

**The State of South Carolina  
In The Court of Appeals**

**Appeal from Charleston County  
Court of Common Pleas**

R. Markley Dennis, Jr., Circuit Court Judge

**RECEIVED**

SEP 26 2016

SC Court of Appeals

Appellate Case No.: 2015-00-2187

**Sea Island Food Group, LLC d/b/a Squeeze, Appellant**

v.

Yaschik Development Company, Inc. d/b/a Yaschik Enterprises, Hilton Smith, East Bay Company, LTD., Thomas M. Ervin, and Michael J. Quillen Family Limited Partnership, Defendants of whom **Hilton Smith and East Bay Company, LTD are Respondents,**

**Quillen Enterprises, LLC d/b/a The Brick, Appellant,**

v.

Yaschik Development Company, Inc. d/b/a Yaschik Enterprises, Hilton Smith, East Bay Company, LTD., Thomas M. Ervin, and Michael J. Quillen Family Limited Partnership, Defendants of whom **Hilton Smith and East Bay Company, LTD are Respondents,**

Michael J. Quillen Family Limited Partnership, Third-Party Plaintiff,

v.

Top of the Bay, Inc., d/b/a Club Light, Third-Party Defendant,

Top of the Bay, Inc., d/b/a Club Light, Fourth-Party Plaintiff,

v.

Yaschik Development Company, Inc., d/b/a Yaschik Enterprises, Fourth-Party Defendant.

**Record on Appeal**

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EBCO was represented by Charles J. Baker III. After reviewing the pleadings and memoranda, hearing arguments from both parties, and considering the law applicable to the issues in this case, the Court grants the motion.

### **FACTS ALLEGED IN FIRST AMENDED COMPLAINT**

Yaschik Development Company, Inc. (“Yaschik”) owns the building at 213 East Bay Street, which it purchased in 2003. At that time, the property was subject to the prior owner’s lease with Charleston T&T, Inc., which had rented the entire building in 1997. In 2006 and 2011, Charleston T&T subleased the premises to two bars, Squeeze and The Brick. In 2012, Michael J. Quillen Family Limited Partnership (“FLP”) assumed the lease held by Charleston T&T for the entire building, and Squeeze and The Brick became its subtenants.

On April 2, 2013, there was a fire at 213 East Bay Street. In the aftermath of the fire, EBCO had discussions with Yaschik concerning EBCO’s possible purchase of 213 East Bay Street. On September 11, 2013, Yaschik informed FLP by letter that its lease was terminated pursuant to a provision requiring termination in the event that the premises “are totally destroyed by fire.” Several months later, on December 30, 2013, EBCO and Yaschik entered into a Real Estate Sales Agreement under which EBCO would purchase 213 East Bay Street pursuant to certain conditions. Squeeze and The Brick allege that the contractual provision conditioning EBCO’s purchase on the cancellation of FLP’s lease with Yaschik constitutes tortious interference with their subleases.

### **STANDARD OF REVIEW**

In deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). This includes exhibits attached to a complaint,

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which are considered to be a part of the pleading for all purposes. Rule 10(c), SCRPC. A 12(b)(6) motion should not be granted if “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* However, the trial court should dismiss a claim “when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

### DISCUSSION

EBCO raises three independent grounds for dismissal of the First Amended Complaint, any of which alone dictate that the Court grant the motion.

First and foremost, the allegations of the First Amended Complaint demonstrate, as a matter of law, that Squeeze and The Brick are not third-party beneficiaries of the FLP lease and, therefore, cannot assert rights under it. “South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it.” *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 553-554, 581 S.E.2d 858, 861 (Ct. App. 2003)(citing *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988)). In some instances, where the contract is made for the benefit of a third person, he may enforce it “if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person.” *Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994). In this case, the FLP lease leaves no doubt that the original contracting parties did not intend to create any direct benefit to subtenants. This 1997 lease was entered into many years before either Squeeze or The Brick came to occupy the premises. Further, the master lease, while acknowledging the tenant’s right to sublease, does not contemplate an actual sublease of the property. Indeed, the master lease provides that the original tenant, Charleston

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T&T, not any subtenants, would renovate the building to accommodate a restaurant and bar. The fact that, many years later, Squeeze and The Brick derive an incidental or consequential benefit from the existence of the master lease is not enough to confer third-party beneficiary status. 312 S.C. at 424, 440 S.E.2d at 891. They are not third-party beneficiaries of that lease and may not assert a claim based on its alleged breach.

Second, the First Amended Complaint alleges facts showing legal justification for EBCO's conduct. The essential elements of a claim for intentional interference with contract are as follows: (1) the existence of a valid contract; (2) the defendant's knowledge of the contract; (3) the intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). As such, it is a plaintiff's burden to plead and prove the absence of justification. A plaintiff cannot show the absence of justification when a defendant merely exercises the legal right to contract. *Broach v. Carter*, 399 S.C. 434, 443, 732 S.E.2d 185, 189 (Ct. App. 2012). See also, RESTATEMENT (SECOND) OF TORTS § 766, cmt. n ("One does not induce another to commit a breach of contract with a third person . . . when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and his contract with the third person."). EBCO exercised its legal right to contract to buy the property on such terms as were acceptable to it and to Yaschik. The fact that Yaschik could not perform both the contract to sell the property and the FLP lease is immaterial and, as a matter of law, does not give rise to a claim for intentional interference with contract against EBCO.

Last, the First Amended Complaint shows on its face that EBCO's alleged conduct was not the proximate cause of Yaschik's purported breach of contract. Proximate cause is an essential element of a claim for intentional interference with contract. *Smith v. Citizens and*

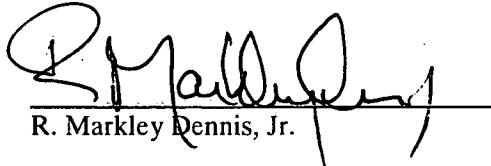
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*Southern Nat'l Bank of S.C.*, 241 S.C. 285, 289, 128 S.E.2d 112, 114 (1962). The facts as alleged indicate that over three months passed between Yaschik's letter terminating the lease on September 11 and the signing of the Real Estate Sales Agreement for the property on December 30. These allegations demonstrate that EBCO's conduct was not the proximate cause of Yaschik's alleged breach of contract.

**CONCLUSION**

For the reasons set forth above, the Court grants the Motion to Dismiss First Amended Complaint as to Defendants East Bay Company, Ltd. and Hilton Smith.

AND IT IS SO ORDERED.

  
R. Markley Dennis, Jr.

CHARLESTON, SC  
July 10, 2015

RMDJ/s

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SEA ISLAND FOOD GROUP, LLC  
doing business as SQUEEZE,

Plaintiff,

v.

YASCHIK DEVELOPMENT  
COMPANY, INC. doing business as  
YASCHIK ENTERPRISES, HILTON  
SMITH, EAST BAY COMPANY,  
LTD., and MICHAEL J. QUILLEN  
FAMILY LIMITED PARTNERSHIP,

Defendants.

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QUILLEN ENTERPRISES, LLC  
doing business as THE BRICK,

Plaintiff-Intervenor,

v.

YASCHIK DEVELOPMENT  
COMPANY, INC. doing business as  
YASCHIK ENTERPRISES, HILTON  
SMITH, EAST BAY COMPANY,  
LTD., and MICHAEL J. QUILLEN  
FAMILY LIMITED PARTNERSHIP,

Defendants.

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) COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE No.: 2013-CP-10-7107

BY \_\_\_\_\_  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2015 MAY 13 PM 2:39

FILED

**FIRST AMENDED COMPLAINT**

(Breach of Contract, Breach of  
Contract Accompanied by a  
Fraudulent Act, and Tortious  
Interference with Contractual  
Relationship)

*(Jury Trial Demanded)*

Plaintiff Sea Island Food Group, LLC doing business as Squeeze and Plaintiff-Intervenor Quillen Enterprises, LLC doing business as The Brick (“Plaintiffs”) bring this action against Defendants Yaschik Development Company, Inc. doing business as Yaschik Enterprises, Michael J. Quillen Family Limited Partnership, Hilton Smith, and East Bay Company, LTD (“East Bay Company”) based on the allegations set forth below.

### **PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs are South Carolina limited liability companies with their principal places of business located in Charleston County, South Carolina.

2. Upon information and belief, Defendant Yaschik Development Company, Inc. is a South Carolina Corporation with its principal place of business located in Charleston County, South Carolina.

