOGIL; LETTER TO CLERK OF COURT; COMPLETE WORK ON MOTION TO RECONSIDER.	3.50	437.50
8/8/02- WORK ON BRIEF OF FACTS; WORK ON ARGUMENT; LETTER RE: CONSTRUCTION OF SEVERAL DOCUMENTS AFFECTING SAME SUBJECT.	4.00	500.00
8/9/02- CONTINUE WORK ON BRIEF IN SUPPORT OF MOTION TO RECONSIDER.	2.50	312.50
8/15/02- WORK ON BRIEF IN SUPPORT OF MOTION TO RECONSIDER; LEGAL RESEARCH RE: JUDICIAL ESTOPPEL.	2.00	250.00
8/16/02- WORK ON BRIEF IN SUPPORT OF MOTION TO RECONSIDER; LEGAL RESEARCH RE: CONSTRUING CONTRACT WITH REFERENCE TO APPLICABLE STATUTE AND DISSOLUTION AND LIQUIDATION STATUTE.	2.00	250.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
8/19/02- WORK ON BRIEF IN SUPPORT OF MOTION TO RECONSIDER.	1.50	187.50
8/20/02- WORK ON BRIEF IN SUPPORT OF MOTION FOR RECONDERATION;	1.50	187.50
8/21/02- CONTINUE WORK ON BRIEF.	3.00	375.00
8/22/02- CONTINUE WORK ON BRIEF; LEGAL RESEARCH TO UPDATE CASE LAW.	3.00	375.00
8/23/02- WORK ON BRIEF.	4.00	500.00
8/25/02- PROOF READ BRIEF; MAKE CHANGES; ADD LEGAL AUTHORITIES.	4.00	500.00
8/26/02- PROOF READ BRIEF; ADD LEGAL AUTHORITIES.	1.50	187.50
8/27/02- COMPLETE WORK ON BRIEF; REVIEW ASSEMBLY PROCESS, ETC; LETTER TO JUDGE KEMMERLIN.	3.50	437.50
8/28/02- COMPLETE WORK ON BRIEF; ASSEMBLE DOCUMENTS; MODIFY LETTER TO JUDGE KEMMERLIN; LETTER TO MR. BAUER, MR. MOBIL AND MR. KIKER.	2.00	250.00
9/3/02- WORK ON AFFIDAVIT OF ATTORNEYS FEES.	0.50	62.50
12/6/02- TELEPHONE CALL FROM MR. BAUER.	0.08	10.00
12/9/02- STUDY MOTIONS, BRIEF, ETC.; TRAVEL TO BEAUFORT COUNTY FOR HEARING BEFORE JUDGE KEMMERLIN; TELEPHONE CALL TO MR. BAUER.	4.00	500.00
12/10/02- TRAVEL TO BEAUFORT FOR HEARING BEFORE JUDGE KEMMERLIN.	3.00	375.00
12/30/02- LEGAL RESEARCH AT EMDRY LAW SCHOOL RE: APPLICATION OF AUTOMATIC STAY PROVISION OF BANKRPTCY CODE.	4.00	500.00
1/12/03- WORK ON PROPOSED ORDER FOR JUDGE KEMMERLIN.	3.00	375.00
1/13/03- COMPLETE WORK ON PROPOSED ORDER; LETTER TO JUDGE KEMMERLIN; TELEPHONE CALL TO MR. HOOKAYLO; TELEPHONE CALL FROM MRS. PASSALOUKAS.	2.50	312.50
1/15/03- STUDY ORDER OF CONFIRMATION; CHANGE PROPOSED ORDER; CHNAGE LETTER TO JUDGE KEMMERLIN.	1.00	125.00
4/26/03- DRAFT PROPOSED ORDER CORRECTING RECORD; LETTER TO MR. BAUER, ET AL; DRAFT NOTICE OF APPEAL.	0.83	103.75
5/15/03- TELEPHONE CALL FROM AMANDA OF MR. BAUER'S OFFICE; LETTER TO CLERK OF COURT; LETTER TO MR. BAUER; FAX TO MR. BAUER; DRAFT NOTICE OF ADDRESS CHANGES, ETC.; LETTER TO JUDGE KEMMERLIN.	0.50	62.50
5/27/03- LEGAL RESEARCH RE: SCOPE OF REVIEW; WORK ON BRIEF RE: SCOPE OF REVIEW.	2.00	250.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
5/28/03- LEGAL RESEARCH RE: SCOPE OF REVIEW OF EQUITABLE AND LEGAL CLAIMS; WORK ON BRIEF.	3.00	375.00
6/10/03- LEGAL RESEARCH RE: SCOPE OF REVIEW; WORK ON BRIEF.	2.50	312.50
6/11/03- WORK ON BRIEF.	5.00	625.00
6/12/03- WORK ON BRIEF; TELEPHONE MESSAGE TO MR. BAUER; TELEPHONE CALL FROM CLERK OF COURT	3.00	375.00
6/13/03- WORK ON BRIEF.	4.00	500.00
6/14/03- WORK ON BRIEF.	6.00	750.00
6/15/03- CONTINUE WORK ON BRIEF.	3.00	375.00
6/16/03- CONTINUE WORK ON BRIEF; LEGAL RESEARCH RE: PAROLE EVIDENCE RULE.	6.00	750.00
6/17/03- LEGAL RESEARCH RE: DAMAGES IN CONVERSION CASES; WORK ON BRIEF.	7.00	875.00
6/18/03- CONTINUE WORK ON BRIEF;	3.00	375.00
6/19/03- CONTINUE WORK ON BRIEF.	4.00	500.00
6/20/03- CONTINUE WORK ON BRIEF.	3.00	375.00
6/21/03- CONTINUE WORK ON BRIEF.	0.75	93.75
6/23/03- WORK ON BRIEF.	2.00	250.00
6/24/03- WORK ON BRIEF.	4.50	562.50
6/25/03- WORK ON BRIEF.	2.75	343.75
6/26/03- WORK ON BRIEF; DRAFT TABLE OF CASES.	8.00	1,000.00
6/27/03- WORK ON BRIEF; WORK ON DESIGNATION OF RECORD; DRAFT CERTIFICATE; DRAFT TABLE OF CONTENTS.	6.00	750.00
6/28/03- CONTINUE WORK ON BRIEF.	8.00	1,000.00
6/29/03- CONTINUE WORK ON BRIEF.	4.00	500.00
6/30/03- LEGAL RESEARCH AT EMORY LAW SCHOOL; COMPLETE WORK ON BRIEF; LETTER TO CLERK OF COURT.	4.00	500.00
9/30/03- TELEPHONE CALL TO MR. BROWN; FAX PAGE OF TRANSCRIPT TO MR. BROWN.	0.25	31.25
10/7/03- LEGAL RESEARCH AT EMORY LAW SCHOOL RE: CASES CITED IN BENSCHES' BRIEF.	3.00	375.00
10/9/03- STUDY BENSCHES' BRIEF; WORK ON FIRST DRAFT OF REPLY BRIEF; TELEPHONE CALL FROM MR. BROWN RE: BENSCHES' NEED TO AMEND DESIGNATION OF RECORD.	5.50	687.50
10/10/03- CONTINUE WORK ON REPLY BRIEF.	4.50	562.50
10/11/03- CONTINUE WORK ON REPLY BRIEF.	4.00	500.00
10/12/03- CONTINUE WORK ON REPLY BRIEF.	3.50	437.50
10/13/03- CONTINUE WORK ON REPLY BRIEF.	4.50	562.50
10/14/03- CONTINUE WORK ON REPLY BRIEF.	3.50	437.50
10/15/03- COMPLETE WORK ON REPLY BRIEF; LETTER TO CLERK OF COURT; DRAFT DESIGNATION OF RECORD; STUDY RESPONDENTS' DESIGNATION OF RECORD AND PROPOSED TESTIMONY; DRAFT TABLE OF CONTENTS; DRAFT TABLE OF CASES; DRAFT CERTIFICATION.	3.00	375.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
10/20/03- DRAFT MOTION FOR EXTENTIONS OF TIME; TELEPHONE CALL TO CLERK OF COURT'S OFFICE; TELEPHONE CALL FROM MR. BROWN; LETTER TO CLERK OF COURT; PREPARATION AND ASSEMBLY OF RECORD ON APPEAL.	2.75	343.75
10/24/03- TELEPHONE CALL TO MR. BROWN RE: NEED TO AMEND DESIGNATION OF RECORD; TELEPHONE CALL TO MS. BENNETT IN CLERK OF COURT'S OFFICE; DRAFT MOTION TO AMEND DESIGNATION OF RECORD; LETTER TO CLERK OF COURT.	1.00	125.00
11/3/03- WORK IN PREPARATION OF RECORD ON APPEAL.	3.00	375.00
11/10/03- WORK ON ASSEMBLY OF RECORD ON APPEAL; LEGAL RESEARCH RE: FORM OF RECORD ON APPEAL.	3.00	375.00
11/11/03- FINAL REVIEW OF RECORD IN PREPARATION OF DELIVERY TO COPYING COMPANY; DELIVER RECORD TO COPYING COMPANY; CONFERENCE WITH COPYING COMPANY RE: PREPARATION OF RECORD ON APPEAL.	2.00	250.00
11/14/03- TRAVEL TO COPYING COMPANY TO REVIEW AND PICK UP COPIES OF RECORD ON APPEAL.	1.00	125.00
11/18/03- TRAVEL TO COPYING COMPANY TO PICK UP AND REVIEW COPIES OF RECORD ON APPEAL; DRAFT CERTIFICATE OF MAILING; LETTER TO CLERK OF COURT.	2.50	312.50
11/19/03- PREPARE FINAL BRIEF FOR COPYING AND COORDINATE WITH RECORD ON APPEAL	3.00	375.00
11/20/03- PREPARE FINAL VERSION OF REPLY BRIEF TO COORDINATE WITH RECORD ON APPEAL.	2.00	250.00
11/21/03- COPY AND ASSEMBLE MAIN BRIEF AND REPLY BRIEF.	2.00	250.00
11/24/03- PREPARE RECORD ON APPEAL AND BRIEFS FOR MAILING; DRAFT CERTIFICATE OF MAILING; LETTER TO CLERK OF COURT.	1.50	187.50
9/13/04- TRAVEL TO COLUMBIA FOR ARGUMENT BEFORE COURT OF APPEALS; PREPARE FOR ARGUMENT.	5.00	625.00
9/14/04- ARGUMENT BEFORE COURT OF APPEALS; CONFERENCE WITH MR. AND MRS. PASSALOUKAS; TRAVEL BACK TO ATLANTA.	4.00	500.00
10/13/04- STUDY COURT OF APPEALS' ORDER; TELEPHONE CALL TO MR. AND MRS. PASSALOUKAS.	0.50	62.50
10/14/04- LEGAL RESEARCH RE: ASSESSMENT OF COSTS IN COURT OF APPEALS; DRAFT ITEMIZED STATEMENT OF COSTS; DRAFT MOTION; LETTER TO CLERK OF COURT.	1.50	187.50

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
10/28/04- CONFERENCE WITH MR. STEINBERG; TELEPHONE CALL TO MR. PASSALOUKAS.	0.67	83.75
1/12/05- WORK ON DRAFT OF MOTION TO AMEND; WORK ON DRAFT OF AMENDED COMPLAINT; TELEPHONE CALL TO MR. PASSALOUKAS.	3.00	375.00
1/13/05- COMPLETE WORK ON AMENDED COMPLAINT; TELEPHONE CALL TO MR. BROWN RE: VARIOUS ISSUES ARISING FROM REMAND TO TRIAL COURT.	1.50	187.50
2/20/05- WORK ON MOTION TO AMEND; DRAFT INTERROGATORIES; DRAFT REQUEST TO PRODUCE; LETTER TO CLERK OF COURT; LETTER TO MR. BROWN.	2.00	250.00
6/29/05- STUDY ANSWER AND COUNTERCLAIMS; WORK ON DRAFT OF REPLY; LEGAL RESEARCH RESEARCH RE: FRIVOLOUS CLAIMS.	1.50	187.50
7/1/05- DRAFT REPLY; LEGAL RESEARCH RE: SANCTIONS FOR FRIVOLOUS PLEADINGS; LETTER TO CLERK OF COURT.	1.50	187.50
9/5/05- WORK ON MOTION TO COMPEL; LETTER TO CLERK OF COURT; LETTER TO MR. JIM AND STEPHEN BROWN; DRAFT DISCOVERY REQUESTS TO TOWN CENTER, LLC.	3.00	375.00
10/27/05- PREPARE FOR HEARING IN BEAUFORT; LEGAL RESEARCH.	2.00	250.00
10/28/05- TRAVEL TO BEAUFORT FOR HEARING BEFORE JUDGE FEW; HEARING BEFORE JUDGE FEW.	10.00	1,250.00
3/31/06- TELEPHONE CALL TO MR. BROWN; LETTER TO JUDGE BUCKNER RE: NEED TO SET TRIAL.	0.50	62.50
8/28/06- TELEPHONE CALL TO MS. FIELDS RE: NEED TO PLACE CASE ON ROSTER; LETTER TO CLERK OF COURT RE: NEED TO PLACE CASE ON ROSTER; TELEPHONE CALL TO MR. BROWN.	0.50	62.50
9/1/06- TELEPHONE CALL TO MR. BROWN; DRAFT MOTION TO COMPEL PRODUCTION OF PHOTOGRAPHS; LETTER TO CLERK OF COURT.	1.00	125.00
9/10/06- PREPARE FOR HEARING ON MOTION FOR RECEIVER, MOTION TO PRODUCE.	0.50	62.50
9/11/06- TRAVEL TO BEAUFORT FOR COURT HEARING BEFORE JUDGE YOUNG; CONFERENCE WITH MR. BROWN.	11.00	1,375.00
9/14/06- LEGAL RESEARCH AT EMORY LAW SCHOOL RE: APPOINTMENT OF RECEIVER FOR CORPORATION IN DERIVATIVE SUIT.	3.00	375.00
9/15/06- DRAFT MEMORANDUM IN OPPOSITION TO MOTION FOR APPOINTMENT OF A RECEIVER.	2.25	281.25

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
9/18/06- LEGAL RESEARCH RE: DAMAGES ARISING FROM TORT OF CONVERSION AND PRE-JUDGMENT INTEREST ON VALUE OF CONVERTED PROPERTY; WORK ON REVISED ACCOUNTING TO INCLUDE PRE-JUDGMENT INTEREST.	2.75	343.75
10/5/06- COMPLETE WORK ON MEMORANDUM IN OPPOSITION TO MOTION FOR RECEIVER.	0.75	93.75
10/9/06- TRAVEL TO BEAUFORT FO COURT HEARING BEFORE JUDGE COLTRANE RE: BENSCHES' MOTION TO APPOINT RECEIVER; CONFERENCE WITH MRS. PASSALOUKAS; TELEPHONE CALL TO MR. PASSALOUKAS.	11.50	1,437.50
2/10/07- STUDY DOCUMENTS; DRAFT REQUESTS TO ADMIT AUTHENTICITY OF DOCUMENTS; LETTER TO MR. CLABAUGH.	1.75	218.75
2/11/07- STUDY DOCUMENTS; STUDY REGISTER OF DEEDS RECORDS RE: CONVEYANCE OF 27 MELLICHAMP DRIVE TO BLUFFTON TOWNE CENTER, LLC; DRAFT ADDITIONAL REQUESTS TO ADMIT AUTHENTICITY OF DOCUMENTS; DRAFT REQUESTS FOR ADMISSION; DRAFT REQUEST TO PRODUCE; LETTERS TO MR. CLABAUGH.	2.50	312.50
8/26/07- TRAVEL TO BEAUFORT FOR STATUS CONFERENCE BEFORE JUDGE DUKES.	12.00	1,500.00
9/2/07- LEGAL RESEARCH RE: TRACING ASSETS.	1.83	228.75
9/3/07- LEGAL RESEARCH RE: RESULTING TRUSTS AND CONSTRUCTIVE TRUSTS AND MUTUALITY OF OBLIGATIONS.	2.83	353.75
9/4/07- WORK ON MOTION FOR SUMMARY JUDGMENT.	1.00	125.00
10/6/07- WORK ON MOTION FOR SUMMARY JUDGMENT.	4.83	603.75
10/7/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	6.00	750.00
10/13/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	2.00	250.00
10/14/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	2.50	312.50
10/20/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	1.67	208.75
10/21/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	3.00	375.00
11/17/07- CONTINUE WORK ON MOTION FOR SUMMARY JUDGMENT.	6.00	750.00
11/18/07- COMPLETE FINAL DRAFT OF MOTION FOR SUMMARY JUDGMENT,	8.00	1,000.00
3/28/08- TRAVEL TO BEAUFORT FOR HEARING BEFORE JUDGE DUKES.	5.00	625.00
3/31/08- COURT HEARING BEFORE JUDGE DUKES IN BEAUFORT; TRAVEL BACK TO ATLANTA.	7.00	875.00

