

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2015-000034

THE WASHINGTON LIGHT INFANTRY OF
CHARLESTON SOUTH CAROLINA, INC., Respondent,

v.

THE SEA GRANT CONSORTIUM, an Agency
and Political Subdivision of the State of South Carolina..... Appellant.

RECORD ON APPEAL

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Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10- 419

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

Defendant,)

COMPLAINT
(non-jury)

FILED
2013 JUL 10 PM 3:16
JULIE J. MONTROSE
CLERK OF COURT

COMES NOW YOUR PLAINTIFF, by and through its undersigned Counsel, and complaining of the Defendant, would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff is a corporation licensed under the laws of the State of South Carolina with a principal place of business in the County of Charleston, State of South Carolina.
2. That the Defendant is an agency of the State of South Carolina and has its primary offices in the County of Charleston, State of South Carolina.
3. That this action involves a lease for real property which is wholly and exclusively located in the County of Charleston, State of South Carolina.
4. That venue is properly vested in this Honorable Court.
5. That this Honorable Court has jurisdiction over the subject matter of this action.
6. That this Honorable Court has jurisdiction over the parties hereto.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment and Construction of a Lease)

7. The Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 6 by reference herein this cause of action as fully and completely as it they were each set forth verbatim herein.

8. That the Plaintiff and Defendant did enter into a lawful lease, which lease is attached hereto as Exhibit 1 and incorporated herein as Exhibit 1 by reference.

9. That said lease was and is supported by full, fair and valid consideration.

10. That issues have arisen under said lease in which the parties are not in agreement and which require the Court to construe the Lease and to issue a lawful declaratory judgment as to the rights and obligations of the parties thereto.

11. That the Heat and Air Conditioning System and Ventilation System (hereinafter "HVAC") is not functioning properly, and its use will lead to mold in the building causing harm and damage to the building and potential harm and damage to the persons who come in contact with it.

12. That a new HVAC system is required, meeting specifications to prevent the aforesaid harm.

13. That the parties disagree as to whom the Lease requires to install HVAC systems and services.

14. That the Lease is unambiguous.

15. That the Lease was drafted by the Defendant.

16. That under the Uniform Declaratory Judgment Act, this Honorable Court has the jurisdiction to construe the Lease and to determine on which party the obligation falls to install a properly working HVAC system.

17. That the Lease unambiguously states that:

The following services incidental to the use and enjoyment of the demised premises **are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs:** electric, gas, and electric and gas services, water, sewer, security service, **heating or air conditioning, ventilating,** Tenant shall be responsible financially for any services for which it contracts hereunder. (Emphasis added.)

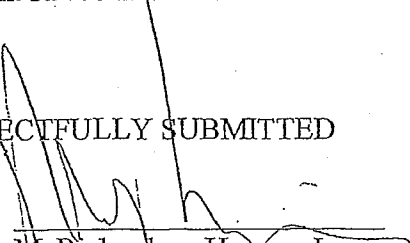
18. That the Lease further unambiguously omits any obligation on the part of Landlord (alternatively herein "Plaintiff") to furnish any system other than water, gas and electric meters.

19. That the Lease does not require Landlord to provide HVAC.

WHEREFORE, your Plaintiff respectfully prays that this Honorable Court investigate the matters set forth herein, construe the Lease attached hereto as Exhibit 1, and issue its lawful Declaratory Judgment declaring that the obligation to install a working HVAC system in the Leased premises is the responsibility and obligation of the Defendant and the Defendant alone, and to also grant such other and further relief as this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED

BY:


M. Richardson Hyman, Jr.
P.O. Box 127
Charleston, South Carolina 29402
843 416 1047
843 416 1199
SC Bar No.: 64867

Charleston, South Carolina

8 July 2013

Attorney for the Plaintiff

VERIFICATION OF PLEADINGS

COMES NOW YOUR AFFLIANT, who is an office of the Plaintiff with delegated authority in this matter, and does swear and depose upon his lawful Oath that he has read the foregoing Complaint and that the information contained therein is true and accurate save those allegations made on information and belief and as to those allegations, he so believes them to be true and accurate.

Henry Siegling

Sworn and subscribed to before me by the foregoing Henry Siegling on this ___ day of July in the Year of Our LORD 2013.

[Signature]
Notary Public in and For South Carolina
My Commission Expires: 2-11-2021

211-3000
2013 JUL 10 PM 3:16
JULIE S. HARRIS
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 THE WASHINGTON LIGHT)
 INFANTRY OF CHARLESTON)
 SOUTH CAROLINA, INC.)
)
 Plaintiff,)
)
 vs.)
)
 THE SEA GRANT CONSORTIUM,)
 An Agency and Political)
 Subdivision of the State of South)
 Carolina,)
)
 Defendant.)

IN THE NINTH JUDICIAL CIRCUIT
 Case No.: 2013-CP-10-4019

ANSWER

BY _____

2013 AUG -7 PM 3:14
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

Defendant THE SEA GRANT CONSORTIUM answers the respective numbered paragraphs of the COMPLAINT dated July 8, 2013, and filed July 10, 2013 thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

- 1. Admits.
- 2. Admits.
- 3. Admits.
- 4. Admits.
- 5. Admits.
- 6. Admits.

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment and Construction of a Lease)

- 7. Is answered above and requires no further response.

8. Admits.

9. Admits.

10. Admits.

11. Admits, on information and belief.

12. Lacks knowledge and information thereof.

13. Defendant believes that the Lease Agreement, applicable law, and common sense require Plaintiff to install the HVAC system and services, however, since Plaintiff disagrees, the parties disagree as to whom is required to install the HVAC system and services.

14. Admits.

15. Admits.

16. Admits.

17. Asks reference to the said Governmental Real Estate Lease - Standard Office Lease Agreement as to the particular terms and conditions therein.

18. Denies, the Lease Agreement provides:

ARTICLE 6 - SERVICES

6.1 The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its [sic] own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure and equipment relating thereto, janitorial services, maintenance services, and other related services.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES:

7.1. Landlord represents and warrants to Tenant that:

* * * *

(f) Landlord will keep. . . Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain. . . Building and the Demised Premises;

(g) Landlord will keep the Building and the Demised Premises protected . . . within a reasonable time after Landlord has notice of damage or the need for repair.

ARTICLE 8 - TENANT'S COVENANTS provides:

8.1. Tenant covenants and agrees that it shall:

* * * *

(b) Maintain the Demised Premises in a clean and good condition. . . . Tenant shall not be obligated to make any repairs arising out of or in any way caused by. . . 2) defects in. . . fixtures or equipment employed, supplied or installed by or on behalf of Landlord. (Emphasis added).

ARTICLE 16 - MINOR REPAIRS provides:

16.1. If at any time during the initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement . . . Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof.

19. Denied, as stated above.

20. Denies all statements and allegations of the Complaint not herein above specifically admitted.

SECOND DEFENSE AND COUNTERCLAIM

21. Defendant repeats and realleges the allegations of its First Defense above.

22. ARTICLE 11 - CASUALTY of the Lease Agreement provides:

11.1. If there be any damage to . . .the Building. . .or any portions thereof, . . .each party will promptly give notice thereof to the other, describing the nature and extent thereof.

* * * *

11.4. Upon damage. . .or in the case of partial damage. . .which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

23. That as a direct and proximate result of the necessary remediation of the HVAC system, and/or its possible replacement, damage to the Building has occurred, and Defendant has suffered a "Taking" in that it has been deprived of both the use and possession of the Demised Premises for a period of time, and has incurred related costs of moving, packing, and repositioning for which it is entitled to reimbursement, and to equitable apportionment of its contractual rental.

WHEREFORE, having fully answered the Complaint dated July 8, 2013, and filed July 10, 2013, defendant THE SEA GRANT CONSORTIUM prays that any issues herein be resolved non-jury, that the Complaint be dismissed, that Defendant be granted recovery and judgment on its Counterclaim, and that Defendant recover its costs and disbursements as may seem equitable and just.

[Signature block on following page]


JAMES A. STUCKEY
ALISSA R. COLLINS
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Email: jstuckey@stuckeylaw.com
Facsimile: 843-577-3635

Attorneys for Defendant

August 7, 2013

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

Defendant,)

PLAINTIFF'S NOTICE
OF MOTION AND MOTION FOR
PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM IN SUPPORT
OF MOTION

NOTICE OF MOTION

TO JAMES A. STUCKEY, JR., ESQUIRE, Attorney for the Defendant/Counterplaintiff.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff shall move the Charleston County Master in Equity, located at 100 Broad Street, Suite 226, Charleston, South Carolina, at 10:00 o'clock a.m. on the tenth day hereafter, or at such time and place as may be reasonable and accommodating for counsel and the Court, for partial summary judgment in this matter, in particular, dismissing the Defendant's Counterclaim.

MOTION

COMES NOW YOUR PLAINTIFF, by and through its undersigned attorneys of record, and does respectfully move this Honorable Court in accordance with the provisions of SCRCR Rule 56 for partial summary judgment in this matter, to wit: dismissal of the counterclaim. The bases for such motion are more fully set forth, *infra*, the Plaintiff's Memorandum in Support of Motion.

MEMORANDUM IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

I. BACKGROUND

The following facts are relevant to this action. These facts, for purposes of this motion only, may be deemed by the Court not to be in dispute.

1. The Plaintiff and Defendant entered into a Lease in which Plaintiff is the Landlord, and Defendant is the Lease. Said Lease is attached hereto as Exhibit 1 and incorporated by reference herein as Exhibit 1.

2. Mold was found in the demised property of the said Lease. (Defendant's Answer and Counterclaim, para. 23.)

3. Plaintiff undertook remediation which disrupted the tenancy of the Defendant, but which was necessary under the law and under the Lease. (Defendant's Answer and Counterclaim, para. 23.)

4. Defendant has counterclaimed against the Plaintiff alleging that it Defendant incurred a "Taking" in that it has been deprived of both the use and possession of the Demised Premises for a period of time." (Defendant's Answer and Counterclaim, para. 23.)

5. Defendant has claimed a right to reimbursement as a result of such loss and for costs including: "costs of moving, packing and repositioning... and to equitable apportionment of rent" (Defendant's Answer and Counterclaim, para. 23.)

6. Since Defendant did not have to totally abandon the Premises, Plaintiff concedes and does not dispute that Defendant is entitled to an apportionment of rent under the terms of the Lease.

7. The Defendant was the drafter of the Lease. (Affidavit of Julian Victor Brandt to be filed separately.)

II. DISCUSSION

South Carolina Rule of Civil Procedure 56(a) states in full:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

The rule further states at subpart (c) that

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In this case, there are no material facts in genuine dispute. For the purposes of this motion only, the Plaintiff concedes the allegation of the Defendant's counterclaim: (1) there was mold, (2) the mold required remediation, (3) the remediation disrupted the Defendant's tenancy, (4) defendant incurred costs of moving, packing and repositioning. These facts are not in dispute. What remains is the question of what obligations the Landlord has under the circumstances and those are set forth by the Lease and the parties are bound thereby. This is a question of pure law based on the provisions of the lease.

It has been repeatedly held in this State that "[w]here there is present on a motion for summary judgment a question as to the construction of a written agreement that can be determined by a consideration of the plain and unambiguous language of the contract, the question as one of law may be resolved by the court. *Lyles v. BMI, Inc.*, 292 S.C. 153, 157 355 S.E.2d 282, (Ct. App.), See also *First-Citizens Bank & Trust Co. v. Conway*

National Bank, 282 S.C. 303, 317 S.E.2d 776 (Ct.App.1984). As there are no material facts in dispute, and the matter is purely a matter of law, the Court should grant summary judgment in favor of the moving party if it is entitled to judgment as a matter of law.

It has been repeatedly held in this State that “[w]here there is present on a motion for summary judgment a question as to the construction of a written agreement that can be determined by a consideration of the plain and unambiguous language of the contract, the question as one of law may be resolved by the court. *Lyles v. BMI, Inc.*, 292 S.C. 153, 157 355 S.E.2d 282, (Ct. App.), See also *First-Citizens Bank & Trust Co. v. Conway National Bank*, 282 S.C. 303, 317 S.E.2d 776 (Ct.App.1984). As there are no material facts in dispute, and the matter is purely a matter of law, the Court should grant summary judgment in favor of the moving party if it is entitled to judgment as a matter of law.

In this case, the Plaintiff is entitled to summary judgment on the Defendant’s counterclaim as a matter of law. Plaintiff concedes that the total abatement of rent is applicable if the tenant was forced to move out. The tenant in this case did not move out during repairs. The question which is at the heart of the Counterclaim is simply stated as “what remedies does the tenant have in cases in which there is damage to the building which requires the Tenant to vacate for repairs.” The answer to the question is only to be found in the commercial lease which Tenant not only entered into, but which Tenant drafted, and which is attached hereto as Exhibit, 1. Both parties agree that the relevant and controlling provision of the lease is found in paragraph 11, more specifically two subparagraphs, 11.4 and 11.5. The former states that

Upon damage or destruction to the Building or the Demised Premises ... which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of

partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

Tenant was not required to discontinue use. Plaintiff is not opposed to equitable apportionment of rent. However, this provision only relates to the question of rent apportionment, and does not indicate whether or not the apportionment of rent is the exclusive remedy for the Tenant. However, subparagraph 11.5 does. It states

Nothing contained herein shall be deemed or construed to prevent Tenant from asserting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

By the express language of the lease provision, which again, Defendant drafted, the rights of Tenant to assert a claim for “the value of its leasehold estate, its leasehold improvements or moving and related costs...” is **predicated upon a taking**. Therefore, if there was a taking, then Defendant is correct and should prevail on this matter.

The drafter of the lease could have stated that such damages are recoverable in all situations, or in situations dealing with takings or casualties. It did not. Defendant asserts that a taking and casualty are the same thing. However, the lease distinguishes between the two. In the heading caption for paragraph 11, it states CONDEMNATION AND CASUALTY. Thus, the lease obviously makes a clear distinction between condemnations and casualties.

Absent ambiguity, the court will look to the plain meaning of the words used to determine their effect. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). The construction of a clear and unambiguous contract is a question of law for the court. *S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). The question of what is a taking in accordance with paragraph 11 of the lease is

not ambiguous. "A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ellie* 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct.App.2004); accord *Bruce v. Blalock*; 241 S.C. 155, 160, 127 S.E.2d 439, 441 (1962); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App.1997).