3. Upon information and belief, Defendant Michael J. Quillen Limited Family Partnership is a Virginia Limited Partnership with its principal place of business located in Gate City, Virginia.

4. Upon information and belief, Defendant East Bay Company, LTD is a South Carolina Corporation with its principal place of business located in Charleston County, South Carolina.

5. Upon information and belief, Defendant Hilton Smith resides in Charleston County, South Carolina.

6. This Court has jurisdiction over the parties to and the subject matter of this action, and venue in Charleston County is proper under § 15-7-30 of the Code of Laws of South Carolina in that all of the alleged acts or omissions giving rise to the cause of action occurred in Charleston County.

### FACTS

7. Plaintiffs incorporate the allegations of paragraphs 1 through 6 above as if fully set forth herein.

8. On or about March 14, 1997 a Master Lease ("Master Lease") was entered into between the now-dissolved 213 East Bay Associates, Inc. and Charleston T&T, Inc. A true and correct copy of the lease is attached as **Exhibit 1** and incorporated by reference.

9. The Master Lease began on April 1, 1997 and was for a period of five years with five five-year options to renew.

10. On or before April 1, 2002, Charleston T&T, Inc. elected to exercise its option to renew the Master Lease for another five years.

11. On or about April 15, 2003, Defendant Yaschik Development Company, Inc. purchased 213 East Bay Street from 213 East Bay Associates, Inc. for approximately \$1,800,000.00.

12. At the time of the purchase, Defendant Yaschik Development Company, Inc. was aware of the landlord-tenant relationship between Charleston T&T and the tenants and operated under the Master Lease with

the knowledge and intent that Charleston T&T would continue leasing the space in 213 East Bay Street.

13. On or about March 15, 2006, Charleston T&T, Inc. sublet the space at 213 A East Bay Street to R&R Entertainment, who operated the bar Squeeze. A true and correct copy of the lease (the "Squeeze Sublease") is attached as **Exhibit 2** and incorporated by reference.

14. The Squeeze Sublease term was for a period of one year beginning on April 1, 2006 with two five-year options to renew.

15. On or about January 12, 2011, Sea Island Food Group, LLC purchased Squeeze from R&R Entertainment and assumed the Squeeze Sublease.

16. On or about August 2, 2010, Charleston T&T, Inc. sublet space at 213 East Bay Street to The Brick. A true and correct copy of the lease (the "Brick Sublease") is attached as **Exhibit 3** and incorporated by reference.

17. The Brick Sublease term was to begin on August 2, 2010 and end on March 31, 2011 with one six-year option to renew.

18. On or about March 30, 2012, the tenants of 213 East Bay Street were informed by letter (the "Assumption Letter") that Defendant Michael J. Quillen Family Limited Partnership had assumed the Master Lease from Charleston T&T, Inc. and that future correspondence and rent should be directed to the attention of Defendant Michael J. Quillen Family Limited

Partnership. A true and correct copy of the Assumption Letter is attached as **Exhibit 4** and incorporated by reference.

19. Defendant Hilton Smith is the president and CEO of East Bay Company.

20. Defendant East Bay Company's real estate holdings include the Maritime Building at 215 East Bay Street and 207 East Bay Street.

21. On or about April 2, 2013, there was a fire at 213 East Bay Street.

22. Defendants Hilton Smith and East Bay Company were aware of the fire that occurred at 213 East Bay Street on or about April 2, 2013.

23. Defendant Yaschik Development Company, Inc., and Charleston Capital Company carried only \$1,000,000.00 of fire insurance on a building that was purchased for \$1,800,000.00.

24. The fire caused damage to the property occupied by other tenants, but the properties occupied by Plaintiffs had limited smoke damage and some water damage.

25. Defendant Michael J. Quillen Family Limited Partnership initiated the cleanup, investigation, and restoration of 213 East Bay Street with the approval of Tom Ervin of Yaschik Enterprises.

26. Defendants Hilton Smith and East Bay Company were aware of the extensive investigation and restoration efforts made by Michael J. Quillen Family Limited Partnership with the approval of Tom Ervin.

27. Defendants Hilton Smith and East Bay Company were aware of Plaintiffs' tenancy and the fact that restorations were made for the benefit of Plaintiffs, as tenants.

28. On or about May 30, 2013, Thomas Ervin, on behalf of Yaschik Development Company, and Hilton Smith, on behalf of East Bay Company, discussed East Bay Company's purchase of 213 East Bay Street. This discussion and a subsequent proposal to sell 213 East Bay are memorialized in correspondence from Thomas Ervin to Hilton Smith dated May 31, 2013.

29. The proposal from Yaschik Development Company makes mention of the following facts incident to the sale:

- i.* The property was subject to the Master Lease;
- ii.* The Master Lease expires on March 31, 2017, but contains renewal options through March 31, 2027; and
- iii.* Defendant Michael J. Quillen Family Limited Partnership has a right of first refusal on any sale offer.

30. Towards the end of 2013, Defendant Hilton Smith and East Bay Company agreed to enter into a purchase agreement with Yaschik Development Company for the purchase of 213 East Bay.

31. After several revisions to the purchase agreement, Thomas Ervin, on behalf of Yaschik Development Company, and Hilton Smith, on behalf of East Bay Company, entered into a Real Estate Sales Agreement on December 30, 2013 for the purchase of 213 East Bay for \$3,673,736.00.

32. The Real Estate Sales Agreement required the cancellation or termination of the Master Lease, and therefore it required the cancellation or termination of the Squeeze Sublease and the Brick Sublease.

33. On or about September 11, 2013, Yaschik Development Company, Inc. sent master leaseholder Defendant Michael J. Quillen Family Limited Partnership a letter (the "Termination Letter") informing them that, "Since the fire at the leased property has led to a total loss of the subject premises, the Master Lease has been automatically terminated pursuant to the terms of the first sentence of Paragraph 20 of the Master Lease." A true and correct copy of the Termination Letter is attached as **Exhibit 5** and incorporated by reference.

34. Michael J. Quillen Family Limited Partnership, Tom Ervin, Yaschik Development, Hilton Smith, and EBC were all aware that investigation revealed that the fire did not, in fact, result in a total loss of the premises.

35. And to date, the reconstruction of 213 East Bay Street has reached a stalemate and ceased.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

*(Against Defendant Yaschik Development Company, Inc.)*

36. Plaintiffs incorporate the allegations of paragraphs 1 through 35 above as if fully set forth herein.

37. A valid contract exists between Defendant Yaschik Development Company and Defendant Michael J. Quillen Family Limited Partnership in the form of the Master Lease.

38. Plaintiffs are Third-Party Beneficiaries of the Master Lease because the Master Lease was made with the intent that the tenants of 213 East Bay would benefit from the performance of the obligations within the contract.

39. Defendant Yaschik Development Company breached the contract in that they failed to speedily make repairs and return the building to substantially the same condition as prior to the fire.

40. Plaintiffs suffered damages as a direct and proximate result of Defendant Yaschik Development Company and Defendant Charleston Capital Company's breach.

41. Plaintiffs are entitled to actual and consequential damages, plus any court costs, and attorney's fees.

**SECOND CAUSE OF ACTION**  
(Breach of Contract Accompanied by a Fraudulent Act)  
(Against Defendant Yaschik Development Company, Inc.)

42. Plaintiffs incorporate the allegations of paragraphs 1 through 41 above as if fully set forth herein.

43. A valid contract exists between Defendants Yaschik Development Company and Defendant Michael J. Quillen Family Limited Partnership in the form of the Master Lease.

44. Plaintiffs are Third-Party Beneficiaries of the Master Lease.

45. Defendant Yaschik Development Company breached the contract in that they failed to speedily make repairs and return the building to substantially the same condition as prior to the fire.

46. Defendant Yaschik Development Company's breach of contract was accompanied by a fraudulent act not in the making of the contract but in the breaching of its obligation accompanied by dishonesty, unfair dealing, and unlawfully appropriating property in which Plaintiff had a legal interest.

47. Defendant Yaschik Development Company sent a Termination Letter that lacked a legal or factual basis with fraudulent and ulterior motives.

48. Plaintiffs suffered damages as a direct and proximate result of Defendants Yaschik Development Company and Charleston Capital Company's breach.

49. Plaintiffs are entitled to actual, consequential, and punitive damages, plus any court costs, and attorney's fees.

**THIRD CAUSE OF ACTION**

(Breach of Contract)

*(Against Defendant Michael J. Quillen Family Limited Partnership)*

50. Plaintiffs incorporate the allegations of paragraphs 1 through 49 above as if fully set forth herein.

51. A valid contract exists between Plaintiffs and Defendant Michael J. Quillen Family Limited Partnership in the form of the Sublease.

