

5

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2016-000505

Tracy Fulmore.....Appellant
v.
Julie Smith Respondent

RECORD ON APPEAL

RECEIVED

JAN 09 2017

SC Court of Appeals

RECEIVED

JAN 23 2017

SC Court of Appeals

Charles T. Brooks, III
Post Office Box 3512
Sumter, South Carolina 29151
Telephone: (803) 418-5708
Facsimile: (803) 934-9618
Attorney for Appellant

Catherine H. Garbee Griffin, Esq.
Mariel D. Norton, Esq.
Post Office Box 8057
Columbia, South Carolina 29202
Attorneys for Respondent

INDEX

Order Denying Appeal (with Form 4).....	1
Judgment for Defendant.....	4
Summons and Complaint with Exhibits.....	5
Answer with Exhibits.....	22
Summons and Counterclaim with Exhibits.....	41
Answer to Counterclaim with Exhibits.....	45
Notice of Civil Appeal.....	52
Proof of Service of Civil Appeal.....	56
Return of Appeal.....	57
Answer to Appeal/Motion to Dismiss.....	59
Return to Motion.....	60
Plaintiff's Reply to Return of Appeal with Exhibits.....	62
Plaintiff's Supplemental Reply to Return to Appeal.....	74
Defendant's Reply to Plaintiff's Supplemental Reply to Return of Appeal.....	76
Transcript for Magistrate Hearing.....	78
Transcript of Record for Hearing July 7, 2015.....	109
Lease.....	123
Letter to Defendant/Respondent May 22, 2015.....	133
Email May 15, 2015.....	134
Email May 18, 2015.....	135
Email May 28, 2015.....	136
Notice of Appeal.....	137

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2014CP4005976**

Tracy Fulmore

Julie Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____

Judge Code 2141

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of Feb, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Thomas Brooks III

Julie Smith

Julie Smith

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette Williams

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TRACY FULMORE,

APPELLANT

vs.

JULIE SMITH,

RESPONDENT

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

ORDER DENYING APPEAL

Case #: 2014-CP-40-5976

This matter comes before me on July 7, 2015 for determination of the Appellant's Notice of Motion and Motion for Appeal, appealing the judgment of the Magistrates Court in Case No. 2014 - CV - 40-10900510. The Magistrate filed his Return of Appeal on or about November 2014. The Respondent in this matter further filed a Notice of Motion/Motion to Dismiss the Appeal with the Richland County Clerk of Court on May 1, 2015. The Appellant then filed his Return to the Respondents Motion. Additionally, the Appellant has filed a Reply to the Return as well as a Supplemental Reply to the Return of Appeal in this matter. A previous hearing was scheduled in this matter on or about May 8 of 2015, at which time the Court granted the Appellant's Motion to Continue in order to give the Appellant additional time to obtain the transcripts from the Magistrates Court hearing. The matter was rescheduled for July 7, 2015 and the Appellant's attorney, again, did not have the transcripts from the Magistrates Court hearing available for the July 7, 2015 hearing. He was given permission to supplement his argument with the transcript once he received it and the hearing was conducted.

Present at the July 7, 2015 hearing were Charles T Brooks, III of the Sumter County Bar, on behalf of the Appellant and the Respondent, Julie Smith, who was not represented by counsel. The Appellant was not present. This court has reviewed the documents filed in this matter and the transcribed hearing of the Richland County Magistrate Court hearing regarding these issues. Based on the foregoing and the remarks of counsel and the parties herein, the court finds as follows:

1. The transcript from the Magistrates Court proceeding clearly indicates that the Appellant was offered keys and access to the building, which is the subject of the lease, on several occasions prior to the start date of the lease;
2. Based upon a transcript of the lower court proceeding, the Magistrate was well within the law in granting the Respondent, Julie Smith, a judgment against the Appellant, Tracy Fulmore, for breaching the lease that was effective per the written details of the lease document; and
3. The Appellant's request for Appeal in this matter should be denied and the findings and judgment of the Magistrate be upheld.

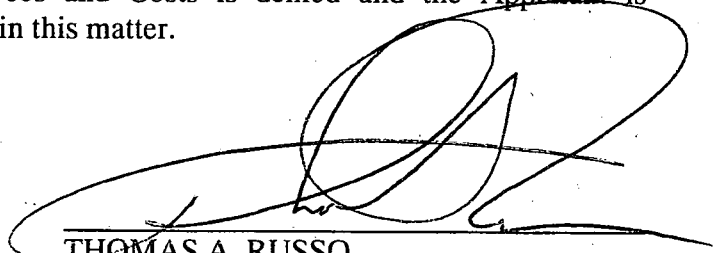
SCANNED

IT IS THEREFORE ORDERED THAT:

1. The Appellant's Request for Appeal in this matter is denied; and
2. The decision and the judgment of the Magistrates Court is hereby upheld; and
3. The Appellant's Request for Attorney's Fees and Costs is denied and the Appellant is responsible for his own attorney fees and costs in this matter.

AND IT IS SO ORDERED

Date: 2/5/2016



THOMAS A. RUSSO

Judge of the Circuit Court

SCANNED

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

2014C J10900510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

JUDGMENT FOR DEFENDANT

Tracy Fulmore
313 Laurel Rise Lane
Columbia, SC 29229
(803) 917-3712

PLAINTIFF(S)

Vs

Julie Smith
208 Springwater
Drive
Columbia, SC 29223

DEFENDANT(S)

The issues in this action were tried in the RICHLAND Magistrate's Court on August 27, 2014 at which time a Judgment for the defendant(s)

Julie Smith

was rendered in the amount of \$5,300.00.

IT IS THEREFORE ORDERED that the Defendant(s):

Julie Smith

recover from the Plaintiff(s) Tracy Fulmore the total amount of \$5,310.00 which includes other relief, if any, as stated below.

Court Costs / Filing Fees

10.00


JUDGE

RICHLAND County
Pontiac Magistrate
10509 Two Notch Road
Elgin, SC 29045
Phone: (803) 576-2520 Fax: (803) 576-2522

August 27, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

2014C V4010900510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

COURT COPY

Tracy Fulmore
313 Laurel Rise Lane
Columbia, SC 29229
(803) 917-3712

PLAINTIFF(S)

Vs

Julie Smith
208 Springwater
Drive
Columbia, SC 29223

DEFENDANT(S)

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

RICHLAND County Pontiac Magistrate
10509 Two Notch Road
Elgin, SC 29045
Phone: (803) 576-2520
Fax: (803) 576-2522

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. **If you desire a jury trial, you must request one within five (5) days before the date of trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand:


JUDGE

READ ATTACHED INSTRUCTIONS CAREFULLY

July 3, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

COMPLAINT

Tracy Fulmore

803-917-3712

PLAINTIFF(S)

Vs

Julie A Smith

H. Ph.# 803-407

3557-WK 803-

476-6450

Julie Smith

Realtor with

Keller Williams

DEFENDANT(S)

I, Tracy Fulmore
do make the following claims:

the plaintiff(s) in this civil action

1. I believe that the defendant(s),

I believe Julie Smith
did not allow me access
to the lease space after she
received two checks totaling
\$2,200.

is/are a resident(s) of Richland County, or this Complaint is properly filed in Richland County.