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
4/8/08- STUDY JUDGE DUKES' ORDER; WORK ON MOTION FOR RECONSIDERATION.	2.50	312.50
4/9/08- COMPLETE WORK ON FINAL DRAFT OF MOTION FOR RECONSIDERATION; LETTER TO JUDGE DUKES.	3.00	375.00
8/19/08- TELEPHONE CONFERENCE WITH JUDGE DUKES AND MR. CLABAUGH.	0.67	83.75
8/24/08- PREPARE WITNESS LIST; LETTER TO CLERK OF COURT.	0.83	103.75
8/28/08- FAX MESSAGE FROM MR. STEINBERG REGARDING PROBLEM WITH ATTENDANCE AT TRIAL; TELEPHONE CALL TO MR. STEINBERG; TELEPHONE CALL TO MR. CLABAUGH; TELEPHONE CALL TO MR. STEINBERG; DRAFT NOTICE OF DEPOSITION; FAX MESSAGE TO MR. STEINBERG; LETTER TO CLERK OF COURT.	1.83	228.75
9/5/08- PREPARE FOR DEPOSITION OF MR. STEINBERG; TELEPHONE CALL TO MR. STEINBERG; DEPOSITION OF MR. STEINBERG; E-MAIL TO MR. CLABAUGH; TELEPHONE CALL TO MR. CLABAUGH.	2.33	291.25
9/6/08- TRIAL PREPARATION.	3.00	375.00
9/7/08- TRIAL PREPARATION.	3.83	478.75
9/8/08- TRIAL PREPARATION.	3.00	375.00
9/9/08- TRIAL PREPARATION.	3.67	458.75
9/10/08- TRIAL PREPARATION.	4.83	603.75
9/11/08- TRIAL PREPARATION.	3.33	416.25
9/12/08- TRAVEL TO HILTON HEAD ISLAND FOR MEETING WITH MR. AND MRS. PASSALOUKAS AND TRIAL PREPARATION.	5.00	625.00
9/13/08- CONFERENCE WITH MR. AND MRS. PASSALOUKAS TO PREPARE FOR TRIAL; TRIAL PREPARATION.	4.83	603.75
9/14/08- TRIAL PREPARATION.	2.00	250.00
9/15/08- CONFERENCE WITH MR. AND MRS. PASSALOUKAS; TRIAL BEFORE JUDGE DUKES; TRIAL PREPARATION.	9.00	1,125.00
9/16/08- CONFERENCE WITH MR. AND MRS. PASSALOUKAS; TRIAL BEFORE JUDGE DUKES.	7.00	875.00
4/6/09- REVIEW TRIAL TRANSCRIPT; DRAFT MEMORANDUM.	1.67	208.75
4/7/09- STUDY TRIAL TRANSCRIPT; DRAFT MEMORANDUM.	3.33	416.25
4/13/09- TRIAL PREPARATION; TELEPHONE CALL FROM MR. CLABAUGH; E-MAIL FROM MR. CLABAUGH.	3.00	375.00
4/14/09- TRIAL PREPARATION; E-MAILS FROM COURT.	2.67	333.75
4/15/09- TELEPHONE CONFERENCE CALL FROM COURT; PREPARE FOR TRIAL; STUDY TRANSCRIPTS AND EXHIBITS; PREPARE OUTLINE OF TESTIMONY.	1.50	187.50

Mr. and Mrs. Bill Passaloukas

	<u>HOURS</u>	<u>AMOUNT</u>
4/17/09- TRIAL PREPARATION; TELEPHONE CALL TO MR. WARCO; E-MAILS TO AND FROM MR. WARCO; WORK ON DMAGES ISSUES.	5.83	728.75
4/18/09- PREPARE FOR TRIAL.	6.00	750.00
4/19/09- TRAVEL TO HILTON HEAD AND BEAUFORT FOR MEETING WITH MR. AND MRS. PASSALOUKAS; PREPARE FOR TRIAL.	8.00	1,000.00
4/20/09- TRIAL BEFORE JUDGE DUKES; MISCELLANEOUS CONFERENCES WITH WITNESSES AND MR. AND MRS. PASSALOUKAS.	6.00	750.00
4/21/09- TRIAL BEFORE JUDGE DUKES; CONFERENCES WITH MR. AND MRS. PASSALOUKAS.	6.00	750.00
TOTAL FEE THIS INVOICE:	627.47	\$78,433.75

EXPENSES

3/28/00- BEAUFORT COUNTY CLERK OF COURT - FILE SUMMONS AND COMPLAINT	70.00
10/4/01- ROBERT STEINBERG - EXPERT WITNESS FEE	250.00
10/31/01- SECRETARY OF STATE OF SOUTH CAROLINA - COPY ARTICLES	14.00
11/1/01- PARALEGAL SERVICES, INC. - RESEARCH	10.55
- SECRETARY OF STATE - COPY OF ARTICLES OF INCORPORATION	14.00
11/2/01- COASTAL COURT REPORTING, INC. - THREE BENSCH DEPOSITIONS	2,496.00
4/23/02- BEAUFORT COUNTY MASTER IN EQUITY - MASTER'S FEE	50.00
5/15/02- DEBBIE CRISCITIELLO - TRIAL TRANSCRIPT	836.00
6/10/02- PARALEGAL SERVICES - COPY TRIAL EXHIBITS	168.00
8/10/02- BEAUFORT COUNTY CLERK OF COURT - FILE MOTIONS	50.00
- BEAUFORT COUNTY CLERK OF COURT - FILE TWO MOTIONS	50.00
10/20/03- COURT OF APPEALS - FILING FEE	25.00
11/18/03- PRINT WAVE - PREPARE AND BIND 20 COPIES OF RECORD ON APPEAL	616.35
11/19/03- U.S. POSTAL SERVICE - MAIL RECORD ON APPEAL TO MR. BROWN	8.35
11/20/03- KINKO'S - COVER SHEETS FOR BRIEFS	19.26
11/21/03- 1880 COPIES OF PAGES OF BRIEFS FOR PREPARATION OF FINAL BRIEFS	188.00
11/22/03- KINKO'S - COST OF BINDING BRIEFS	126.26
11/24/03- US POSTAL SERVICE - MAIL BRIEFS AND RECORD TO CLERK OF COURT	32.25
- US POSTAL SERVICE - MAIL BRIEFS TO MR. BROWN	5.30
9/14/04- HOLIDAY INN, COLUMBIA - TRAVEL TO COLUMBIA FOR ARGUMENT IN COURT OF APPEALS	100.00

Mr. and Mrs. Bill Passaloukas

	<u>AMOUNT</u>
10/15/04- SOUTH CAROLINA COURT OF APPEALS - FILE MOTION FOR COSTS	25.00
- U S POSTAL SERVICE - MAIL MOTION TO COURT OF APPEALS	3.85
2/21/05- BEAUFORT COUNTY CLERK OF COURT - FILE MOTION	25.00
5/1/05- RED ROOF INN - TRAVEL TO JASPER COUNTY FOR HEARING BEFORE JUDGE GREGORY	70.55
9/5/05- BEAUFORT COUNTY CLERK OF COURT - FILE MOTION	25.00
9/1/06- BEAUFORT COUNTY CLERK OF COURT - FILING FEE	25.00
5/7/07- BEAUFORT COUNTY CLERK OF COURT - FILE MOTION	25.00
11/18/07- BEAUFORT COUNTY CLERK OF COURT- FILE MOTION	25.00
3/31/08- BEST WESTERN SEA ISLAND INN - COURT APPEARANCE	133.19
4/9/08- CLERK OF COURT - FILE MOTION TO ALTER OR AMEND	25.00
8/17/08- FEDEX KINKO'S - MAIL TRIAL TRANSCRIPT TO PASSALOUKAS	11.84
9/11/08- COASTAL COURT REPORTING - DEPOSITION OF MR. STEINBERG	251.00
9/13/08- COMFORT INN - TRAVEL TO HILTON HEAD TO MEET WITH CLIENTS TO PREPARE FOR TRIAL	78.37
9/14/08- COMFORT INN - TRAVEL TO HILTON HEAD TO MEET WITH CLIENT IN PREPARATION FOR TRIAL	76.76
9/16/08- BEST WESTERN SEAS ISLAND INN - TRAVEL TO BEAUFORT FOR TRIAL	266.38
10/1/08- ROBERT STEINBERG - EXPERT WITNESS VALUATION OF BUSINESS	250.00
3/30/09- JOANNE B. McDONALD - TRANSCRIPT OF TWO DAYS OF TRIAL	1,935.00

TOTAL EXPENSES THIS INVOICE:

\$8,381.26

TOTAL FEE AND EXPENSES - THIS INVOICE:

\$86,815.01**BALANCE NOW DUE:**

\$86,815.01



COMFORT INN HILTON HEAD ISLAND (SC173)
2 TANGLEWOOD DRIVE
HILTON HEAD ISLAND, SC 29928 USA
Phone: (843) 842-6662
Fax: (843) 842-6664
779sm_hiltonhead@snbhotels.com

Account: SC173 - 279815
Date: 09/14/08
Page: 1 of 1
Room: 235 RACK
Arrival Date: 09/13/08 08:35
Departure Date: 09/14/08 11:28
Frequent Traveler ID: [REDACTED]

You were checked out by: LALA
You were checked in by: LALA

PAPE, FRANK
PO BOX 190009
NORTH ATLANTA, GA 30319 US
fpape@bellsouth.net

Post Date	Description	Comments	Amount
09/14/08	SAFE	SAFE	-1.50
09/14/08	IN-ROOM SAFE TAX	IN-ROOM SAFE TAX	-0.11
09/14/08	VISA PAYMENT	VISA PAYMENT Acct: *****6543	-76.76
Balance Due:			-78.37

If payment by credit card, I agree to pay the above total charge amount according to the card issuer agreement.

x _____



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Phone: (843) 842-6662
Fax: (843) 842-6664
779sm_hiltonhead@snbhotels.com

Room: 235
Arrival Date: 09/13/08
Departure Date: 09/14/08
Account: SC173 - 279815
Frequent Traveler ID: [REDACTED]

Approval Number: 03552A
Card Type: VI
Date: 9/14/2008
Card Number: *****6543
Total: 76.76

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779sm_hiltonhead@snbhotels.com

Account: SC173 - 279815

Date: 09/14/08

Page: 1 of 1

Room: 235 RACK

Arrival Date: 09/13/08 08:35

Departure Date: 09/14/08 11:28

Frequent Traveler ID: [REDACTED]

You were checked out by: LALA

You were checked in by: LALA

PAPE, FRANK

PO BOX 190009

NORTH ATLANTA, GA 30319 US

fpape@bellsouth.net

Post Date	Description	Comment	Amount
09/13/08	ROOM CHARGE	#235 PAPE, FRANK	69.00
09/13/08	SAFE	SAFE	1.50
09/13/08	STATE TAX	STATE TAX	4.23
09/13/08	CITY/COUNTY TAX	CITY/COUNTY TAX	3.53
09/13/08	IN-ROOM SAFE TAX	IN-ROOM SAFE TAX	0.11
Balance Due:			78.37

If payment by credit card, I agree to pay the above total charge amount according to the card issuer agreement.

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BY CHOICE HOTELS

COMFORT INN HILTON HEAD ISLAND (SC173)

2 TANGLEWOOD DRIVE
HILTON HEAD ISLAND, SC 29928 USA
Phone: (843) 842-6662
Fax: (843) 842-6664
779sm_hiltonhead@snbhotels.com

Room: 235

Arrival Date: 09/13/08

Departure Date: 09/14/08

Account: SC173 - 279815

Frequent Traveler ID: [REDACTED]

Approval Number:

Card Type:

Date: 9/14/2008

Card Number:

Total:

FRANK PAPE

PO BOX 190009

NORTH ATLANTA, GA 30319 US

fpape@bellsouth.net

If payment by credit card, I agree to pay the above total charge amount according to the card issuer agreement.

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Coastal Court Reporting & Video

Post Office Box 7349
Hilton Head, South Carolina 29938
843-785-7739 Beaufort 525-9600
FED. ID [REDACTED]

Invoice

DATE	INVOICE #
9/9/2008	33606

BILL TO
FRANK KPAPE, ESQUIRE Post Office Box 190009 Atlanta, Georgia 31119

TERMS		REP
Due on receipt		CW
DESCRIPTION		AMOUNT
BILL P. PASSALOUKAS -VS- CYNTHIA BENSCH		
Original & copy of deposition of Robert Steinberg, taken on September 5, 2008.		251.00
Thank you for your business. Interest is charged at 1 1/2% per month on outstanding balances.		Total \$251.00

PAST DUE!
WE WOULD APPRECIATE YOUR
PAYMENT TODAY!

Best Western Sea Island Inn

Page 1 of 1

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843-522-2090 fax 843-521-4858
seaislandinn1@yahoo.com - sea-island-inn.com

Frank Pape
P.O. Box 190009
Atlanta, GA 31119

Room:	Folio:	CheckIn:	CheckOut:	Balance
143	62894	09/14/2008	09/16/2008	0.00
Master Folio		SunMonTue: 119.99 WeThFrSat: 119.99		

Date:	Room:	Description:	Charges:	Credits:	Balance
09/14/2008	143	Room Charge Taxable	119.99	0.00	119.99
09/14/2008	143	Sales Tax - 6.000%	7.20	0.00	127.19
09/14/2008	143	Accommodations Tax - 2.000%	2.40	0.00	129.59
09/14/2008	143	City Tax - 3.000%	3.60	0.00	133.19
09/15/2008	143	Room Charge Taxable	119.99	0.00	253.18
09/15/2008	143	Sales Tax - 6.000%	7.20	0.00	260.38
09/15/2008	143	Accommodations Tax - 2.000%	2.40	0.00	262.78
09/15/2008	143	City Tax - 3.000%	3.60	0.00	266.38
09/16/2008	143	Visa/Mastercard	0.00	266.38	0.00

DLH
9/16/2008 03:00 AM

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FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 95310
ATLANTA, GA 30347

FIRST UNION NATIONAL BANK
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5438

8/10/02

PAY TO THE ORDER OF Beaufort County Clerk of Court

\$ ***** 50.00

Fifty and no/100*****

DOLLARS

Beaufort County Clerk of Court

120001589 08-15-02 1142 1142 08

Details on back
Security Features Included

08057407-00

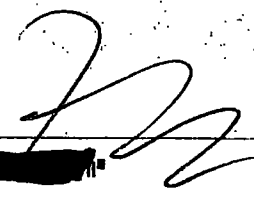
00-CP-2-524 (2)

MEMO File two motions: Passaloukas vs Bensch

⑈00005438⑈

⑈[REDACTED]⑈

⑈0000005000⑈



FIRST UNION NATIONAL BANK
67-776-532

10/31/01

\$ *** 14.00**

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Business Checking

03

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0 42

107,280

WACHOVIA

09/30/2006 thru 10/31/2006

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

9/1/2006

Pay to the order of Beaufort County Clerk of Court \$ *****25.00

Twenty and no/100***** DOLLARS

Beaufort County Clerk of Court

MEMO File Notation: Passelunas vs Be

#00006034 #000002500/

REF#3412509894 PAID 10/19 25.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

9/2/2006

Pay to the order of Secretary of State of GA \$ *****100.00

One Hundred and no/100***** DOLLARS

Secretary of State of GA

MEMO Educators Associates: File Arti

#00006035# #0000010000/

REF#8213535411 PAID 10/02 100.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

9/2/2006

Pay to the order of Bill Moldran \$ *****35.00

Thirty-five and no/100***** DOLLARS

Bill Moldran

MEMO Witness Pass: Page v Callaway

#00006046# #000003500/

REF#5717037027 PAID 10/02 35.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

9/28/2006

Pay to the order of Bill Moldran \$ *****35.00

Thirty-five and no/100***** DOLLARS

Bill Moldran

MEMO Witness Pass: Page v Callaway

#00006052# #000003500/

REF#1716196388 PAID 10/13 35.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

10/6/2006

Pay to the order of Fountain Center HSA \$ *****237.00

Two Hundred Thirty-seven and no/100***** DOLLARS

Fountain Center HSA
c/o TAC Property Management
204 Fountain Center, 55 New Orleans Road
Wilton Road Island, S.C. 29928

MEMO 206 FC: October 2006

#00006053# 40532078642110000744714# #0000023700/

REF#3810457793 PAID 10/13 237.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

10/6/2006

Pay to the order of Park Place HSA \$ *****275.00

Two Hundred Seventy-five and no/100***** DOLLARS

Park Place HSA
c/o TAC Property Management
204 Fountain Center, 55 New Orleans Road
Wilton Road Island, S.C. 29928

MEMO 228 New Circle: October 06

#00006054# #0000027500/

REF#3810457792 PAID 10/13 275.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