52. Defendant Michael J. Quillen Family Limited Partnership breached the contract in that it failed to speedily make repairs and return the building to substantially the same condition as prior to the fire.

53. Plaintiffs suffered damages as a direct and proximate result of Defendant's breach.

54. Plaintiffs are entitled to actual and consequential damages, plus any court costs, and attorney's fees.

**FOURTH CAUSE OF ACTION**

(Intentional Interference with a Contractual Relationship)

*(Against Defendant Yaschik Development Company, Inc.)*

55. Plaintiffs incorporate the allegations of paragraphs 1 through 54 above as if fully set forth herein.

56. The Squeeze Sublease is a valid contract between Plaintiff and the Michael J. Quillen Family Limited Partnership.

57. The Brick Sublease is a valid contract between Plaintiff-Intervenor and the Michael J. Quillen Family Limited Partnership.

58. Defendant Yaschik Development Company, Inc. was aware of the contract between Plaintiff and Michael J. Quillen Family Limited Partnership.

59. Defendant Yaschik Development Company, Inc. intentionally procured the breach of this contract in that they sent a Termination Letter that lacks a legal or factual basis with fraudulent and ulterior motives, they failed to speedily make repairs and return the building to substantially the same condition as prior to the fire, and they stalled reconstruction of the building.

60. Plaintiffs suffered damages as a direct and proximate result of Defendant Yaschik Development Company's willful, wanton, and intentional conduct.

61. Plaintiffs are entitled to actual, punitive, and consequential damages, plus any court costs, and attorneys' fees.

#### **FIFTH CAUSE OF ACTION**

(Intentional Interference with a Contractual Relationship)  
(Against Defendants Hilton Smith and East Bay Company, Ltd.)

62. Plaintiffs incorporate the allegations of paragraphs 1 through 61 above as if fully set forth herein.

63. The Squeeze Sublease is a valid contract between Plaintiff and the Michael J. Quillen Family Limited Partnership.

64. The Brick Sublease is a valid contract between Plaintiff-Intervenor and the Michael J. Quillen Family Limited Partnership.

65. Defendants Hilton Smith and East Bay Company were aware of the contracts between Plaintiffs and Michael J. Quillen Family Limited Partnership.

66. Defendants Hilton Smith and East Bay Company intentionally procured the breach of these contracts by, among other things, ultimately conditioning the purchase of 213 East Bay on the termination or cancellation of the Master Lease.

67. Plaintiffs suffered damages as a direct and proximate result of Defendants Hilton Smith and East Bay Company's willful, wanton, and intentional conduct.

68. Plaintiffs are entitled to actual, punitive, and consequential damages, plus any court costs, and attorneys' fees.

#### **JURY DEMAND**

69. Pursuant to Rule 38 of the South Carolina Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury.

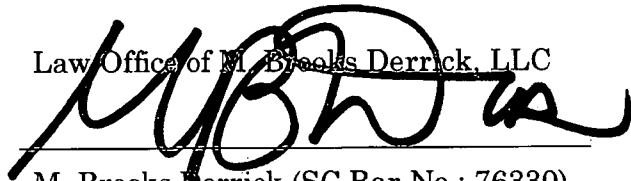
#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants on all causes of action and that Plaintiffs be awarded:

- A. Actual damages;
- B. Punitive damages;
- C. Consequential damages;
- D. Pre and post judgment interest;
- E. Reasonable attorneys' fees and costs; and
- F. Such other and further relief as this Court deems just and

appropriate.

Law Office of M. Brooks Derrick, LLC



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*Attorneys and Counselors for  
Plaintiff Sea Island Food Group, LLC  
and Plaintiff-Intervenor Quillen  
Enterprises, LLC*

Charleston, South Carolina  
May 13, 2015

**EXHIBIT 1**

*Master Lease dated March 14, 1997*

**EXHIBIT 1**

Tenant: <u>Charleston T &amp; T</u>	Term: <u>Five (5) Years</u>
Date Signed: <u>March 14, 1997</u>	Initial Monthly Base Rental: <u>\$ 8750.00</u>
Effective Date: <u>April 1, 1997</u>	Renewal Date: <u>December 31, 2001*</u>

\*90 day notice to renew

RECEIVED FROM Charleston T & T hereinafter referred to as Tenant  
 a sum of \$8750.00 (Eight Thousand Seven Hundred Fifty DOLLARS)  
 evidenced by check as a deposit which shall be applied as follows:

	RECEIVED	PAYABLE PRIOR TO OCCUPANCY
rent for the period from <u>July 1, 1997</u> to <u>July 31, 1997</u>	\$ <u>8750.00</u>	\$ _____
1st Month's Rental	\$ _____	\$ _____
Security Deposit	\$ _____	\$ <u>8750.00</u> due prior
Utility Deposit	\$ _____	\$ _____ to <u>March 25, 1997</u>
Carrying charge	\$ _____	\$ _____
Bar	\$ _____	\$ _____
TOTAL	\$ <u>8750.00</u>	\$ <u>8750.00</u> due prior to <u>March 25, 1997</u>

STATE OF SOUTH CAROLINA, COUNTY OF Charleston

HIS AGREEMENT entered into this 14th day of March 19 97  
 between Charleston T & T hereinafter referred to as Tenant  
 and 213 East Bay Associates Inc. Landlord, or Agent for the Landlord,  
 hereinafter referred to as Landlord.

WITNESSETH:

1. PREMISES. That Landlord, in consideration of rents, covenants and conditions mentioned herein, to be paid, kept, performed and observed by Tenant does hereby demise, lease and let unto Tenant, and Tenant does hereby hire and take from Landlord the premises known as:

213 East Bay Street to include entire premises and parking area in the garage behind the building that is included in the title to this property.

2. TERM. To have and to hold said leased premises for the term of Five (5) Years  
 beginning April 1, 1997  
 and ending March 31, 2002

Tenant shall have five (5) options to renew of five (5) years each. Landlord agrees to give tenant three (3) months rent abatement beginning April 1, 1997.

Landlord agrees to give tenant \$7500.00 at delivery of premises for heat and air system for unfinished space in rear and to include the installation of firewalls to meet codes for restaurant and bar. Tenant shall pay any amount over the \$7500.00.

Tenant has the right to sublet.

Landlord agree to give tenant first right of refusal to buy property should landlord elect to sell. Tenant shall have 30 days from notice to enter into a contract agreeable to both parties.

The rental amount shall increase by 4% per year during term and any renewals

3. RENT. Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:

(A) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each calendar month during the term of this lease or any renewal thereof, in advance on or before the first day of each succeeding month. The amount of the Monthly Base Rental for the first year of this lease shall be Eight Thousand Seven Hundred Fifty Dollars (\$8750.00)

The rental for the first month of the term of this lease shall be paid at the date of the execution hereof. If such date be other than the first day of the calendar month, such first rental payment shall be prorated for the period between the effective date of this lease and the first day of the following month.

(B) MONTHLY BASE RENTAL ADJUSTMENTS. The Monthly Base Rental shall be subject to an annual accumulative adjustment upward on each



for the convenience or welfare of all tenants' customers conservatively. Common area maintenance shall include (in appropriate) the cleaning, stripping and repairing of parking areas (surfacing not included) and the managing, cleaning and repairing of all common areas, including but not limited to the following:

(C) **PRORATION OF CHARGES.** If the leased premises described herein are less than the entire property, the increases to Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the leased premises bears to the rentable floor areas of the entire property. It is agreed that the leased premises contains \_\_\_\_\_ square feet of rentable area of the entire property is \_\_\_\_\_ square feet resulting in a percentage ratio factor of \_\_\_\_\_ percent.

(D) **ADDITIONAL CHARGES.** Any charges due Landlord by Tenant, including but not limited to, damage to premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc. or for work done on the premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien for rent. In the event any documentary stamp tax or tax levied on rental or leasing of the premises is required the cost shall be paid by tenant upon demand. The cost of a credit report on the Tenant, which may be requested at the Landlord's option shall be paid by the Tenant.