In this case, the question of whether the work taking means anything other than a governmental condemnation is best answered by examining if there are any authorities which define the term taking as such. The answer is no. The term is defined in *Black's Law Dictionary*, 7th Ed. (1999) p. 1467 as meaning two things. The first being a larcenous taking in the criminal sense of the word is wholly inapplicable. The second definition relates to eminent domain. No other definition is given. Therefore, there are not two or more meanings for the word "taking" and it is unambiguous.

The second test for ambiguity is whether its meaning is unclear. In this case the meaning could not be clearer. The Defendant conveniently disregards the fact that paragraph 11.1 actually **defines** the word "taking" as "proceedings or negotiations [] instituted which do or may result in a taking by condemnation or eminent domain ("Taking")... That same provision distinguishes takings from casualties by defining them differently. It states

11.1 If there be **any damage to or destruction** of the Building, the Demised Premises or any portions thereof **or proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking")**, each party will promptly give notice thereof to the other, describing the nature and extent thereof. (All emphasis added)

Thus, the lease actually defines the term taking as eminent domain and by the conjunctive "or" disassociates that application from damage or destruction. Therefore, the lease actually states that damage to the building is not a taking.

The last inquiry must return to the first. If damage or destruction is not a taking, then can the Defendant recover anything other than the remedy of abatement of rent which it has had? It is answered exclusively by subparagraph 11.5 which again states

Nothing contained herein shall be deemed or construed to prevent Tenant from asserting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

This provision only mentions a taking and not damage or destruction. All throughout paragraph 11, the contract considers the implications of both takings by eminent domain along side of damage and destruction. In this provision, there is no reference to damage or destruction. In South Carolina, the "canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another... ." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000).

Because paragraph 11 in general references both eminent domain takings and damage and destruction throughout, and only expresses eminent domain takings in subparagraph 11.5, it is clear that the express reference of "takings" to the exclusion of "damages and destruction" means that only takings will trigger the remedy of that subparagraph. As there was no taking as defined by the lease or the plain language meaning of the word that subparagraph is inapplicable and it is proper for this court to rule as a matter of law that such damages may not be had on the facts presented by the Defendant in this matter.

Lastly, if, *arguendo*, the plain language of the Lease were ambiguous and required construction, it must be construed in favor of Plaintiff, for were the Court to entertain the idea of an ambiguity, such ambiguity would have to be construed against the

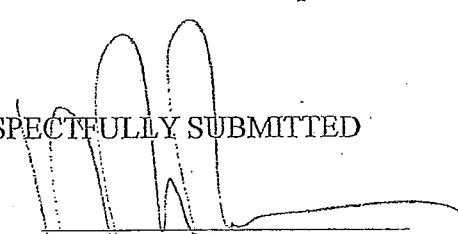
Defendant which drafted the agreement. *Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting the rule of contract interpretation that an ambiguous contract will be construed against the drafting party); *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 175, 644 S.E.2d 718, 722 (2007) (“[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement.”).

III. CONCLUSION

For the reasons set forth herein, the Plaintiff prays that this Court issue its lawful partial summary judgment dismissing the Defendant’s Counterclaim except so much as it may pray for an equitable apportionment of rent.

RESPECTFULLY SUBMITTED

BY:



M. Richardson Hyman, Jr.
P.O. Box 127
Charleston, South Carolina 29402
843 416 1047
843 416 1199
SC Bar No.: 64867

Charleston, South Carolina

17 October 2013

Attorney for the Plaintiff

GOVERNMENTAL REAL ESTATE LEASE - STANDARD OFFICE

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina Budget and Control Board, Division of General Services, executes this Lease as set forth on the signature page) by and between: The Washington Light Infantry Battalion of Charleston, Inc. ("Landlord") having an address at: 287 Meeting Street, Charleston, SC 29401, and the S.C. Sea Grant Consortium ("Tenant") an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 287 Meeting Street, Charleston, SC 29401.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, premises (the "Demised Premises") consisting of 5,822 rentable square feet on the ground floor of the building (the "Building") located at: 287 Meeting Street, Charleston, SC 29401, in the County of Charleston, State of South Carolina (the "Land"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

More specifically, the demised and leased premises shall consist of that office space set forth on Exhibit "A" which is attached hereto and incorporated herein by reference, and includes the common use of the Foyer as a reception area as long as the access to the elevator shall not be impeded or blocked, provided however, that the leased and demised area shall not include the elevator nor use of the elevator. As the elevator provides access to the upper floors, the Landlord, its guests, invitees, employee's agents, designees etc. shall have access to said elevator across the area necessary of the demised and leased premises for access thereto.

ARTICLE 2 - TERM

2.1. The term of this Lease shall be three (3) years (the "Initial Term") beginning on July 1, 2009, (the "Commencement Date") and, unless terminated or extended, shall end on June 30, 2012, (the "Termination Date"). Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this lease for up to one (1) consecutive period of three (3) years (the "Extended Term") upon the same terms and conditions contained herein, except the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least six (6) months prior to the expiration of the then existing term.

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Initial Term at the rate of \$10.21 per rentable square foot, in the annual aggregate amount of \$59,420.04, payable in equal monthly installments of \$4,951.67 in advance on or before the tenth (10th) day of each consecutive calendar month of the Initial Term. Upon the expiration of the Initial Term of the lease, and on any extension or renewal thereof, Basic Rent shall increase once at the beginning of the extended term in the amount of three percent (3%) of the above-referenced amount as a base point of calculation.

3.2. Rentable square footage shall be determined in accordance with BOMA standards.

Exhibit 1

3.3. All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

Washington Light Infantry Battalion
287 Meeting Street
Charleston, SC 29401

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for office space.

4.2. If during the Initial Term or any Extended Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or uneconomical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and Additional Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease. Any assignment or sublease shall be on the same terms and conditions as those of Tenant, and the requirements of the sublease or assignee shall not exceed the requirements of Tenant as to the demised space. Any assignment made hereunder shall be conditioned upon the assignee or sub-lessee not interfering with the peaceful and quiet enjoyment of Landlord or other tenants, or engaging in business or conduct which would cause a risk to the premises, the landlord or other tenants. Such an assignment or sub-tenancy created under this provision or elsewhere herein, shall not be construed as a release of Tenant from the obligations of this Lease unless a release is executed in writing by Landlord in addition to the consent to any assignment or sub-tenancy created hereunder.

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sub-lessee of Tenant and the performance of such act shall be deemed to be performance by Tenant. However, such provision shall not be construed to relieve Tenant of any obligation, in the event that any pertinent assignee or sub-lessee fail to perform any obligation on behalf of Tenant, nor shall it be construed to remove liability from Tenant for any failure to perform under the provisions of this lease.

ARTICLE 6 - SERVICES

6.1. The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure and equipment relating thereto, janitorial services, maintenance services and other related services. Landlord has provided separate water, gas and electric meters

for Tenant to use in acquiring any of these services it may desire. Tenant shall be responsible financially for any services for which it contracts hereunder.

The Landlord shall designate four (4) parking spaces for the Tenant at the rear of the building. Tenant may use these parking spaces for parking only and may not use any other parking spaces on the Landlord's fee, other than those as may from time to time be designated by Landlord, without landlord's specific written permission

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease, that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises,

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises;

(g) Landlord will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Landlord has notice of damage or the need for repair; and

(h) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or by any other person, party or entity.

7.2 Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Tenant by the Landlord. Should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Landlord reasonable access to the Demised Premises for inspections.

(f) Use reasonable precautions to protect persons and property against fire or other casualty;

(g) Use reasonable precautions in the conservation of water, energy, gas and other utilities; and,

(h) Shall only erect signage approved by Landlord and the City of Charleston's Board of Architectural review and any other applicable regulatory or government authority.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1 Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty accepted.

10.2. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE AND TAXES

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal. Landlord shall not be required to maintain liability or any other insurance in which the Tenant is named insured. Tenant may obtain its own insurance at its own election, but Landlord shall not become liable to Tenant for any damage to Tenant or Tenant's business or property for any casualty, including but not limited to fire, flood, hurricane, earthquake, rain, storm, ice, sleet, or any other event or disaster of any kind nature or sort, unless such damage or casualty is due to Landlord's negligence or conduct.

12.2. If, as a result of Landlord's leasing of the remaining portions of the Building to parties other than Tenant, or as a result of any assignment or subletting by such parties, Landlord's insurance premium for the coverage required by subparagraph 12.1 shall be increased. Tenant shall not be liable for or obligated to pay any portion of such increase and such increase shall not constitute part of the Building Operating Cost.

12.3. Landlord shall be responsible for all ad valorem taxes applicable to the Demised Premises and shall pay such amounts when due.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the State Budget and Control Board; or

(b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it;
or

(c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of the State Budget and Control Board, Division of General Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If Landlord shall have breached any covenant, condition, representation or warranty made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 13.1, Tenant shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Initial Term by giving 120 days written notice to Landlord of Tenant's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the State of South Carolina.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

(a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;

(b) Liquidated or punitive damages for any cause or reason;

(c) Landlord's attorney fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;

(d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability.

(e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and

(f) Payment of any late charges or penalties for failure by Tenant to make payment of Basic Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgagee.

ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies which affect Tenant's use and enjoyment of the Demised Premises, Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof. In the event Landlord shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$1,000, Tenant shall have the right but not the obligation to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Basic Rent. In the event Tenant does not undertake such repair, replacement or cure, irrespective of the cost thereof, and Landlord shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Tenant's notice to Landlord of such deficiency, Tenant may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or Taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Landlord or Tenant at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - DEFAULT

20.1. If either party shall be in default of any provision of this Lease, the non-defaulting party shall give written notice to the defaulting party of its intention to declare a default, together with a statement of the nature of the default.

20.2. In the event of a default either Landlord or Tenant the other party may exercise any rights or remedies under this lease or under the law, to include, but not limited to, terminating this Lease as provided herein.

ARTICLE 21 - HOLDOVER

21.1. In the event Tenant shall remain in the Demised Premises after the Initial Term has expired and Tenant shall have failed to give notice to Landlord of Tenant's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Initial Term until either Landlord or Tenant, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

22.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

- 22.7. Exhibit "A" referred to in this Lease is incorporated herein and made a part hereof.
- 22.8. This Lease is subject to and conditioned upon the approval of the Division of General Services, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year indicated under their signature.

WITNESS:

LANDLORD:

The Washington Light Infantry Battalion of Charleston, Inc.

usc [unclear]

Henry J. Siegling
(signature for landlord)

HENRY J. SIEGLING, PRESIDENT
(printed name and title of signatory)

11-06-09
Date

WITNESS:

TENANT:

S.C. Sea Grant Consortium

Glenn Z. Knight

M. Richard DeVoe
(signature for tenant)

M. Richard DeVoe, Executive Director
(printed name and title of signatory)

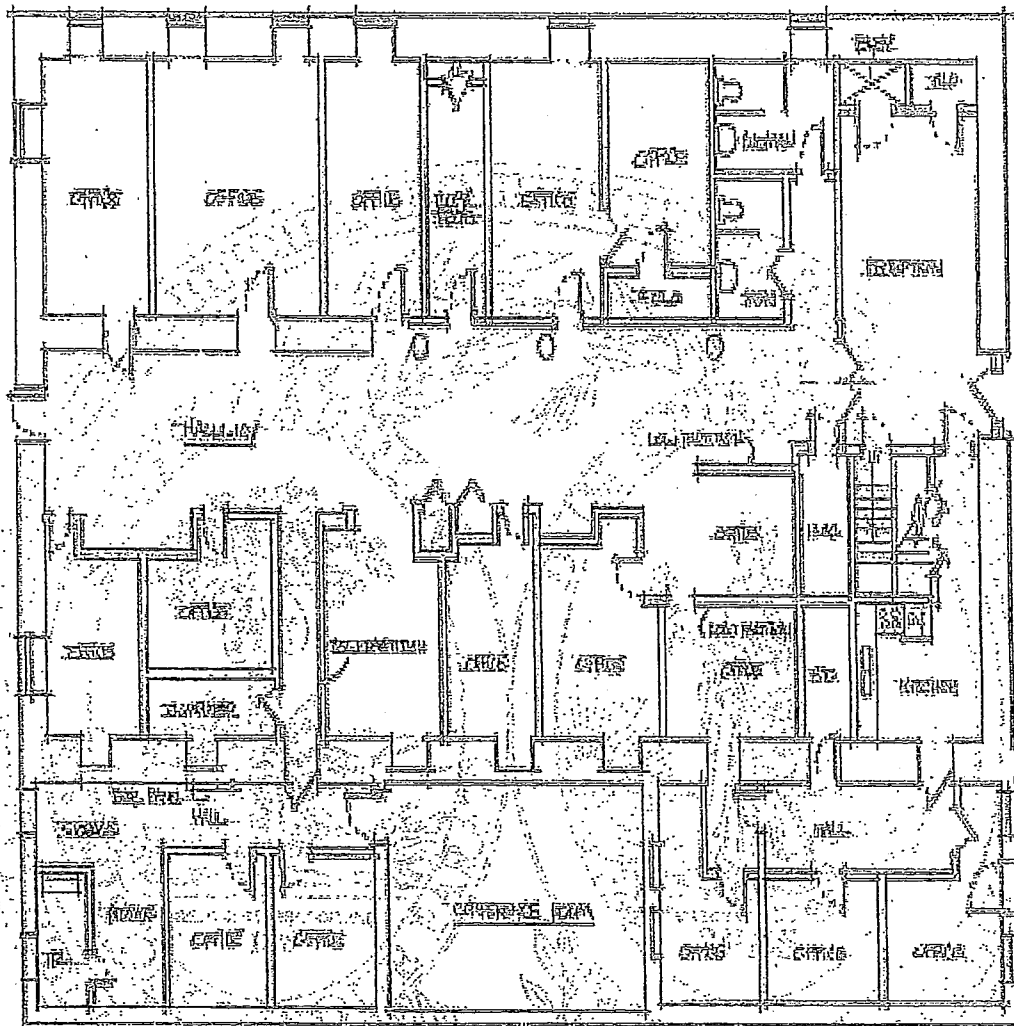
11/6/09
Date

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447-1000 by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, this 9th day of November 2009.