10/6/2006

Pay to the order of Option Financial Services \$ *****416.67

Four Hundred Sixteen and 67/100***** DOLLARS

Option Financial Services
P.O. Box 629259
Orlando FL 32863-8259

MEMO Loan # 1312003259: 2953 Crossover

#00006055# #0000041667/

REF#3811186957 PAID 10/16 416.67

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10000
ATLANTA, GA 30310

WACHOVIA BANK, N.A.
07-70-028

10/6/2006

Pay to the order of Georgia Natural Gas \$ *****31.38

Thirty-one and 38/100***** DOLLARS

Georgia Natural Gas
P.O. Box 639411
San Antonio TX 78265-9411

MEMO 002022250-2044192

#00006056# #000003138/

REF#1716198252 PAID 10/13 31.38

-435-



WACHOVIA

Business Checking

03 2110000244314 008 130 0 42 135,606

09/01/2005 thru 09/30/2005

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5940

Pay to the order of Georgia Power 125.87

One Hundred Twenty-five and 87/100 *****

Georgia Power
96 Avenue
Atlanta GA 30395-0001

2956 Cossowyska Forest Circle

MEMO #00005940 #0000012587

REF#5811216508 PAID 9/08 125.87

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5941

Pay to the order of Georgia Natural Gas 38.38

Thirty-eight and 38/100 *****

Georgia Natural Gas
P.O. Box 88411
San Antonio TX 78260-9411

2956 Cossowyska Forest Circle

MEMO #00005941 #0000003838

REF#5311480456 PAID 9/13 38.38

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5942

Pay to the order of Optimum Financial Services 416.67

Four Hundred Sixteen and 67/100 *****

Optimum Financial Services
P.O. Box 228208
Orlando FL 32820-8208

Loan # 1313003259; 2956 Cossowyska

MEMO #00005942 #0000041667

REF#3516049036 PAID 9/09 416.67

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5943

Pay to the order of Ballouch 140.06

One Hundred Forty and 06/100 *****

Ballouch
P.O. Box 108503
Atlanta GA 30309-8503

484 946-0225 490 0326

MEMO #00005943 #0000014006

REF#6213186400 PAID 9/08 140.06

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5944

Pay to the order of Park Place RPR 260.00

Two Hundred Sixty and no/100 *****

Park Place RPR
c/o TAC Property Management
204 Mountain Center
55 New Orleans Road
211 New Road, 2nd floor, S.C. 29920
226 New Circle, September 08

MEMO #00005944 #0000026000

REF#5311307188 PAID 9/12 260.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5945

Pay to the order of Mountain Center RPR 205.00

Two Hundred Five and no/100 *****

Mountain Center RPR
c/o TAC Property Management
204 Mountain Center
55 New Orleans Road
211 New Road, 2nd floor, S.C. 29920
226 New Circle, September 08

MEMO #00005945 #0000020500

REF#3613990547 PAID 9/14 205.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5946

Pay to the order of Henry Physical Therapy, LLC 19.70

Nineteen and 70/100 *****

Henry Physical Therapy, LLC
P.O. Box 102831
Atlanta GA 30308

Physical Therapy

MEMO #00005946 #0000001970

REF#5310332720 PAID 9/09 19.70

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 8828
ATLANTA, GA 30308

WACHOVIA BANK, N.A.
9/4/2005

5947

Pay to the order of Mountain Center RPR 25.00

Twenty-five and no/100 *****

Mountain Center RPR
c/o TAC Property Management
204 Mountain Center
55 New Orleans Road
211 New Road, 2nd floor, S.C. 29920
226 New Circle, September 08

MEMO #00005947 #0000002500

REF#1717667174 PAID 9/14 25.00

-436-



Business Checking

03 2110000244314 008 135 0 42 117,643

WACHOVIA

03/01/2005 thru 03/31/2005

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Bino Cans - Bino Shield of GA

Three Hundred Sixty-One and no/100

Bino Cans - Bino Shield of GA
Attn: 000703
P.O. Box 4003
Atlanta GA 30302

MEMO: 035A441651

REF#1919396502 PAID 3/08 371.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Pickens County Clerk of Court

Twenty-Five and no/100

Pickens County Clerk of Court

MEMO: Country Walk vs Cherokee filing fee

REF#3416671754 PAID 3/03 25.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Beaufort County Clerk of Court

Twenty-Five and no/100

Beaufort County Clerk of Court

MEMO: File motion: Pappalardo v Burch

REF#3416450108 PAID 3/03 25.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Post Loans Park

Eight Hundred Thirty-Three and 55/100

Post Loans Park

MEMO: rent, studio Bc, water, sewer, March 05

REF#6217923299 PAID 3/04 833.55

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Fountain Center HPR

Two Hundred Five and no/100

Fountain Center HPR
c/o TLC Property Management
204 Fountain Center
Fishes Head Island, S.C. 29928

MEMO: March Fees: 206 FC

REF#3512970850 PAID 3/17 205.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

03/08/08 81664 11907 P04 0732748002

PAY TO THE ORDER OF: Tanglewood Villas HPR

Two Hundred Ninety-Five and no/100

Tanglewood Villas HPR
Fountain Center
P.O. Box 103007
Atlanta, Ga 30343-5007

MEMO: P06 TV

REF#3811864032 PAID 3/08 295.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: Park Place HPR

Two Hundred Sixty and no/100

Park Place HPR
c/o TLC Property Management
204 Fountain Center
Fishes Head Island, S.C. 29928

MEMO: 229 Bow Circle: Regular Fee

REF#5710262484 PAID 3/16 260.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 4003
ALANTA, GA 30302

WACHOVIA BANK, N.A.
ATLANTA, GA 30302

3/2/05

PAY TO THE ORDER OF: BallBooth

One Hundred Seventy and 21/100

BallBooth

MEMO: Acc 6404-846-023 490 0350

REF#6114757659 PAID 3/07 170.21

-437-



WACHOVIA

Business Checking

03 2110000244314 008 130 0 66 94,532

12/01/2007 thru 12/31/2007

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

11/11/2007

Pay to the order of South Carolina Bar \$345.00
Three Hundred Forty Five and no/100

South Carolina Bar
P.O. Box 608
Columbia, S.C. 29202-0608

MEMO 2008 License Fee

#00006195#

REF#0156831560 PAID 12/11 345.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

11/18/2007

Pay to the order of Beaufort County Clerk of Court \$25.00
Twenty Five and no/100

Beaufort County Clerk of Court

MEMO File Motion: Passalunghi vs Bersch

#00006195#

REF#3312064007 PAID 12/04 25.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

12/4/2007

Pay to the order of AT&T \$157.31
One Hundred Fifty Seven and 31/100

AT&T
Dept. 91064
Network Services/AT&T
P.O. Box 56000
Atlanta, GA 30356

MEMO 404 845-0228 490 0358

#00006195#

REF#6219574443 PAID 12/10 157.31

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

12/4/2007

Pay to the order of EverHome Mortgage Company \$416.67
Four Hundred Sixteen and 67/100

EverHome Mortgage Company
P.O. Box 530578
Atlanta GA 30353-0578

MEMO Loan #9000419207

#00006195#

REF#5816894474 PAID 12/10 416.67

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

12/4/2007

Pay to the order of Georgia Natural Gas \$78.21
Seventy Eight and 21/100

Georgia Natural Gas
P.O. Box 859411
San Antonio TX 78285-9411

MEMO 00202258-2044192

#00006195#

REF#5455033340 PAID 12/12 78.21

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

12/4/2007

Pay to the order of Park Place HPR \$309.00
Three Hundred Nine and no/100

Park Place HPR
c/o TLC Property Management
204 Fountain Center, 55 New Orleans Road
Hilton Head Island, S.C. 29928

MEMO 22 B: December 07

#00006195#

REF#1717017518 PAID 12/11 309.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 19008
ATLANTA, GA 30319

WACHOVIA BANK, N.A.
6775 523

12/4/2007

Pay to the order of Fountain Center HPR \$267.00
Two Hundred Sixty Seven and no/100

Fountain Center HPR
c/o TLC Property Management
204 Fountain Center, 55 New Orleans Road
Hilton Head Island, S.C. 29928

MEMO 208 FC: December 2007

#00006195#

REF#1717017517 PAID 12/11 267.00

-438-



Business Checking

04 2110000244314 008 130 0 66 107,918

WACHOVIA

05/01/2007 thru 05/31/2007

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10227
ATLANTA, GA 30301-1027

WACHOVIA BANK, N.A.
6779-002

4/28/2007

6130

PAID TO THE ORDER OF DeKalb County Water Sewer System

Forty-Two and 00/100

DeKalb County Water Sewer System
P.O. Box 10227
Doraville GA 30031-1027

MEMO 2062 Crosswicks Forest Circle; 3430887

000006130 00000004260

REF#3817572047 PAID 5/03 42.60

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10228
ATLANTA, GA 30301-1028

WACHOVIA BANK, N.A.
6779-002

4/28/2007

6131

PAID TO THE ORDER OF AT&T

One Hundred Eighty-One and 21/100

AT&T
Dept. 01504
Network Services/AT&T
P.O. Box 65000
Atlanta, GA 30328-0500

MEMO 404 945-2228 404 0350

000006131 00000018121

REF#2212957367 PAID 5/02 181.21

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10229
ATLANTA, GA 30301-1029

WACHOVIA BANK, N.A.
6779-002

4/28/2007

6132

PAID TO THE ORDER OF Park Place HPR

Two Hundred Eighty and no/100

Park Place HPR
c/o TLC Property Management
204 Fountain Center, 55 New Orleans Road
Hilton Head Island, S.C. 29928

MEMO 22 B: May 07

000006132 00000028000

REF#3413443120 PAID 5/04 280.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10230
ATLANTA, GA 30301-1030

WACHOVIA BANK, N.A.
6779-002

4/28/2007

6133

PAID TO THE ORDER OF Fountain Center HPR

Two Hundred Sixty-Seven and no/100

Fountain Center HPR
c/o TLC Property Management
204 Fountain Center, 55 New Orleans Road
Hilton Head Island, S.C. 29928

MEMO 206 FC: May 2007

000006133 00000026700

REF#3413443121 PAID 5/04 267.00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 10231
ATLANTA, GA 30301-1031

WACHOVIA BANK, N.A.
6779-002

5/7/2007

6134

PAID TO THE ORDER OF Beaufort County Clerk of Court

Twenty-Five and no/100

Beaufort County Clerk of Court

MEMO 00-534
File Motion: Pessaboudas vs Benach

000006134 00000002500

REF#3612692138 PAID 5/21 25.00

-439-

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 95310
ATLANTA, GA 30347

FIRST UNION NATIONAL BANK
67-776-532

5274

11/2/01

PAY TO THE
ORDER OF

Coastal Court Reporting, Inc.

\$ *****2,496.00

Two Thousand Four Hundred Ninety-Six and no/100*****

DOLLARS

Coastal Court Reporting, Inc.
P.O. Box 7349
Hilton Head Island, S.C. 29938

MEMO

Passaloukas vs Bensch

⑈00005274⑈

⑈0000249600⑈

Security Features Included. Details on back.

CR0374/07-00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 95310
ATLANTA, GA 30347

FIRST UNION NATIONAL BANK
67-776-532

5395

5/15/02

PAY TO THE
ORDER OF Debbie Criscitiello

\$ ***** 836.00

~~Eight Hundred Thirty-Six and no/100~~***** DOLLARS

Debbie Criscitiello
33 Battery Lane
Beaufort SC 29902

MEMO Passaloukas vs Bensch trial transcript

⑈00005395⑈

⑈0000083600⑈

Details on back.
Security Features Included.

00007407-00

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 95310
ATLANTA, GA 30347

FIRST UNION NATIONAL BANK
67-776-532

5373

4/23/02

PAY TO THE ORDER OF Beaufort County Master in Equity

\$ ***** 50.00

Fifty and no/100***** DOLLARS

Beaufort County Master in Equity
P.O. Drawer 1228
Beaufort SC 29901

MEMO Passaloukas vs Bensch: masters' fee

⑈00005373⑈

⑈0000005000⑈

080574/07-00

* Holiday Inn

Name & Address

FRANK PAGE

Room 208-11

Arrive Date 7/11/74

Dept. Date 7-11-74

Folio # 1128

Room Rate \$11.28

Account 2-123456

Mkt/Seg 4-101

IF EVERYTHING ON THIS FOLIO IS CORRECT, SIMPLY CALL THE FRONT DESK

TO ADVISE THEM OF YOUR DEPARTURE AND TO REGISTER YOURSELF TO THE FOLIO AND TO MY ACCOUNT TO MY CREDIT CARD WHICH WAS PRESENTED UPON REGISTRATION.

STAYING WITH US. GUEST SERVICES

SIGNATURE

Frank Check-Out

The management is not responsible for any valuables not secured in safety deposit boxes provided at the front office. I agree that my liability for the charges is not waived and agree to be held personally liable in the event that the indicated person, company or association fails to pay for any part or the full amount of such charges.

X
SIGNATURE

DATE	CODE	REFERENCE	ID	DESCRIPTION	CHARGE	PAYMENT	BALANCE

0913	114	0913000	ENC	DISCOUNT ROOM	90.00\$	00\$	90.00\$
0913	211	0913001	ENC	ROOM TAX	0.00\$	00\$	90.00\$
0913	431	0913002	ENC	LOCAL PHONE	1.00\$	00\$	100.00\$

TOTAL

100.00\$

*
Holiday Inn

ACCT. NO. XXXXXXXXXXXXXXXXXX
CARD MEMBER NAME XXXXXXXXXXXXXXXXXXXX
ESTABLISHMENT NO. & LOCATION HOLIDAY INN - COLISEUM COLUMBIA AT USC 30 ASSEMBLY STREET COLUMBIA, SC 29201
CARD MEMBER'S SIGNATURE X

DATE OF CHARGE 7/11/74	FOLIO NO./CHECK NO. 11-111111-11
AUTHORIZATION XXXXXX	I.D. XX
PURCHASES & SERVICES XXXXXXXXXX	
TOTAL AMOUNT XXXXXXXXXX	

Debbie Criscitiello

Professional Verbatim Reporter
Beaufort, South Carolina 29901
(843) 525-0791 (800) 543-5506

★ Invoice for Services Rendered ★

Date: May 13, 2002

Bill to: Frank F. Pape, Jr., Esquire
P.O. Box 95310
Atlanta, GA 30347

PLEASE REMIT PAYMENT TO:
Debbie Criscitiello
Professional Verbatim Reporter
33 Battery Lane
Beaufort, SC 29902

Tax I.D. No. [REDACTED]

Re: Master in Equity Proceeding
January 31 and February 1, 2002
Passaloukas v. Bensch & Zorba's, Inc.

One Copy:

\$880.00

(Original to Judge Kemmerlin)

** 5% Discount if paid before May 23, 2002 **

FRANK F. PAPE, JR.
ATTORNEY AT LAW - OPERATING ACCOUNT
P.O. BOX 95310
ATLANTA, GA 30347

FIRST UNION NATIONAL BANK
67-776-532

5410

6/10/02

PAY TO THE
ORDER OF Paralegal Services, Inc.

\$ ***** 168.00

One Hundred Sixty-Eight and no/100 ***** DOLLARS

Paralegal Services, Inc.
P.O. Box 89
Beaufort SC 29901

MEMO 02 1933

⑈00005410⑈

⑈[REDACTED]1000⑈

⑈0000016800⑈

Security Features Included. Details on back.

080974/07-00

PrintWave

innovative print and copy

2859 Paces Ferry Road • Suite 450
Atlanta, Georgia 30339
1 770 433-2628 • Fax 770 433-1554

Invoice

No. **8192**

Frank Pape

Date 11/14/03

Customer P.O. No. frank pape

TERMS: Net on receipt

Failure to present any claim by the customer within 5 days from date of delivery shall constitute a waiver of every such claim or claims

• Payments received 30 days beyond invoice date are subject to a 5% service charge per month

QUANTITY	DESCRIPTION	AMOUNT
20	Record on Appeal, 8.5 x 11 White 20# Xerox Bond, 241 originals, copied on 2 sides	582.00
	20 1 1/2" velo blind	
20	Covers and Backs, 8.5 x 11 White 80# Cougar Cover, copied on 1 side	5.00

as Rep: kim
en by: kim
ount Type: Charge
ase pay from this invoice.

nk

-446-

SUBTOTAL	587.00
TAX	29.35
SHIPPING	
TOTAL	616.35

PO Box 89
Beaufort, SC 29901

DATE	INVOICE NO.
05/15/2002	02 1933

BILL TO

Frank F. Pape, Jr.
P.O. Drawer 5665
Hilton Head Island, S.C. 29938

[illegible]

Para-Legal Services, Inc.