2. I make this complaint on the following:

See attached documents

(Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for
\$ \$12,280 and/or relief as below requested:

including any costs resulting in this action.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE STATED FACTS ARE
TRUE EXCEPT THOSE BASED ON MY BEST INFORMATION THAT I BELIEVE TO BE
TRUE.

Tracy Fulmore
Signature of Plaintiff/Attorney

RECEIVED
JUL 3 PM 4:03
MAGISTRATE

I called Julie A. Smith on 11/12/2013 to inquire about the space for lease at 323 Long Pointe Lane, Columbia SC 29229. I asked her if I could lease it for \$900.00 a month for a year. She replied yes. But over the next few months she denied /did not remember telling me she would rent the space to me for \$900.00. I told her that I was not going to argue with her over the rental amount since it was her property. We had several phone calls over the next 6-7 months before I signed the lease on 5/9/2014. At the signing, she did not provide me a copy of the signed lease nor the key to the leased building. Julie's husband, Steve, asked her where was his copy and my copy of the lease. She replied she would email it to me. Later that day she did email a copy but it had been modified with additional requirements that were not present on the original document that I had signed.

Julie Smith told me that she would call me to meet her to receive my key to the building. After waiting 5 days, I called her on 5/14/2014 to inquire about the key. At that time, she had a lot of additional demands that I had to meet before she would give me the key. Because of these additional demands, I asked her to return my two checks in the amount of \$1000.00 and \$1200.00 for a total of \$2200.00. This phone conversation lasted approximately 12 minutes. After this conversation I felt that to continue in this lease would be more of a headache than a benefit to my barber business.

See attached documents.

Tracy E. Fulmore

2

Subject: Lease
From: Julie Smith (jsmithrealtor@gmail.com)
To: fulmoretle@bellsouth.net;
Date: Friday, May 9, 2014 4:48 PM

Hi Tracy,

Thank you for meeting with me today and for leasing our commercial space. I have attached a scan of the documents. I will call you when we get everything moved out of the space and have it cleaned up for you. I look forward to doing business with you.

What I need from you before you begin work:

- Electricity for 323 Long Pointe Ln #100 put in your name as of the first of this coming week since you will have full access. The water and sewer will remain in my name.
- Drawing/sketch showing your plans for changes to the building/plumbing and proof of license and insurance from your contractor
- Your liability insurance certificate showing Steve & Julie Smith as additional insureds (this should not cost you anything to do – it does not insure us for anything unless the liability arises due to your business. An example would be if someone tripped on something in your space and they sue you and us as building owner.)

If you have any questions, please don't hesitate to call me.

Julie Smith

803-476-6450

P.O. Box 291895
Columbia, SC 29229

From: Julie Smith (jsmithrealtor@gmail.com)
To: fulmoretie@bellsouth.net
Date: Thursday, May 15, 2014 2:39 PM

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

Subject: FW: Key

From: Julie Smith (jsmithrealtor@gmail.com)

To: fulmoretie@bellsouth.net;

Date: Wednesday, May 28, 2014 8:52 AM

Hi Tracy,

I'm just checking in again on when you will be ready to pick up a key.

To clear up any confusion, I understand that your first month rent begins June 1, although you won't be paying for it until after the second year of your lease is up and that a payment is not due until August 1, 2014 as you have already paid for July.

Julie Smith

From: Julie Smith [mailto:jsmithrealtor@gmail.com]

Sent: Thursday, May 15, 2014 2:39 PM

To: fulmoretie@bellsouth.net

Subject: Key

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

TRACY E FULMOR
PH: 803-865-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

67-160/532
25802

5-9-14

PAY

to the order of

Julie Smith

Date

\$ 1200.00

ONE thousand Two Hundred 00/100

Dollars



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

Classic
BANKING

For \$100 L

Signature

Tracy Fulmor

TRACY E FULMORE
PH: 803-865-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

67-160/532
25802

5-9-14

PAY

to the order of

JULIE Smith

Date

\$ 1000.00

ONE thousand 00/100

Dollars



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

Classic
BANKING

For For Lease

Signature

Tracy Fulmor

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150

POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@cthbrooks.com

May 22, 2014

Ms. Julie Smith
Post Office Box 291895
Columbia, South Carolina 29229

RE: 333 Long Pointe Ln. #100, Columbia, SC

Dear Ms. Smith:

Please be advised that my offices have been retained by Mr. Fulmore with regards to his lease for the above property.

It is Mr. Fulmore's position that he no longer desires to lease these premises and is requesting the funds paid to you to be returned to him immediately. As Mr. Fulmore has not taken possession of the premises and has not been provided access to this property this return of funds should not be an issue.

Please refund Mr. Fulmore his money within the next ten (10) business days.

If you have any other questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB,III/jlm

cc: Tracey E. Fulmore

In consideration of the covenants herein contained, Tracy Fulmore, hereinafter called "Tenant" and Steve & Julie Smith, Landlord, or Agent for the Landlord, hereinafter called "Landlord", agree as follows:

→ For the period of time beginning on June 1, 2014, and ending at midnight on May 30, 2016, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision Lake Carolina Harborside Town Center

Address _____

Tax Map # _____ City _____ Zip _____

County of _____ 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 First 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 See below Dollars (\$ See below).

- 77
8
(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: *1,000/month for 1st 6 months (thru Nov)
Beginning Dec 1, 2014 rent to increase to *1,100/mth. Beginning of 2nd
year rent to increase to *1,200/mth

- (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 2013, 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 N/A % of gross sales, as herein defined, in excess of N/A Dollars, (\$ N/A), 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

☒ 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 proceeding 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 NA Dollars (\$ NA)

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

[44] INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one): Only on building - Not tenant's property.

[✓] INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of 2013 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.

[45] 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 fifty percent (50 %).

[46] 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

[] TENANT, [] TENANT, AND [✓] LANDLORD HAVE READ THIS PAGE.

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.

[47. LATE RENT. If rent is not paid within five days after due date, the Tenant is subject to a one-time late fee of 100- (%) 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 (\$ 1,200-) twelve hundred 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. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant,

EXCEPT: excess garbage, water more than \$20/month, sewer

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for barber shop 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 N/A 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: Simple parking pad at rear of building. May park in front.