4. **SECURITY DEPOSIT.** Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied (that Landlord shall have the full amount of the deposit on hand at all times during the term of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the leased premises as required in paragraph 25 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon verifying of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 15 days after the termination of this tenancy or completion of the repairs necessitated by Tenant's misuse of the premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

5. **TENANTS UTILITIES.** Tenant shall pay all charges or bills for all utility and scavenger services used by the Tenant. EXCEPT:

**No exceptions**

6. **USE OF PREMISES.** Tenant agrees to use entire leased premises for : **any use permitted as per zoning**

7. **EXAMINATION OF PREMISES.** Tenant has examined the leased premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept premises in their present condition except for the specific items listed herein or itemized on attached check-in list.

8. **DELAY OF POSSESSION.** If Landlord is unable to deliver possession of leased premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the premises to Tenant by **April 1, 1997**, 19\_\_\_\_, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepay rent shall be promptly returned to Tenant. ~~Should Landlord be unable to deliver possession of the premises to Tenant by the effective date of this lease, the lease shall be deemed null and void and all monies paid by Tenant shall be returned to Tenant.~~

9. **TENANT'S PARKING.** Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows:

**all available space in rear of building as part of the title to this property.**

10. **LIABILITY INSURANCE.** Tenant shall not carry any stock of goods or do anything in or about the leased premises which will in any way restrict or invalidate any insurance coverage of the leased premises. Tenant agrees to pay upon demand an additional rent any increase in premiums in insurance carried by the Landlord on the leased premises resulting from the Tenant's use or occupancy. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:

**\$1,000,000 liability shall be maintained by tenant.**

11. **MAINTENANCE AND REPAIRS.** Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the leased premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the leased premises, both interior and exterior, ordinary and extraordinary, including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and door coverings. Tenant's responsibility to maintain the premises shall also include the servicing, repair, maintenance, and if caused by Tenant's neglect, replacement of the plumbing, electrical, ventilating, heating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances. Tenant shall also repair and be responsible for any damage caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the leased premises is damaged by the Tenant or Tenant's employees, agents or invitees or by any breaking and entering of said premises, or by any attempt to break and enter leased premises, Tenant shall promptly at Tenant's expense give written notification of all damages to the Landlord. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof, and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

12. **REGULATIONS AND SANITATION.** Tenant shall keep the leased premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around lease premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the leased premises or adjacent public area by Tenant, Tenant's customers or anyone else. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of the lease. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

13. **ALTERATIONS.** Tenant shall make no alterations, additions, improvements, or rewiring in or to the leased premises without the consent of Landlord. All additions or improvements to the building including carpeting, tile, other floor covering, wall covering, ceiling tile, etc. made with or without Landlord's written consent shall become part of the premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as

- with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a written notice. In the event Tenant shall sublease the leased premises in accordance herewith for rental in excess of those rentals payable hereunder, Tenant shall pay in addition monthly in advance an Additional Rent hereunder, one half of all such excess rent. Any proposed assignment (that proposes to assume Tenant's obligations hereunder shall first receive a satisfactory assumption agreement before consent shall be given.
15. **SIGNS OR AWNINGS.** Tenant shall place no signs, notices, pictures or advertising matter upon the exterior of the leased premises except with the written consent of the Landlord. Any and all signs placed on the leased premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense.
  16. **WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this lease at a future time. The rights and remedies created by this lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.
  17. **RULES AND REGULATIONS.** Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment may be necessary for the safety, care, appearance, and cleanliness of the premises and the preservation of good order therein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.
  18. **RIGHT OF ENTRY.** Landlord without being liable for trespass or damages, shall have the right to enter leased premises during reasonable hours to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof, or to exhibit said premises. Entry shall also be allowed to post "FOR RENT" notices, during the thirty days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.
  19. **LIENS.** Tenant shall not create any liens for labor or materials against Landlord's interest in the leased premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the leased premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the leased premises to secure the payment of any bill for work done or material furnished during the rental period created by this lease. In the event that liens are placed on record against the leased premises by contractors, mechanics, laborers, material suppliers, etc. because of action by Tenant it will constitute a default of this lease.
  20. **DAMAGE OR DESTRUCTION OF PREMISES.** If premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of premises has been lost to the Tenant. Landlord shall restore premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence.
  21. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the leased premises shall be at the risk of Tenant or the owners thereof, and Landlord shall not be liable for any damages, loss of theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.
  22. **CONDEMNATION.** If the whole of the leased premises, or such portion thereof as will make said premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the leased premises is acquired by condemnation as will leave the remaining premises after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of leased premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required, to restore the premises to a safe and usable condition.
  23. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the leased premises. Landlord shall not be liable, and Tenant waives all claims for, damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the leased premises, or any equipment or such as may result from any accident in or about the leased premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the leased premises is a part.
  24. **REVERSION.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said leased premises broom clean and in as good condition as the leased premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said premises against Landlord because of delay in delivering possession of leased premises, so far as such delay is occasioned by failure of Tenant to so surrender leased premises. Security deposit may be withheld as payment or partial payment of repairs or unusual cleaning needed after Tenant vacates.
  25. **EFFECTIVE DATE OF LEASE.** This lease shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this lease is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy to the submitting party.
  26. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this lease as well as all dispossession, distraint notices, the person in charge of leased premises or occupying said premises, at the time notice is delivered. If no person is in charge of, or occupying said premises, the service of such notice may be made by attaching the same in the main entrance to said premises. A copy of all notices under this lease shall also be sent to Tenant's last known address, if different from said premises.
  27. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvency law, or if a Trustee in bankruptcy or a receiver, be appointed or elected for Tenant, under Federal or State law, this lease at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.
  28. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed, as the case may be, nor the obligation of the Tenant to pay rent, Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this lease, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alterations, repairs, or decorations, or to supply any equipment or fixtures, or any other promises, covenants, or obligations on the part of the Landlord to be performed. If the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.
  29. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of leased premises to the Landlord upon termination or cancellation of this lease and/or Tenant's vacating said premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or keys for use in the premises, including all doors.

- Access exist for the purpose of removing firearms, gases, flames, and other weapons or explosives from the premises. Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.
19. **LIENS.** Tenant shall not create any liens for labor or materials against Landlord's interest in the leased premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the leased premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the leased premises to secure the payment of any bill for work done or material furnished during the rental period created by this lease. In the event that liens are placed on record against the leased premises by contractors, mechanics, laborers, material suppliers, etc. because of action by Tenant it will constitute a default of this lease.
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22. **CONDEMNATION.** If the whole of the leased premises, or such portion thereof as will make said premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the leased premises is acquired by condemnation as will leave the remaining premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of leased premises by Tenant. In the event of such partial acquisition and reduction in rental, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required, to restore the premises to a safe and usable condition.
23. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the leased premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of, the leased premises, or any equipment or such as may result from any accident in or about the leased premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the leased premises is a part.
24. **REVERSION.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said leased premises broom clean and in as good condition as the leased premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said premises against Landlord because of delay in delivering possession of leased premises, so far as such delay is occasioned by failure of Tenant to so surrender leased premises. Security deposit may be withheld as payment or partial payment of repairs or unusual cleaning needed after Tenant vacates.
25. **EFFECTIVE DATE OF LEASE.** This lease shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this lease is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy to the submitting party.
26. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this lease as well as all dispossession or distraint notices, the person in charge of leased premises or occupying said premises, at the time notice is delivered. If no person is in charge of, or occupying said premises, the service of such notice may be made by attaching the same to the main entrance to said premises. A copy of all notices under this lease shall also be sent to Tenant's last known address, if different from said premises.
27. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this lease at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice. UNLESS the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.
28. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay rent, Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this lease, to supply or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied, or by reason of the Landlord being unable to make any alterations, repairs, or decorations, or to supply any equipment or fixtures or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.
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30. **STOPPEL CERTIFICATES.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this lease is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this lease. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.
31. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the leased premises, subject to the rights of the holders of any mortgage which now covers said premises or which may hereafter be placed on leased premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.
32. **DEFAULT.** If Tenant fails to pay rent, including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this lease shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord; or if Tenant shall be in default in performing any of the terms, covenants and conditions of this lease other than the provision requiring the payment of rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord; or if leased premises shall be abandoned or deserted for fifteen (15) days; or if this lease is assigned to any other person, firm, officer or corporation, without the permission of Landlord as required in paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith reassess the entire premises and without being liable for trespass or damage shall re-let, lease or demise the premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the premises were leased or rented to another Tenant. The collection by Landlord of rent for the unexpired term shall entitle Tenant to all Tenant's rights of this lease during the period for which the rent may have been collected.

premises as security for the payment of said rent, and Tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the premises when Tenant vacates shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

4. **ATTORNEY'S FEE.** In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the leased premises or any part thereof, the Tenant shall pay all costs, including reasonable attorney's fees.