PO Box 89

Beaufort, SC 29901

Invoice

DATE	INVOICE NO.
05/15/2002	02 1933

BILL TO

Frank F. Pape, Jr.
P.O. Drawer 5665
Hilton Head Island, S.C. 29938

REP	ATTY FILE#	OWNER	PURCHASER	PROPERTY	PURPOSE	REQUESTOR
LC	Passaloukas v...	na	na	na	Exhibits Copies	Frank

DESCRIPTION	AMOUNT
Information Request	15.00
Copy Costs	144.00
Postage Charges	9.00

Total

\$168.00

Best Western Sea Island Inn

Page 1 of 1

PO Box 1479

Beaufort, SC 29901

843-522-2090 fax 843-521-4858

seaislandinn1@yahoo.com - sea-island-inn.com

Frank Pape

P.O. Box 190009

Atlanta, GA 31119

Room	Folio	CheckIn	CheckOut	Balance
142	59995	03/30/2008	03/31/2008	0.00
Master Folio		SunMonTue: 119.99 WeThFrSat: 119.99		

Date	Room	Description	Charges	Credits	Balance
03/30/2008	142	Room Charge Taxable	119.99	0.00	119.99
03/30/2008	142	Sales Tax - 6.000%	7.20	0.00	127.19
03/30/2008	142	Accommodations Tax - 2.000%	2.40	0.00	129.59
03/30/2008	142	City Tax - 3.000%	3.60	0.00	133.19
03/31/2008	142	Visa/Mastercard	0.00	133.19	0.00

ESC

03/31/2008 12:29 AM

Thank you for staying with us!
Each Best Western Hotel is
independently owned and operated.

-449-

Coastal Court Reporting & Video

Post Office Box 7349
Hilton Head, South Carolina 29938
843-785-7739 Beaufort 525-9600
FED. ID [REDACTED]

Invoice

DATE	INVOICE #
9/9/2008	33606

BILL TO
FRANK KPAPE, ESQUIRE Post Office Box 190009 Atlanta, Georgia 31119

TERMS	REP
Due on receipt	CW

DESCRIPTION	AMOUNT
BILL P. PASSALOUKAS -VS- CYNTHIA BENSCH Original & copy of deposition of Robert Steinberg, taken on September 5, 2008.	251.00
Thank you for your business. Interest is charged at 1 1/2% per month on outstanding balances.	Total \$251.00

JOANNE B. McDONALD
CERTIFIED COURT REPORTER
Post Office Box 2196
Ridgeland, South Carolina 29936
(843) 726-8936

STATEMENT FOR SERVICES RENDERED

TO: Frank Pape, Esquire

RE: Passaloukas v. Bensch

ORIGINAL AND ONE COPY (421 Pages)
(Original is filed with Court) \$ 1935.00

COPY ONLY \$

DEPOSIT \$ 0

TOTAL AMOUNT NOW DUE \$ 1935.00

Invoices Are Due And Payable Upon Receipt

FedEx Kinko's

Office and Print Center

3637 PEACHTREE RD NE
ATLANTA, GA 30319

Location: PDKKS
Device ID: PDKKS-POS2
Employee: 2260847
Transaction: 68014203514

FEDEX HOME DELIVERY

468887210099105 7.40 1b (S) \$9.68
Box 18x12.5x3
790363025849 1 (T) \$2.00

Shipment subtotal: \$9.68
Merchandise taxable subtotal: \$2.00
Tax(GA) 4.000% \$0.08
Tax(City) 1.000% \$0.02
Tax(County) 2.000% \$0.04
Tax(County2) 1.000% \$0.02
Total Due: \$11.84

Cash: \$20.00

Change Due: \$8.16

M = Weight entered manually
S = Weight read from scale
T = Taxable item

Subject to additional charges. See FedEx Service Guide at fedex.com for details. All merchandise sales final. FedEx disclaims all warranties, express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. This packaging is sold 'as is' 'with all faults.' By paying for and accepting this packaging, you agree to release and hold FedEx harmless for any claims, suits, disputes or causes of action relating to this packaging as well as any related incidental or consequential damages incurred by you or any other party.

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August 17, 2008 2:23:02 PM

MICHAEL W. MOGIL, ESQ.
303 Professional Building
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676

Admitted in SC, NY, PA

December 21, 1999

Anthony F. Griffis, Esq.
By Fax: 837-3778

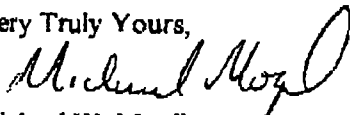
Re: Zorba's Inc

Dear Tony:

I have communicated your proposal regarding transfer of control to the Bensch's and am awaiting their response. In the meantime, Mrs. Bensch asked me to remind you to inform Bill that rent had not been received for December as of this morning, and he is in danger of triggering the late fee provision again

I will certainly contact you as soon as I hear further from the Bensch's.

Very Truly Yours,


Michael W. Mogil

PLAINTIFF'S
EXHIBIT

32

Form 1065

Department of the Treasury Internal Revenue Service

U.S. Return of Partnership Income 2000

See separate instructions.

IRS use only — Do not write or staple in this space.

For calendar year 2000, or tax year beginning Jan 1, 2000, and ending May 2, 2000.

OMB No. 1545-0099

A Principal Business Activity Restaurant		Use the IRS label. Otherwise, print or type.	Name of Partnership Nicolis Cafe LLC		D Employer Identification Number [REDACTED]
B Principal Product or Service Food and Beverage			Number, Street, and Room or Suite Number. (If a P.O. Box, See Instructions.) PO Box 22242		E Date Business Started 01/01/00
C Business Code Number 722110			City or Town Hilton Head Island		F Total Assets (See instructions) \$ 0.

G Check applicable boxes: (1) ☒ Initial return (2) ☒ Final return (3) ☐ Change in address (4) ☐ Amended return

H Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) _____

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year _____

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

INCOME	1a Gross receipts or sales	1a	37,622.	
	b Less returns and allowances	1b		1c 37,622.
	2 Cost of goods sold (Schedule A, line 8)	2		18,819.
	3 Gross profit. Subtract line 2 from line 1c	3		18,803.
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)	4		
	5 Net farm profit (loss) (attach Schedule F (Form 1040))	5		
	6 Net gain (loss) from Form 4797, Part II, line 18	6		72,908.
	7 Other income (loss) (attach schedule)	7		
8 Total income (loss). Combine lines 3 through 7	8		91,711.	
DEDUCTIONS FOR LIMITATIONS	9 Salaries and wages (other than to partners) (less employment credits)	9		29,093.
	10 Guaranteed payments to partners	10		
	11 Repairs and maintenance	11		400.
	12 Bad debts	12		
	13 Rent	13		8,800.
	14 Taxes and licenses	14		2,854.
	15 Interest	15		
	16a Depreciation (if required, attach Form 4562)	16a	8.	
	b Less depreciation reported on Schedule A and elsewhere on return	16b		16c 8.
	17 Depletion (Do not deduct oil and gas depletion.)	17		
	18 Retirement plans, etc.	18		
	19 Employee benefit programs	19		
	20 Other deductions (attach schedule)	20		9,315.
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20	21		50,470.
22 Ordinary income (loss) from trade or business activities. Subtract line 21 from line 8	22		41,241.	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of General Partner or Limited Liability Company Member

Date

Paid Preparer's Use Only

Preparer's Signature

Date

Check if self-employed

Preparer's SSN or PTIN

Firm's Name (or yours if self-employed), Address, and ZIP Code

Self Prepared

PLAINTIFF'S EXHIBIT

No.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2000)

PTPA0112 11/29/00

-454-

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5 (2000) Nicolis Cafe LLC

Page 2

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	0.
2	Purchases less cost of items withdrawn for personal use	2	18,819.
3	Cost of labor	3	
4	Additional Section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	18,819.
7	Inventory at end of year	7	0.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	18,819.

Ba Check all methods used for valuing closing inventory:

- (i) ☒ Cost as described in Regulations Section 1.471-3
 (ii) ☐ Lower of cost or market as described in Regulations Section 1.471-4
 (iii) ☐ Other (specify method used and attach explanation)

b Check this box if there was a writedown of 'subnormal' goods as described in Regulations Section 1.471-2(c)

c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)

d Do the rules of Section 263A (for property produced or acquired for resale) apply to the partnership? Yes ☐ No ☒e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? Yes ☐ No ☒

If 'Yes', attach explanation

Schedule B Other Information

	Yes	No
1 What type of entity is filing this return? Check the applicable box:		
a ☐ Domestic general partnership		
b ☐ Domestic limited partnership		
c ☒ Domestic limited liability company		
d ☐ Domestic limited liability partnership		
e ☐ Foreign partnership		
f ☐ Other		
2 Are any partners in this partnership also partnerships?		X
3 During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations Sections 301.7701-2 and 301.7701-3? If yes, see instructions for required attachment		X
4 Is this partnership subject to the consolidated audit procedures of Sections 6221 through 6233? If 'Yes,' see Designation of Tax Matters Partner below		X
5 Does this partnership meet all three of the following requirements? a The partnership's total receipts for the tax year were less than \$250,000; b The partnership's total assets at the end of the tax year were less than \$600,000; and c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return. If 'Yes,' the partnership is not required to complete Schedules L, M-1, and M-2; item F on page 1 of Form 1065; or item J on Schedule K-1	X	
6 Does this partnership have any foreign partners?		X
7 Is this partnership a publicly traded partnership as defined in Section 469(k)(2)?		X
8 Has this partnership filed, or is it required to file, Form 8264, Application for Registration of a Tax Shelter?		X
9 At any time during calendar year 2000, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If 'Yes,' enter the name of the foreign country		X
10 During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If 'Yes,' the partnership may have to file Form 3520. See instructions		X
11 Was there a distribution of property or a transfer (e.g., by sale or death) of a partnership interest during the tax year? If 'Yes,' you may elect to adjust the basis of the partnership's assets under Section 754 by attaching the statement described in the instructions under Elections Made by the Partnership	X	
12 Enter the number of Forms 8865 attached to this return		

Designation of Tax Matters Partner (see instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of Designated TMP → Gary M Bensch

Identifying Number of TMP →

Address of Designated TMP → PO Box 22242, Hilton Head Island
SC, SC 29938

(2000) Nicolis Cafe LLC

Page 3

Partners' Shares of Income, Credits, Deductions, etc

(a) Distributive share items		(b) Total amount	
Income (Loss)	1 Ordinary income (loss) from trade or business activities (page 1, line 22)	1	41,241.
	2 Net income (loss) from rental real estate activities (attach Form 8825)	2	
	3a Gross income from other rental activities	3a	
	b Expenses from other rental activities (attach schedule)	3b	
	c Net income (loss) from other rental activities. Subtract line 3b from line 3a	3c	
	4 Portfolio income (loss):	4a	
	a Interest income	4b	
	b Ordinary dividends	4c	
	c Royalty income	4d	
	d Net short-term capital gain (loss) (attach Schedule D (Form 1065))	4e	
	e Net long-term capital gain (loss) (attach Schedule D (Form 1065)):	4e (2)	
	(1) 28% rate gain (loss)	(2) Total for year	
	f Other portfolio income (loss) (attach schedule)	4f	
	5 Guaranteed payments to partners	5	
6 Net Section 1231 gain (loss) (other than due to casualty or theft) (attach Form 4797)	6		
7 Other income (loss)	7		
Deductions	8 Charitable contributions (attach schedule)	8	
	9 Section 179 expense deduction (attach Form 4562)	9	
	10 Deductions related to portfolio income (itemize)	10	
	11 Other deductions	11	
Credits	12a Low-income housing credit:		
	(1) From partnerships to which Section 42(j)(5) applies for property placed in service before 1990	12a (1)	
	(2) Other than on line 12a(1) for property placed in service before 1990	12a (2)	
	(3) From partnerships to which Section 42(j)(5) applies for property placed in service after 1989	12a (3)	
	(4) Other than on line 12a(3) for property placed in service after 1989	12a (4)	
	b Qualified rehabilitation expenditures related to rental real estate activities (attach Form 3468)	12b	
	c Credits (other than credits shown on lines 12a and 12b) related to rental real estate activities	12c	
d Credits related to other rental activities	12d		
13 Other credits	13		
Investment Interest	14a Interest expense on investment debts	14a	
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	14b (1)	
	(2) Investment expenses included on line 10 above	14b (2)	
Self-Employment	15a Net earnings (loss) from self-employment	15a	-31,667.
	b Gross farming or fishing income	15b	
	c Gross nonfarm income	15c	18,803.
Adjustments and Tax Preference Items	16a Depreciation adjustment on property placed in service after 1986	16a	0.
	b Adjusted gain or loss	16b	0.
	c Depletion (other than oil and gas)	16c	
	d (1) Gross income from oil, gas, and geothermal properties	16d (1)	
	(2) Deductions allocable to oil, gas, and geothermal properties	16d (2)	
	e Other adjmnts & tax pref items	16e	
Foreign Taxes	17a Name of foreign country or U.S. possession		
	b Gross income sourced at partner level	17b	
	c Foreign gross income sourced at partnership level:		
	(1) Passive	(2) Listed categories (attach sch.)	(3) General limitation
	d Deductions allocated and apportioned at partner level:		
	(1) Interest expense	(2) Other	
	e Deductions allocated and apportioned at partnership level to foreign source income:		
	(1) Passive	(2) Listed categories (attach sch.)	(3) General limitation
	f Total foreign taxes (check one): ☐ Paid ☐ Accrued	17f	
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	17g		
Other	18 Section 59(e)(2) expenditures: a Type	b Amount	
	19 Tax-exempt interest income	19	
	20 Other tax-exempt income	20	
	21 Nondeductible expenses	21	
	22 Distributions of money (cash and marketable securities)	22	70,927.
	23 Distributions of property other than money	23	
24 Other items and amounts required to be reported separately to partners (attach schedule)			

(2000) Nicolis Cafe LLC
Analysis of Net Income (Loss)

Page 4

1	Net income (loss). Combine Schedule K, lines 1 through 7 in column (b). From the result, subtract the sum of Schedule K, lines 8 through 11, 14a, 17f, and 18b	1	41,241.
2	Analysis by partner type:		
	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)
	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other
a General partners			
b Limited partners	41,241.		

Schedule L Balance Sheets per Books (Not required if question 5 on Schedule B is answered 'Yes.')

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		0.		0.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories		0.		0.
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach schedule)				
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9a Buildings and other depreciable assets				
b Less accumulated depreciation				
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)				
b Less accumulated amortization				
13 Other assets (attach schedule)				
14 Total assets		0.		0.
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach sch)				
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach schedule)				
21 Partners' capital accounts		0.		0.
22 Total liabilities and capital		0.		0.

Schedule M-1 Reconciliation of Income (Loss) per Books with Income (Loss) per Return
(Not required if question 5 on Schedule B is answered 'Yes.' See instructions.)

1	Net income (loss) per books	41,241.	6	Income recorded on books this year not included on Schedule K, lines 1 through 7 (itemize):	
2	Income included on Schedule K, lines 1 through 4, 6, and 7, not recorded on books this year (itemize):		a	Tax-exempt interest	\$
3	Guaranteed payments (other than health insurance)		7	Deductions included on Schedule K, lines 1 through 11, 14a, 17f, and 18b, not charged against book income this year (itemize):	
4	Expenses recorded on books this year not included on Schedule K, lines 1 through 17, 14a, 17f, and 18b (itemize):		a	Depreciation	\$
a	Depreciation	\$	8	Add lines 6 and 7	
b	Travel and entertainment	\$	9	Income (loss) (Analysis of net income (loss), line 1). Subtract line 8 from line 5	41,241.
5	Add lines 1 through 4	41,241.			

Schedule M-2 Analysis of Partners' Capital Accounts (Not required if question 6 on Schedule B is answered 'Yes.')

1	Balance at beginning of year	0.	6	Distributions: a Cash	70,927.
2	Capital contributed during year	29,686.	b	Property	
3	Net income (loss) per books	41,241.	7	Other decreases (itemize):	
4	Other increases (itemize):		8	Add lines 6 and 7	70,927.
5	Add lines 1 through 4	70,927.	9	Balance at end of year. Subtract line 8 from line 5	0.

PTPA0134 11/30/00

Form 10

-457-

362

Depreciation and Amortization (Including Information on Listed Property)

OMB No. 1545-0172

2000

67

Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions.
▶ Attach this form to your return.

Name(s) Shown on Return

Business or Activity to Which This Form Relates

Identifying Number

Nicolis Cafe LLC

Form 1065 Line 22

Part I Election to Expense Certain Tangible Property (Section 179)

Note: If you have any 'listed property,' complete Part V before you complete Part I.

1	Maximum dollar limitation. If an enterprise zone business, see instructions	1	\$20,000.
2	Total cost of Section 179 property placed in service. See instructions	2	
3	Threshold cost of Section 179 property before reduction in limitation	3	\$200,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter amount from line 27	7	
8	Total elected cost of Section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from 1999. See instructions	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2001. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

Part II MACRS Depreciation for Assets Placed in Service Only During Your 2000 Tax Year (Do not include listed property.)