Lisa H. Catalanotto

Lisa H. Catalanotto
Program Manager/Attorney

Exhibit "A"



FLOOR PLAN

LEASE RENEWAL

THIS LEASE RENEWAL, is made as of the Executed Date (which is the date on which the South Carolina Budget and Control Board, Division of General Services, executes this Lease Renewal as set forth on the signature page) by and between: The Washington Light Infantry Battalion of Charleston, Inc. (the "Landlord") having an address at: 287 Meeting Street, Charleston, South Carolina 29401 and the South Carolina Sea Consortium (the "Tenant"), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at 287 Meeting Street, Charleston, South Carolina 29401.

WITNESSETH;

WHEREAS, the Washington Light Infantry Battalion of Charleston, Inc. entered into a Lease with Tenant dated July 1, 2009 for the Demised Premises located at 287 Meeting Street, Charleston, South Carolina 29401 for a three (3) year term commencing July 1, 2009 and ending June 30, 2012 (the "Lease");

WHEREAS, the Demised Premises consists of 5,822 rentable square feet on the ground floor of the Building; and

WHEREAS, Landlord and Tenant hereto desire to renew said Lease;

NOW THEREFORE, Landlord and Tenant for considerations hereinafter mentioned covenant and agree the said Lease is renewed and amended as follows:

1. The term of this Lease Renewal (the "Lease Renewal Term") shall be three (3) years beginning on July 1, 2012, (the "Commencement Date") and, unless terminated or extended, shall end on June 30, 2015 (the "Termination Date").
2. Tenant shall pay rent (the "Basic Rent") to Landlord during the Lease Renewal Term at the rate of \$10.60 (rounded) per rentable square foot, in the annual aggregate amount of \$ 61,713.24 payable in equal monthly installments of \$5,142.77 in advance on or before the tenth (10th) day of each consecutive calendar month of the Lease Renewal Term.
3. If any provisions of this Lease Renewal conflict with any provisions contained in the Lease, save the term of the Lease and the amount of basic rent to be paid, then provisions of this Lease Renewal shall govern and control. All other provisions of the aforesaid Lease are in effect and are incorporated herein by reference as fully and completely as if each provision therein were set forth and recited herein verbatim, and shall fully and completely control and apply to the Lease Renewal.
4. Landlord and Tenant ratify and confirm the Lease and agree that this Lease Renewal shall bind and inure to the benefit of the parties hereby and their permitted successors, assigns and representatives effective as of July 1, 2012.

All capitalized terms used herein shall have the meaning more particularly set forth in the Lease unless otherwise expressly defined otherwise in this Lease Renewal.

THIS LEASE RENEWAL, by reference to the above stated Lease, shall, when fully executed, form a part thereof; and ALL OTHER TERMS AND CONDITIONS of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Lease Renewal as of the day and year indicated under their signature.

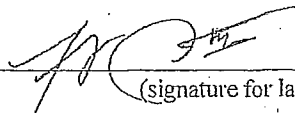
WITNESS:



(witness signature)

LANDLORD:

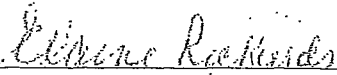
The Washington Light Infantry Battalion of Charleston, Inc.



(signature for landlord)
Julian V. Brandt III Chairman Property Manager
(printed name and title of signatory)
April 2nd 2012

Date

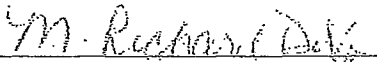
WITNESS:



(witness signature)

TENANT:

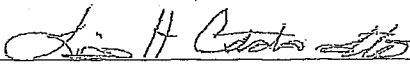
South Carolina Sea Grant Consortium



(signature for tenant)
M. Richard D. V...
(printed name and title of signatory)
4/4/2012

Date

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, this 6th day of April, 2012.



Lisa H. Catalanotto

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

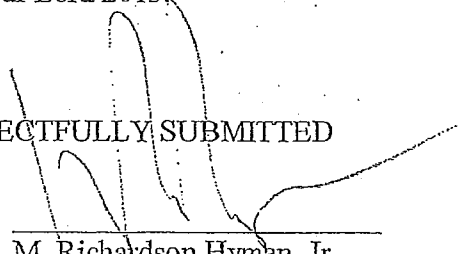
Defendant,)

CERTIFICATE OF SERVICE

COMES NOW YOUR UNDERSIGNED and certifies that a copy of the Plaintiff's Notice of Motion and Motion for Partial Summary Judgment and Memorandum in Support of Motion for Summary Judgment was served was served on the Defendant by placing a copy of the same in the United States Post, with sufficient first class postage attached thereto, and properly addressed to the Defendant's Counsel of Record on this 17th day of October in the Year of Our Lord 2013.

RESPECTFULLY SUBMITTED

BY:


M. Richardson Hyman, Jr.
P.O. Box 127
Charleston, South Carolina 29402
843 416 1047
843 416 1199
SC Bar No.: 64867

Charleston, South Carolina

17 October 2013

Attorney for the Plaintiff



M. RICHARDSON HYMAN, JR.
ATTORNEY AT LAW
P.O. BOX 127
CHARLESTON, SOUTH CAROLINA 29402

MRHCHAS@COMCAST.NET

(843) 416-1047
(843) 323-4101 (FACSIMILE)

21 October 2013

Mr. James A. Stuckey Jr., Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

RE: *Washington Light Infantry of Charleston, v. The Sea Grant Consortium*

Dear Mr. Stuckey:

Please find enclosed a copy of the Affidavit of Julian V. Brandt III in support of the Plaintiff's motion for Partial Summary Judgment. I do not anticipate further documentation to be submitted in support of the motion at this time.

With kindest regards, I am and remain as ever,

Yours very truly,


M. Richardson Hyman, Jr.

MRH/ip

cc: Washington Light Infantry Board of Directors

Enclosures:
Affidavit of Julian V. Brandt
Cover Letter to Clerk of Court

OCT 23 2013

RECORDONAPPEAL_00031



M. RICHARDSON HYMAN, JR.
ATTORNEY AT LAW
P.O. Box 127
CHARLESTON, SOUTH CAROLINA 29402

MRHCHAS@COMCAST.NET

(843) 416-1047
(843) 323-4101 (FACSIMILE)

21 October 2013

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, South Carolina 29401

RE: *Washington Light Infantry of Charleston, South Carolina Inc., v. The Sea Grant Consortium*
Case No. 2013-CP-10-4019

Dear Madam Clerk:

Please find enclosed for filing, the original and one copy of an affidavit in Support of Plaintiff's Motion for Partial Summary Judgment, as well as a certificate of service thereof.

I would appreciate your clocking and filing the original, and clocking the copy and returning it to me in the enclosed return envelope.

I thank you for your assistance in this matter, and with kindest regards, I am and remain as ever,

your most humble and obed't sv't,


M. Richardson Hyman, Jr.

MRH/ip

Enclosures:
As stated above

Cc: Henry I. Siegling
Washington Light Infantry
287 Meeting Street
Charleston, South Carolina 29401

Mr. James A. Stuckey Jr., Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

RECORDONAPPEAL_00032

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF JULIAN V. BRANDT III

COMES NOW YOUR AFFIANT, Julian V. Brandt III, and does swear, testify and depose upon his lawful Oath as follows:

1. I am Julian V. Brandt, a citizen and resident of the County of Charleston, State of South Carolina, and a person have attained the age of eighteen and having knowledge of the facts attested to herein.

2. I am a licensed real estate broker in the State of South Carolina and the principal of the firm Julian V. Brandt, Inc.

3. I am the real estate agent for the Washington Light Infantry Company of Charleston, South Carolina, Inc.

4. I am intimately familiar with the lease between the Washington Light Infantry Company of Charleston, South Carolina, Inc. and the Sea Grant Consortium, a copy of which is attached hereto as Exhibit 1 to this Affidavit and incorporated herein as Exhibit 1 hereto by reference.

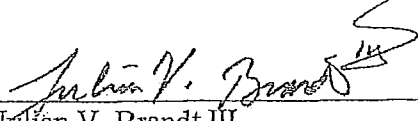
5. I was involved in the procurement of that Lease.

6. The Lease was drafted by the State of South Carolina for its subsidiary agency the Sea Grant Consortium.

7. I was told by the drafters that the provisions of the Lease had to be as they were drafted and that even the paper used for the Lease must be special paper approved by the State of South Carolina.

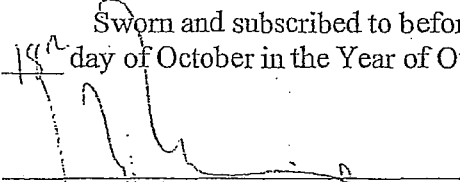
8. This affidavit was prepared for me, but the content herein is my own and true and accurate based on my own knowledge and information of the events and transactions set forth herein.

FURTHER SAYETH your affiant naught!



Julian V. Brandt III

Sworn and subscribed to before me by the foregoing Julian V. Brandt III this 14th day of October in the Year of Our LORD 2013.



Notary Public for South Carolina
My Commission Expires: June 26, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

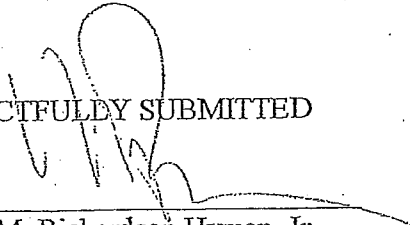
Defendant,)

CERTIFICATE OF SERVICE

COMES NOW YOUR UNDERSIGNED and certifies that a copy of the Affidavit of Julian V. Brandt III was served was served on the Defendant by placing a copy of the same in the United States Post, with sufficient first class postage attached thereto, and properly addressed to the Defendant's Counsel of Record on this 21st of October in the Year of Our Lord 2013.

RESPECTFULLY SUBMITTED

BY:


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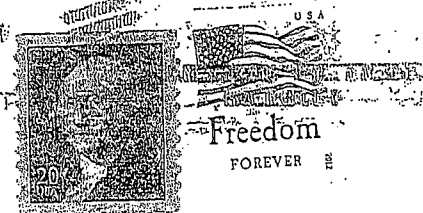
21 October 2013

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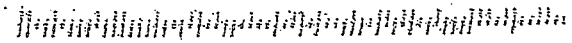
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) IN THE NINTH JUDICIAL CIRCUIT
) Case No. 2013-CP-10-4019

THE WASHINGTON LIGHT
INFANTRY OF CHARLESTON
SOUTH CAROLINA, INC.

Plaintiff,

vs.

THE SEA GRANT CONSORTIUM,
An Agency and Political
Subdivision of the State of South
Carolina,

Defendant.

**MEMORANDUM OF
DEFENDANT**

Defendant THE SEA GRANT CONSORTIUM submits this Memorandum in opposition to the Declaratory Judgment requested by plaintiff.

OVERVIEW

Defendant leases 287 Meeting Street, Charleston, at the southwest corner of Meeting and George Streets, from Plaintiff The Washington Light Infantry. (Exhibit 1) By Lease Renewal dated April 6, 2012, the Lease was extended for three years and will now end and expire on June 30, 2015. The Demised Premises are 5,822 square feet on the ground floor of the building. The upper floors, including an historic museum, are occupied by plaintiff.

It was recently discovered that the HVAC system, which was present and operative when the plaintiff acquired the property, and which has been used by the defendant/tenant has caused mold accumulation which can present a threat to health and welfare of the occupants. Plaintiff

has taken action to remediate the mold, but has now been advised that the HVAC system needs to be repaired or replaced in order to prevent re-accumulation of the mold.

Plaintiff is now before the Court on its request for a Declaratory Judgment “declaring that the obligation to install a working HVAC system in the Leased premises is the responsibility and obligation of the Defendant and the Defendant alone.”

Defendant opposes the Declaratory Judgment, believing that the terms of the GOVERNMENTAL REAL ESTATE LEASE-STANDARD OFFICE prepared and approved by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, does not provide that Defendant is either required to repair or replace the existing HVAC system.

LAW AND ARGUMENT

The parties have agreed to the uncontested facts of this case by submitting to the Court a STIPULATION OF FACT with the Lease Agreement attached.

It seems to Defendant that these provisions of the Lease Agreement are controlling and dispositive of Plaintiff's case:

ARTICLE 8 - TENANT'S COVENANTS provides:

8.1. Tenant covenants and agrees that it shall:

* * * *

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord. . . . (Emphasis added).

ARTICLE 16 - MINOR REPAIRS provides:

16.1. If at any time during the initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement . . . Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof.

Additionally, ARTICLE 7 of the Lease Agreement provides:

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES:

7.1. Landlord represents and warrants to Tenant that:

* * * *

(f) Landlord will keep . . . Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain . . . Building and the Demised Premises; (Emphasis added)

(g) Landlord will keep the Building and the Demised Premises protected . . . within a reasonable time after Landlord has notice of damage or the need for repair.

Yes, the Lease Agreement provides:

ARTICLE 6 - SERVICES

6.1 The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its [sic] own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure and equipment relating thereto, janitorial services, maintenance services, and other related services.

It appears that these "services" are exactly that, electricity, gas, water, sewer, all to be paid separately by Landlord under the provision, "Landlord has provided separate water, gas and electric meters for Tenant to use in acquiring any of these services it may desire. Tenant shall be


responsible financially for any services for which it contracts hereunder.” (ARTICLE 6 -- SERVICES, Para. 6.1)

Accordingly, since the Lease Renewal expires on June 30, 2015, and the HVAC mold problem has now been remedied, it seems overreaching for Plaintiff to ask to declare “that the obligation to install a working HVAC system in the Leased premises is the responsibility and obligation of the Defendant and the Defendant alone.

CONCLUSION

For the reasons stated, based on the logical interpretation of the Lease Agreement, Plaintiff’s request for Declaratory Judgment should be denied.

Respectfully submitted,


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Attorneys for Defendant

December 1, 2014

Charleston, South Carolina

while maintenance to the HVAC system was being performed. Plaintiff was required to repair the HVAC system because of mold infestation in the air conditioning ducts.

The parties agree that the Governmental Real Estate Lease-Standard Office is the valid Lease in this dispute. As a result of mold discovered in the Demised Premises, which required Plaintiff to disrupt and infringe on the tenancy of Defendant, the parties agree that an equitable apportionment of rent of \$2,571.39 will be made to Defendant.