5. **AGENT.** Tenant acknowledges that the aforementioned N/A is the managing agent for the owner(s) of the leased premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the leased premises and shall terminate with the expiration of said management agreement or any renewal thereof.

6. **DEFINITIONS.** "Landlord" as used in this lease shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or sublessees, as to premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

7. **SPECIAL STIPULATIONS.** Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control:

Tenant shall be responsible for the following in addition to base rent:

1. real estate taxes
2. user fees
3. fire and extended coverage insurance
4. liability insurance
5. all maintenance to include roof, exterior of building, electrical, heat and air systems, plumbing


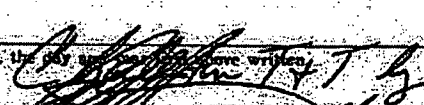
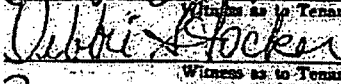

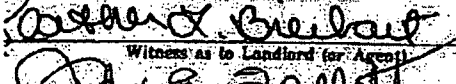

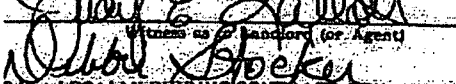

It is understood that this is a net lease and all expenses/assessments associated with this property shall be paid by tenant.

Landlord understands that the tenant is going to renovate the property to accommodate a restaurant/bar and hereby approves said renovations.

**ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the leased premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. **TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

**THIS IS A LEGALLY BINDING CONTRACT. TENANT IS ADVISED TO SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. TENANT ACKNOWLEDGES THE RECEIPT OF A COPY OF THIS AGREEMENT.**

IN WITNESS WHEREOF, Landlord and Tenant have executed these premises, the day and date here written.

 _____ Witness as to Tenant	 _____ Tenant
 _____ Witness as to Tenant	 _____ Tenant
 _____ Witness as to Landlord (or Agent)	 _____ Landlord (or Agent)
 _____ Witness as to Landlord (or Agent)	 _____ Landlord (or Agent)

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- 1. real estate taxes
- 2. user fees
- 3. fire and extended coverage insurance
- 4. liability insurance
- 5. all maintenance to include roof, exterior of building, electrical, heat and air systems, plumbing

It is understood that this is a net lease and all expenses/assessments associated with this property shall be paid by tenant. Landlord understands that the tenant is going to renovate the property to accommodate a restaurant/bar and hereby approves said renovations.

8. ENTIRE AGREEMENT This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the leased premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

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IN WITNESS WHEREOF, Landlord and Tenant have executed these premises, the day and date above written.

*Debbie Stocker* (Witness as to Tenant)  
*Debbie Stocker* (Witness as to Tenant)  
*Roxanne A. Gierhart* (Witness as to Landlord (or Agent))  
*Judy E. Elliott* (Witness as to Landlord (or Agent))  
*Debbie Stocker* (Witness as to Landlord (or Agent))

*[Signature]* (Tenant)  
*[Signature]* (Tenant)  
*[Signature]* (Landlord (or Agent))  
*[Signature]* (Landlord (or Agent))  
*Charl E. [Signature]* (Landlord (or Agent))

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The printed matter in this form approved by the CHARLESTON TRIDENT ASSOCIATION OF REALTORS®

TS 201 (Revised 10/97)

COPYRIGHT PENDING

Lease  
 Lease  
 Property  
 19

**EXHIBIT 2**  
*Sublease dated August 2, 2010*

**EXHIBIT 2**



COMMERCIAL LEASE

In consideration of the covenants herein contained, Quillen Enterprises, LLC, hereinafter called "Tenant" and Charleston T & T, Landlord, or Agent for the Landlord, hereinafter called "Landlord"), agree as follows:

For the period of time beginning on August 2, 2010, and ending at midnight on March 31, 2011. Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

*AMT*  
\*Tenant shall have one (1) six (6) year option w/ 4% annual increase on April 1st.  
Lot \_\_\_\_\_ Block \_\_\_\_\_ Section \_\_\_\_\_ Subdivision \_\_\_\_\_

Address: 213 East Bay St

Tax Map # 158-05-03-080 City Charleston Zip 29401

County of Charleston State of South Carolina.

THE  LANDLORD  TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. RENT. Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:
  - (a) MONTHLY-BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 1st day of ea. month day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be eleven thousand one hundred ninety one and sixty two cents Dollars (\$ 11,191.62).
  - (b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: 4% ea. April 1st starting  
year 2011
  - (c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):
    1. PROPERTY TAXES (choose one):
      - TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees.) over those assessed for the year of \_\_\_\_\_ on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.
      - NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.
    2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to \_\_\_\_\_ % of gross sales, as herein defined, in excess of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), in any lease year. Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-3). Tenant shall deliver to Landlord a certified copy of each monthly report within ten (10) days after report is due to

*AMT*  
 TENANT,  TENANT, AND  LANDLORD HAVE READ THIS PAGE.

the South Carolina Tax Commission. Lease year as used herein shall be the period of one year's duration commencing on the effective day of the lease and each successive period of one full year commencing on the anniversary of said effective date. Tenant shall deliver to Landlord within days following the end of each lease year written statement signed and certified by Tenant to be a true and correct statement of the amount of gross sales during the preceding lease year. Tenant shall at the same time pay the amount of Additional Rent due (if any) as a percentage of the excess over the amount herein stated.

3. COMMON AREA MAINTENANCE. Tenant shall pay on the first day of each month, in advance, a fee equal to the Tenant's pro-rata share of the cost of maintaining common areas. Tenant's common area maintenance fee for the remaining portion of the calendar year in which this lease became effective shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per month. Said fee shall be adjusted at the end of each calendar year to reflect any increase in cost during said year. Common areas include all areas used in common with the other Tenants of the property of which the Premises is a part, for the convenience or welfare of all tenants' customers collectively. Common area maintenance shall mean and include all amounts paid or incurred by Landlord for operating, managing and maintaining the Property, including the buildings, improvements and common area facilities of the Property in a manner deemed by Landlord reasonable and appropriate and for the best interest of the Property, including, without limitation, all costs and expenses of 1) operating, repairing, lighting, cleaning, painting and securing the Property and the common areas of the Property, and water and sewer charges; 2) paying all personnel employed on a part-time basis or full-time basis in the operation, maintenance or repair of the Property, including the common areas; 3) removing rubbish and debris from the Property; 4) repair and maintenance of walkway, landscaping, and lighting facilities, other than such costs and expenses of a capital nature; 5) management fees paid to the property management firm to manage the Property; 6) planting, replanting and replacing flowers, shrubbery, and planters and the supplies required therefore; 7) all utilities used in connection with the operation of the common area facilities; 8) seasonal decorations, including installation and removal thereof and electricity therefore; 9) leasing or renting equipment used in connection with the operation and maintenance of the common areas; 10) fountain maintenance and repairs when applicable; 11) security, fire and crime prevention services; 12) utility charges for the common area including, without limitation, storm water, sewer and pollution control fees

4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one):

INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of \_\_\_\_\_ on a pro-rata basis. Presentation of copies of insurance bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

NET LEASE. Tenant shall pay annually the insurance premium upon presentation by the Landlord of bill on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect. *51% property + flood*

5. PRORATION OF CHARGES. If the Premises described herein are less than the entire property, the increases in Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the Premises bears to the rentable floor areas of the entire property. Landlord and Tenant hereby deem that the Premises contains approximately \_\_\_\_\_ square feet of rentable area of the entire property which is approximately \_\_\_\_\_ square feet, resulting in a percentage ratio factor of \_\_\_\_\_ percent ( \_\_\_\_\_ %).

6. ADDITIONAL CHARGES. Any charges due Landlord by Tenant, including but not limited to, damage to Premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc, or for work done on the Premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is

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required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

[ 17. LATE RENT. If rent is not paid within 4 days days after due date, the Tenant is subject to a one-time late fee of — (%) percent of all rents due at that time.

2. SECURITY DEPOSIT. Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of (\$ 8,125.00) Eight thousand one hundred twenty five Dollars. Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. TENANT'S UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant. EXCEPT: no exceptions. Tenant is aware that meters are mixed in the building. He is paying for AC/Heat for unit 6 and unit 9 is paying for a portion of his AC/Heat as well as all gas charges.

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for Bar/Restaurant and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity.