Section A - General Asset Account Election

- 14 If you are making the election under Section 168(j)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box. See instructions ☐

Section B - General Depreciation System (GDS) (See instructions)

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
15a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
i Nonresidential real property	01/00	914.	39 yrs	MM	S/L	8.

Section C - Alternative Depreciation System (ADS) (See instructions)

16a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

Part III Other Depreciation (Do not include listed property.) (See instructions)

17	GDS and ADS deductions for assets placed in service in tax years beginning before 2000	17	
18	Property subject to Section 168(f)(1) election	18	
19	ACRS and other depreciation	19	

Part IV Summary (See instructions)

20	Listed property. Enter amount from line 26	20	
21	Total. Add deductions from line 12, lines 16 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instructions	21	8.
22	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to Section 263A costs	22	

Work Reduction Act Notice, see instructions.

FD-20812 10/26/00

Form 4562 (2000)

(2000) Nicolis Cafe LLC

Page 2

Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 23a, 23b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A — Depreciation and Other Information (Caution: See instructions for limits for passenger automobiles.)

23a Do you have evidence to support the business/investment use claimed?					Yes	No	23b If 'Yes,' is the evidence written?					Yes	No
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/Convention	(h) Depreciation deduction	(i) Elected Section 179 cost					
24 Property used more than 50% in a qualified business use (see instructions):													
25 Property used 50% or less in a qualified business use (see instructions):													
26 Add amounts in column (h). Enter the total here and on line 20, page 1							26						
27 Add amounts in column (i). Enter the total here and on line 7, page 1							27						

Section B — Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1	(b) Vehicle 2	(c) Vehicle 3	(d) Vehicle 4	(e) Vehicle 5	(f) Vehicle 6
28 Total business/investment miles driven during the year (do not include commuting miles — see instructions)						
29 Total commuting miles driven during the year						
30 Total other personal (noncommuting) miles driven						
31 Total miles driven during the year. Add lines 28 through 30						
	Yes	No	Yes	No	Yes	No
32 Was the vehicle available for personal use during off-duty hours?						
33 Was the vehicle used primarily by a more than 5% owner or related person?						
34 Is another vehicle available for personal use?						

Section C — Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons. See instructions.

35 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No
36 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See instructions for vehicles used by corporate officers, directors, or 1% or more owners		
37 Do you treat all use of vehicles by employees as personal use?		
38 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
39 Do you meet the requirements concerning qualified automobile demonstration use? See instructions		

Note: If your answer to 35, 36, 37, 38, or 39 is 'Yes,' you need not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Costs Section	(e) Amortization period or percentage	(f) Amortization for this year
40 Amortization of costs that begins during your 2000 tax year (see instructions):					
41 Amortization of costs that began before 2000					41
42 Total. Add amounts in column (f). See instructions for where to report					42

Form **4797****Sales of Business Property**

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return. ▶ See separate instructions.

OMB No. 1545-0184

2000**27**Department of the Treasury
Internal Revenue Service (99)

Name(s) Shown on Return

Nicolis Cafe LLC

Identifying Number

- 1 Enter the gross proceeds from sales or exchanges reported to you for 2000 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)

1

Part II Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions from Other Than Casualty or Theft – Most Property Held More Than 1 Year (See instructions.)

2	(a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

- 3 Gain, if any, from Form 4684, line 39

3

- 4 Section 1231 gain from installment sales from Form 6252, line 26 or 37

4

- 5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824

5

- 6 Gain, if any, from line 32, from other than casualty or theft

6

- 7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows

7

Partnerships (except electing large partnerships). Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 6. Skip lines 8, 9, 11, and 12 below.

S corporations. Report the gain or (loss) following the instructions for Form 1120S, Schedule K, lines 5 and 6. Skip lines 8, 9, 11, and 12 below, unless line 7 is a gain and the S corporation is subject to the capital gains tax.

All others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on Schedule D and skip lines 8, 9, and 12 below.

- 8 Nonrecaptured net section 1231 losses from prior years (see instructions)

8

- 9 Subtract line 8 from line 7. If zero or less, enter -0-. Also enter on the appropriate line as follows (see instructions)

9

S corporations. Enter any gain from line 9 on Schedule D (Form 1120S), line 15, and skip lines 11 and 12 below.

All others. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below, and enter the gain from line 9 as a long-term capital gain on Schedule D.

Part III Ordinary Gains and Losses

- 10 Ordinary gains and losses not included on lines 11 through 17 (include property held 1 year or less):

Equipment/Inventory	01/01/00	05/02/00	35400	0	0	35400
Goodwill	01/01/00	05/02/00	37500		0	37500
Equipment	01/01/00	05/02/00	1186	0	1186	0
Leasehold improvements	01/01/00	05/02/00	914	8	914	8

- 11 Loss, if any, from line 7

11

- 12 Gain, if any, from line 7 or amount from line 8, if applicable

12

- 13 Gain, if any, from line 31

13

- 14 Net gain or (loss) from Form 4684, lines 31 and 38a

14

- 15 Ordinary gain from installment sales from Form 6252, line 25 or 36

15

- 16 Ordinary gain or (loss) from like-kind exchanges from Form 8824

16

- 17 Recapture of section 179 expense deduction for partners and S corporation shareholders from property dispositions by partnerships and S corporations (see instructions)

17

- 18 Combine lines 10 through 17. Enter the gain or (loss) here and on the appropriate line as follows

18

72,908.

a For all except individual returns: Enter the gain or (loss) from line 18 on the return being filed.

b For individual returns:

(1) If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 27, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 22. Identify as from Form 4797, line 18b(1). See instructions

18b(1)

(2) Redetermine the gain or (loss) on line 18 excluding the loss, if any, on line 18b(1). Enter here and on Form 1040, line 14

18b(2)

For Paperwork Reduction Act Notice, see Instructions.

Form 4797 (2000)

FD121001 11/08/00

-460-

8594

July 1998

Department of the Treasury
Internal Revenue ServiceAsset Acquisition Statement
Under Section 1060

OMB No. 1545-1021

▶ Attach to your Federal income tax return.

61

Name as Shown on Return

Identification Number as Shown on Return

Nicolis Cafe LLC

Check the box that identifies you ☐ Buyer☒ Seller**Part I** General Information — To be completed by all filers.

1 Name of Other Party to the Transaction

Other Party's Identification Number

Mi Tierra Bluffton, Inc.

Address (number, street, and room or suite number)

27 Mellichamp, Ste 101

City

State

ZIP Code

Bluffton

SC

29910

2 Date of Sale

05/02/00

3 Total Sales Price

75,000.

Part II Assets Transferred — To be completed by all filers of an original statement.

4 Assets	Aggregate Fair Market Value (Actual Amount for Class I)	Allocation of Sales Price
Class I	\$	\$
Class II	\$	\$
Class III	\$	\$
Classes IV and V	\$	\$
Equipment and Goodwill	75,000.	75,000.
Total	\$ 75,000.	\$ 75,000.

5 Did the buyer and seller provide for an allocation of the sales price in the sales contract or in another written document signed by both parties? ☒ Yes ☐ NoIf 'Yes,' are the aggregate fair market values listed for each of asset Classes I, II, III, IV and V the amounts agreed upon in your sales contract or in a separate written document? ☒ Yes ☐ No6 In connection with the purchase of the group of assets, did the buyer also purchase a license or a covenant not to compete, or enter into a lease agreement, employment contract, management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller)? ☐ Yes ☒ No

If 'Yes,' specify (a) the type of agreement, and (b) the maximum amount of consideration (not including interest) paid or to be paid under the agreement. See instructions.

K-1
1065

Partner's Share of Income, Credits, Deductions, Etc

OMB No. 1545-0099

2000

Department of the Treasury
Internal Revenue ServiceFor calendar year 2000 or tax year
beginning Jan 1, 2000, and ending May 2, 20 00Partner's identifying number
Partner's Name, Address, and ZIP CodeGary M Bensch
PO Box 22242
Hilton Head Island
SC, SC 29938Partnership's identifying number
Partnership's Name, Address, and ZIP CodeNicolis Cafe LLC
PO Box 22242
Hilton Head Island, SC 29925A This partner is a ☐ general partner ☐ limited partner
☒ limited liability company member

B What type of entity is this partner? ... Individual

C Is this partner a ☒ domestic or a ☐ foreign partner?D Enter partner's % of: (i) Before change or termination (ii) End of year
Profit sharing 100.00000% 100.00000%
Loss sharing 100.00000% 100.00000%
Ownership of capital .. 100.00000% 100.00000%

E IRS Center where partnership filed return: Cincinnati, OH

F Partner's share of liabilities:

Nonrecourse \$
Qualified nonrecourse financing \$
Other \$

G Tax shelter registration number

H Check here if this partnership is a publicly traded partnership as defined in section 469(k)(2) ☐I Check applicable boxes: (1) ☒ Final K-1 (2) ☐ Amended K-1

J Analysis of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Partner's share of lines 3, 4, and 7, Form 1065, Schedule M-2	(d) Withdrawals and distributions	(e) Capital account at end of year (combine columns (a) through (d))
0.	29,686.	41,241.	70,927.	0.

(a) Distributive share items

(b) Amount

(c) 1040 filers enter the amount in column (b) on:

Income (Loss)	1 Ordinary income (loss) from trade or business activities	1	41,241.	See Partner's Instructions for Schedule K-1 (Form 1065).
	2 Net income (loss) from rental real estate activities	2		
	3 Net income (loss) from other rental activities	3		
	4 Portfolio income (loss):			Schedule B, Part I, line 1 Schedule B, Part II, line 5 Schedule E, Part I, line 4 Schedule D, line 5, column (f) Schedule D, line 12, column (g) Schedule D, line 12, column (f) Enter on applicable line of your return
	a Interest	4a		
	b Ordinary dividends	4b		
	c Royalties	4c		
	d Net short-term capital gain (loss)	4d		
	e Net long-term capital gain (loss):			
	(1) 28% rate gain (loss)	4e(1)		
	(2) Total for year	4e(2)		
	f Other portfolio income (loss) (attach schedule)	4f		See Partner's Instructions for Schedule K-1 (Form 1065). Enter on applicable line of your return
	5 Guaranteed payments to partner	5		
	6 Net section 1231 gain (loss) (other than due to casualty or theft)	6		
Deductions	7 Other income (loss) (attach schedule)	7		See Partner's Instructions for Schedule K-1 (Form 1065). Enter on applicable line of your return
	8 Charitable contributions (see instructions) (attach schedule)	8		
	9 Section 179 expense deduction	9		
	10 Deductions related to portfolio income (attach schedule)	10		
Credits	11 Other deductions (attach schedule)	11		See Partner's Instructions for Schedule K-1 (Form 1065). Form 8586, line 5
	12a Low-income housing credit:			
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	12a(1)		
	(2) Other than on line 12a(1) for property placed in service before 1990	12a(2)		
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	12a(3)		See Partner's Instructions for Schedule K-1 (Form 1065).
	(4) Other than on line 12a(3) for property placed in service after 1989	12a(4)		
	b Qualified rehabilitation expenditures related to rental real estate activities	12b		
	c Credits (other than credits shown on lines 12a and 12b) related to rental real estate activities	12c		
	d Credits related to other rental activities	12d		
	13 Other credits	13		

BAA For Paperwork Reduction Act Notice, see instructions for Form 1065.

Schedule K-1 (Form 1065) 2000

Federal 1065 Depreciation Report
Regular Tax

Activity Form 1065 All Activities - 2001

Total cost of goods sold Total IRC Section 754

Description		In Service	Cost	Land	Bus %	Type	Class	Conv	Depr
Cost of Goods Sold	IRC 754	Disposed	Basis	Sec. 179	Listed	Mthd	Life	Year	Prior
Main Activity									
Equipment		01/01/00	1,186.		100.00	MACRS	5	HY	0.
		05/02/00	1,186.			200DB	5.00	2	
Leasehold improvements		01/01/00	914.		100.00	MACRS	NR	MM	0.
		05/02/00	914.			SL	39.00	2	
Total			<u>2,100.</u>						<u>0.</u>
			<u>2,100.</u>						

Federal 1065 Depreciation Report
Alternative Minimum Tax

Activity Form 1065 All Activities - 2001

Description	Real	Leased	AMT Cost	AMT Life	AMT Depr	AMT Adj
			AMT Basis	AMT Mthd	AMT Prior	AMT Pref
Main Activity						
Equipment			1,186.	5.00	0.	0.
			1,186.	150DB		
Leasehold improvements			914.	39.00	0.	0.
			914.	SL		
Total			2,100.		0.	0.
			2,100.			

01/17/2002

18:51

KIKER & DOUDS P.A. → 8428782

NO.560

012

Form 1065

Partner's Basis Statement

2000

► Note to Partner: Keep for your records

Partner's name
Gary M. Bensch
Partnership name
Nicolis Cafe LLC

Identifying Number

Employer ID Number

Part I - Basis Computation

1	Beginning basis	1	0.
2	Contributions	2	29,686.
3	Increase in share of liabilities	3	
4	Share of taxable income:		
	Ordinary income		41,241.
	Total	4	41,241.
5	Share of tax-exempt income	5	
6	Add lines 1 through 5	6	70,927.
7	Decrease in share of liabilities (not to exceed line 6)	7	0.
8	Subtract line 7 from line 6	8	70,927.
9	Distributions (not to exceed line 8)	9	70,927.
10	Subtract line 9 from line 8	10	0.
11	Share of nondeductible expenses (not to exceed line 10)	11	0.
12	Subtract line 11 from line 10	12	0.
13	Share of deductions not subject to basis limitation:		
	Total (not to exceed line 12)	13	0.
14	Subtract line 13 from line 12	14	0.
15	Share of taxable losses and deductions subject to basis limitation:		
	Total (not to exceed line 14)	15	0.
16	Ending basis. Subtract line 15 from line 14.	16	0.

Part II - Alternative Basis Computation

		Beginning	Increase (Decrease)	Ending
17	Capital account balance	17	0.	0.
18	Share of liabilities	18	0.	0.
19	Accumulated tax/book timing differences	19		
20	Carryover nondeductible expenses	20	0.	0.
21	Excess deductions not subject to basis limit	21	0.	0.
22	Carryover losses and deductions	22	0.	0.
23	Distributions in excess of basis	23	0.	0.
24	Other differences	24	0.	0.
25	Alternative basis. Combine lines 17 thru 24.	25	0.	0.

Part III - Loss Carryovers

Final K-1 - Carryover not applicable

26	Loss items carried over to next year	26	0.
27	Nondeductible expense items carried over to next year	27	0.

01/17/2002

18:51

KIKER & DOUDS P.A. → 8428782

NO.560

D13

Cafe LLC

Form 1065, Line 20

Other deductions

Advertising	246.
Automobile Expense	60.
Bank Service Charges	962.
Insurance:Liability Insurance	229.
Miscellaneous	1,566.
Office Supplies	704.
Postage and Delivery	98.
Professional Fees:Accounting	1,350.
Professional Fees:Legal Fees	1,043.
Telephone	1,398.
Utilities:Gas and Electric	1,617.
Utilities:Water	42.
Total	<u>9,315.</u>



State of South Carolina
Department of Revenue

Partnership Return of Income

SC1065
(Rev 9/15/00)
3087

For the calendar year **2000** or fiscal year beginning Jan 1, 2000 and ending May 2, 00

This return must be filed with the South Carolina Department of Revenue, Partnership Return, Columbia, SC 29214-0008 not later than the 15th day of the fourth month following the close of the accounting period.

Location of business property: City _____ State _____

Check if initial return ☒ Check if final return ☒ Total number of partners in this partnership

Does the partnership have any partners who are nonresidents of South Carolina? ... Yes ☐ No ☒ (If yes, complete Schedule W-H.)

Amended return must be filed when the Internal Revenue Service adjusts your federal return.

Name of Partnership

Nicolis Cafe LLC

Street and Number

PO Box 22242

Post Office

State

ZIP Code

Hilton Head Island

SC

29925

Do not write
in this space

Federal Identification No. [REDACTED]

14-0824

Attach a Copy of Form 1065 Federal Partnership Return and Copies of All Schedules.

Read the instructions carefully and fill in all applicable lines and schedules.