I find this Court has jurisdiction of this action and that venue is proper.

Conclusions of Law

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (S.C. App. 2004). Even where there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. Hamilton v. Miller, 301 S.C. 45, 47, 389 S.E.2d 652 (1990). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

Where the issue is construction of a written contract the question is one of law if the language is "plain and unambiguous." First-Citizens Bank & Trust Co. v. Conway Nat. Bank, 282 S.C. 303, 317 S.E.2d 776 (S.C. App. 1984); Dabbs v. Cincinnati Ins. Co.,

293 S.C. 234, 359 S.E.2d 521 (S.C. App. 1987). If a contract's terms, when viewed by a reasonably intelligent person, are capable of having more than one meaning then the contract is considered to be ambiguous. Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46-47, 747 S.E.2d 178, 184 (2013).

A court will construe any ambiguities in a contract against the drafter of the agreement. Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 309, 698 S.E.2d 773, 778 (2010). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). Documents will be interpreted to give effect to all of their provisions, thus the primary test as to the character of a contract is the intention of the parties gathered from the whole scope and effect of the language used. Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007).

There is no dispute between the parties as to the validity of the Governmental Real Estate Lease-Standard Office lease agreement in this action. The parties agree that an equitable apportionment of rent, totaling \$2,571.39, will be made to Defendant because of the discovery of mold in the air conditioning vents. However, the dispute between the parties concerns the interpretation of Paragraph 11.4. The question for this Court to decide is whether the language of Paragraph 11.4 is unambiguous. The parties argue over whether, "other payments and charges," includes Defendant's IT/computer expenses of \$5,389.49 and \$572.73 for packing, which includes boxes that were used to move computer equipment.

Paragraph 11.4 of the lease agreement provides:



11.4 Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned. (Emphasis added)

In its redacted form the pertinent portions of this paragraph will read:

11.4 Upon damage...to the building or the demised premises...or in the case of partial damage...which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned. (Emphasis added)

Paragraph 11.4's language is unambiguous. The Lease fails to define "other payments and charges." However, when reading the Lease as a whole, "other payments and charges," refers to any payment of rent or charges payable to Plaintiff, and owed by Defendant.¹ Paragraph 11.4 applies only to payments and charges made to or received by the Landlord pursuant to the Lease, and not debts incurred outside the Lease. The payments that Defendant made for IT and moving costs are not provided for in the Lease, and thus, are not payments Defendant may seek to apportion under the Lease.

Conclusions

IT IS THEREFORE ORDERED:

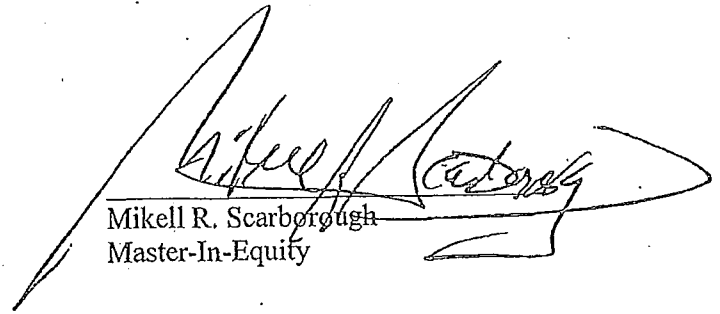
1. Plaintiff shall equitably apportion rent in the amount of \$2,571.39 to Defendant;
2. Defendant's IT/computer and packing/boxes expenses are not a Taking;
3. The lease language is unambiguous; and
4. Plaintiff's motion for partial summary judgment is granted.

¹ As an example, Article 14, paragraph 14.1(f) exempts Defendant from, "[P]ayment of any late charges or penalties for failure by Tenant to make payment of Basic Rent or any other charges payable to landlord pursuant to this Lease."



IT IS SO ORDERED.

October 8, 2014
Charleston, South Carolina



Mikell R. Scarborough
Master-In-Equity

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 THE WASHINGTON LIGHT INFANTRY OF CHARLESTON
5 SOUTH CAROLINA, INC.,

6 Plaintiff,

7 vs. CASE NO. 2013-CP-10-4019

8 THE SEA GRANT CONSORTIUM, An Agency and
9 Political Subdivision of the State of South
10 Carolina,

11 Defendant.

12 Hearing before the Honorable Mikell
13 R. Scarborough, reported by Christine A.
14 Smith, Court Reporter and Notary Public, at
15 10:16 a.m. on December 1, 2014, at 100 Broad
16 Street, Courtroom 2A, Charleston, South
17 Carolina.

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COPY

Christine A. Smith, Court Reporter
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casmith@charlestoncounty.org

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APPEARANCES OF COUNSEL:

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ATTORNEYS FOR THE DEFENDANT:

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1 (DFT. EXH. #1, Memorandum, was marked for
2 identification.)

3
4 P R O C E E D I N G S

5
6 THE COURT: So we are back into our
7 case for this morning, WLI versus Sea
8 Grant. We set it for trial this morning.
9 We had previously heard maybe back in
10 January, actually, we heard motions for
11 summary judgment. The Court took them
12 under advisement. I apologize for the
13 delay in getting you-all an answer, but I
14 did finally give you an answer.

15 When we met last week, we set the
16 matter today for hearing. I'm really sort
17 of assuming it's more like a damages
18 hearing is really where we are on this one.

19 Mr. Hyman, what have you got?

20 MR. HYMAN: Very briefly, in lieu of
21 an opening statement, we brought this
22 action which is an action for the Court to
23 construe a contract. There are no prayers
24 for damages on the Plaintiff's side.
25 Defendant had counterclaims for damages.

1 THE COURT: Okay.

2 MR. HYMAN: And that was the
3 subject, but basically our prayers were for
4 the Court to construe the obligations of
5 the parties under the lease between the
6 parties.

7 THE COURT: You-all are not seeking
8 damages -- just the DJ action, right?

9 MR. HYMAN: Yes, sir.

10 THE COURT: All right. Mr. Stuckey?
11 Any objection to that?

12 MR. STUCKEY: No, Your Honor,
13 otherwise. Basically I think we were
14 deserving the damages because if the Court
15 rules in favor of the Plaintiff then
16 they're going to come back -- what this is
17 is a repair to an air conditioning system
18 or replacement of the air conditioning
19 system. That's basically what it is.

20 Counsel was asking that the contract
21 be construed as to who has the obligation
22 to either repair or replace and that's what
23 we're before the Court on today.

24 THE COURT: Very good. Are you
25 ready to proceed then?

1 MR. HYMAN: Yes, Your Honor. As we
2 informed the Court last week, Mr. Stuckey
3 and I have worked and reached a stipulation
4 of fact and with the Court's permission
5 I'll read the stipulation of fact into the
6 record.

7 THE COURT: All right, sir.

8 MR. HYMAN: Parties hereby agree and
9 stipulate to the following facts which are
10 admissible for all purposes.

11 THE COURT: Now, I want you to slow
12 down unless you've given Ms. Smith a copy
13 of that. If you'll just slow down because
14 she's typing it down.

15 MR. HYMAN: I'm sorry.

16 THE COURT: Thank you, Mr. Hyman.

17 MR. HYMAN: "The Plaintiff,
18 Washington Light Infantry of Charleston,
19 South Carolina, Inc., or Washington Light
20 Infantry, is a nonprofit corporation
21 licensed under the laws of the State of
22 South Carolina. The Defendant, Sea Grant
23 Consortium, is an agency and political
24 subdivision of the State of South Carolina.

25 "The Plaintiff owns certain property

1 located on Meeting Street, Charleston,
2 South Carolina commonly known as the
3 Washington Light Infantry. The Sea Grant
4 Consortium has leased the first floor of
5 the Washington Light Infantry Armory from
6 the Washington Light Infantry."

7 The lease for the first floor is
8 attached hereto as Exhibit 1 and
9 incorporated herein as Exhibit 1, and is
10 also Plaintiff's Exhibit 1. With the
11 Court's permission I'll tender the lease at
12 this time.

13 THE COURT: All right. Exhibit 1,
14 very good.

15 (PLF. EXH. #1, Lease Agreement, was
16 marked for identification.)

17 MR. HYMAN: "The lease, Exhibit 1,
18 is supported by full, fair, and valuable
19 consideration. There's a heating,
20 ventilation, and air conditioning (HVAC)
21 unit for the first floor of the Washington
22 Light Infantry Armory which constitutes the
23 Sea Grant leasehold. The HVAC unit was
24 present when Washington Light Infantry
25 acquired the Armory. The tenant has been

1 using the HVAC system that was in place
2 when the Washington Light Infantry acquired
3 the Armory.

4 "It was recently discovered that the
5 HVAC system has caused mold accumulation
6 which can present a threat to health and
7 welfare. The Washington Light Infantry has
8 remediated the mold, which has accumulated
9 to date. The HVAC system needs to be
10 repaired or replaced to prevent
11 reaccumulation of mold. The parties
12 dispute whose obligation under the lease it
13 is to maintain, repair, or replace the HVAC
14 system."

15 The lease at Exhibit 1 was drafted
16 by the Defendant and signed by both myself
17 and Mr. Stuckey, and we can offer this up
18 as Exhibit 2 if the Court likes, or if not
19 I think the reading is sufficient.

20 THE COURT: I've got it. Is it
21 executed at all, or did you-all just have
22 it signed? Let's go ahead and put it in
23 and call it an exhibit. That will be fine.
24 That will take care of any questions I
25 think. That's Exhibit No. 2?

1 MR. HYMAN: Yes, sir.

2 (PLF. EXH. #2, Stipulation of Fact,
3 was marked for identification.)

4 THE COURT: All right.

5 MR. HYMAN: At this time, Your
6 Honor, I will move for Exhibits 1 and 2 to
7 be accepted into evidence as Exhibits 1 and
8 2.

9 THE COURT: Very good.

10 MR. STUCKEY: No objection.

11 THE COURT: Without objection. Very
12 good.

13 MR. HYMAN: Plaintiff rests, Your
14 Honor.

15 THE COURT: Very good. And
16 Mr. Stuckey? I have a memorandum from you.

17 MR. STUCKEY: That's correct, Your
18 Honor. That sets forth our position.

19 And would Your Honor like to hear
20 arguments by me, or would you like to have
21 Mr. Hyman open with some?

22 THE COURT: Let me go ahead and hear
23 from you, and then I'll come back to
24 Mr. Hyman. How about that? That's a
25 little different, but he's already spoken.

1 MR. STUCKEY: Your Honor, we've
2 outlined the facts and we've also outlined
3 our understanding in our submittal of the
4 lease agreement.

5 Basically, as set forth in our
6 memorandum, this lease agreement involves
7 the premises at 287 Meeting Street, which
8 is the Washington Light Infantry building
9 which is on the southwestern corner of
10 George Street and Meeting Street. The
11 first floor is leased to the Sea Grant
12 Consortium and the second or third floor --
13 and I forget whether it's the second or
14 third or not, but anyhow the Washington
15 Light Infantry has their museum there,
16 their historic museum, and I think also
17 they use it as a meeting hall.

18 So anyhow, we're talking about
19 basically 5,822 square feet of the lower
20 first floor which is leased. Now, the
21 lease, Your Honor, will expire in June,
22 unless it's renewed, June 30th, 2015. It
23 had an original lease of three years. It
24 was extended three additional years from
25 2012, and is set to expire now on June 30,

1 2015.

2 We do not know now, Your Honor --
3 we're basically talking about six or seven
4 months is what it is unless the parties
5 agree. I've made certain overtures to
6 Mr. Hyman, and he's indicated he's not sure
7 what the wishes will be of the Plaintiff as
8 to whether or not the lease will be
9 extended. The probability is it's a
10 standard provision, I think, that the
11 rental increases by 3 percent under the
12 lease renewal.

13 Your Honor, we think that -- if Your
14 Honor will look at Paragraph 8.1 of the
15 lease agreement we think that's completely
16 governing and dispositive of this case.
17 What it says, if I might read it to the
18 Court, "Tenant covenants and agrees that it
19 shall -- and this is subparagraph (b)
20 maintain the demised premises in a clean
21 and good condition and return the demised
22 premises to landlord at the termination of
23 this lease in accordance with Article 17
24 hereof." This is the governing provision.

25 "The tenant shall not be obligated

1 to make any repairs arising out of or in
2 any way caused by, 1) settling, 2) defects
3 in labor, workmanship, materials, fixtures
4 or equipment employed, supplied, or
5 installed by or on behalf of the landlord."

6 So it specifically says there that
7 the tenant shall not be obligated to make
8 any repairs arising out of or any defects
9 in fixtures or equipment employed,
10 supplied, or installed by or on behalf of
11 the landlord.

12 So Your Honor, this HVAC system was
13 in place when the lease went into effect.
14 It was in place when the renewal went into
15 effect. That is the governing provision,
16 and it specifically states that the tenant,
17 that's us, shall not be obligated to make
18 any repairs arising out of or caused by any
19 defects in the workmanship, materials, or
20 fixtures or equipment employed, supplied,
21 or installed by or on behalf of the
22 landlord.

23 So the HVAC system was clearly
24 installed and was in place by the landlord,
25 so it's the landlord's responsibility, Your

1 Honor. We have discussed other provisions.
2 Mr. Hyman has presented a very airtight
3 memorandum in support of his client's
4 position. We've talked about several other
5 provisions of the lease agreement.

6 We think one is about services and
7 it appears that these services are exactly
8 that. They talk about services should be
9 provided by the tenant and then the
10 landlord has no responsibility for
11 providing the services. Well, the services
12 are exactly that: Electricity, gas, water,
13 sewer all to be paid separately by
14 landlord. Under the provision, landlord
15 has provided separate -- well, that's to be
16 paid separately by tenant. I've got that
17 wrong in the memorandum.

18 Under the provision, landlord has
19 provided separate water, gas, and electric
20 meters for tenant to use in acquiring any
21 of these services that they desire. Tenant
22 shall be responsible financially for any
23 services which it contracts hereunder.

24 So obviously the services are things
25 like telephone, sewer, electricity, which

1 are all of the amenities which are paid by
2 the tenant and have nothing to do with the
3 tenant's responsibility to replace or
4 repair the HVAC system.