5. EXAMINATION OF PREMISES. Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. DELAY OF POSSESSION. If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by — and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. TENANT'S PARKING. Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows: No parking

8. LIABILITY INSURANCE. Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance coverage of the Premises. Tenant agrees to pay upon demand as additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass.

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personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and landlord shall be named as the insured with the following minimum coverage:

Single Limit \$ \_\_\_\_\_ Aggregate \$ \_\_\_\_\_

A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease.

9. MAINTENANCE AND REPAIRS. Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment servicing the Premises, to include the compressors, condensing units, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. REGULATIONS AND SANITATION. Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers, invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow loitering on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. ALTERATIONS. ~~Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc., which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.~~

12. ASSIGNMENT OR SUBLEASE. Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or

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delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.

13. SIGNS OR AWNINGS. Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement.

14. WAIVER OF RIGHTS. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. RULES AND REGULATIONS. Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. RIGHT OF ENTRY. Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notice, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions, which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. LIENS. Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs, shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

18. DAMAGE OR DESTRUCTION OF PREMISES. If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant

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as of that date, if Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable; whereupon full rental shall commence. Insurance proceeds if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.

19. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss of theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

20. **CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.

21. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Premises, or any equipment, or such as may result from any accident in or about the Premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the Premises is a part.

22. **HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default, and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

23. **EFFECTIVE DATE OF LEASE.** This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.

24. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessory distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: \_\_\_\_\_

Landlord Address: Apw Thode

3 Blaine Ct  
Charleston, SC 29407

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25. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental, Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement to supply, or to delay in supplying, heat, light, elevator service, or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. **ESTOPPEL.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. **DEFAULT.** If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord, or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord, or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire, and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said Premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. **ASSIGNMENT OF CHATTELS.** Tenant hereby pledges and assigns to Landlord all the furniture, fixtures, goods, equipment and chattels of Tenant which shall or may be brought or put on said Premises as security for the payment of said rent, and tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises when Tenant vacates

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shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

32. **ATTORNEY'S FEE.** In the event landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof, the Tenant shall pay all costs, including reasonable attorney's fees.

33. **AGENT.** Tenant acknowledges that Aww Thode is the leasing/managing agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. **SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE:** Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the Premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosing thereof, and to the lessor in the event of a termination of any such ground lease.

35. **DEFINITIONS.** "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or subleases, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

36. **ENVIRONMENTAL MATTERS:** Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, sublessees, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities in and around the Premises.

37. **AMERICANS WITH DISABILITIES ACT:** Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the Premises. Tenant further agrees to indemnify, defend and hold Landlord harmless against any claims, which may arise out of Tenant's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

38. **SPECIAL STIPULATIONS.** Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): This is a triple net lease with tenant being responsible for 5.7% of totals of cost for insurances, taxes, janitor fees, building maint (including roof), all electrical and plumbing, and all special assessments.

39. **SOUTH CAROLINA LAW TO GOVERN.** Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

MB TENANT,    TENANT, AND    LANDLORD HAVE READ THIS PAGE.



**GUARANTEE**

As an inducement and, thus, a further consideration for the Landlord entering into this Agreement with the Tenant, the undersigned (jointly and severally, if more than one) hereby guarantees full performance by the Tenant and its heirs, successors, or assigns of all of the terms and conditions of the Agreement. The Landlord is not required to provide the Guarantor(s) with any notice provided for in the Agreement in addition; this Guarantee is not waived by any delay that the Landlord has permitted the Tenant in satisfying its obligations under the Agreement. This Guarantee runs to the Guarantor's heirs, successors, and assigns and ensures to the benefit of the Landlord and its successors, and assigns. The Landlord and Tenant may agree to a modification of the Agreement without the approval of the Guarantor(s), provided that the obligation of the Guarantor(s) is not increased beyond the financial conditions contained in the Lease. This is a guarantee of payment and performance and not merely of collection of any term or condition of the Agreement that requires the Tenant to pay the Landlord any sum of money.

Michael J. Dwyer 7-22-10  
GUARANTOR Date

William C. Johnson  
Witness to GUARANTOR

\_\_\_\_\_  
GUARANTOR Date

\_\_\_\_\_  
Witness to GUARANTOR

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110 TENANT, 1 TENANT, AND 3 LANDLORD HAVE READ THIS PAGE.

Form 400 Page 10 of 10

STATE OF SOUTH CAROLINA )

ASSIGNMENT OF LEASE

COUNTY OF CHARLESTON )

FOR VALUE RECEIVED, SIC PARVUS MAGNUM, INC., a South Carolina corporation, ("Tenant Assignor") does hereby sell, assign, transfer, set over and convey unto QUILLEN ENTERPRISES, LLC, a South Carolina limited liability company, ("Tenant Assignee") all of Tenant Assignor's right, title, and interest as Tenant under that certain Lease (the "Lease") dated NOV. 1, 2001, for real property and improvements located at 213 East Bay Street, Charleston, SC. Sad Lease is by and between Charleston T&T as Landlord, and Sic Parvus Magnum Inc as Tenant. A true and complete copy of the Lease is attached and incorporated into this Assignment as Exhibit "A" and there are no written or verbal amendments to the Lease.

Tenant Assignor represents and warrants that (a) it is duly authorized to make this assignment, that the individual signing on behalf of the undersigned is duly authorized and empowered to bind the Tenant Assignor, (b) that there are no lawful impediments to the making and consummation of this assignment, and (c) there are no defaults by Landlord or Tenant Assignor under the Lease, nor are there uncured events which, with the passage of time, would become defaults.

The parties agree that signatures obtained by facsimile are as acceptable and binding as original signatures.

IN WITNESS OF THIS ASSIGNMENT, Tenant Assignor, as Tenant under the Lease, has executed its signature on this 30 day of July, 2010.

Assignor)

SIC PARVUS MAGNUM, INC. (Tenant

A South Carolina corporation

By:

Its: President

First Witness

Second Witness

LANDLORD'S CONSENT:

The foregoing Assignment is approved and there are no defaults by Landlord or Tenant under the Lease, nor are there uncured events which, with the passage of time, would become defaults. The Lease is that same lease dated NOV. 1, 2001, plus amendment(s) dated (if none, write "None") Ann Thode by and between the undersigned as Landlord and Matthew Quillen as Tenant, a true and correct copy of which is attached hereto as Exhibit "A".

[Signature]  
First Witness  
[Signature]  
Second Witness

Landlord: [Signature]  
By: [Signature] Ann Thode  
Its: [Signature]

TENANT ASSIGNEE'S ACCEPTANCE:

The Assignment is accepted. Tenant Assignee acknowledges receipt of a copy of the Lease and agrees to abide by the terms and conditions therein.

[Signature]  
First Witness  
[Signature]  
Second Witness

QUILLEN ENTERPRISES, LLC,  
(Tenant Assignee)  
A South Carolina limited liability company  
By: [Signature]  
Its: Member/Manager

**EXHIBIT 3**  
*Assumption Letter dated March 30, 2012*

**EXHIBIT 3**

March 30, 2012

**NOTICE TO TENANTS OF 213 EAST BAY STREET, CHARLESTON, SC**

Dear Tenants:

We are happy to announce that as of the above stated date, CHARLESTON T&T, INC. has assigned all of its rights as landlord under your lease to the MICHAEL J. QUILLEN FAMILY LIMITED PARTNERSHIP. This assignment is effective immediately, so from this date forward, please send all communications, correspondence, rents other sums payable under your lease to the MICHAEL J. QUILLEN FAMILY LIMITED PARTNERSHIP at the address stated below. Furthermore, any security deposits previously held by CHARLESTON T&T, INC. have been assigned and transferred to the MICHAEL J. QUILLEN FAMILY LIMITED PARTNERSHIP.

Sincerely,

CHARLESTON T&T, INC.

By: \_\_\_\_\_  
Ann Thode, Its President

MICHAEL J. QUILLEN  
FAMILY LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Michael J. Quillen, General Partner

\*\*\*\*\*

**Until further notice, the mailing address for all future communications, correspondence, rent, and other payments shall be:**

**MICHAEL J. QUILLEN FAMILY LIMITED PARTNERSHIP  
15121 Washington Way  
Bristol, VA 24202**

**EXHIBIT 4**  
*Termination Letter dated September 11, 2013*

**EXHIBIT 4**

**YASCHIK ENTERPRISES**  
Complete Real Estate and Investment Service

Yaschik Development Co., Inc. • Charleston Capital Corporation.