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,

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 3 of 10

97

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 \$ 1,000,000 -

Aggregate \$ 2,000,000 -

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

7-7

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 at 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 5 of 10

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: _____ Fulmore TLED bell south net

Landlord Address: _____

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

40. ENTIRE AGREEMENT. This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it shall be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the 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 WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

41. FACSIMILE: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

42. MEGAN'S LAW: The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

43. NON-RELIANCE CLAUSE: Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

[Signature]

Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

[Signature] 5/9/14

Landlord Date Witness to Landlord

Landlord's Email Address: j.smith@realtor@gmail.com

Phone: 476-6450 Fax: _____

LANDLORD'S AGENT AND COMPANY _____

TENANT'S AGENT AND COMPANY _____

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 9 of 10

D.L.
8450092
2/16

77

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.

Tom Palmer 5-9-14
GUARANTOR Date

Witness to GUARANTOR

GUARANTOR Date

Witness to GUARANTOR

Tenant acknowledges that building is for sale and agrees to allow prospective buyers to inspect property upon reasonable notice. Tenant's lease terms to remain in effect upon sale with the exception that building owner may require cancellation of this lease upon payment to lessee of \$5,000 upon sale closing. Tenant may stay in property for 3 months after closing and must pay rent amounts during that period to new owner. New owner may allow tenant to remain longer upon mutual agreement.

JF

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2006 South Carolina Association of REALTORS® 1/06

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

JF

Form 400 Page 10 of 10

Julie Ann Smith
Steven Leonard Smith

Phone # (H) 803-407-3757
(C) 803-476-6450
email: jsmithrealtor@gmail.com

03-476-6450
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tracy Fulmore

PLAINTIFF

STREET ADDRESS

CITY, STATE ZIP

803-917-3712

TELEPHONE

VS.

Julie Smith

DEFENDANT(S)

STREET ADDRESS

CITY, STATE-ZIP

803-476-6450

TELEPHONE

2014CV4010900510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
ANSWER

RECEIVED
PONTIAC MAGISTRATE
2014 JUL 15 PM 2:47

On 7/7/2014 I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the Richland County Summary Court is as follows:

CHECK ONE:

- A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary) _____
- B. ☐ I admit everything in the complaint and do not want a trial.
- C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary) _____
- D. ☒ I deny that I am responsible at all because: (use additional pages if necessary) See Attached Documents

You must file this document with the Court within thirty days.

THE DEFENDANT STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE.

Dated: 7/9/14

Signature of Defendant (or his attorney)

SCCA/703 (Amended 08/2009)

ANSWER TO COMPLAINT:

DISCLOSURES: First I would like to point out that I am a South Carolina Licensed Realtor and I adhere to the highest standards of ethics to be a Realtor. I own this property. This property is not handled by the real estate company with which I am associated.

LEASE COPY PLAINTIFF WAS EMAILED IS THE LEASE EXACTLY AS SIGNED BY ALL: (See p9, item 41 of lease) which allows for facsimile to equal original. I have the original lease with the original signatures and initials. I would NEVER change a document after it has been signed – As a licensed Realtor – I know better! I did not write the lease in duplicates to get original signatures on multiple copies. I never do this for any document and it is never required in a lease or in a purchase of a property, unless specifically required by an attorney or if requested by the other party (he never asked). I stated at the time of signing that I would email his copy the same day, which I did. I did not modify the lease in any manner after it was signed. **The lease was initialed by both parties at every change made to what was typewritten at the time of signing. I went over every item on the lease paragraph by paragraph to ensure that the tenant understood the entire lease.**

My husband, Steve, was present at lease signing and did not ask for his copy of the lease. He lives with me and we only need 1 copy, there never is "his copy". In the many years that we have leased properties he has never asked for his own copy of the lease.

KEY: According to the lease, I was not required to provide a key to the tenant until June 1, 2014 as that is the start date of his lease. Further, I never provide a key until the lease checks clear and a liability insurance certificate is provided. There was other inventory in the rental space at the time of lease signing, of which tenant was aware since we met in the space and signed the documents there. This inventory was subsequently moved out that week for Mr. Fulmore's convenience and he agreed that he would get the key at that time.

Notice was given to tenant many times that I would meet him to give him a key and that I needed his liability insurance – as according to the lease agreement. No response from tenant to any of these notices.

LEASE AMOUNT: Tenant had originally told me he wanted to lease in 2013 but didn't, so I had the right to charge the amount I wanted when we actually negotiated for the lease many months later. Tenant and I both agreed to a lower price than the desired price of \$1,200 at the time of actual lease negotiations. The price he mentions was an amount that I had considered many months before. At that time Tenant did not sign a document for me to hold the space at that price.

DATE OF OCCUPATION: Technically June 1, 2014. (see page 1 of lease) I agreed to give tenant a key to the building early (prior to lease beginning) as a kindness so that he could begin work on his space. I further agreed that the first month's rent wouldn't be due until the end of the term of the lease to help him to get his business started.

DOCUMENTATION NEEDED FROM TENANT prior to possession: Lease date began June 1, 2014. Tenant was to provide liability insurance certificate for his business and to ask for written approval from me of any modification he wanted to make to the building, along with the name and licensing and insurance documentation of his contractor. **ALL OF THIS IS WRITTEN IN THE LEASE AGREEMENT.** (see page 3&4 item 8 & 11 and page 8 item 38)

ELECTRICITY: (see page 2, item 3 of lease) I requested the tenant put the electric in their name as the lease doesn't include electricity and they refused. I asked how they would do modifications without electric and he said he didn't want the electricity and to turn it off. I did as he requested and sent him an email to let him know.

PERFORMANCE: I never at any point asked tenant for anything of the tenant that was not in the lease agreement.

I did everything I was supposed to do and tried to work with the tenant. Tenant did none of what he was required. Tenant did not respond to my many emails nor to my text (he received them because he provided the court with copies of the emails in his complaint).

Tenant did not request to me to cancel lease, nor did he ask me for his checks back. The first notice I received was on June 4th when I received a letter from his attorney asking to cancel the lease and for the tenant's checks. When I called his attorney the next day, he said he hadn't seen the lease nor the emails and I then forwarded it all to him immediately.

For the court's convenience, I have marked the lease sections in red to assist in locating relevant items.