5 THE COURT: Was the unit under any
6 type of maintenance contract at all? Did
7 anybody have it under contract?

8 MR. HYMAN: No, sir.

9 THE COURT: Let me hear from you on
10 the issue then of the equipment used or
11 supplied by the landlord, and then I'll be
12 glad to hear from you otherwise. Let's
13 talk about that first.

14 MR. HYMAN: Okay. The first issue
15 that I would say is that -- there's certain
16 aspects -- that's Paragraph 8.1. First of
17 all, my client didn't install that nor was
18 it installed on my client's behalf. That
19 is the language which is contained in
20 Paragraph 8.1.

21 THE COURT: 1(b), wasn't it?
22 8.1(b)?

23 MR. HYMAN: 1(b). It says, The
24 tenant shall not be obligated to make any
25 repairs out of or caused by defects in

1 labor, workmanship, materials, fixtures
2 supplied or installed by landlord. We
3 didn't supply it. We didn't install it.
4 It wasn't done on our behalf. It was there
5 when we bought the building. That's
6 argument number one. So it doesn't meet
7 the requirements of 8.1(b).

8 Second of all, Your Honor, the only
9 evidence before the Court today is what is
10 in the stipulation of fact. There is not
11 one shred of evidence which has been
12 introduced which says that the HVAC system
13 was defective in labor, defective in
14 workmanship, defective in materials, or
15 otherwise.

16 It's not working as it should now.
17 It's old. It's nothing to say it's
18 defective when it was installed. If the
19 word language of 8.1(b) is read as it
20 should be read, the tenant is not
21 responsible for defects in workmanship,
22 labor, et cetera. This doesn't apply to
23 things that just had been installed
24 properly and over the years don't work
25 right anymore.

1 THE COURT: Do we have an idea of
2 the age of the unit?

3 MR. HYMAN: We don't know, Your
4 Honor.

5 THE COURT: It's not been under a
6 maintenance contract? We don't know how
7 old it is?

8 MR. HYMAN: It's older than 1986,
9 Your Honor.

10 THE COURT: Is that when the
11 building was acquired?

12 MR. HYMAN: Yes, sir.

13 THE COURT: All right. Again, we're
14 only talking about the first floor? We
15 don't have any other problems anywhere in
16 the building to speak of?

17 MR. HYMAN: Correct.

18 THE COURT: All right.

19 MR. HYMAN: Your Honor asked me to
20 address that one issue and I have, but the
21 real crux of the issue doesn't lie in that
22 provision.

23 THE COURT: You can go further.
24 That's fine.

25 MR. HYMAN: If you take that one

1 provision, and decide this case, even
2 though those facts aren't in evidence,
3 maybe Mr. Stuckey's argument would sound
4 much more plausible. To do that the Court
5 has to completely disregard the language in
6 Paragraph 6. This is a critical paragraph.

7 The following services incidental to
8 the use and enjoyment of the demised
9 premises are not included in this lease or
10 the landlord's obligation to tenant. The
11 following services are not included in the
12 landlord's obligation to tenant.

13 If you go down -- heating or air
14 conditioning, ventilating, artificial
15 lighting, et cetera, are included in there.
16 Now, Mr. Stuckey interprets that to mean
17 services and services only. To do that the
18 Court has to chop part of Paragraph 6 out
19 just as the Court has to chop the whole of
20 Article 6 out to make Article 8.1(b) stand
21 because Article 6.1 says that all of these
22 things must be contracted independently by
23 tenant at its own expense, and on the
24 second line to the end, "and infrastructure
25 and equipment relating thereto."

1 So it is very clear that the
2 contract was drafted by the State of South
3 Carolina and not only included services but
4 infrastructure and equipment relating
5 thereto. If Your Honor wants me -- I'm
6 going to show Mr. Stuckey real quick.

7 MR. STUCKEY: I've got it. I've got
8 it.

9 THE COURT: We're in 6.1, correct?

10 MR. HYMAN: Yes, sir.

11 THE COURT: So it reads, The
12 following services incidental to the use
13 and enjoyment are not included in this
14 lease or in landlord's obligation to the
15 tenant and must be contracted for
16 independently by tenant, and that includes
17 heating or air conditioning and
18 infrastructure and equipment related
19 thereto.

20 And it goes on in the next sentence,
21 Landlord has provided separate water, gas,
22 and electric meters for tenant to use in
23 acquiring of these services, but they
24 obtain and paid for their own services is
25 what you're getting at, right?

1 I'm talking about water, gas,
2 electric, right? The meters are there.
3 They paid separately for those? Separate
4 from the rent?

5 MR. HYMAN: Correct.

6 THE COURT: They're not paying all
7 that to the landlord?

8 MR. HYMAN: That is correct.

9 THE COURT: So then there's no
10 common area? Maintenance? This is just a
11 straight rental payment that's made to the
12 landlord for the use?

13 MR. HYMAN: Well, I'm not sure if
14 there are, but there is not for any HVAC
15 system. There may some type of provision
16 for taxes. I'm not sure, Your Honor.

17 THE COURT: I've got it. All right.
18 Okay.

19 MR. HYMAN: That's the critical crux
20 of the question. We're not in disagreement
21 as to which of the applicable paragraphs of
22 the lease are relevant. What is manifested
23 in this case, Your Honor -- 8.1(f) states
24 that the tenant shall, "Use reasonable
25 precautions to protect person and property

1 against fire or other casualty."

2 . The Washington Light Infantry spent
3 close to \$250,000 remedying this mold
4 situation. So it's very evident that mold
5 in this building is a danger, and it's
6 stipulated by the parties that it's a
7 danger to person and property.

8 So it's very clear under Article
9 8.1(f) that they cannot use the HVAC
10 system, and we notified them of that when
11 this issue came up and it was remediated.

12 So who fixes it? This is a case of
13 a very inartfully drafted lease. I think
14 that all of us would agree that this lease
15 has been -- during the summary judgment
16 stages in regard to their claim against us,
17 and in regard to this incident of an
18 inartfully drafted lease.

19 The Court must read the lease in
20 accordance with the construction and the
21 Court must give effect to each and every
22 provision in the lease, not ignoring one
23 and reducing it to mere surplus. If in
24 this case the Court simply looks at
25 Paragraph 8.1(b) then Mr. Stuckey is

1 correct, but it basically disregards the
2 whole of Paragraph 6.1 and Article 6 all
3 together.

4 The State of South Carolina wrote
5 this lease. It's even on their own
6 letterhead, which I think was a legal
7 requirement, with their watermark. The
8 answer, I think, basically, Your Honor, in
9 the textbook sense is, the WLI is not
10 required to replace anything. It's very
11 clear from Paragraph 6.

12 Sea Grant is not required to replace
13 or repair anything. I think that's very
14 clear from the lease, too, but if you go to
15 Paragraph 6 -- if Sea Grant wants these
16 services, if it wants HVAC, then it is
17 responsible for either repairing or
18 replacing the system because it is
19 responsible solely under Paragraph 6 for
20 HVAC services. They do not have to have
21 it, and they can walk away from this lease
22 without having it. They can terminate
23 right now if they want to terminate because
24 they have that right under the lease.

25 If they want this service

1 Paragraph 6 mandates that they provide it
2 and they do so at their own expense as well
3 as all infrastructure and equipment
4 relating thereto. I think that is the
5 textbook answer the law school professor
6 would be looking for in the construction of
7 this.

8 One wishes to find this contract
9 ambiguous, but it really isn't ambiguous.
10 I've tried all I can. If it were ambiguous
11 it would still be construed against the
12 drafter. Actually, you can look at the
13 plain language of this and give effect to
14 each of those terms by concluding that
15 neither party is obligated to repair or
16 replace, but if such use is to be had, then
17 it must be had at the expense of the Sea
18 Grant. Thank you, Your Honor.

19 THE COURT: Very good. Let me hear
20 from you on that one, Mr. Stuckey? How do
21 you reconcile 6.1 is what I'm getting at?

22 MR. STUCKEY: Your Honor, 6.1 -- we
23 would like to make a slight change. We've
24 got a Scribner's error on Page 3 (sic) at
25 the bottom. That paragraph stated, it

1 appears that these "services" are exactly
2 that of electricity, gas, water, sewer are
3 to be paid separately by the landlord -- it
4 should be tenant -- are to be paid
5 separately by tenant.

6 Under the provision landlord has
7 provided separate water, gas, and electric
8 meters for tenant to use in acquiring any
9 of these services if they desire.
10 Obviously, the services are the monthly
11 rental for those provisions: Electricity,
12 gas, water, sewer, and so forth.

13 The lease agreement goes on, Your
14 Honor, to say, "Tenant shall be responsible
15 financially for any services for which it
16 contracts hereunder." So that's the
17 provision about the Sea Grant contracting
18 hereunder. There's no contract provision
19 here.

20 In addition, Your Honor, we pointed
21 out in our memorandum, Paragraph 7.1,
22 Landlord represents and warrants --
23 represents and warrants -- to tenant that:
24 (f) Landlord will keep the building and the
25 demised premises in good order and repair

1 and make all reasonable improvements to
2 maintain the building and the demised
3 premises.

4 (g) Landlord will keep the building
5 and the demised premises protected --
6 protected -- and we're talking about a
7 hazard from mold, within a reasonable time
8 after landlord has notice of damage or the
9 need for repair.

10 THE COURT: Mr. Hyman said they did
11 do those repairs; is that correct?

12 MR. STUCKEY: They did the
13 remediation, Your Honor. They have done
14 the remediation, and now if there's going
15 to be any future problems with the
16 remediation I'm assuming that they will
17 extend the lease agreement beyond the
18 deadline of June 15, 2015.

19 What they want us to do is if
20 there's any recurring remediation for us to
21 take care of that, or for us to completely
22 replace the HVAC system. We have no
23 responsibility to do either, Your Honor,
24 under the lease agreement we submit. I was
25 looking to see if Representative Whipper

1 might be here when it was emphasized that
2 this lease prepared by the South Carolina
3 Budget and Control Board Department of
4 Property Services was inept or incompetent
5 or improper or something like that.

6 THE COURT: I'm with you on that
7 one.

8 MR. HYMAN: I wouldn't mind telling
9 Seth that to his face. Maybe it will do
10 some good.

11 THE COURT: All right. One second.

12 (Brief pause.)

13 THE COURT: What I have done -- this
14 is a little unusual. Let me tell you what
15 I was wrestling with. I'm ready to rule
16 and get this one out of the way. You-all
17 need some clarity on this. Again, I
18 apologize for taking as long as I did.

19 I've gone to the Residential
20 Landlord and Tenant Act, not because it
21 applies but because it was passed in 1986
22 and it provides certain remedies and
23 requirements. Clearly this is a commercial
24 lease, so it's not subject to the
25 Residential Landlord and Tenant Act, but I

1 went to it because here's what I find to be
2 applicable here.

3 I'm looking at 27-40-440(a)(5). It
4 talks in terms of the landlord to maintain
5 the premises. It talks about keeping the
6 property in reasonably good and safe
7 working order including heating and
8 ventilation and air conditioning. The
9 appliances present in the dwelling unit are
10 presumed to be supplied by the landlord
11 unless specifically excluded by the rental
12 agreement.

13 I think that's exactly what we have
14 here. That's kind of where I'm going to go
15 because I'm going to find that under the
16 terms of this lease agreement the services
17 that were defined, in fact, does include
18 heating and air conditioning.

19 So it looks to me that the
20 provision -- I think this is unusual, but
21 when I look at this in the context, not of
22 a residential lease but in terms of a
23 commercial lease -- in a typical commercial
24 lease you go into a building, and quite
25 frankly, it's just a shell.

1 If you want heating and air, you've
2 got to go get heating and air. If you want
3 gas and water, you've got to get gas and
4 water. So that's what I'm looking at. I'm
5 looking at this as if they went into a
6 shell. Clearly, it was more than a shell
7 that they went into, and I'm talking about
8 they being the tenant.

9 The following services are
10 incidental to the use and enjoyment and are
11 not included in this lease or the
12 landlord's obligations, and it specifically
13 includes heating or air conditioning.

14 Okay?

15 I think under the residential lease
16 it would be presumed that it was, but it
17 provides for an out in the event of a
18 contract providing for that. I think
19 that's what we've got under 6.1, that in
20 fact those are included. Under 8.1, which
21 is what the Defendant has argued in order
22 to maintain the premises in a good
23 condition and return it as indicated, but
24 these fixtures or equipment have been --
25 that would be quote "employed, supplied, or

1 installed by or on behalf of the landlord,
2 I find to be specifically excluded by the
3 language of 6.1.

4 In other words, what I'm finding is
5 that the landlord's requirement is to
6 provide the tenant with a shell and then
7 the shell -- and under the terms of this
8 lease I find that the tenant's required to
9 maintain and cover those expenses of what's
10 provided for under 6.1: Electric, gas,
11 water, sewer, security, heating, or air
12 conditioning which is relevant to our
13 inquiry.

14 So that's my finding. Mr. Hyman,
15 from your prospective then I found for your
16 client under the terms of the lease that
17 the demise/premises -- the provision of
18 heating and air conditioning relevant to
19 this inquiry, is required to be provided
20 and maintained by the tenant. Okay? So I
21 think that covers what it is you're after.

22 Mr. Stuckey, it's not in your favor,
23 and I understand that, and you-all
24 certainly have a right to disagree with me
25 on that. I'm looking at the language of

1 the contract itself is what I'm telling you
2 that I'm looking at.

3 The only reason I went to the
4 Residential Landlord and Tenant Act was
5 because I knew that it would be -- it was
6 supposedly written more in favor of the
7 tenants. Even if you look at the language
8 of the Residential Landlord and Tenant Act
9 it provides for an exclusion in the
10 contract. I find that that's exactly what
11 Article 6.1 does, it excludes the
12 requirement of landlords to provide and
13 maintain the heating and air conditioning
14 units. That's just the language of the
15 contract. I find that it is not ambiguous.
16 It is unambiguous and therefore it's a
17 matter of law for the Court.

18 With that, gentlemen, I have ruled.
19 Mr. Hyman would you provide me with an
20 order and run that by Mr. Stuckey?

21 MR. HYMAN: Yes, Your Honor.

22 THE COURT: We'll go from there.
23 Very good. Thank you-all very much.

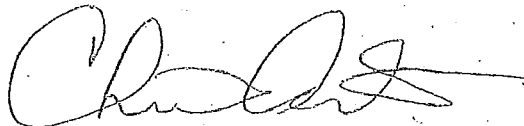
24 (The proceedings were concluded at
25 10:48 a.m.)