1	Total of lines 1 through 7, Schedule K of 2000 federal Form 1065	1	41,241.
2	South Carolina additions to income (from lines 1 through 7, Schedule SC-K, column B)	2	
3	South Carolina deductions from income (from lines 1 through 7, Schedule SC-K, column B)	3	
4	Net income (loss) subject to apportionment (line 1 plus line 2 minus line 3)	4	41,241.
Apportionment Factors for Multistate Business (Lines 5 through 9 - Multistate Only)			
5	Sales	Totals	South Carolina
	Total gross receipts		
	Sales percentage		%
6	Sales percentage (same as line 5)		%
7	Property		
	Total owned and rented property		
	Property percentage		%
8	Payroll		
	Total wages and salaries		
	Payroll percentage		%
	Total Percent		%
9	Apportionment factor (average percent): 100% if operating entirely within South Carolina (see instructions) ...	9	100.0000 %
10	Net business income (loss) apportioned to South Carolina (line 4 multiplied by line 9)	10	41,241.
11	Withholding tax on income of nonresident partners from Schedule W-H	11	0.

The undersigned declares that this return, including the accompanying schedules and statements, has been examined by him (or them) and is to the best of his (or their) knowledge and belief a true and complete return, made in good faith, for the accounting period stated, pursuant to the Code of 2000 and amendments.

Please Sign Here	Signature of General Partner _____ Date _____	
	I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer Yes ☐ No ☐	
	Preparer Printed Name _____	Preparer Telephone Number _____
Paid Preparer's Use Only	Preparer Signature _____	EN _____
	Check if self-employed ☐	Date _____
	Firm's Name (or yours if self-employed) and Address _____	
	ZIP Code _____	

SCPAD112 10/17/00

SC1065

Nicolis Cafe, LLC

Page 2

Schedule SC-K Partners' Shares of Income (Losses), Deductions, Credits Etc (See instructions.)

* Enter amounts from corresponding lines on your federal Schedule K in column A.

	(A) Amounts from Federal Schedule K	(B) Plus or Minus South Carolina Adjustments	(C) Federal Schedule K Amounts After SC Adjustments	(D) Col (C) Amounts Apportioned or Allocated to States Other than SC	(E) Col (C) Amounts Apportioned or Allocated to SC
1	Ordinary Business Income (loss) 41,241.		41,241.	0.	41,241.
2	Net Real Estate Rents (A)				
3c	Net — Other Rents (A)				
4a	Interest Income				
4b	Dividend Income				
4c	Royalty Income				
4d	Net Short-Term Cap Gain (loss)				
4e	Net Long-Term Cap Gain (loss)				
4f	Other Portfolio Income				
5	Guaranteed Payments				
6	Sec 1231 Gain (loss)				
7	Other Income				
8	Charitable Contributions				
9	Sec 179 Exp Deduction				
10	Deductions Related to Portfolio Income				
11	Other Deductions				
12	Investment Interest Expense				

Schedule W-H Withholding Tax on Income of Nonresident Partners

1	Total from line 10, page 1, Form SC1065	1	_____
2	Line 1 times _____ % of income allocated to nonresident partners	2	_____
3	Amount of line 2 exempt from withholding by affidavit, by composite filing or real estate gain subject to buyer withholding or amount withheld upon by another partnership. Attach statement. See instructions	3	_____
4	Subtract line 3 from line 2	4	_____
5	Withholding tax due — line 4 times .05 (5%). Enter here and on line 11, page 1, Form SC1065	5	0.

Non-Refundable Tax Credits

	Amount
A Drip/Trickle Irrigation System (TC-1)	A _____
B Minority Business (TC-2)	B _____
C Water Resources (TC-3)	C _____
D South Carolina New Jobs Credit (TC-4)	D _____
E Scenic Rivers (TC-5)	E _____
F Palmetto Seed Capital (TC-7)	F _____
G Child Care Program (TC-9)	G _____
H Base Closure/Federal Facility Employment Reduction-Hiring Credit (TC-10)	H _____
I Economic Impact Zone Property Investment Credit (TC-11)	I _____
J Credit for Hiring Recipients of Family Independence Payments (TC-12)	J _____
K Additional Family Independence Payments Credit (TC-12-A)	K _____
L Motion Picture Project/Production Facility Credit (TC-13)	L _____

SCPAD112 10/11/00

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Form SC1065

South Carolina Schedule K-1 Equivalent

2000

Keep for your records

Partner's Identifying Number

Partnership's Identifying Number

Partner's Name, Address, and ZIP Code

Partnership's Name, Address, and ZIP Code

Gary M Bensch
PO Box 22242 Hilton Head Island
SC 29938

Nicolis Cafe LLC
PO Box 22242
Hilton Head Island SC 29925

Is this partner a nonresident of South Carolina?

Yes ☒ No ☐

	(A) Amounts from Federal Schedule K-1	(B) Plus or Minus South Carolina Adjustments	(C) Federal Schedule K-1 Amounts After SC Adjustments	(D) Column (C) Amounts Apportioned or Allocated to States Other than SC	(E) Column (C) Amounts Apportioned or Allocated to SC — Column (C) Minus Column (D)
1	Ordinary business income (loss) 41,241.		41,241.		41,241.
2	Net real estate rents				
3c	Net — other rents				
4a	Interest income				
4b	Dividend income				
4c	Royalty income				
4d	Net short-term capital gain (loss)				
4e	Net long-term capital gain (loss)				
4f	Other portfolio income				
5	Guaranteed payments				
6	Section 1231 gain (loss)				
7	Other income				
8	Charitable contributions				
9	Section 179 expense deduction				
10	Deductions related to portfolio income				
11	Other deductions				
12	Investment interest expense				

Non-Refundable Tax Credits

- a Drip/Trickle Irrigation System (TC-1)
- b Minority Business (TC-2)
- c Water Resources (TC-3)
- d South Carolina New Jobs Credit (TC-4)
- e Scenic Rivers (TC-5)
- f Palmetto Seed Capital (TC-7)
- g Child Care Program (TC-9)
- h Base Closure/Federal Facility Employment Reduction — Hiring Credit (TC-10)
- i Economic Impact Zone Property Investment Credit (TC-11)
- j Credit for Hiring Family Independence Payments Recipients (TC-12)
- k National Family Independence Payments Credit (TC-12A)

Amounts

a _____

b _____

c _____

d _____

e _____

f _____

g _____

h _____

i _____

j _____

k _____

Do Not File / For Information Only

SCPW0201 11/19/00

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Form 1065 2000

Gary M Bensch

Page 2

(a) Distributive share item		(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Investment Interest	14a Interest expense on investment debts	14a	Form 4952, line 1
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f	14b(1)	See Partner's Instructions for Schedule K-1 (Form 1065).
	(2) Investment expenses included on line 10	14b(2)	
Self-employment	15a Net earnings (loss) from self-employment	15a -31,667.	Schedule SE, Section A or B
	b Gross farming or fishing income	15b	See Partner's Instructions for Schedule K-1 (Form 1065).
	c Gross nonfarm income	15c 18,803.	
Adjustments and Tax Preference Items	16a Depreciation adjustment on property placed in service after 1986	16a 0.	See Partner's Instructions for Schedule K-1 (Form 1065) and instructions for Form 6251.
	b Adjusted gain or loss	16b 0.	
	c Depletion (other than oil and gas)	16c	
	d (1) Gross income from oil, gas, and geothermal properties	16d(1)	
	(2) Deductions allocable to oil, gas, and geothermal properties	16d(2)	
	e Other adjustments & tax preference items (attach schedule)	16e	
Foreign Taxes	17a Name of foreign country or U.S. possession	17a	Form 1116, Part I
	b Gross income sourced at partner level	17b	
	c Foreign gross income sourced at partnership level:		
	(1) Passive	17c(1)	
	(2) Listed categories (attach schedule)	17c(2)	
	(3) General limitation	17c(3)	
	d Deductions allocated and apportioned at partner level:		
	(1) Interest expense	17d(1)	
	(2) Other	17d(2)	
	e Deductions allocated and apportioned at partnership level to foreign source income:		
	(1) Passive	17e(1)	
	(2) Listed categories (attach schedule)	17e(2)	
(3) General limitation	17e(3)		
f Total foreign taxes (check one): ☐ Paid ☐ Accrued	17f	Form 1116, Part II	
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	17g	See instructions for Form 1116.	
Other	18a Section 59(e)(2) expenditures: a Type	18a	See Partner's Instructions for Schedule K-1 (Form 1065).
	b Amount	18b	
	19 Tax-exempt interest income	19	Form 1040, line 8b
	20 Other tax-exempt income	20	
	21 Nondeductible expenses	21	See Partner's Instructions for Schedule K-1 (Form 1065).
	22 Distributions of money (cash and marketable securities)	22 70,927.	
	23 Distributions of property other than money	23	
	24 Recapture of low-income housing credit:		Form 8511, line 8
a From section 42(f)(5) partnerships	24a		
b Other than on line 24a	24b		
Supplemental Information	25 Supplemental information required to be reported separately to each partner (attach additional schedules if more space is needed):		
	Item J (c) - Capital account adjustments: Ordinary income (loss) 41,241. Total 41,241.		

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PURCHASE AND SALE AGREEMENT

This Agreement (the "Agreement") is made and entered into by and between Towne Center, LLC, Gary M. Bensch and Cynthia M. Bench, (collectively referred to as "Seller"), and Juan Campos, his heirs or assigns, ("Purchaser").

WITNESSETH:

1. SALE-PURCHASE; PROPERTY DESCRIPTION. For and in consideration of the mutual covenants and promises set forth in this Agreement, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, that certain property known as 27 Mellichamp Drive (Tax Map 610-39A-14), located in Town of Bluffton, Beaufort County, State of South Carolina, together with all improvements, tenements, declarant rights, water/sewer availability rights, hereditaments and appurtenances pertaining thereto, which property is legally described on Exhibit "A" and a survey designated as Exhibit "A-1" attached hereto and by this reference made a part of this Agreement (the "Property").

2. PURCHASE PRICE. The purchase price for the Property (the "Purchase Price") is ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 (\$1,850,000.00) DOLLARS. The Purchase Price shall be paid by Purchaser to Seller as follows:

2.01 Purchaser shall deposit (the "Escrow Deposit") the sum of TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS in escrow with John L. Wilson of Wilson & Bratt, P.A. (the "Escrow Agent"), ~~within five (5) business days after the Effective Date (hereinafter defined).~~ The receipt of the Escrow Deposit shall be acknowledged by Escrow Agent. *CMB*

2.02 The Escrow Deposit shall be held by Escrow Agent, it being understood and agreed between Seller and Purchaser, that the Escrow Deposit shall be delivered to Seller by Escrow Agent as part of the Purchase Price due to Seller from Purchaser at closing (hereinafter defined). This Agreement shall serve as the Escrow Agreement and the Escrow instructions binding upon Escrow Agent, Purchaser and Seller, subject only to mutually agreed upon supplemental instructions executed by both Purchaser and Seller and acknowledged by Escrow Agent, in writing.

2.03 This contract is subject to Purchaser obtaining a first mortgage at prevailing rates and terms from a lender customarily making such loans in Beaufort County for One Million Three Hundred Eighty-Seven Thousand Five Hundred and No/100 (\$1,387,500.00) Dollars for a term of at least fifteen (15) years and a second mortgage in the amount of Three Hundred Thousand and No/100 (\$300,000.00) Dollars from the Seller at the annual rate of eight (8%) percent payable annually in the principal amount of One Hundred Thousand and No/100 (\$100,000.00) plus interest and payable in full in three (3) years.

2.04 This contract is subject to Purchaser obtaining a commitment for the first mortgage financing referenced above from a lender customarily making such loans in Beaufort County. Purchaser shall use best efforts to obtain such loan and shall supply any prospective lender with such information as shall be requested within ten (10) days of the execution of this contract, and shall pay usual charges therefor. Purchaser shall execute and deliver the mortgage instruments and other papers customarily used by such institution. This financing contingency is a limited one and must be satisfied on or before thirty (30) days from the date of acceptance of this Contract by Seller. As to the financing contingency, time is of the essence. If Purchaser's bona fide application to such lender shall be denied, Purchaser may, by written

BAD/FORMS/SALE/PURCHASER

PLAINTIFF'S
EXHIBIT

#34

notice, either elect to: (a) waive the financing contingency, in which event this Contract shall remain in full force and effect; or (b) terminate this Contract for failure to obtain financing. Purchaser has the affirmative obligation to provide written notice as to its decision on this condition. Notice is to be provided to Seller directly at the address set forth herein. If no notice is received within the applicable time period for this contingency, it is presumed that Purchaser has waived the financing contingency. Upon receipt of notice and execution of any required release forms, the Seller shall return to Purchaser any sums heretofore paid as earnest money, and upon such payment, this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder.

2.05 At closing, Purchaser shall pay to Seller the balance of the Purchase Price in cash, certified check or attorney's escrow check; subject, however, to adjustments and prorations as provided in this Agreement.

3. **WATER AND SEWER SERVICE.** Seller warrants and represents to Purchaser that the Property has water and sewer mains so as to make water and sewer available to the property. As part of the purchase price herein, Seller shall assign and transfer to Purchaser the Seller's allocated water distribution capacity and sewage collection, treatment and disposal capacity within the facilities of "utility" which has been previously assigned to the Property and paid for by Seller.

4. **TITLE EVIDENCE.** Within twenty (20) days after the receipt by Purchaser the survey described below, Purchaser shall obtain a current ALTA Form-B Owner's Title Insurance Commitment (the "Commitment") underwritten on and issued by a title insurance company of Purchaser's choice (the Title Insurance Company selected by Purchaser is herein referred to as the "Title Company"), which Commitment shall agree to insure marketable fee simple title to the Property in the name of the Purchaser and in an amount equal to the Purchase Price. Seller and Purchaser understand and agree that as of the Effective Date, fee simple title to the Property shall be vested in Seller, and that the Commitment shall: (i) show and evidence that fee simple title to the Property is vested in Seller and (ii) show and evidence that title to the Property is in the condition required by Paragraph 6 of this Agreement and subject only to the Permitted Exceptions (hereinafter defined). The cost of the Commitment (including the premium for the title insurance policy to be issued therefrom) shall be the responsibility of and paid for by Purchaser.

5. **SURVEY; INSPECTION.**

5.01 Seller shall provide Purchaser with an up-to-date certified in accordance with ALTA standards (to Purchaser and Title Company) as-built Survey of the Property (the "Survey") prepared by a State of South Carolina Licensed and Registered Land Surveyor. The Survey shall show the location of all building setback lines.

5.02 The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the property and all electrical, plumbing and other equipment, and shall additionally include without limitation the following: _____

_____ All appliances, heating, air conditioning, electrical and plumbing systems shall be in good working order at time of Closing.

5.03 Seller agrees to provide at Seller's expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" from a licensed pest control firm dated within forty-five (45) days of the Closing indicating that the improvements to the property are free of termites and other wood infesting organisms and of damage caused by same; provided that if any damage or infestation is discovered during said inspection, Seller shall cause same to be repaired prior to Closing or permit Purchaser's attorney to escrow funds from the sales proceeds at Closing in an amount equal to the costs of such repair.

6. PERMITTED EXCEPTIONS. As a condition to Purchaser's obligation to close hereunder, at Closing the Property shall be sold, and fee simple title to the Property shall be conveyed to Purchaser, good of record and in fact, marketable, and free and clear of any and all liens, encumbrances, leases, easements, rights-of-way, encroachments, conditions, defects, boundary discrepancies, restrictions, limitations, or other matters affecting title, recorded or unrecorded, other than those matters set forth on Schedule 1 attached hereto and by this reference made a part of this Agreement (collectively referred to herein as the "Permitted Exceptions").

7. OBJECTION TO TITLE. If Purchaser's title examination, the Commitment Documents or the Survey shall reveal that Seller's title to the Property is subject to any easements, encroachments, boundary discrepancies, liens, encumbrances, or other matters affecting title, other than the Permitted Exceptions, which are objectionable to Purchaser, and Purchaser shall notify Seller of Purchaser's objections to the same in writing within ten (10) days after Purchaser's receipt of the last of the Commitment and the Survey, then the same shall be treated as defect(s) in title ("Title Defects"). Unless Purchaser delivers written notice to Seller of any Title Defect(s) within said ten (10) day period, time being of the essence, it shall be conclusively deemed that Purchaser has accepted title to the Property in its then existing condition. Seller shall have ten (10) days from and after receipt of Purchaser's notification of any Title Defects(s) to cure, or cause to be cured, the same, and Seller agrees that Seller shall use its best efforts and due diligence in curing, or causing to be cured, any such Title Defect(s). If said ten (10) day period given Seller to cure, or cause to be cured, any such Title Defect(s) shall extend beyond the Closing Date, and accordingly, Seller does not cure, or cause to be cured, such Title Defect(s) on or before the Closing Date, then Closing shall be held ten (10) days from and after the date on which Seller notifies Purchaser that Seller has cured, or caused to be cured, the Title Defect(s). If Seller does not cure, or cause to be cured, the Title Defect(s) within said ten (10) day period, Purchaser shall have the option of either: (i) closing this transaction in accordance with the terms and provisions of this Agreement (either on the Closing Date, or, if the expiration of said ten (10) day period shall extend beyond the Closing Date, ten (10) days from and after the expiration of said ten (10) day period) and accepting title in its then accurate survey of the Property would show or otherwise disclose without any abatement or requirement to escrow any portion of the Purchase Price, or (ii) terminating this Agreement, whereupon Purchaser shall be returned the Escrow Deposit from Escrow Agent and Seller and Purchaser shall be released from any and all further obligations and liabilities arising under or out of this Agreement.