TIMELINE:

2013 Sometime back in 2013 tenant contacted me to say he was interested in leasing the space in October 2013.

- 5/9/14 Signed lease with tenant. Tenant provided 2 checks
- 5/9/14 emailed tenant the lease and noted a reminder of what he needed to do before doing work.
- 5/14/14 Phone call from tenant. Tenant requested key. I asked for his proof of liability insurance paperwork. I also requested tenant put electricity in his name. He yelled at me for not giving him a key until he turned the electricity in his name and provided an insurance certificate. He told me to turn the power off that he didn't want the power on. I questioned him as to why he didn't want it in his name and he just said he didn't want it yet. I told him I would shut it off to the space. Tenant did not ask to cancel lease nor to return the checks.
- 5/15/14 Text sent to tenant asking for liability insurance certificate and offering to meet to give him a key. Reminded him that no changes were to be made to the building until approval of plan and receiving liability insurance certification of tenant and documentation of contractor.
- 5/15/14 Email to tenant stating that I had turned the power off to the space and offered to give him the key. I again stated that liability insurance certificate and plan was required prior to beginning work.
- 5/18/14 Sent email telling tenant that I haven't heard back from him and to request that he tell me when he is ready to get the key.
- 5/28/14 Sent email to tenant asking him again if he wanted the key.
- 6/4/14 Received a letter from tenant's attorney (evening). When I called his attorney on 6/5/2014, he said he hadn't seen the lease nor the emails and I then forwarded it all to him immediately.

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Friday, May 09, 2014 4:49 PM
To: 'fulmoretie@bellsouth.net'
Subject: Lease
Attachments: Fulmore Checks.pdf, Fulmore Lease.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tracy,

Thank you for meeting with me today and for leasing our commercial space. I have attached a scan of the documents. I will call you when we get everything moved out of the space and have it cleaned up for you. I look forward to doing business with you.

What I need from you before you begin work:

- Electricity for 323 Long Pointe Ln #100 put in your name as of the first of this coming week since you will have full access. The water and sewer will remain in my name.
- Drawing/sketch showing your plans for changes to the building/plumbing and proof of license and insurance from your contractor
- Your liability insurance certificate showing Steve & Julie Smith as additional insureds (this should not cost you anything to do – it does not insure us for anything unless the liability arises due to your business. An example would be if someone tripped on something in your space and they sue you and us as building owner.)

If you have any questions, please don't hesitate to call me.

Julie Smith
803-476-6450

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Thursday, May 15, 2014 2:39 PM
To: fulmoretle@bellsouth.net
Subject: Key

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Sunday, May 18, 2014 2:02 PM
To: fulmoretle@bellsouth.net
Subject: Keys

Follow Up Flag: Follow up
Flag Status: Flagged

Tracy, I haven't heard back from you. Let me know when you are ready to get the key.

Julie Smith
476-6450

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Wednesday, May 28, 2014 8:53 AM
To: fulmoretle@bellsouth.net
Subject: FW: Key

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tracy,

I'm just checking in again on when you will be ready to pick up a key.

To clear up any confusion, I understand that your first month rent begins June 1, although you won't be paying for it until after the second year of your lease is up and that a payment is not due until August 1, 2014 as you have already paid for July.

Julie Smith

From: Julie Smith [<mailto:jsmithrealtor@gmail.com>]
Sent: Thursday, May 15, 2014 2:39 PM
To: fulmoretle@bellsouth.net
Subject: Key

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith



COMMERCIAL LEASE

In consideration of the covenants herein contained, Tracy Fulmore, hereinafter called "Tenant" and Steve & Julie Smith, Landlord, or Agent for the Landlord, hereinafter called "Landlord", agree as follows:

For the period of time beginning on June 1, 2014 and ending at midnight on May 30, 2016 Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision Lake Carolina Harborside Town Center

Address _____

Tax Map # _____ City _____ Zip _____

County of _____, 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 First 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 See below Dollars (\$ See below).

(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: \$1,000/month for 1st 6 months (thru Nov)
Beginning Dec 1, 2014 rent to increase to \$1,100/mth. Beginning of 2nd
year rent to increase to \$1,200/mth

(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 2013 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 N/A % of gross sales, as herein defined, in excess of N/A Dollars, (\$ N/A), 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

7/2 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 proceeding 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 NA Dollars (\$ NA) 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] 4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one): Only on building - Not tenant's property

[X] INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of 2013 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.

[4] 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 fifty percent (50 %).

[X] 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

[] TENANT, [] TENANT, AND [X] LANDLORD HAVE READ THIS PAGE.

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.

[47. LATE RENT. If rent is not paid within five days after due date, the Tenant is subject to a one-time late fee of 100- (%) 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 (\$ 1,200-) twelve hundred 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. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: excess garbage, water more than \$30/month, sewer A

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for barber shop 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 N/A 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: Single parking pad at rear of building. May park in front.

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, A

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE

97

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 \$ 1,000,000 -

Aggregate \$ 2,000,000 -

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 forth 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 4 of 10

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 at 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 5 of 10

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: 313 Laurel Rise Ln.

Full more TLED bell south.net

Landlord Address: PO Box 291895
Columbia SC 29229

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 6 of 10

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, 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 7 of 10

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 Steve or Julie Smith 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, ATTORNMEN, 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 attom 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): All changes to premises must be approved in writing + performed by licensed + insured professionals. Space must be returned to same condition. No excessive noise to bother upstairs tenants.

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 8 of 10

40. **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 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 WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.**

41. **FACSIMILE:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

42. **MEGAN'S LAW:** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

43. **NON-RELIANCE CLAUSE:** Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

[Signature]

Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

[Signature] 5/9/14

Landlord Date Witness to Landlord

Landlord's Email Address: jsmithrealtor@gmail.com
Phone: 476-6450 Fax: _____

LANDLORD'S AGENT AND COMPANY _____
TENANT'S AGENT AND COMPANY _____

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

D.L.
8450092
2/16
38

97

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.

 5-9-14

GUARANTOR Date

Witness to GUARANTOR

GUARANTOR Date

Witness to GUARANTOR

Tenant acknowledges that building is for sale and agrees to allow prospective buyers to inspect property upon reasonable notice. Tenant's lease terms to remain in effect upon sale with the exception that building owner may require cancellation of this lease upon payment to lessee of \$5,000 upon sale closing. Tenant may stay in property for 3 months after closing and must pay rent amounts during that period to new owner. New owner may allow tenant to remain longer upon mutual agreement.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2006 South Carolina Association of REALTORS®. 1/06

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 10 of 10

TRACY E FULMORE
PH. 803-865-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

97-180/532
1552

5-9-14

PAY *Julie Smith*

ONE thousand Two Hundred 00/100 \$ 1200.00



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

Classic
BANKING

For *Loose*

Signature: *Tracy Fulmore*

TRACY E FULMORE
PH. 803-865-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

97-180/532
1552

5-9-14

PAY *Julie Smith*

ONE thousand 00/100 \$ 1000.00



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

Classic
BANKING

For *Loose*

Signature: *Tracy Fulmore*

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

2014CV4010900510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS
TO COUNTERCLAIM

Tracy Fulmore
313 Laurel Rise Lane
Columbia, SC 29229
(803) 917-3712

DEFENDANT'S COPY

PLAINTIFF(S)

Vs

Julie Smith
208 Springwater
Drive
Columbia, SC 29223



DEFENDANT(S)

TO THE PLAINTIFF(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations in the attached Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

RICHLAND County
Pontiac Magistrate
10509 Two Notch Road
Elgin, SC 29045
Phone: (803) 576-2520 Fax: (803) 576-2522

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Counterclaim, plus interest and costs.