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court
5 Reporter and Notary Public for the State of
6 South Carolina at Large, do hereby certify
7 that the foregoing transcript is a true,
8 accurate, and complete record.

9 I further certify that I am neither
10 related to nor counsel for any party to the
11 cause pending or interested in the events
12 thereof.

13 Witness my hand, I have hereunto
14 affixed my official seal this 11th day of
15 December, 2014 at Charleston, Charleston
16 County, South Carolina.
17
18

19
20 

21 Christine A. Smith
22 Notary Public
23 My Commission Expires
24 May 12, 2021
25

GOVERNMENTAL REAL ESTATE LEASE - STANDARD OFFICE

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina Budget and Control Board, Division of General Services, executes this Lease as set forth on the signature page) by and between: The Washington Light Infantry Battalion of Charleston, Inc. ("Landlord") having an address at: 287 Meeting Street, Charleston, SC 29401, and the S.C. Sea Grant Consortium ("Tenant") an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 287 Meeting Street, Charleston, SC 29401.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, premises (the "Demised Premises") consisting of 5,822 rentable square feet on the ground floor of the building (the "Building") located at: 287 Meeting Street, Charleston, SC 29401, in the County of Charleston, State of South Carolina (the "Land"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

More specifically, the demised and leased premises shall consist of that office space set forth on Exhibit "A" which is attached hereto and incorporated herein by reference, and includes the common use of the Foyer as a reception area as long as the access to the elevator shall not be impeded or blocked, provided however, that the leased and demised area shall not include the elevator nor use of the elevator. As the elevator provides access to the upper floors, the Landlord, its guests, invitees, employee's agents, designees, etc. shall have access to said elevator across the area necessary of the demised and leased premises for access thereto.

ARTICLE 2 - TERM

2.1. The term of this Lease shall be three (3) years (the "Initial Term") beginning on July 1, 2009 (the "Commencement Date") and, unless terminated or extended, shall end on June 30, 2012 (the "Termination Date"). Provided there is no continuing event of default thereunder by Tenant, Tenant shall have the right to extend the term of this lease for up to one (1) consecutive period of three (3) years (the "Extended Term") upon the same terms and conditions contained herein, except the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least six (6) months prior to the expiration of the then existing term.

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Initial Term at the rate of \$10.21 per rentable square foot, in the annual aggregate amount of \$59,420.04, payable in equal monthly installments of \$4,951.67 in advance on or before the tenth (10th) day of each consecutive calendar month of the Initial Term. Upon the expiration of the Initial Term of the lease, and on any extension or renewal thereof, Basic Rent shall increase once at the beginning of the extended term in the amount of three percent (3%) of the above-referenced amount as a base point of calculation.

3.2. Rentable square footage shall be determined in accordance with BOMA standards.

3.3. All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

Washington Light Infantry Battalion
287 Meeting Street
Charleston, SC 29401

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for office space.

4.2. If during the Initial Term or any Extended Term the application of any statute, code or ordinance of any government, authority, agency, official or officer, applicable to the Building or the Demised Premises makes it impossible or uneconomical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and Additional Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease. Any assignment or sublease shall be on the same terms and conditions as those of Tenant, and the requirements of the sublease or assignee shall not exceed the requirements of Tenant as to the demised space. Any assignment made hereunder shall be conditioned upon the assignee or sub-lessee not interfering with the peaceful and quiet enjoyment of Landlord or other tenants, or engaging in business or conduct which would cause a risk to the premises, the Landlord or other tenants. Such an assignment or sub-tenancy created under this provision, or elsewhere herein, shall not be construed as a release of Tenant from the obligations of this Lease unless a release is executed in writing by Landlord in addition to the consent to any assignment or sub-tenancy created hereunder.

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sub-lessee of Tenant and the performance of such act shall be deemed to be performance by Tenant. However, such provision shall not be construed to relieve Tenant of any obligation in the event that any pertinent assignee or sub-lessee fail to perform any obligation on behalf of Tenant, nor shall it be construed to remove liability from Tenant for any failure to perform under the provisions of this Lease.

ARTICLE 6 - SERVICES

6.1. The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure and equipment relating thereto, janitorial services, maintenance services and other related services. Landlord has provided separate water, gas and electric meters

for Tenant to use in acquiring any of these services it may desire. Tenant shall be responsible financially for any services for which it contracts hereunder.

The Landlord shall designate four (4) parking spaces for the Tenant at the rear of the building. Tenant may use these parking spaces for parking only and may not use any other parking spaces on the Landlord's fee, other than those as may from time to time be designated by Landlord, without Landlord's specific written permission.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises;

(g) Landlord will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Landlord has notice of damage or the need for repair; and

(h) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or by any other person, party or entity.

7.2 Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Tenant by the Landlord. Should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by: 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Landlord reasonable access to the Demised Premises for inspections.

(f) Use reasonable precautions to protect persons and property against fire or other casualty,

(g) Use reasonable precautions in the conservation of water, energy, gas and other utilities; and,

(h) Shall only erect signage approved by Landlord and the City of Charleston's Board of Architectural review and any other applicable regulatory or government authority.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1. Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense, and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty accepted.

10.2. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE AND TAXES

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal. Landlord shall not be required to maintain liability or any other insurance in which the Tenant is named insured. Tenant may obtain its own insurance at its own election, but Landlord shall not become liable to Tenant for any damage to Tenant or Tenant's business or property for any casualty, including but not limited to fire, flood, hurricane, earthquake, rain, storm, ice, sleet, or any other event or disaster of any kind nature or sort, unless such damage or casualty is due to Landlord's negligence or conduct.

12.2. If, as a result of Landlord's leasing of the remaining portions of the Building to parties other than Tenant, or as a result of any assignment or subletting by such parties, Landlord's insurance premium for the coverage required by subparagraph 12.1 shall be increased. Tenant shall not be liable for or obligated to pay any portion of such increase and such increase shall not constitute part of the Building Operating Cost.

12.3. Landlord shall be responsible for all ad valorem taxes applicable to the Demised Premises and shall pay such amounts when due.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the State Budget and Control Board; or

(b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it; or

(c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of the State Budget and Control Board, Division of General Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If Landlord shall have breached any covenant, condition, representation or warranty made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 13.1, Tenant shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Initial Term by giving 120 days written notice to Landlord of Tenant's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the State of South Carolina.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

(a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;

(b) Liquidated or punitive damages for any cause or reason;

(c) Landlord's attorney fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;

(d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability.

(e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and

(f) Payment of any late charges or penalties for failure by Tenant to make payment of Basic Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage, which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgagee.

ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies, which affect Tenant's use and enjoyment of the Demised Premises, Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof. In the event Landlord shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$1,000, Tenant shall have the right, but not the obligation, to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Basic Rent. In the event Tenant does not undertake such repair, replacement or cure, irrespective of the cost thereof, and Landlord shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Tenant's notice to Landlord of such deficiency, Tenant may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or Taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Landlord or Tenant at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - DEFAULT

20.1. If either party shall be in default of any provision of this Lease, the non-defaulting party shall give written notice to the defaulting party of its intention to declare a default, together with a statement of the nature of the default.

20.2. In the event of a default either Landlord or Tenant the other party may exercise any rights or remedies under this lease or under the law, to include, but not limited to, terminating this Lease as provided herein.

ARTICLE 21 - HOLDOVER

21.1. In the event Tenant shall remain in the Demised Premises after the Initial Term has expired and Tenant shall have failed to give notice to Landlord of Tenant's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Initial Term until either Landlord or Tenant, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

22.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

22.7. Exhibit "A" referred to in this Lease is incorporated herein and made a part hereof.

22.8. This Lease is subject to and conditioned upon the approval of the Division of General Services, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year indicated under their signature.

WITNESS:

LANDLORD:

The Washington Light Infantry Battalion of Charleston, Inc.

usc Arlington

Henry T. Siegling
(signature for landlord)

HENRY T. SIEGLING, PRESIDENT
(printed name and title of signatory)

11-06-09

Date

WITNESS:

TENANT:

S.C. Sea Grant Consortium

E. Lane Knight

M. Richard DeVoe
(signature for tenant)

M. Richard DeVoe, Executive Director

(printed name and title of signatory)

11/6/09

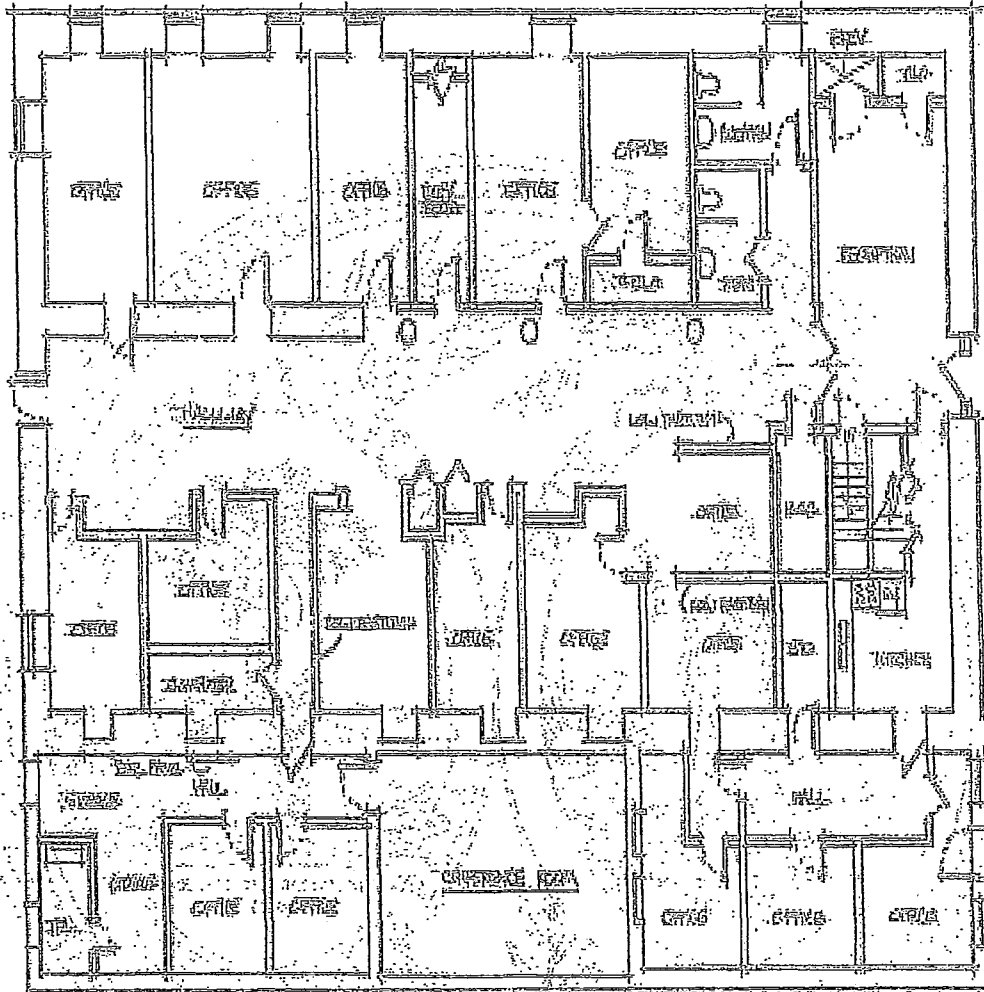
Date

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447-1000 by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, this 9th day of November, 2009.

Lisa H. Catalanotto

Lisa H. Catalanotto
Program Manager/Attorney

Exhibit "A"



FLOOR PLAN

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

Defendant,)

STIPULATION OF FACT

The Parties hereto, hereby agree and stipulate to the following facts, which are admissible for all purposes:

1. The Plaintiff, Washington Light Infantry of Charleston, South Carolina, Inc., or Washington Light Infantry, is a non-profit corporation licensed under the laws of the State of South Carolina.
2. The Defendant, Sea Grant Consortium is an agency and political subdivision of the State of South Carolina.
3. The Plaintiff owns certain property located on Meeting Street, Charleston, South Carolina, commonly known as the Washington Light Infantry.
4. The Sea Grant Consortium has leased the first floor of the Washington Light Infantry Armory from the Washington Light Infantry.
5. The lease for the first floor is attached hereto as Exhibit 1, and incorporated herein as Exhibit 1, and is also Plaintiff's Exhibit 1.

6. The lease at Exhibit 1 is supported by full, fair and valuable consideration.
7. There is a Heating, Ventilation and Air Conditioning (HVAC) unit for the first floor of the Washington Light Infantry Armory, which constitutes the Sea Grant Leasehold.
8. The HVAC unit was present when the Washington Light Infantry acquired the armory.
9. The Tenant has been using the HVAC system that was in place when the Washington Light Infantry acquired the armory.
10. It was recently discovered that the HVAC system has caused mold accumulation which can present a threat to health and welfare.
11. The Washington Light Infantry has remediated the mold which has accumulated to date.
12. The HVAC system need to be repaired or replaced to prevent re-accumulation of mold.
13. The parties dispute whose obligation under the Lease it is to maintain, repair or replace the HVAC system.
14. The lease at Exhibit 1 was drafted by Defendant.

James A. Stuckey, Jr.
Stuckey Law Firm
123 Meeting Street
Charleston, South Carolina 29401
843 577 9323
Attorney for the Defendant

M. Richardson Hyman, Jr.
Law Offices of M. Richardson Hyman, Jr.
P. O. Box 127
Charleston, South Carolina 29402
843 416 1047
Attorney for the Plaintiff

GOVERNMENTAL REAL ESTATE LEASE - STANDARD OFFICE

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina Budget and Control Board, Division of General Services, executes this Lease as set forth on the signature page) by and between: The Washington Light Infantry Battalion of Charleston, Inc. ("Landlord") having an address at: 287 Meeting Street, Charleston, SC 29401 and the S.C. Sea Grant Consortium ("Tenant") an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 287 Meeting Street, Charleston, SC 29401.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, premises (the "Demised Premises") consisting of 5,822 rentable square feet on the ground floor of the building (the "Building") located at: 287 Meeting Street, Charleston, SC 29401, in the County of Charleston, State of South Carolina (the "Land"), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

More specifically, the demised and leased premises shall consist of that office space set forth on Exhibit "A" which is attached hereto and incorporated herein by reference, and includes the common use of the Foyer as a reception area as long as the access to the elevator shall not be impeded or blocked, provided however, that the leased and demised area shall not include the elevator nor use of the elevator. As the elevator provides access to the upper floors, the Landlord, its guests, invitees, employee's agents, designees, etc. shall have access to said elevator across the area necessary of the demised and leased premises for access thereto.