56 Queen Street • Post Office Box 328 (29402)  
Charleston, South Carolina 29401

Phone (843) 723-6464 • FAX (843) 723-1228 • E-mail: yaschik@bellsouth.net

September 11, 2013

**EXPRESS MAIL – OVERNIGHT DELIVERY**

Mike J. Quillen, General Partner  
Michael J. Quillen Family Limited Partnership  
15121 Washington Way  
Bristol, VA 24202

Re: Michael J. Quillen Family Limited Partnership / Yaschik Development Co., Inc. –  
Lease Matter (213 East Bay)

Dear Mike:

This letter is in response to your correspondence dated September 3, 2013 regarding the insurance proceeds and Master Lease related to 213 East Bay Street. Since the fire at the leased property has led to a total loss of the subject premises, the Master Lease has been automatically terminated pursuant to the terms of the first sentence of Paragraph 20 of the Master Lease. As such, please discontinue using any insurance proceeds for the design, remediation or rebuilding of the premises until and unless I provide you with such authorization.

Please find enclosed our check for \$7,787.36 as payment in full of prepaid rent from April 2 to April 30, 2013. I have deducted the costs of property tax and user fee on a prorata basis to the date of the fire.

	Before proration	Pro-rata
Rent	15,758.26	(525.28)
Property tax	29,368.25	(7,423.78)
User fee	86.00	(21.84)
		<b>(7,970.90) deduction</b>

Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Thomas M. Ervin  
President

Cc: Greg Pearce

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) THE NINTH JUDICIAL CIRCUIT  
COUNTY OF CHARLESTON ) CASE NO. 2013-CP-10-7107

SEA ISLAND FOOD GROUP, LLC )  
doing business as SQUEEZE, )  
 )  
Plaintiff, )

vs. )

YASCHIK DEVELOPMENT )  
COMPANY, INC., doing business as )  
YASCHIK ENTERPRISES, HILTON )  
SMITH, EAST BAY COMPANY, LTD., )  
and MICHAEL J. QUILLEN FAMILY )  
LIMITED PARTNERSHIP, )  
 )  
Defendants. )

**ANSWER TO FIRST  
AMENDED COMPLAINT**

\_\_\_\_\_  
QUILLEN ENTERPRISES, LLC doing )  
business as THE BRICK, )  
 )  
Plaintiff-Intervenor, )

v. )

YASCHIK DEVELOPMENT )  
COMPANY, INC. doing business as )  
YASCHIK ENTERPRISES, HILTON )  
SMITH, EAST BAY COMPANY, LTD., )  
and MICHAEL J. QUILLEN FAMILY )  
LIMITED PARTNERSHIP, )  
 )  
Defendants. )

FILED  
2015 JUN 12 PM 3:49  
JULIE J. ARMSTRONG  
CLERK OF COURT

Yaschik Development Company, Inc., doing business as Yaschik Enterprises (“Yaschik Development”), by and through counsel, hereby answers the Plaintiffs’ First Amended Complaint. Yaschik Development denies each allegation of the First Amended Complaint not specifically admitted, qualified, or explained below.

**PARTIES, JURISDICTION, AND VENUE**

1. The allegations of Paragraph 1 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

2. The allegations of Paragraph 2 are admitted.

3. The allegations of Paragraph 3 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

4. The allegations of Paragraph 4 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

5. The allegations of Paragraph 5 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

6. Yaschik Development admits that this Court has personal jurisdiction over Yaschik Development and the subject matter of this action. The remaining allegations of Paragraph 6 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

**FACTS**

7. Responding to Paragraph 7, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

8. The Master Lease speaks for itself. To the extent the allegations of Paragraph 8 are inconsistent with the terms contained therein, the allegations are denied.

9. The Master Lease speaks for itself. To the extent the allegations of Paragraph 9 are inconsistent with the terms contained therein, the allegations are denied.

10. The allegations of Paragraph 10 are admitted upon information and belief.

11. The allegations of Paragraph 11 are admitted.
12. Yaschik Development admits that at the time of the purchase of 213 East Bay Street, Yaschik Development was aware that Charleston T&T had sublet the premises to one or more subtenants. Yaschik Development did not learn the details of the sub-leases, however, until after the fire. The remaining allegations of Paragraph 12 are denied for lack of knowledge or information to form a belief as to the truth or falsity of the allegations contained therein.
13. The Squeeze Sublease speaks for itself. To the extent the allegations of Paragraph 13 are inconsistent with the terms contained therein, the allegations are denied.
14. The Squeeze Sublease speaks for itself. To the extent the allegations of Paragraph 14 are inconsistent with the terms contained therein, the allegations are denied.
15. The allegations of Paragraph 15 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
16. The Brick Sublease speaks for itself. To the extent the allegations of Paragraph 16 are inconsistent with the terms contained therein, the allegations are denied.
17. The Brick Sublease speaks for itself. To the extent the allegations of Paragraph 17 are inconsistent with the terms contained therein, the allegations are denied.
18. The Assumption Letter speaks for itself. To the extent the allegations of Paragraph 16 are inconsistent with the terms contained therein, the allegations are denied.
19. The allegations of Paragraph 19 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
20. The allegations of Paragraph 20 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.
21. The allegations of Paragraph 21 are admitted.

22. The allegations of Paragraph 22 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

23. The allegations of Paragraph 23 are denied.

24. Yaschik Development admits the fire caused damage to the property. The remaining allegations of Paragraph 24 are denied.

25. The allegations of Paragraph 25 are admitted.

26. The allegations of Paragraph 26 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

27. The allegations of Paragraph 27 are denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein.

28. The email of May 31, 2013 speaks for itself. To the extent that the allegations of Paragraph 28 are inconsistent with the terms contained therein, the allegations are denied.

29. The email of May 31, 2013 speaks for itself. To the extent that the allegations of Paragraph 29 are inconsistent with the terms contained therein, the allegations are denied.

30. Yaschik Development admits that it entered into a Real Estate Sales Agreement with East Bay Company on December 31, 2013. The remaining allegations of Paragraph 30 are denied.

31. Yaschik Development admits that it entered into a Real Estate Sales Agreement with East Bay Company on December 31, 2013, which speaks for itself. The remaining allegations of Paragraph 30 are denied.

32. The allegations of Paragraph 32 are denied.

33. Yaschik Development admits that Tom Ervin sent a letter to Defendant Quillen on September 11, 2013, which letter speaks for itself. To the extent the allegations of Paragraph 33

are inconsistent with the terms contained therein, the allegations are denied. The remaining allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

35. The allegations of Paragraph 35 are denied.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

(Against Defendant Yaschik Development Company, Inc.)

36. Responding to Paragraph 36, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

37. Yaschik Development admits that a valid contract existed before the contract was automatically terminated on account of the total loss of the premises at 213 East Bay Street. The remaining allegations of Paragraph 37 are denied.

38. The allegations of Paragraph 38 are denied.

39. The allegations of Paragraph 39 are denied.

40. The allegations in Paragraph 40 are denied.

41. The allegations of Paragraph 41 are denied.

**SECOND CAUSE OF ACTION**

**(Breach of Contract Accompanied by a Fraudulent Act)**

(Against Defendant Yaschik Development Company, Inc.)

42. Responding to Paragraph 42, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

43. Yaschik Development admits that a valid contract existed before the contract was automatically terminated on account of the total loss of the premises at 213 East Bay Street. The remaining allegations of Paragraph 43 are denied.

44. The allegations of Paragraph 44 are denied.

45. The allegations of Paragraph 45 are denied.

46. The allegations of Paragraph 46 are denied.

47. The allegations of Paragraph 47 are denied.

48. The allegations in Paragraph 48 are denied.

49. The allegations of Paragraph 49 are denied.

**THIRD CAUSE OF ACTION**

**(Breach of Contract)**

(Against Defendant Michael J. Quillen Family Limited Partnership)

50. Responding to Paragraph 50, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

51. Paragraph 51 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

52. Paragraph 52 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

53. Paragraph 53 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

54. Paragraph 54 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

**FOURTH CAUSE OF ACTION**  
**(Intentional Interference with a Contractual Relationship)**  
**(Against Defendant Yaschik Development Company, Inc.)**

55. Responding to Paragraph 55, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

56. The allegations of Paragraph 56 are admitted.

57. The allegations of Paragraph 57 are admitted.

58. The allegations of Paragraph 58 are vague, ambiguous, and misleading and, as such, are denied. Notwithstanding this denial, Yaschik Development was aware that Plaintiff was a sub-tenant of the premises, but did not learn the details of the sub-lease until after the fire.