Given Under My Hand:


JUDGE

READ ATTACHED INSTRUCTIONS CAREFULLY

July 15, 2014

IN THE MAGISTRATE'S COURT

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

Julie Smith)

PLAINTIFF)

STREET ADDRESS)

Columbia, SC 29223)

CITY, STATE ZIP)

803-476-6450)

TELEPHONE)

VS.)

Tracy Fulmore)

DEFENDANT(S))

STREET ADDRESS)

Columbia, SC 29229)

CITY, STATE ZIP)

803-917-3712)

TELEPHONE)

COUNTERCLAIM

RECEIVED
PORTIAC MAGISTRATE
2014 JUL 15 PM 2:47

The defendant states he has a claim against the plaintiff in the amount of \$7,500.00

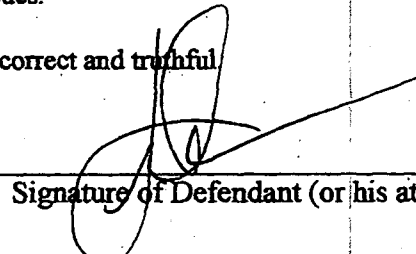
The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

Breach of Contract - signed 2 year commercial lease. (Full Lease amount is \$27,000 with \$2,200 received by landlord, Julie Smith) Landlord is willing to accept the payment of an additional \$7,500 with no further action to recover remainder of the lease. See attached

The defendant states that the information contained in the counterclaim is true and correct to the best of his knowledge. Defendant understands that should he be successful in this action and obtain judgment, and if plaintiff does not appeal within thirty days, this judgment becomes final. The defendant cannot commence another action involving the same parties and issues.

I state under penalty of perjury that the above is correct and truthful

Dated: 7/14/14


Signature of Defendant (or his attorney)

KEEP A COPY OF THIS COUNTERCLAIM AND BRING IT TO COURT

COUNTERCLAIM

Tenant signed a 2 year commercial lease. I received no request from tenant to cancel the lease. The first notice I had was on June 4th when I received a letter from his attorney.

After signing the lease, I rushed my daughter's business out of the building so that this tenant could have access to the space early as a convenience to the tenant (mid May). She had to liquidate her inventory and move out what didn't sell.

I request \$7,500 in additional funds to dissolve this lease as liquidated damages.

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET - SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 - SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

May 22, 2014

Ms. Julie Smith
Post Office Box 291895
Columbia, South Carolina 29229

RE: 333 Long Pointe Ln. #100, Columbia, SC

Dear Ms. Smith:

Please be advised that my offices have been retained by Mr. Fulmore with regards to his lease for the above property.

It is Mr. Fulmore's position that he no longer desires to lease these premises and is requesting the funds paid to you to be returned to him immediately. As Mr. Fulmore has not taken possession of the premises and has not been provided access to this property this return of funds should not be an issue.

Please refund Mr. Fulmore his money within the next ten (10) business days.

If you have any other questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III

CTB, III/jlm

cc: Tracey E. Fulmore

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

2014CV4010900510
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

ANSWER TO COUNTERCLAIM

Tracy Fulmore
313 Laurel Rise Lane
Columbia, SC 29229
(803) 917-3712

PLAINTIFF(S)

Vs

Julie Smith
208 Springwater
Drive
Columbia, SC 29223

DEFENDANT(S)

On July-7-2014 I was served with a Counterclaim. My Answer to Counterclaim which is hereby filed with the **RICHLAND County Summary Court**, is as follows:

CHECK ONE:

- A. ☐ I admit everything in the complaint and do not want a trial.
- B. ☐ I admit that I am responsible, but not for the total amount claimed because: (use additional pages if necessary)
- C. ☒ I deny that I am responsible at all because: (use additional pages if necessary): Failure to give copy of Lease at-on May-9-2014. Failure to give key on May-9-2014. Failure to allow possession of 323 Longpoint Lane. Julie Smith say one thing & does another. ALL these things and more she said on the phone. See all attached documents. Please

YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER TO COUNTERCLAIM IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATED: July-7-2014

Tracy Fulmore
SIGNATURE OF DEFENDANT(S)/PLAINTIFF(S)/(ATTORNEY)

PLEASE RETURN TO RICHLAND County
Pontiac Magistrate 10509 Two Notch Road, Elgin, SC 29045
Phone: (803) 576-2520 Fax: (803) 576-2522

RECEIVED
PONTIAC MAGISTRATE
2014 JUL 28 PM 3:24

I called Julie A. Smith on 11/12/2013 to inquire about the space for lease at 323 Long Pointe Lane, Columbia SC 29229. I asked her if I could lease it for \$900.00 a month for a year. She replied yes. But over the next few months she denied /did not remember telling me she would rent the space to me for \$900.00. I told her that I was not going to argue with her over the rental amount since it was her property. We had several phone calls over the next 6-7 months before I signed the lease on 5/9/2014. At the signing, she did not provide me a copy of the signed lease nor the key to the leased building. Julie's husband, Steve, asked her where was his copy and my copy of the lease. She replied she would email it to me. Later that day she did email a copy but it had been modified with additional requirements that were not present on the original document that I had signed.

Julie Smith told me that she would call me to meet her to receive my key to the building. After waiting 5 days, I called her on 5/14/2014 to inquire about the key. At that time, she had a lot of additional demands that I had to meet before she would give me the key. Because of these additional demands, I asked her to return my two checks in the amount of \$1000.00 and \$1200.00 for a total of \$2200.00. This phone conversation lasted approximately 12 minutes. After this conversation I felt that to continue in this lease would be more of a headache than a benefit to my barber business.

See attached documents.

Tracy E. Fulmore

TRACY E FULMORE
PH: 803-855-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

57-160/532
25802

5-9-14

PAY to the order of Julie Smith

\$ 1200.00

ONE THOUSAND TWO HUNDRED 00/100 Dollars



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BB&T BB&T.COM

Classic
BANKING

For For L

Signature Tracy Fulmore

TRACY E FULMORE
PH: 803-855-8395
313 LAUREL RISE LN
COLUMBIA, SC 29229-7404

57-160/532
25802

5-9-14

PAY to the order of Julie Smith

\$ 1000.00

ONE THOUSAND 00/100 Dollars



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BB&T BB&T.COM

Classic
BANKING

For For Lease - July

Signature Tracy Fulmore

Subject: FW: Key

From: Julie Smith (jsmithrealtor@gmail.com)

To: fulmoretle@bellsouth.net;

Date: Wednesday, May 28, 2014 8:52 AM

Hi Tracy,

I'm just checking in again on when you will be ready to pick up a key.