8. CLOSING.

8.01 This transaction shall be "closed" and title to the Property shall be conveyed from Seller to Purchaser by delivery of the Deed (hereinafter defined) from Seller to Purchaser (referred to herein as the "Closing") at 10 o'clock a.m. on the Closing Date at the Office of Purchaser's attorney or the Escrow Agent or at such other place which Purchaser and Seller shall otherwise mutually agree upon in writing. The date of Closing (as to which time shall be of the essence), unless otherwise modified or extended pursuant to the provisions of this Agreement or otherwise mutually agreed upon in writing between Purchaser and Seller, shall be on or before thirty (30) days after Purchaser has cleared all contingencies described in Paragraphs 2.03 and 11 of this agreement.

8.02 At Closing, Seller shall deliver to Purchaser, at Seller's expense, the following Closing documents:

8.02.1 A good and sufficient General Warranty Deed (the "Deed") so as to convey to Purchaser fee simple marketable title to the Property, free and clear of all liens and encumbrances other than the Permitted Exceptions. The Deed shall be in recordable form, and executed by Seller and duly acknowledged before a Notary Public.

8.02.2 A "Certification By Entity Transferor", certifying that Seller is not a "foreign

person", as that term is used and defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

8.02.3 A Mechanics Lien affidavit, duly executed by Seller and duly acknowledged before a Notary Public, attesting to the absence, unless otherwise provided for in this Agreement or unless created by the acts of Purchaser, of any claims of lien or potential lienors and further attesting that there have been no improvements to the Property for ninety (90) days immediately preceding the Closing Date for which the cost thereof remains unpaid.

8.02.4 An ALTA Statement and title "gap" affidavit duly executed by Seller and duly acknowledged before a notary public, attesting to the absence of any matters pending which could cause a lien or encumbrance upon the Property between the date of the Commitment and the date of the recordation of the Deed.

8.02.5 A South Carolina Residency Affidavit certifying the address, Residency and Federal Identification Number of the Seller to establish the withholding requirements of Section 12-9-310 of the Code of Laws of South Carolina, 1976, As Amended and South Carolina Revenue Ruling #89-19.

8.02.6 Certified copy of Corporate Resolutions duly adopted by the Board of Directors of the Seller authorizing the transaction contemplated by this Agreement and authorizing the execution of the Deed and all other Closing Documents by the Corporate Officers of Seller who in fact have executed said documents.

8.02.7 Opinion from Seller's legal counsel stating that the Officers of Seller executing this Agreement and all documents as are required for the Closing of the transactions contemplated by this Agreement have been duly authorized to execute this Agreement, the Deed and all other Closing Documents.

8.02.8 Full and complete release of all claims against the subject Property, in recordable form, from any lienholders.

8.02.9 An Absolute Assignment by Seller unto Purchaser of all of Seller's right, privileges, permits, easements, licenses and approvals of every kind and nature, which may exist regarding or incidental to the Property and/or the present and future development of said Property. Said assignment shall be prepared by Purchaser's attorney at Purchaser's expense.

8.02.10 Such other documents as are necessary to convey the Property to Purchaser in accordance with the provisions of this Agreement.

8.02.11 Unless the Title Company is willing to delete all exceptions (permitted or otherwise) in its title insurance policy relating to the matters affecting title to the Property between the effective date of the Commitment to and through the actual recordation of the Deed to Purchaser, there shall be an Escrow Closing pursuant to which all monies and other documents shall be held in escrow in accordance with standards generally accepted in Beaufort County, South Carolina.

8.02.12 The Escrow Agent shall serve as Closing Agent for all parties at settlement. Deposit with the Escrow Agent of the Purchase Price, the instruments of transfer and such other funds and/or documents as are required of either party under the terms of this Agreement, and/or by the Title Company, and/or the Escrow Agent shall be deemed to be good and sufficient tender of performance in accordance with the terms hereof.

9. DEFAULT BY PURCHASER. Except as may be otherwise expressly provided herein to the contrary with respect to any specific act or omission, if the transaction contemplated herein does

not close by reason of Purchaser's failure to perform its obligation to make settlement in accordance with the terms, conditions and agreements contained in this Agreement, then, upon Seller's demand, as Seller's sole remedy hereunder, Seller shall be entitled to receive the Escrow Deposit from Escrow Agent, as agreed upon and liquidated damages on account of such breach by Purchaser (it being understood and agreed by both Purchaser and Seller that such amount is a fair and reasonable measure of the damages to be suffered by Seller in the event of such default by Purchaser, the exact amount thereof being incapable of ascertainment), whereupon both Purchaser and Seller shall be relieved from any further obligations or liabilities arising under or out of this Agreement.

10. DEFAULT BY SELLER. Except as may be otherwise expressly provided herein to the contrary with respect to any specific act or omission, if Seller defaults in the performance of any of Seller's obligations, covenants or agreements contained in this Agreement, then, upon Purchaser's demand, the Escrow Deposit shall be returned to Purchaser from Escrow Agent and Purchaser shall be entitled to pursue any remedy at Law or in equity against Seller including, but not limited to an action for damages or specific performance. The provisions of this Paragraph 10 shall specifically survive the termination of this Agreement.

11. CONDITIONS OF PURCHASER'S OBLIGATIONS.

11.01 The obligation of Purchaser to purchase the Property from Seller is subject to satisfaction, as of the Closing Date, of the following conditions (any of which may be waived, in writing, in whole or in part by Purchaser at or prior to the Closing). In the event any of such conditions is not satisfied or waived in writing by Purchaser, the Escrow Deposit shall be returned to Purchaser (together with accrued interest thereon) and thereafter this Agreement shall terminate.

11.01.1 All of the representations and warranties of Seller set forth in this Agreement shall be true on and as of the Closing in all respects, as though such representations and warranties were made at and as of the Closing; and all covenants, agreements and documents required of Seller pursuant to this Agreement shall have been performed, complied with or delivered (as the case may be) in accordance with this Agreement.

11.01.2 The Property shall not be in material violation of any governmental laws, ordinances, rules or regulations, and there shall be no action, suit or proceeding filed or pending against or affecting the Property or any portion thereof, or relating to or arising out of the ownership or development of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality.

11.01.3 This agreement is contingent upon a wetlands delineation survey revealing no wetlands on the property.

11.01.4 This agreement is contingent upon an environmental site assessment revealing no hazardous or environmentally dangerous materials which would require remediation.

11.01.5 This agreement is contingent upon the Purchaser's review and acceptance of the terms of the leases in effect at the Property. The Seller must provide copies of all leases within three (3) days of the execution of the contract. The Purchaser has twenty (20) days from receipt of the leases to approve them or terminate the contract. All tenants must execute and deliver estoppel agreements at or before closing.

12. REPRESENTATIONS AND WARRANTIES OF SELLER.

12.01 To induce Purchaser to enter into this Agreement and to purchase the Property,

Seller represents and warrants (which representations and warranties shall survive the Closing and the delivery of the Deed), to Purchaser as follows:

12.01.1 Seller is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina, and as of the date of Closing, it or its nominee will be licensed to do business in South Carolina. Seller, as of the date of Closing, will have all requisite legal power and authority to execute and deliver the Deed to be delivered pursuant to this Agreement. The individual or individuals executing this Agreement on behalf of Seller have and as of the date of Closing, will have express authority and full power on behalf of Seller to enter into and deliver this Agreement and the Deed.

12.01.2 Other than work or materials contracted for by Purchaser, as of the Closing, no work will have been performed or will be in process at the Property, and no materials will have been delivered to the Property that might provide the basis for a mechanic's, materialman's or other lien against the Property or any portion thereof. This Paragraph will be deemed satisfied if the Title Company, based upon Seller's mechanics lien affidavit, is willing to give Purchaser affirmative mechanics lien insurance.

12.01.3 There has been no deferral of any taxes with respect to the Property.

12.01.4 Seller shall not grant any easements or rights of way or enter into any covenants or agreements concerning the Property or in any other way affect title to the Property without the prior written consent of Purchaser, which consent shall not be unreasonably withheld.

12.01.5 There are no easements or claims of easements not shown by the public records of Beaufort County, South Carolina.

12.01.6 There are no rights or claims of parties in possession not shown by the public records of Beaufort County, South Carolina, except the existing leases of the existing tenants of the property. All leases will be assigned to the Purchaser. Zorba's, Inc., an entity 50% owned by the Seller's principals, Gary and Cynthia Bensch, was terminated as a tenant at Towne Center on January 8, 2000 by written notice and that as of the date of this Purchase and Sale Agreement, no lawsuits or claims have been asserted by the remaining shareholders with respect to the leasehold interest or tenant improvements and that no action has been taken to liquidate or dissolve Zorba's, Inc.

12.01.7 Seller is not in violation of, and has not received notice of violation of any applicable building, zoning, or other ordinances, resolutions, statutes or regulations of any government, governmental agency, including environmental control agencies, in respect to the use and condition of the Property.

12.01.8 No options, leases, or other contracts are still outstanding giving any other party a right to purchase any interest in the Property.

12.01.9 The Property is not in breach of any environmental law and is free of any hazardous materials that would trigger response or remedial action under any environmental laws or any existing common law theory based on nuisance or strict liability.

13. **BROKERS.** Purchaser and Seller warrant and represent to the other that each party has dealt with no real estate broker entitled to a sales commission in this matter. Each party shall hold the other harmless from any claim for a sales commission.. In the event of any claim(s) by any other person or firm for a finder's fee, professional fee or brokerage commission, Seller and Purchaser hereby agree to indemnify and hold the other harmless from any and all losses, damages, costs and expenses, including but not limited to reasonable attorney's fees and related disbursements through trial and on appeal, incurred in

connection with such claim(s) if the warranties stated in this Paragraph 13 of this Agreement are proven to be false. The provisions of this Paragraph 13 shall survive the Closing and the delivery of the Deed.

14. DATE OF AGREEMENT. The date of this Agreement ("Effective Date") shall be the date when a fully executed copy of this agreement is delivered to the Escrow Agent hereunder.

15. COUNTERPARTS. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. ATTORNEY'S FEES AND COSTS. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, including those related to appeals, in addition to any other relief to which it or they might be entitled.

17. NOTICES. All notices, demands, requests or other communications made pursuant to, under or by virtue of this Agreement must be in writing and either hand delivered, delivered by overnight courier or mailed through the United States Postal Service by certified or registered mail, return receipt requested, to the party to which the notice, demand, request or communication is being made, as follows:

To Seller: Towne Center, LLC
c/o Gary M. Bensch
6 Fantail Lane
Hilton Head Island, S.C. 29926

With a copy to: Michael W. Mogil, Esquire
303 Professional Building
Hilton Head Island, SC 29928

To Purchaser: Juan Campos
160 William Hilton Parkway
Fairfield Square, Unit 6
Hilton Head Island, S.C. 29926

With a copy to: Ehrick K. Haight, Jr., Esquire
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938

To Escrow Agent: John L. Wilson., Esquire
Wilson & Bratt, P.A.
P.O. Box 21668
Hilton Head Island, S.C. 29925

or to such other address as may be hereafter designated by either Purchaser or Seller by giving notice to the other party. Any notice, demand, request or other communication shall be deemed to be given upon actual receipt in the case of hand delivery or delivery by overnight courier, or in the case of certified or registered mail, at the time of receipt (or on the date that such notice was not accepted for delivery by the addressee) as conclusively established by the date shown on the return receipt or the official records of the United States

Postal Service as the same may be. For purposes of delivering and receiving any notices, demands, requests or other communications under this Agreement, the attorneys for Purchaser may directly contact Seller and the attorneys for Seller may directly contact Purchaser. The respective attorneys for both Seller and Purchaser are hereby expressly authorized to give any notice, demand, request or to make any other communication pursuant to the terms of this Agreement on behalf of their respective clients.

ENTIRE AGREEMENT. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof, and is the complete, exclusive and the entire understanding between Purchaser and Seller with respect to the purchase and sale of the Property.

AMENDMENTS. This Agreement may not be changed, modified or terminated, except by an instrument executed by and between both Purchaser and Seller, and joined where applicable by other parties affected by such amendment or modification where such parties have joined this Agreement.

WAIVER. No waiver by Purchaser or Seller of any failure or refusal to comply with obligations of either party shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

HEIRS, SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, successors and assigns of the respective parties.

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

PARAGRAPH HEADINGS. The captions and headings of the various paragraphs of this Agreement have been inserted only for the purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, expand or restrict any of the provisions of this Agreement.

GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, and this Agreement shall not be construed more strictly against either party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and equally to the negotiation and preparation of this Agreement.

ASSIGNMENT. This Agreement may be assigned by either party.

PLURAL SINGULAR. Where appropriate, the use of the singular herein shall include and be deemed to be the plural, and the use of the plural herein shall include and be deemed to be the singular.

ESCROW AGENT. If there is any dispute as to whether Escrow Agent is obligated to deliver the Escrow Deposit, or any monies or documents which it holds, or as to whom same are to be delivered, Escrow Agent will not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by Seller and Purchaser directing the disposition of the same. In the event either party would be entitled to the Escrow Deposit, or any monies or documents held by Escrow Agent, Seller and Purchaser agree to forthwith execute such written authorization to Escrow Agent. In the absence of such authorization, Escrow Agent may hold the Escrow Deposit, or any monies or documents in its possession, until the final determination of the rights of the parties.

in an appropriate proceedings. If such written authorization is not given or proceedings for such determination are not begun and diligently continued, Escrow Agent may bring an appropriate proceeding for leave to place the Escrow Deposit or any of said funds or documents with the court registry, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same are the result of the gross negligence or willful misconduct of Escrow Agent, and upon making delivery of funds or documents which Escrow Agent holds in accordance with this Agreement, Escrow Agent shall have no further liability and Purchaser and Seller hereby agree to indemnify, save and hold Escrow Agent harmless for any such liability.

28. POSSESSION. Possession of the Property shall be delivered to Purchaser at Closing; provided, however, that the Purchase Price, plus or minus adjustments and prorations, is paid in full to Seller either by or on behalf of Purchaser at Closing.

29. APPORTIONMENT. The following are to be apportioned as of the Closing Date:

29.01 Real Property Taxes and Assessments. Apportionment of real property taxes and assessments shall be made on the basis of the current year's tax with due allowance made for the maximum allowable discount and exemptions if allowed for said year. If Closing occurs at a date when the current year's taxes are not fixed but the current year's assessment is available, taxes will be apportioned based upon said assessment, and the prior year's millage plus ten (10%) percent. However, any tax apportionment based on an estimate shall be recalculated when the Property taxes are finally fixed, and the Seller or Purchaser, as the case may be, shall make payment to the other based on such recalculation. If any refund of real property taxes or assessments is made after the Closing for a period prior to the Closing, the same shall be paid to Seller for the period to and including the Closing Date and to Purchaser for the period commencing on the date after the Closing Date. The provisions of this Paragraph 29.01 shall survive the Closing and the delivery of the Deed.

29.02 Property Owner's Association Assessments. Certified, confirmed or ratified special assessment liens as of the Closing Date are to be paid by Seller. The owner's association assessments(if any) and water/sewer charges for the current year shall be prorated as of the Closing Date.

29.03 Closing Costs. Seller shall be responsible to pay for the cost of: (i) deed recording fee (formerly documentary stamps) payable to the State of South Carolina and/or the County of Beaufort, and any other surcharges or other fees payable by reason of execution, delivery and recordation of the Deed, (ii) such other customary Seller closing costs in Beaufort County, South Carolina. Purchaser shall be responsible to pay for the cost of: (i) recording the Deed (ii) The cost of any title insurance premium chargeable for the Commitment (and the title insurance policy issued therefrom)and (iii) such other customary Purchaser closing costs in Beaufort County, South Carolina.

IN WITNESS WHEREOF, This Agreement has been duly executed by the parties hereto as of the day and year set forth below.

PURCHASER:

Juan Campos
JUAN CAMPOS

Dated: MAY 2, 2000

SELLERS:
TOWNE CENTER, LLC

By: Gary M. Bensch
Gary M. Bensch

Its: Manager

Gary M. Bensch
GARY M. BENSCH

Cynthia M. Bensch
CYNTHIA M. BENSCH

Dated: May 2, 2000

ESCROW AGENT

The undersigned agrees to hold the Escrow Deposit, as Escrow Agent, as provided for and in accordance with the terms of this Agreement, which Deposit shall be held by Escrow Agent pursuant to this Agreement.