ARTICLE 2 - TERM

2.1. The term of this Lease shall be three (3) years (the "Initial Term") beginning on July 1, 2009, (the "Commencement Date") and, unless terminated or extended, shall end on June 30, 2012 (the "Termination Date"). Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this lease for up to one (1) consecutive period of three (3) years (the "Extended Term") upon the same terms and conditions contained herein, except the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least six (6) months prior to the expiration of the then existing term.

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Initial Term at the rate of \$10.21 per rentable square foot, in the annual aggregate amount of \$59,420.04, payable in equal monthly installments of \$4,951.67 in advance on or before the tenth (10th) day of each consecutive calendar month of the Initial Term. Upon the expiration of the Initial Term of the lease, and on any extension or renewal thereof, Basic Rent shall increase once at the beginning of the extended term in the amount of three percent (3%) of the above-referenced amount as a base point of calculation.

3.2. Rentable square footage shall be determined in accordance with BOMA standards.

3.3. All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

Washington Light Infantry Battalion
287 Meeting Street
Charleston, SC 29401

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for office space.

4.2. If during the Initial Term or any Extended Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or uneconomical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and Additional Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease. Any assignment or sublease shall be on the same terms and conditions as those of Tenant, and the requirements of the sublease or assignee shall not exceed the requirements of Tenant as to the demised space. Any assignment made hereunder shall be conditioned upon the assignee or sub-lessee not interfering with the peaceful and quiet enjoyment of Landlord or other tenants, or engaging in business or conduct which would cause a risk to the premises, the landlord or other tenants. Such an assignment or sub-tenancy created under this provision or elsewhere herein, shall not be construed as a release of Tenant from the obligations of this Lease unless a release is executed in writing by Landlord in addition to the consent to any assignment or sub-tenancy created hereunder.

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sub-lessee of Tenant and the performance of such act shall be deemed to be performance by Tenant. However, such provision shall not be construed to relieve Tenant of any obligation, in the event that any pertinent assignee or sub-lessee fail to perform any obligation on behalf of Tenant, nor shall it be construed to remove liability from Tenant for any failure to perform under the provisions of this Lease.

ARTICLE 6 - SERVICES

6.1. The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure and equipment relating thereto, janitorial services, maintenance services and other related services. Landlord has provided separate water, gas and electric meters

for Tenant to use in acquiring any of these services it may desire. Tenant shall be responsible financially for any services for which it contracts hereunder.

The Landlord shall designate four (4) parking spaces for the Tenant at the rear of the building. Tenant may use these parking spaces for parking only and may not use any other parking spaces on the Landlord's fee, other than those as may from time to time be designated by Landlord, without landlord's specific written permission

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises;

(g) Landlord will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Landlord has notice of damage or the need for repair; and

(h) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or by any other person, party or entity.

7.2 Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

- (a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Tenant by the Landlord. Should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;
- (b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.
- (c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;
- (d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and
- (e) Allow Landlord reasonable access to the Demised Premises for inspections.
- (f) Use reasonable precautions to protect persons and property against fire or other casualty;
- (g) Use reasonable precautions in the conservation of water, energy, gas and other utilities; and
- (h) Shall only erect signage approved by Landlord and the City of Charleston's Board of Architectural review and any other applicable regulatory or government authority.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1 Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty accepted.

10.2. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE AND TAXES

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal. Landlord shall not be required to maintain liability or any other insurance in which the Tenant is named insured. Tenant may obtain its own insurance at its own election, but Landlord shall not become liable to Tenant for any damage to Tenant or Tenant's business or property for any casualty, including but not limited to fire, flood, hurricane, earthquake, rain, storm, ice, sleet, or any other event or disaster of any kind nature or sort, unless such damage or casualty is due to Landlord's negligence or conduct.

12.2. If, as a result of Landlord's leasing of the remaining portions of the Building to parties other than Tenant, or as a result of any assignment or subletting by such parties, Landlord's insurance premium for the coverage required by subparagraph 12.1 shall be increased. Tenant shall not be liable for or obligated to pay any portion of such increase and such increase shall not constitute part of the Building Operating Cost.

12.3. Landlord shall be responsible for all ad valorem taxes applicable to the Demised Premises and shall pay such amounts when due.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the State Budget and Control Board; or

(b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it;

or

(c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of the State Budget and Control Board, Division of General Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If Landlord shall have breached any covenant, condition, representation or warranty made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 13.1, Tenant shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Initial Term by giving 120 days written notice to Landlord of Tenant's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the State of South Carolina.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

(a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;

(b) Liquidated or punitive damages for any cause or reason;

(c) Landlord's attorney fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;

(d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability.

(e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and

(f) Payment of any late charges or penalties for failure by Tenant to make payment of Basic Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage, which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgage.

ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies which affect Tenant's use and enjoyment of the Demised Premises, Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof. In the event Landlord shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$1,000, Tenant shall have the right, but not the obligation, to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Basic Rent. In the event Tenant does not undertake such repair, replacement or cure, irrespective of the cost thereof, and Landlord shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Tenant's notice to Landlord of such deficiency, Tenant may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or Taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Landlord or Tenant at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - DEFAULT

20.1. If either party shall be in default of any provision of this Lease, the non-defaulting party shall give written notice to the defaulting party of its intention to declare a default, together with a statement of the nature of the default.

20.2. In the event of a default either Landlord or Tenant the other party may exercise any rights or remedies under this lease or under the law, to include, but not limited to, terminating this Lease as provided herein.

ARTICLE 21 - HOLDOVER

21.1. In the event Tenant shall remain in the Demised Premises after the Initial Term has expired and Tenant shall have failed to give notice to Landlord of Tenant's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Initial Term until either Landlord or Tenant, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

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22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

22.7. Exhibit "A" referred to in this Lease is incorporated herein and made a part hereof.

22.8. This Lease is subject to and conditioned upon the approval of the Division of General Services, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year indicated under their signature.

WITNESS:

LANDLORD:

The Washington Light Infantry Battalion of Charleston, Inc.

usc Brunston

Henry I. Siegling
(signature for landlord)

HENRY I. SIEGLING, PRESIDENT
(printed name and title of signatory)

11-06-09
Date:

WITNESS:

TENANT:

S.C. Sea Grant Consortium

Elaine Z. Knight

Richard DeVoe
(signature for tenant)

Richard DeVoe, Executive Director
(printed name and title of signatory)

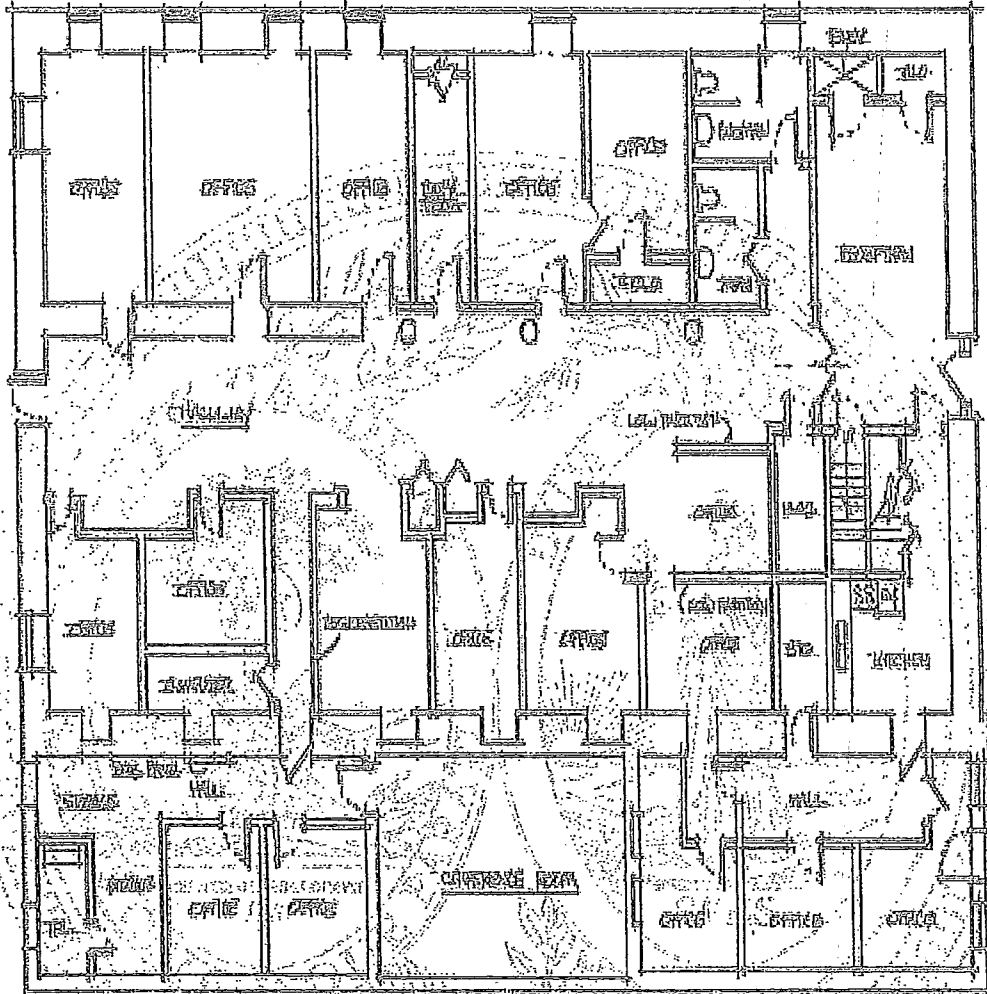
11/6/09
Date:

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, this 9th day of November, 2009.

Lisa H. Catalanotto

Lisa H. Catalanotto
Program Manager/Attorney

Exhibit "A"



FLOOR PLAN

LEASE RENEWAL

THIS LEASE RENEWAL, is made as of the Executed Date (which is the date on which the South Carolina Budget and Control Board, Division of General Services, executes this Lease Renewal as set forth on the signature page) by and between: The Washington Light Infantry Battalion of Charleston, Inc. (the "Landlord") having an address at: 287 Meeting Street, Charleston, South Carolina 29401 and the South Carolina Sea Consortium (the "Tenant"), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at 287 Meeting Street, Charleston, South Carolina 29401.

WITNESSETH;

WHEREAS, the Washington Light Infantry Battalion of Charleston, Inc. entered into a Lease with Tenant dated July 1, 2009 for the Demised Premises located at 287 Meeting Street, Charleston, South Carolina 29401 for a three (3) year term commencing July 1, 2009 and ending June 30, 2012 (the "Lease");

WHEREAS, the Demised Premises consists of 5,822 rentable square feet on the ground floor of the Building; and

WHEREAS, Landlord and Tenant hereto desire to renew said Lease;

NOW THEREFORE, Landlord and Tenant for considerations hereinafter mentioned covenant and agree the said Lease is renewed and amended as follows:

1. The term of this Lease Renewal (the "Lease Renewal Term") shall be three (3) years beginning on July 1, 2012, (the "Commencement Date") and, unless terminated or extended, shall end on June 30, 2015 (the "Termination Date").
2. Tenant shall pay rent (the "Basic Rent") to Landlord during the Lease Renewal Term at the rate of \$10.60 (rounded) per rentable square foot, in the annual aggregate amount of \$ 61,713.24 payable in equal monthly installments of \$5,142.77 in advance on or before the tenth (10th) day of each consecutive calendar month of the Lease Renewal Term.
3. If any provisions of this Lease Renewal conflict with any provisions contained in the Lease, save the term of the Lease and the amount of basic rent to be paid, then provisions of this Lease Renewal shall govern and control. All other provisions of the aforesaid Lease are in effect and are incorporated herein by reference as fully and completely as if each provision therein were set forth and recited herein verbatim, and shall fully and completely control and apply to the Lease Renewal.
4. Landlord and Tenant ratify and confirm the Lease and agree that this Lease Renewal shall bind and inure to the benefit of the parties hereby and their permitted successors, assigns and representatives effective as of July 1, 2012.

All capitalized terms used herein shall have the meaning more particularly set forth in the Lease unless otherwise expressly defined otherwise in this Lease Renewal.

THIS LEASE RENEWAL, by reference to the above stated Lease, shall, when fully executed, form a part thereof; and ALL OTHER TERMS AND CONDITIONS of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Lease Renewal as of the day and year indicated under their signature.

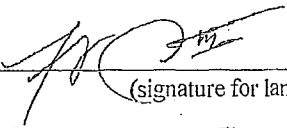
WITNESS:



(witness signature)

LANDLORD:

The Washington Light Infantry Battalion of Charleston, Inc.



(signature for landlord)

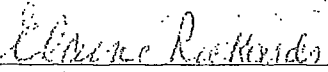
Julian V. Brandt III Chairman Property Managers

(printed name and title of signatory)

April 2nd 2012

Date

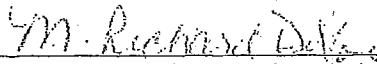
WITNESS:



(witness signature)

TENANT:

South Carolina Sea Grant Consortium



(signature for tenant)

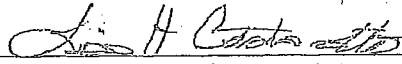
M. Richard DeVore

(printed name and title of signatory)

4/4/2012

Date

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the South Carolina Budget and Control Board, Division of General Services, Real Property Services, this 6th day of April, 2012.



Lisa H. Catalanotto

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) AFFIDAVIT OF JULIAN V. BRANDT III
 SUPPLEMENTAL

COMES NOW YOUR AFFIANT, Julian V. Brandt III, and does swear, testify
and depose upon his lawful Oath as follows:

BY
JULIE J. ARMS, 2013
CLERK OF COURT
2014 JAN 28 AM 10:18

FILED

1. I am Julian V. Brandt, a citizen and resident of the County of Charleston, State of South Carolina, and a person have attained the age of eighteen and having knowledge of the facts attested to herein.