To clear up any confusion, I understand that your first month rent begins June 1, although you won't be paying for it until after the second year of your lease is up and that a payment is not due until August 1, 2014 as you have already paid for July.

Julie Smith

From: Julie Smith [mailto:jsmithrealtor@gmail.com]

Sent: Thursday, May 15, 2014 2:39 PM

To: fulmoretle@bellsouth.net

Subject: Key

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

From: Julie Smith (jsmithrealtor@gmail.com)

To: fulmorette@bellsouth.net

Date: Thursday, May 15, 2014 2:39 PM

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

2

Subject: Lease

From: Julie Smith (jsmithrealtor@gmail.com)

To: fulmoretie@bellsouth.net;

Date: Friday, May 9, 2014 4:48 PM

Hi Tracy,

Thank you for meeting with me today and for leasing our commercial space. I have attached a scan of the documents. I will call you when we get everything moved out of the space and have it cleaned up for you. I look forward to doing business with you.

What I need from you before you begin work:

- Electricity for 323 Long Pointe Ln #100 put in your name as of the first of this coming week since you will have full access. The water and sewer will remain in my name.
- Drawing/sketch showing your plans for changes to the building/plumbing and proof of license and insurance from your contractor
- Your liability insurance certificate showing Steve & Julie Smith as additional insureds (this should not cost you anything to do – it does not insure us for anything unless the liability arises due to your business. An example would be if someone tripped on something in your space and they sue you and us as building owner.)

If you have any questions, please don't hesitate to call me.

Julie Smith

803-476-6450

P.O. Box 291895
Columbia, SC 29229

GUARANTEE

As an inducement and, thus, a further consideration for the Landlord entering into the 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.

Joe Palmer

5-9-14

GUARANTOR

Date

Witness to GUARANTOR

GUARANTOR

Date

Witness to GUARANTOR

Tenant acknowledges that building is for sale and agrees to allow prospective buyers to inspect property upon reasonable notice. Tenant's lease terms to remain in effect upon sale with the exception that building owner may require cancellation of this lease upon payment to lessee of \$5,000. upon sale closing, Tenant may stay in property for 3 months after closing and must pay rent amounts during that period to new owner. New owner may allow tenant to remain longer upon mutual agreement.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2006 South Carolina Association of REALTORS®. 1/06

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Fulmore

Plaintiff(s)

vs.

Smith

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40-

Submitted By: Charles T. Brooks, III
Address: 309 Broad St., Sumter, SC 29150

SC Bar #: 11762
Telephone #: 803-418-5708
Fax #: 803-934-9618
Other:
E-mail: cbrooks@ctbrooks.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☒ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: 9-25-2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

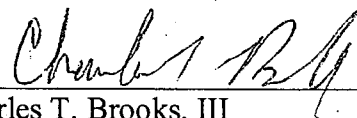
**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

deposit and rents paid which equaled \$2,200.00 leaving a total amount owed by the Plaintiff to the Defendant of \$5,300.00

The basis for the appeal is that the Defendant's refusal to provide the Plaintiff with access to the property constituted a breach of contract/lease on the part of the Defendant. Once the Plaintiff tendered payment per the lease between the parties the Defendant was obligated to provide the Plaintiff access to the premises which she failed to do. The Magistrate committed a judicial error in overlooking this fact. Additionally, the Plaintiff had filed the Magistrate Court action during the term of the first month of the lease, a month for which he had already remitted rents, and at that time he was not in breach of any of his obligations as outlined by the lease. Therefore, the Magistrate's determination that the Plaintiff was in breach of the lease was also a judicial error in this matter.

Wherefore, based upon the foregoing the Plaintiff is informed and believes that the Circuit Court should:

1. Reverse the decision of the Magistrate's Court in this matter; and
2. Reverse the judgment awarded to the Defendant in this matter; and
3. Remand the matter back to Magistrate's Court for a retrial on the issues of this case;
and
4. For any such other relief as this Court finds just and proper.



Charles T. Brooks, III
Attorney for the Plaintiff
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

September 25, 2014
Sumter, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tracy Fulmore,)
)
Plaintiff,)
)
vs.)
)
Julie Smith,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Proof of Service by Mail
Case No.: 2014-CP-40-05976

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

2014 OCT -6 AM 10:20

RICHLAND COUNTY
FILED

The undersigned employee of CHARLES T. BROOKS, III, hereby certifies that on October 2, 2014, I did serve the foregoing Notice of Civil Appeal by personally depositing a true copy thereof into the United States Mail, proper first class postage affixed at Sumter, South Carolina addressed as follows:

Ms. Julie Smith
Post Office Box 291895
Columbia, South Carolina 29229

Richland County Magistrate
10509 Two Notch Road
Elgin, South Carolina, 29045

So Certified By: _____

Judith L. McCool
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151

Sumter, South Carolina
Dated: 10-02, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PONTIAC MAGISTRATE'S COURT

CP NUMBER 2014CP4005976

CASE NUMBER: 2014CV4010900510

Tracy Fulmore

PLAINTIFF,

VS.

Julie Smith

DEFENDANT

RETURN OF APPEAL

RICHLAND COUNTY
FILED
2014 NOV - 7 PM 12:42
JEANETTE W. McBRIDE
C.C.P. & G.S.

This appeal arises from Pontiac Magistrate civil case number 2014CV4010900510 filed July 3, 2014 and heard August 27, 2014 during a term of Civil Non Jury Court. Tracy Fulmore Plaintiff and Defendant, Julie Smith appeared without attorneys. No motions or objections rose during trial.

Case Summary;

Plaintiff, Mr. Fulmore filed to recover twenty two hundred dollars plus filing fees from Defendant, Ms. Smith. Ms. Smith answered and filed a counter claim seeking seventy five hundred dollars for cost associated with the alleged breach of a lease agreement.

Mr. Fulmore wanted to lease a building owned by Ms. Smith for a barbershop business. After several conversations an agreement was reached and a lease agreement signed. In May 2014 Mr. Fulmore and Ms. Smith entered into a two year lease which would begin on June 1, 2014. Before the start date Mr. Fulmore notified Ms. Smith he would not go forward with the lease and wanted his money returned.

Mr. Fulmore states that at the time of signing in early May he did not get a signed copy of the lease and did not get a key to the building. He further states that during further conversations he got a bad feeling about Ms. Smith saying she would say one thing but do another and because of this discomfort he did not want to go forward. He also stated he had never entered into a lease where he did not get a key and copy of the lease at signing.

Ms. Smith counters, she did not give a copy of the lease at signing but did scan and email a copy that afternoon. The lease did not start for a month and Ms. Smith's daughter still had items in the building that needed to be removed and Ms. Fulmore still needed to provide documents for liability insurance and switch the power into his name. Several weeks before June Ms. Smith tried to arrange a meeting to give Mr. Fulmore a key.