ESCROW AGENT

BY: _____

Exhibit "A"

LEGAL DESCRIPTION OF PROPERTY

ALL that certain piece, parcel lot or tract of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina and consisting of 1.215 acres as shown on a Plat entitled "A Boundary Survey on Dr. Mellichamp Drive", prepared by E.H. Friescleben, Registered Land Surveyor, and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 28 at Page 234, on September 10, 1995. For a more detailed description as to courses, metes and bounds, reference is made to said Plat of record



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

P.O. Box 219

P.O. Box 327

P.O. Box 158

Beaufort, SC 29901

Bluffton, SC 29910

Hampton, SC 29924

(843) 524-3300

(843) 757-3747

(803) 943-2671

FDIC

000 70 05

DATE: 03/31/00

PAGE: 1

ZORBA'S INC
BILL PASSALOUKAS
PO BOX 1667
BLUFFTON SC 29910

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*** FINAL STATEMENT ***

FOR BALANCE INQUIRIES TO YOUR CHECKING AND SAVINGS ACCOUNTS CALL US
AT 943-2476 OR TOLL FREE 1-800-943-2644. OUR 24 HOUR TELEPHONE BANKING
SYSTEM IS READY TO SERVE YOU. YOUR PIN # IS THE LAST FOUR DIGITS OF THE
SOCIAL SECURITY NUMBER OF THE PRIMARY NAME ON THE ACCOUNT.

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			02/29/00	1,399.10
LYNK SYSTEMS, INC MTHLY CHGS LK109998 030200	19.50		03/06/00	1,379.60
CHECK	115.18		03/08/00	1,264.42
CHECK	1,166.22		03/08/00	98.20
GOLDEN EAGLE CC DEBITS 351470 002	44.29		03/15/00	53.91
CHECK	53.91		03/22/00	.00
BALANCE THIS STATEMENT			03/31/00	.00
TOTAL CREDITS (0)		.00		
TOTAL DEBITS (5)	1,399.10			
TAX ID NUMBER				

YOUR CHECKS SEQUENCED

DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
03/08 * 115.18	03/08 * 1,166.22	03/22 53.91

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

DEFENDANT'S
EXHIBIT

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-481-



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC

P.O. Box 219 Beaufort, SC 29901 (843) 524-3300
P.O. Box 327 Bluffton, SC 29910 (843) 757-3747
P.O. Box 158 Hampton, SC 29924 (803) 943-2671

FDIC

000 70 05

DATE: 02/29/00

PAGE:

1

ZORBA'S INC
BILL PASSALOUKAS
PO BOX 1667
BLUFFTON SC 29910

30-2
1
2

FOR BALANCE INQUIRIES TO YOUR CHECKING AND SAVINGS ACCOUNTS CALL US
AT 943-2476 OR TOLL FREE 1-800-943-2644. OUR 24 HOUR TELEPHONE BANKING
SYSTEM IS READY TO SERVE YOU. YOUR PIN # IS THE LAST FOUR DIGITS OF THE
SOCIAL SECURITY NUMBER OF THE PRIMARY NAME ON THE ACCOUNT.

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			01/31/00	1,410.79
AMERICAN EXPRESS COLLECTION 4392411500				
	.65		02/03/00	1,410.14
NOVUS SERVICES SETTLEMENT	1.53		02/03/00	1,408.61
LYNK SYSTEMS, INC MTHLY CHGS LK109998 020100	74.20		02/03/00	1,334.41
CHECK	20.00		02/03/00	1,314.41
CHECK	68.84		02/03/00	1,245.57
GOLDEN EAGLE CC DEBITS 351470 002	44.29		02/15/00	1,201.28
DEPOSIT		200.00	02/17/00	1,401.28
SERVICE CHARGE	2.18		02/29/00	1,399.10
BALANCE THIS STATEMENT			02/29/00	1,399.10
TOTAL CREDITS (1)		200.00		
TOTAL DEBITS (7)		211.69		
TAX ID NUMBER				

YOUR CHECKS SEQUENCED

DATE...	CHECK #.....	AMOUNT	DATE...	CHECK #.....	AMOUNT	DATE...	CHECK #.....	AMOUNT
02/03	*	20.00	02/03		68.84			

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

**TOWNE CENTER
27 MELLINCHAMP DR.
BLUFFTON, S.C. 29910**

Gary Bensch
6 Fantail Lane
Hilton Head Isl. S.C. 29926

Zorba's Restaurant
Bill Passoluka, Manager
P.O. Box 1667
Bluffton, S.C. 29910

December 1, 1999

RE: Rent for 101 Towne Center, Bluffton, S.C. 29910

Dear Bill,

This letter is notification your November rent is now Fifteen days past due. Due to consistent slow payment of the rent a late charge penalty of \$128.05 is due with payment. The total due immediately is \$2,689.05.

Also we continue to be very concerned about the negative cash flow of the Restaurant and strongly suggest that we meet immediately to modify the menu to include more Greek/ American foods to increase profits.

Regards,



Gary M. Bensch

DEFENDANT'S
EXHIBIT

#4

463



Palmetto STATE BANK

HAMPTON • BEAUFORT • BLUFFTON • MEMBER FDIC



P.O. Box 219 P.O. Drawer 327 P.O. Box 158
Beaufort, SC 29902 Bluffton, SC 29910 Hampton, SC 29924
(803) 524-3300 (803) 757-3747 (803) 943-2671

000 70 05

DATE: 01/31/00

PAGE: 1

ZORBA'S INC
BILL PASSALOUKAS
PO BOX 1667
BLUFFTON SC 29910

30-2
5
8

FOR BALANCE INQUIRIES TO YOUR CHECKING AND SAVINGS ACCOUNTS CALL US
AT 943-2476 OR TOLL FREE 1-800-943-2644. OUR 24 HOUR TELEPHONE BANKING
SYSTEM IS READY TO SERVE YOU. YOUR PIN # IS THE LAST FOUR DIGITS OF THE
SOCIAL SECURITY NUMBER OF THE PRIMARY NAME ON THE ACCOUNT.

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			12/31/99	278.57
AMERICAN EXPRESS SETTLEMENT 4392411500		14.10	01/03/00	292.67
DEPOSIT		228.10	01/03/00	520.77
NOVUS SERVICES SETTLEMENT 601101079010359		254.43	01/03/00	775.20
AMERICAN EXPRESS SETTLEMENT 4392411500		433.96	01/03/00	1,209.16
LYNK SYSTEMS, INC BNKCRD DEP LK109998 000117		466.34	01/03/00	1,675.50
CHECK # 1339	44.00		01/03/00	1,631.50
CHECK # 1335	796.65		01/03/00	834.85
AMERICAN EXPRESS SETTLEMENT 4392411500		15.44	01/04/00	850.29
NOVUS SERVICES SETTLEMENT 601101079010359		68.95	01/04/00	919.24
LYNK SYSTEMS, INC BNKCRD DEP LK109998 000118		78.31	01/04/00	997.55
DEPOSIT		231.00	01/04/00	1,228.55
LYNK SYSTEMS, INC BNKCRD DEP LK109998 000120		176.34	01/05/00	1,404.89
LYNK SYSTEMS, INC MTHLY CHGS LK109998 010100				
	275.57		01/05/00	1,129.32
DEPOSIT		215.00	01/06/00	1,344.32
LYNK SYSTEMS, INC BNKCRD DEP LK109998 000121		230.35	01/06/00	1,574.67
DEPOSIT		347.58	01/06/00	1,922.25
CHECK # 1342	1,000.00		01/06/00	922.25
CHECK # 1343	42.00		01/06/00	880.25
CHECK # 1341	97.00		01/06/00	783.25
CHECK # 1347	200.00		01/06/00	583.25
CHECK # 1340	347.86		01/06/00	235.39
CHECK # 1337	1,000.00		01/06/00	764.61
AMERICAN EXPRESS SETTLEMENT 4392411500		49.52	01/07/00	715.09
DEPOSIT		165.52	01/07/00	549.57
LYNK SYSTEMS, INC BNKCRD DEP LK109998 000122		207.61	01/07/00	341.96
NSF FEE CHARGE	20.00		01/07/00	361.96

***** C O N T I N U E D *****

-483-

PASSALOUKAS EQUIPMENT PURCHASES FOR ZORBAS RESTAURANT
Court of Appeals Record pages 269 & 267

Exhibit #	Date	Payee	Amount
31	3/22/99	S Watkins walk-in cooler	500.
31	3/28/99	S Watkins walk-in cooler	1300.
33	4/1/99	Deli case, prep tables, ice machine etc.	3000.
28	4/1/99	R & R Restaurant / equip	5745.
32	4/21/99	S Watkins tables	600.
34	4/2/99	Sport food court equipment	650.
16	5/10/99	Kitchen equip & supply	300.
17	6/9/99	R&R Restaurant equip.	817.16
27	6/21/99	Kitchen equip & supply	2000.
30	6/24/99	R & R Restaurant equip	1047.
13	6/21/99	Seaside Accents, chairs	3807.38
16	7/1/99	Kitchen equip & supply	330.
27	7/1/99	Kitchen equip & supply	1000.
27	7/19/99	Kitchen equip & supply	1000.
23	8/9/99	FS Lowcountry kit.equip	350.47
14	8/13/99	Kitchen equip & supply	1000.
15	9/8/99	Kitchen equip & supply	1435.14
15	10/6/99	Kitchen equip & supply	1347.79

TOTAL EQUIPMENT PURCHASES

\$26,229.94
 954.08

27,184.02

Appraisal from Kitchen Equipment & Supply Depot Inc. April 25, 2000

TOTAL APPRAISED VALUE OF EQUIPMENT & SUPPLIES: \$12,635.00

*See attached

DEFENDANT'S
 EXHIBIT

#5

T#S

MICHAEL W. MOGIL, ESQ.
303 Professional Building
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676

Admitted in SC, NY, PA

December 8, 1999

James O. Hale
Hale and Hale, P.A.
1555 Fording Island Road, Suite E
Post Office Box 22561
Hilton Head Island SC 29925-2561
By Mail and Fax: 837-3001

**DEFENDANT'S
EXHIBIT**

#18

Re: Zorba's Inc.

Dear Jim:

I am in receipt of the Notice of Shareholders Meeting from your office on behalf of Zorba's. Per my phone message, I am representing the Bensch's in this matter.

The Bensch's are requesting that the following matters be addressed and voted upon at the meeting:

1) That a seven person board of directors be voted with the following persons as Directors

Bill Passaloukas
Susie Passaloukas
Gary Bensch
Cynthia Bensch
Gil Fisher
Tom Jackson
A neutral director

2) That the corporation issue the initial stock set forth in the pre-incorporation agreements and additional stock in direct proportion to the financial investments made into the corporation to date;

3) That the corporation pay all current and past due rent, and further, that the Passaloukas' indemnify the corporation for any legal and court costs occasioned by their failure to pay rent on a timely basis:

4) That the Bensch's be added as signatory parties to the business checking account and other bank accounts and that all checks in excess of \$ 50.00 require one of the Bensch's signatures;

5) That Bill Passaloukas make a full accounting for all monies, including cash monies, withdrawn by him or his family from the bank accounts or cash receipts of the corporation, whether they be characterized by him as salary, expense reimbursement, loan reimbursement, or fees.

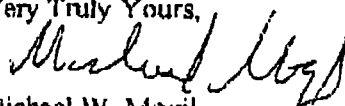
6) That the Bensch's be provided a copy of the mail box key and that business mail box be established .

The above measures reflect a significant change in the way the business is being operated. However, my clients have invested significant sums of money and have received no return on their investment to date, the business continues to lose money, and the present management has taken the extraordinary and offensive measures of excluding my clients from the finances and mail of the business. We now believe these changes are necessary to protect their investment and ensure their ownership and control.

My clients have attempted to work out their differences amicably with Mr. Passaloukas but that meeting resulted in an outrage with explicatives and verbal abuse from Mr. Passaloukas. This shareholders meeting represents the last opportunity to restructure this business without court supervision.

Additionally, please disburse the rent check that Mr. Griffis claims has been paid to your office. The Bensch's are not recognizing any rent credits for the water heater because 1) that issue was resolved months ago and 2) the costs for that equipment had been allocated by contract to Bill Passaloukas.. Moreover the Bensch's as landlords are not waiving any late fees.

Very Truly Yours,


Michael W. Mogil

cc: Tony Griffis, Esq. By fax: 837-3778

MICHAEL W. MOGIL, ESQ.
303 Professional Building
Hilton Head Island, SC 29928
Telephone (843) 785-8110
Fax (843) 785-9676

Admitted in SC, NY, PA

December 8, 1999

James O. Hale
Hale and Hale, P.A.
1555 Fording Island Road, Suite E
Post Office Box 22561
Hilton Head Island SC 29925-2561
By Mail and Fax: 837-3001

Re: Zorba's Inc.

Dear Jim:

Attached are my draft minutes from the shareholders' meeting of December 15. My notes only reflect that four matters were voted upon. Please incorporate these into the minutes that you are keeping for Zorba's records and send me a copy of the final version for approval on behalf of the Bensch's.

I have not heard from either of you with respect to a meeting to discuss liquidation of the assets. When Passaloukas called me over the weekend and I told her that I could not discuss the situation at Zorba's with her in any detail without Tony or you being present or part of the conversation.

Very Truly Yours,

Michael W. Mogil

cc: Tony Griffis, Esq. By fax: 837-3778

DEFENDANT'S
EXHIBIT

19 ID

Minutes for Shareholders Meeting for Zorba's, Inc.

December 15, 1999

At Law Office of James Hale, Bluffton SC

Present: Bill Passaloukas, Susan Passaloukas, Gary Bensch, Cynthia Bensch, Gil Fisher, Tom Young, Anthony Griffis (attorney for Passaloukas'), Michael Mogil (attorney for Bensch's), James Hale and Tom Jackson

The meeting was called at the request of the Bensch's to address certain matters referenced in the attached letter from counsel and to discuss the future of the business. In addition, rent for November was tendered by Jim Hale to the Bensch's.

The following matters were raised for vote of the shareholders:

1) That the Bensch's be given access to the business post office mail box and that the Passaloukas' use a separate mail box for personal matters.

Vote: All shareholders for.

2) That the Bensch's be given signatory authority on the account at Palmetto State Bank and that co-signatures be required on disbursements in excess of \$ 500, other than to food suppliers.

Vote: Bill Passaloukas against. Susie Passaloukas against. Gary Bensch for. Cynthia Bensch for. Measure did not pass.

3) That the Board of Directors be increased from 4 to 7 and that Gil Fisher be named a director.

Vote: Bill Passaloukas against. Susie Passaloukas against. Gary Bensch for. Cynthia Bensch for. Measure did not pass.

4) That the corporation issue additional stock in proportion to the parties investments, to wit: \$ 80/130000 to the Bensch's and \$50000/130000 to the Passaloukas'.

Vote: Bill Passaloukas against. Susie Passaloukas against. Gary Bensch for. Cynthia Bensch for. Measure did not pass.

Other matters were discussed but no other shareholder votes were taken.

6162

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/26/2000

PAY TO THE ORDER OF Hughes Supply \$ 639.29

Five hundred & thirty nine & 29/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6162

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
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FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6162 \$639.29 01/26/2000

6163

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/26/2000

PAY TO THE ORDER OF High Performance \$ 10.00

Ten dollars & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6163

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/26/2000

PAY TO THE ORDER OF High Performance \$ 10.00

Ten dollars & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6163 \$10.00 01/21/2000

6164

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/21/2000

PAY TO THE ORDER OF High Performance \$ 440.00

Four hundred & forty & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6164

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/21/2000

PAY TO THE ORDER OF High Performance \$ 440.00

Four hundred & forty & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6164 \$440.00 01/21/2000

6165

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/26/2000

PAY TO THE ORDER OF High Performance \$ 6.00

Six dollars & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6165

BENSCH-MARK CUSTOM BUILDERS
P.O. BOX 2248 P.M. 29521-0113
MILTON HEAD, SC 29555

130171688 01-26-00 0757 0757 27

DATE 1/26/2000

PAY TO THE ORDER OF High Performance \$ 6.00

Six dollars & 00/100 DOLLARS

PALMETTO STATE BANK
234787/3B

FOR Home Center - 234787/3B Cynthia Bensch

00000163 *000000000000*

6165 \$6.00 01/26/2000

-490-

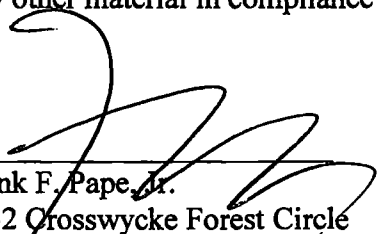
DEFENDANT'S
EXHIBIT

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any party and not any other material in compliance with Rule 210 (g) of the SCACR.

August 20, 2010



Frank F. Pape, Jr.
2952 Crosswycke Forest Circle
P.O. Box 190009
Atlanta, Georgia 31119
1-404-846-0228
Appellants' Attorney