2. I am a licensed real estate broker in the State of South Carolina and the principal of the firm Julian V. Brandt, Inc.

3. I am the real estate agent for the Washington Light Infantry Company of Charleston, South Carolina, Inc.

4. I am intimately familiar with the lease between the Washington Light Infantry Company of Charleston, South Carolina, Inc. and the Sea Grant Consortium.

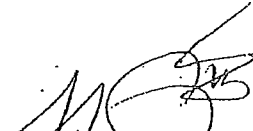
5. I was involved in the procurement of that Lease.

6. The Lease was drafted by the State of South Carolina for its subsidiary agency the Sea Grant Consortium.

7. Only Basic Rent is charged under said Lease, though the Lease expressly references Additional Rent.

8. This affidavit was prepared for me, but the content herein is my own and true and accurate based on my own knowledge and information of the events and transactions set forth herein.

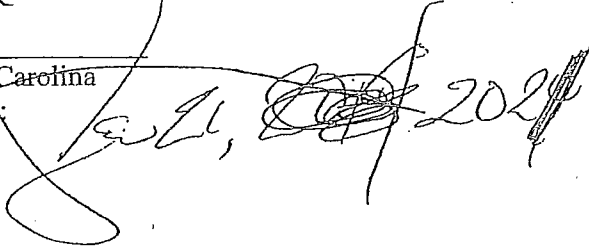
FURTHER SAYETH your affiant naught!



Julian V. Brandt III

20 Sworn and subscribed to before me by the foregoing Julian V. Brandt III this
day of January in the Year of Our LORD 2014.

Notary Public for South Carolina
My Commission Expires:


Jan, ~~2014~~ 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

Defendant,)

DECLARATORY JUDGMENT

FILED
2014 DEC -9 PM 2:19
JULIE HENNINGSON
CLERK OF COURT
BY _____

This matter came before the Court on 1-December 2014. Present at the hearing were Plaintiff and Defendant and counsel of record for both. The parties entered into a stipulation of fact which was read into the record. In accordance with the stipulation of fact, the Court makes the following findings of fact:

The Plaintiff, Washington Light Infantry of Charleston, South Carolina, Inc., (hereinafter "Washington Light Infantry" or "WLI"), is a non-profit corporation licensed under the laws of the State of South Carolina. The Defendant, Sea Grant Consortium (hereinafter "Sea Grant"), is an agency and political subdivision of the State of South Carolina.

The Plaintiff owns certain property located on Meeting Street, Charleston, South Carolina, commonly known as the Washington Light Infantry Armory. Sea Grant has leased the first floor of the Washington Light Infantry Armory from the WLI. The agreement of the parties is reduced to a written lease. The Lease was entered into

evidence as Exhibit 1, and is supported by full, fair and valuable consideration. The lease was drafted by the Defendant.

There is a Heating, Ventilation and Air Conditioning (HVAC) unit for the first floor of the Washington Light Infantry Armory, which constitutes the Sea Grant Leasehold. The HVAC unit was present when the Washington Light Infantry acquired the armory. It was recently discovered that the HVAC system has caused mold accumulation which can present a threat to health and welfare. The Washington Light Infantry has remediated the mold which has accumulated to date. The HVAC system needs to be repaired or replaced to prevent re-accumulation of mold.

DISCUSSION

This action is a declaratory judgment to construe the Lease between the Washington Light Infantry and the Sea Grant Consortium. "In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Southern Atl. Fin. Svs., Inc. v. Middleton*, 439 S.C. 77, 80, 562 S.E.2d 482, 484 (Ct. App. 2002). "The parties' intention must, in the first instance, be derived from the language of the contract." *Id.*

Plaintiff has sought the Court to declare the rights of the parties in regard to the following questions:

1. Who is responsible for the maintenance and repair of the HVAC system?
2. Who is responsible for replacement of the HVAC system?

As indicated above, the current HVAC system in the leasehold premises is creating mold within the leased premises and building. Mold constitutes a significant threat to human

life and the WLI property. Article 8.1(f) states that the Tenant shall "use reasonable precautions to protect persons and property against fire [sic] or other casualty." As the use of the existing HVAC system constitutes a threat to persons and property, use of the HVAC system in its current condition is prohibited by Article 8.1(f) of the Lease. Thus, the parties have sought clarification as to whose responsibility it is to repair or replace the HVAC system.

In this case, there are several relevant and separate provisions in the WLI-Sea Grant Lease. The Defendant asserts that there are two provisions which hold place the onus of repair and replacement on the Plaintiff, and one that expressly removes it from the Defendant. In regard to the former, the Defendant asserts Article 7 of the Lease at subparagraph (1)(f). It states in full:

Landlord will keep the Land, [sic] the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises.

Similarly, Article 16.1 states in relevant part:

If at any time during the initial Term or Extended Term, if any, Tenant shall find in the demised Premises items in need of repair or replacement ... Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair replace or otherwise cure the deficiencies....

In regard to these two provisions, read alone, the Court agrees that it would appear that the onus of repair or replacement of the HVAC system is on Plaintiff.

Sea Grant also holds that the Lease does not require it to make repairs, citing Article 8.1(b) which states:

Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1), settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord.

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Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord.



Under this provision, Tenant is exempted from making repairs to fixtures and equipment supplied or installed by or on behalf of Landlord which were defective in "labor, workmanship, materials," etc. Even if, *arguendo*, the HVAC were supplied with by Landlord which the Court rejects *infra*, there is no evidence which was introduced that the repairs in question were necessitated by "defects in labor, workmanship, materials," etc. Defendant drafted the lease, if Defendant wished the provision to be universally inclusive of relieving Defendant of the obligation of making any repairs, it should not have limited the repair exclusion to repairs which are necessitated by "defects in labor, workmanship, materials," etc.

On the other hand, Plaintiff asserts that a correct construction of the Lease cannot be had by reading the Lease piecemeal; and that consideration of the whole lease, and not these isolated provisions, is necessary. The Court agrees. The Lease must be read as a whole in accordance with the "four corners" rule. Our courts have consistently held that when construing a lease, "[t]he primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct.App.2000). (Emphasis added). In other words, "[t]he parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof." *Ward v. West Oil Co.*, 379 S.C. 225, 665 S.E.2d 618, 627 (Ct. App. 2008).



DMS

Article 6 of the Lease unambiguously specifies certain services which are not included in the Landlord's obligations to the tenant under Article 7. It states in relevant part.

The following services incidental to the use and enjoyment of the demised premises are not included in this Lease or Landlord's obligations to the Tenant and must be contracted for independently by Tenant at its own costs: electric, gas, and electric and gas services, water, sewer, security service, heating or air conditioning, ventilating, artificial lighting or other lighting, telephone services and infrastructure or equipment relating thereto... (Emphasis added).

Heating, air conditioning and ventilating or HVAC are one of these certain services are specifically excluded from any obligations of the Landlord to the Tenant. When a Lease provides a general provision, such as maintenance on the Plaintiff in this instance, the canons of construction require the general to give way to the more specific provisions regarding the same classifications. In this case, the Lease created a general duty on Landlord to make repairs, but excluded certain items from the general requirement in Article 6.1. Among these exclusions is "heating or air conditioning, ventilation" or HVAC.

Defendant argues that this provision only applies to services and not the actual HVAC system itself. This argument is negated by the express language contained in Article 6.1. This provision expressly states that "infrastructure or equipment relating thereto" is included within the exception, and that "infrastructure or equipment relating [to HVAC]" must be contracted for by Tenant, at Tenant's expense.

It is common for Landlords in commercial settings to provide a shell building only for Tenant to fill out, including HVAC. The language of the Lease clearly does so in this case. Returning to Defendant's argument that the HVAC system in place is the

express responsibility of Landlord to maintain, even the South Carolina Residential Landlord Tenant Act (which is not expressly applicable to this commercial Lease, but helpful by analogy) holds that “[a]ppliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement.” South Carolina Code Annotated § 27-40-440(5). In this case, the clear and unambiguous language of the Lease excludes the HVAC system in place from that which is provided by the Landlord under the Lease.

If the Court were to adopt the Defendant’s arguments, it could only do so by completely rejecting the whole of the language of Article 6.1. However, not only must the court look to the whole of a contract, or its four corners, when construing it, the Court must do so in a manner which gives reasonable meaning and effect to all of the language contained in the Lease. See *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952). “A court, however, under the guise of ‘interpretation’ or ‘construction’ may not rewrite an agreement for the parties.” *Gamble, Givens & Moody v. Moise*, 288 S.C. 210, 215, 341 S.E.2d 147, 150 (Ct.App.1986). The Court cannot adopt a construction which is contrary to the express language of the Lease, and which reduces an entire article of the Lease to mere surplusage.

Having reviewed the law and the language of the contract, the Court must then turn to the questions before it and declare the rights of the parties. As stated above, the WLI is not required to provide HVAC services to the Defendant, nor is the WLI obligated to repair or maintain the existing HVAC system. On the other hand, the Lease in no way obligates the Defendant to replace the HVAC system. However, if the Defendant wishes to avail itself of the HVAC system in place, then the Lease places the

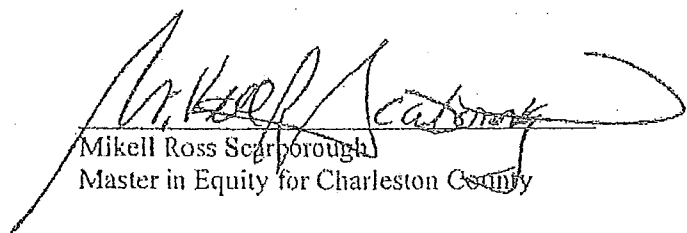
obligation of maintenance and repair on the Defendant. If the HVAC system cannot be repaired to prevent mold accumulation, then the Defendant must replace it if it wishes to avail itself of HVAC services, keeping in mind that the Lease does not mandate that it does avail itself ^{of} HVAC services.

IT IS THEREFORE, ADJUDICATED, ADJUDGED AND DECREED that the Plaintiff has no responsibility under the Lease to maintain, repair or replace the existing HVAC system.

IT IS FURTHER ADJUDICATED, ADJUDGED AND DECREED Defendant cannot use the existing HVAC system without repair or replacement as such would present a potential harm to persons or property and be in violation of the provisions of Article 8.1(f) of the Lease.

IT IS FURTHER ADJUDICATED, ADJUDGED AND DECREED that if Defendant wishes to avail itself of HVAC services, it must repair the existing system, if it can be repaired, in a manner so as to prevent mold accumulation, and if it cannot be repaired, to replace the current HVAC system with a system which will function without causing mold accumulation.

AND IT IS SO ORDERED, ADJUDICATED AND DECREED this 3rd day of December in the City and County of Charleston, State of South Carolina.


Mikell Ross Scarborough
Master in Equity for Charleston County

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE WASHINGTON LIGHT)
INFANTRY OF CHARLESTON)
SOUTH CAROLINA, INC.,)

Plaintiff,)

vs.)

THE SEA GRANT CONSORTIUM,)
An Agency and Political)
Subdivision of the State of South)
Carolina,)

Defendant,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-10-4019

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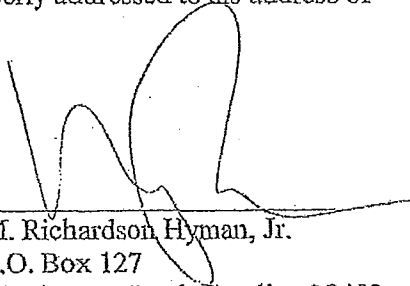
OCT 12 2015

SC Court of Appeals

Certificate of Service

The undersigned hereby certifies that on this 11th day of December, in the Year of Our LORD 2014 that he served a copy of the Declaratory Judgment of the Court on the attorney for the Defendant by placing a copy of the same in the United States Post, with sufficient first class postage attached thereto, and properly addressed to his address of record.

BY:


M. Richardson Hyman, Jr.
P.O. Box 127
Charleston, South Carolina 29402
843 416 1047
843 416 1199
SC Bar No.: 64867

Charleston, South Carolina

11 December 2014

Attorney for Plaintiff

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 12 2015

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2015-000034

THE WASHINGTON LIGHT INFANTRY OF
CHARLESTON SOUTH CAROLINA, INC., Respondent,

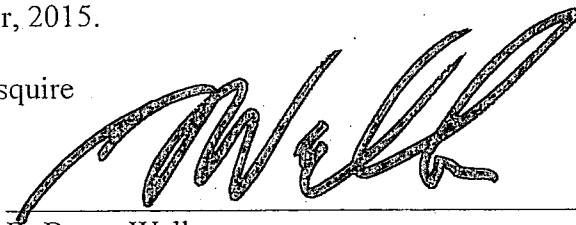
v.

THE SEA GRANT CONSORTIUM, an Agency
and Political Subdivision of the State of South Carolina..... Appellant.

PROOF OF SERVICE FOR RECORD ON APPEAL

I, R. Bruce Wallace, hereby certify that I have served a copy of the RECORD ON APPEAL upon counsel for Respondent by mailing a copy to them at the address below via the United States Mail this 23rd day of September, 2015.

M. Richardson Hyman, Jr., Esquire
P.O. Box 127
Charleston, SC 29402



R. Bruce Wallace
Mary D. Shahid
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
PHONE: 843.720.1760
FACSIMILE: 843.414.8222
BWallace@nexsenpruet.com
mshahid@nexsenpruet.com
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2015-000034

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OCT 12 2015

SC Court of Appeals

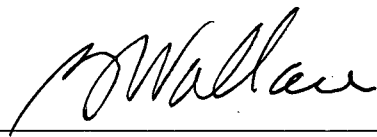
THE WASHINGTON LIGHT INFANTRY OF
CHARLESTON SOUTH CAROLINA, INC.,Respondent,

v.

THE SEA GRANT CONSORTIUM, an Agency
and Political Subdivision of the State of South Carolina.....Appellant.

RULE 210(g), SCACR, CERTIFICATION

I, R. Bruce Wallace, Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal** contains all of the material and documentation proposed to be included by any of the parties and not any other material.

Signed: 
R. Bruce Wallace, Esquire

Charleston, South Carolina
October 8, 2015