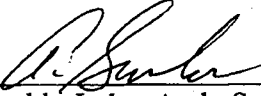
In June Mr. Fulmore contacted an attorney who wrote a letter stating Mr. Fulmore wanted his money back and on June 7, 2014 Mr. Fulmore filed a summons and complaint to recover the funds,

Court Conclusion:

The testimony presented by the parties showed that both parties agreed on key issues. Both parties wanted to enter into an agreement and both parties would benefit from the agreement. Mr. Fulmore sign a two year lease in early May and gave Ms. Smith a security deposit of twelve hundred dollars and the first month's rent of one thousand dollars. While Ms. Smith did not give a written copy of the lease at signing she did scan and email a copy later that day. Even if she did not provide a copy of the lease for a day or two, that would not justify a breach in the contract.

Both parties knew there were items in the building that needed to be removed and actual availability would not take place immediately. The lease start date was June 1st. After hearing the testimony the Court could not find sufficient justification for Mr. Fulmore to not honor the agreement. Ms. Smith sought seventy five hundred dollars to cover her loss because the building was not leased. She demonstrated she actively sought to lease the space. She did not seek compensations for the full amount of the breach.

The Court granted Ms. Smith the amount requested minus the security deposit and first month's rent already received.



The Honorable Judge Andy Surles
Pontiac Magistrate

This 17th day of October 2014

STATE OF SOUTH CAROLINA

2014CP4005976
CIVIL CASE NUMBER

COUNTY OF RICHLAND

IN THE CIVIL COURT

Tracy Fulmore

PLAINTIFF

ANSWER TO APPEAL

Columbia, SC 29229

CITY, STATE, ZIP

MOTION TO DISMISS

803-917-3712

TELEPHONE

VS

Julie Smith

DEFENDANT

Columbia, SC 29223

CITY, STATE, ZIP

803-476-6450

TELEPHONE

RICHLAND COUNTY
FILED
2015 MAY -1 PM 1:38
JEANETTE W. MCBRIDE
Clerk, S.C.

On the matter of the Civil Appeal filed with the Richland County Common Pleas and scheduled for hearing before the Honorable Judge DeAndrea G. Benjamin on May 8, 2015.

Defendant would like to request a Motion to Dismiss on the grounds that the Plaintiff's Appeal has no basis by reason of the following:

- 1) Plaintiff claims denial of access to property constituted a breach of contract/lease.

Defendant offered access to Plaintiff multiple times in writing prior to commencement of lease, with no response by Plaintiff (he received written notice)

- 2) Plaintiff claims to have tendered payment for June

Plaintiff only provided damage deposit and rent for July. Not for June as notated on his checks.

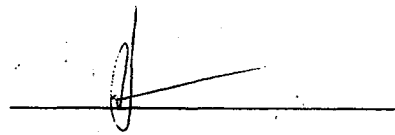
- 3) Plaintiff claims that he was not in breach of any of his obligations as outlined by the lease

Plaintiff failed to provide Defendant with copies of proof of liability insurance documents prior to occupancy as required by lease.

Therefore, the Magistrate's determination that the Plaintiff was in breach of the lease was correct and there was not a judicial error in this matter.

Wherefore, based upon the foregoing the Defendant is informed and believes that the Circuit Court should:

1. Uphold the original Judgement from the Magistrate's Court



Julie Smith, Defendant

(

)

1

5

)

)

3

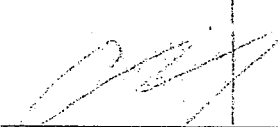
;

)

)

5. The Defendant, in an unnumbered paragraph references a breach of the Plaintiff by failing to provide insurance documentation. The Plaintiff is informed and believes that the matters raised in the Magistrate Court did not include the Plaintiff's failure to provide insurance documentation and as such the matter cannot now be newly introduced to the Court.
6. The Defendant alleges that it is the Magistrate's determination that there was no judicial error in this matter.
7. The Plaintiff is informed and believes that the Defendant is neither a Magistrate Judge for Richland County nor is she an agent of the Magistrate's Court for Richland County.
8. The Magistrate for Richland has not filed any responsive pleadings in this matter since the filing of the Notice of Intent to Appeal filed by the Plaintiff and that neither the Plaintiff nor his counsel are in receipt of any such a pleading or response.
9. That the Defendant's Answer to Appeal/Motion to Dismiss is not timely filed and as such should be dismissed.
10. The Plaintiff is informed and believes that the Defendant should be awarded to pay his attorney's fees and costs associated with this matter.

THEREFORE, the Plaintiff requests that this Court issue an Order to dismiss the Defendant's Answer/Motion to Dismiss and that the Defendant be ordered to reimburse the Plaintiff for the costs and fees of his attorney.


CHARLES T. BROOKS, III
Attorney for the Plaintiff
309 Broad Street
P.O. Box 3512
Sumter, South Carolina 29151
(803) 418-5708

Sumter, South Carolina
May 6, 2015

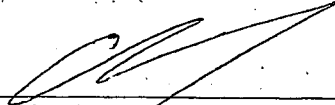
4. The Magistrate was informed by the Defendant that the Plaintiff notified her in June 2014 of his decision not to pursue the lease on this property and the Plaintiff by and through his present counsel notified the Defendant on May 22, 2014 in writing of this matter a copy of which was attached to the Plaintiff's original Complaint and a machine copy of the letter dated May 22, 2014 is hereby attached as Exhibit A of the Plaintiff.
5. The Defendant received the May 22, 2014 correspondence and responded to this communication by electronic mail to the attention of counsel.
6. The Plaintiff calls to the Court's attention Page 3, Paragraph 6 of the Lease (attached hereto as Exhibit B) between the parties which states:

"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 N/A, and if Tenant shall in fact 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 the Landlord and upon such cancellation Landlord and Tenant shall each be released from all liability under this lease. In such case any deposit or prepaid rent shall be promptly return to Tenant."
7. The Plaintiff is informed and believes that the Defendant should be ordered to return to him immediately the security deposit and rents provided in this matter.

8. The Plaintiff is informed and believes that the Defendant should be ordered to pay his attorney's fees and costs associated with this matter.

THEREFORE, based upon the foregoing the Plaintiff is informed and believes that the Circuit Court should:

1. Reverse the decision of the Magistrate's Court in this matter; and
2. Reverse the judgment awarded to the Defendant in this matter; and
3. Remand the matter back to Magistrate's Court for a retrial on the issues of this case;
and
4. For any such other relief as this Court finds just and proper.