59. The allegations of Paragraph 59 are denied.

60. The allegations in Paragraph 60 are denied.

61. The allegations of Paragraph 61 are denied.

**FIFTH CAUSE OF ACTION**  
**(Intentional Interference with a Contractual Relationship)**  
**(Against Defendants Hilton Smith and East Bay Company, Ltd.)**

62. Responding to Paragraph 62, Yaschik Development incorporates by reference their responses set forth in the preceding paragraphs of this Answer as fully as if repeated verbatim herein.

63. Paragraph 63 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

64. Paragraph 64 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

65. Paragraph 65 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

66. Paragraph 66 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

67. Paragraph 67 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

68. Paragraph 68 relates to a claim that is not asserted against Yaschik Development, and, therefore, requires no response. To the extent a response is required, Yaschik Development is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and, therefore, denies those allegations.

**JURY DEMAND**

69. Paragraph 69 states Plaintiff's request for a jury trial and, as such, requires no answer. To the extent a response is required, the allegations of Paragraph 56 are denied.

**FOR A FIRST DEFENSE**  
**(Failure to State a Claim)**

70. Plaintiffs have failed to state a claim upon which relief can be granted, and some or all of the claims in Plaintiffs' Amended Complaint should, therefore, be dismissed pursuant to SCRCP 12(b)(6).

**FOR A SECOND DEFENSE**  
**(Waiver and Estoppel)**

71. Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

**FOR A THIRD DEFENSE**  
**(Laches)**

72. The claims asserted in Plaintiffs' Amended Complaint are barred by the doctrine of Laches.

**FOR A FOURTH DEFENSE**  
**(Good Faith and Reasonable Procedures)**

73. Yaschik Development would show that any actions taken by and/or any procedures followed by Yaschik Development were taken in good faith, in a reasonable manner, and that said actions and/or procedures were authorized by statutes, reasonable in time and

manner, and in compliance with any laws and contracts, and therefore the Plaintiffs are precluded from recovery against Yaschik Development.

**FOR A FIFTH DEFENSE**  
**(Intervening Actions of Third Party)**

74. Yaschik Development would show that any injury or damage suffered by Plaintiffs, if any, was due to or caused by or occasioned by the intervening actions or omissions of a third party or parties for whom Yaschik Development is not responsible and therefore, Plaintiffs' claims should be barred or reduced accordingly.

**FOR A SIXTH DEFENSE**  
**(Failure to Mitigate)**

75. Yaschik Development would show that the damages recoverable by Plaintiffs, if any, must be reduced by any amount of damages caused by Plaintiffs' failure to mitigate such damages in whole or in part.

**FOR A SEVENTH DEFENSE**  
**(Unclean Hands and *In Pari Delicto*)**

76. Yaschik Development would show that the Plaintiffs' claims are barred by the Doctrines of Unclean Hands and/or *In Pari Delicto*.

**FOR AN EIGHTH DEFENSE**  
**(Failure to Allege Fraud with Particularity)**

77. Yaschik Development would show that Plaintiffs have failed to allege fraud with the particularity required under SCRCP 9(b).

**FOR A NINTH DEFENSE**  
**(Lack of Standing)**

78. Yaschik Development would show that Plaintiffs lack the capacity, authority, and/or standing to assert some or all of the Claims asserted in the Complaint.

**FOR A TENTH AFFIRMATIVE DEFENSE**  
**(Lack of Consideration)**

79. Further answering the Amended Complaint, and as and for a further defense thereto, Yaschik Development alleges that Plaintiffs' action are barred in whole or in part based on the fact that the terms of the Lease fail to include any third-party beneficiaries.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Intervening/Superseding Negligence)**

80. For an additional affirmative defense, Defendants allege and aver that Plaintiffs' claims are barred because Plaintiffs' damages, if any, were caused by an intervening or superseding act on the part of an unrelated third party.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(Reservation of Rights to Assert Additional Defenses)**

81. Yaschik Development specifically reserves any additional affirmative defenses as may be available to it as are revealed during the course of its investigation and/or discovery in the case, as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Yaschik Development prays that the Amended Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.



Robert E. Sumner, IV (S.C. Bar No. 71728)  
Moore & Van Allen PLLC  
78 Wentworth Street  
Charleston, SC 29401  
PH. (843) 579-7018  
FAX (843) 579-8743  
robertsumner@mvalaw.com  
*Attorneys for Yaschik Development  
Company, Inc., doing business as Yaschik  
Enterprises, Charleston Capital  
Corporation and Thomas M. Ervin*

CHARLESTON, SC  
June 12, 2014

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-10-7107

SEA ISLAND FOOD GROUP, LLC )  
doing business as SQUEEZE, )

Plaintiff, )

v. )

YASCHIK DEVELOPMENT )  
COMPANY, INC. doing business as )  
YASCHIK ENTERPRISES, HILTON )  
SMITH, EAST BAY COMPANY, )  
LTD., and MICHAEL J. QUILLEN )  
FAMILY LIMITED PARTNERSHIP, )

Defendants. )

**NOTICE AND MOTION TO DISMISS  
OF EAST BAY COMPANY, LTD.  
AND HILTON SMITH**

---

QUILLEN ENTERPRISES, LLC )  
doing business as THE BRICK )

Plaintiff-Intervenor, )

v. )

YASCHIK DEVELOPMENT )  
COMPANY, INC. doing business as )  
YASCHIK ENTERPRISES, HILTON )  
SMITH, EAST BAY COMPANY, )  
LTD., and MICHAEL J. QUILLEN )  
FAMILY LIMITED PARTNERSHIP, )

Defendants. )

**FILED**  
2015 JUN 12 PM 4:20  
JULIE J. ARMSTRONG  
CLERK OF COURT

PLEASE TAKE NOTICE that Defendants East Bay Company, Ltd. and Hilton Smith (collectively, "EBCO"), through their undersigned counsel, will move before the Presiding Judge, Ninth Judicial Circuit, Charleston, South Carolina, at such place and time as the Court may appoint, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an

order dismissing the First Amended Complaint on the grounds that it fails to state facts sufficient to constitute a cause of action.

Specifically, the First Amended Complaint fails as a matter of law for the following reasons: 1) Plaintiff and Plaintiff-Intervenor fail to plead facts showing an absence of justification for the alleged intentional interference with contract, which is an essential element of the claim and, in fact, the First Amended Complaint on its face shows that EBCO was motivated by the legitimate business purpose of contracting to purchase real estate with clear title and no encumbrances; 2) EBCO's alleged conduct was not the proximate cause of Yaschik's alleged breach of the Master Lease because Yaschik issued its termination letter three months before EBCO contracted to buy 213 East Bay Street; and 3) the Master Lease and subleases for Squeeze and The Brick, which are attached to and incorporated into the First Amended Complaint, show they were not third-party beneficiaries of the Master Lease and, as such, cannot claim any rights under the Master Lease.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



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Charles J. Baker III (S.C. Bar No. 486)  
5 Exchange Street  
Post Office Box 999  
Charleston, SC 29402-0999  
Telephone: (843) 722-3400  
*cbaker@wcsr.com*

*Attorneys for East Bay Company, Ltd. and Hilton Smith*

CHARLESTON, SC  
June 12, 2015

# YASCHIK ENTERPRISES

56 Queen Street • Post Office Box 328 (29402)  
Charleston, South Carolina 29401

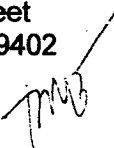
Phone: (843) 723-6464 • FAX: (843) 723-1228 • E-mail: yaschik@bellsouth.net

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## MEMORANDUM

DATE: May 31, 2013

TO: Hilton C. Smith, Jr., President/CEO  
East Bay Company, Ltd.  
PO Box 1298  
215 East Bay Street  
Charleston, SC 29402

FROM: Thomas M. Ervin 

RE: 213 E. Bay Street

Pursuant to our telephone conversation yesterday, please review the pertinent facts and proposal, as follows:

1. 213 East Bay is subject to a master lease on a pure net basis.
2. The current lease term expires March 31, 2017.
3. Renewal options are available through March 31, 2027.
4. The current tenant has a right of first refusal on any sale offer.
5. Annual rent increases of 4% are due each April 1.
6. An offer based on a 5% capitalization rate will be considered. Current net rent is \$189,099.12. Purchase price would be \$3,781,982.40.
7. Closing must be no later than July 19, 2013.
8. No broker fees will be paid.

If the foregoing is of interest, please contact me at your convenience.