Charles T. Brooks, III
Attorney for the Plaintiff
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

June 3, 2015
Sumter, South Carolina

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

May 22, 2014

Ms. Julie Smith,
Post Office Box 291895
Columbia, South Carolina 29229

RE: 333 Long Pointe Ln. #100, Columbia, SC

Dear Ms. Smith:

Please be advised that my offices have been retained by Mr. Fulmore with regards to his lease for the above property.

It is Mr. Fulmore's position that he no longer desires to lease these premises and is requesting the funds paid to you to be returned to him immediately. As Mr. Fulmore has not taken possession of the premises and has not been provided access to this property this return of funds should not be an issue.

Please refund Mr. Fulmore his money within the next ten (10) business days.

If you have any other questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III
CTB,III/jlm
cc: Tracey E. Fulmore



In consideration of the covenants herein contained, Tracy Fulmore, hereinafter called "Tenant" and Steve & Julie Smith, hereinafter called "Landlord", agree as follows:

For the period of time beginning on June 1, 2014, and ending at midnight on May 30, 2016. Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision Lake Carolina Harborside Town Center

Address _____

Tax Map # _____ City _____ Zip _____

County of _____ 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 First 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 See below Dollars (\$ See below).

(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: \$1,000/month for 1st 6 months (thru Nov)
Beginning Dec 1, 2014 rent to increase to \$1,100/mth. Beginning of 2nd
year rent to increase to \$1,200/mth

(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 2013, 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 N/A % of gross sales, as herein defined, in excess of N/A Dollars, (\$ N/A), 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

☒ 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 proceeding 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 N/A Dollars (\$ N/A) 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

[X] 4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one): Only on building - Not tenant's property.

[X] INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of 2013, 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.

[X] 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 fifty percent (50 %).

[X] 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

[] TENANT, [] TENANT, AND [X] LANDLORD HAVE READ THIS PAGE.

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.

[47. LATE RENT. If rent is not paid within five days after due date, the Tenant is subject to a one-time late fee of 100- (%) 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 (\$ 1,200-) twelve hundred 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. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: excess garbage, water more than \$30/month, sewer

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for barber shop 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 N/A 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: Simple parking pad at rear of building. May park in front.

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,

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

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 \$ 1,000,000 -

Aggregate \$ 2,000,000 -

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

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 dispossessionary 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: 313 Laurel Rise Ln.

Fulmore TLED bell south.net

Landlord Address: PO Box 291895
Columbia SC 29229

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

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 Steve or Julie Smith 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): All changes to premises must be approved in writing & performed by licensed & insured professionals. Space must be returned to same condition. No excessive noise to bother upstairs tenants.

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

40. 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 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 WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

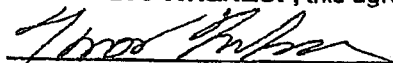
41. FACSIMILE: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

42. MEGAN'S LAW: The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

43. NON-RELIANCE CLAUSE: Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.



Tenant _____ Date _____

Witness to Tenant _____

Tenant's Email Address: _____

Phone: _____

Fax: _____

Tenant _____

Date _____

Witness to Tenant _____

Tenant's Email Address: _____

Phone: _____

Fax: _____

Landlord 

Date 5/9/14

Witness to Landlord _____

Landlord's Email Address: j.smith@realtor.com

Phone: 476-6450

Fax: _____

LANDLORD'S AGENT AND COMPANY _____

TENANT'S AGENT AND COMPANY _____

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 9 of 10

D.L.
00 8450092
2/16

77

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tracy Fulmore,

Plaintiff,

vs.

Julie Smith,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2014-CP-40-5976

PLAINTIFF'S SUPPLEMENTAL
REPLY TO RETURN TO APPEAL

2015 JUL 16 AM 9:30
JEANETTE W. MCBRIDE
C.C. CLERK

RICHLAND COUNTY
FILED

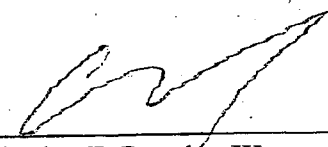
The Plaintiff, by and through his counsel, Charles T. Brooks III, hereby supplements and responds to the Return Of Appeal filed with this Court on November 7, 2014. The Plaintiff makes his Supplemental Reply to this Return, as follows:

1. The Plaintiff hereby restates for the Court that he is desirous that the Decision and Judgment rendered by the Magistrate in this matter be reversed and remanded back for retrial in the Summary Court.
2. The Plaintiff asserts to the Court that possession of the property would be necessary to create a liability of the Plaintiff in this matter. Page 3, Paragraph 6 of the Lease. *(The effective date of this lease however, shall not begin until the delivery of possession.)*
3. The Plaintiff asserts to the Court that because the Plaintiff was not granted possession of the property that he was left in a situation without benefit and therefore he cannot be asked to now suffer a burden.
4. The Plaintiff is informed and believes that the Lease was never effective per the written contract until the receipt of possession was received by the Plaintiff.

5. The Plaintiff calls to the Court's attention the transcript from the Magistrate Court proceeding (attached hereto) which clearly indicates that the Plaintiff/Tenant was never provided possession of the property and therefore the lease was not effective.
6. The Plaintiff is informed and believes that the Magistrate Judge clearly erred in granting the Defendant Julie Smith a Judgment against the Plaintiff for breaching of a lease that was not effective per the written details in the Defendant's lease.
7. The Plaintiff is informed and believes that the Defendant should be ordered to return to him immediately the security deposit and rents provided in this matter.
8. The Plaintiff is informed and believes that the Defendant should be ordered to pay his attorney's fees and costs associated with this matter.

THEREFORE, based upon the foregoing the Plaintiff is informed and believes that the Circuit Court should:

1. Reverse the decision of the Magistrate's Court in this matter; and
2. Reverse the judgment awarded to the Defendant in this matter; and
3. Remand the matter back to Magistrate's Court for a retrial on the issues of this case;
and
4. For any such other relief as this Court finds just and proper.



Charles T. Brooks, III
Attorney for the Plaintiff
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

July 13, 2015
Sumter, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tracy Fulmore,

Plaintiff,

vs.

Julie Smith,

Defendant,

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2014-CP-40-5976

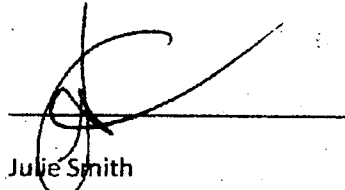
DEFENDANT'S REPLY TO PLAINTIFF'S
SUPPLEMENTAL REPLY TO RETURN OF
APPEAL

The Defendant hereby responds to Plaintiffs Return of Appeal and Supplemental Reply as filed through the mail postmarked on July 14, 2015

1. Plaintiff & Defendant fully signed a legal lease document creating a mutually beneficial legally binding arrangement. This created a liability on the part of both parties to fulfil the terms of the lease. Possession was offered multiple times and Plaintiff simply ignored his responsibility to meet, at Plaintiff's convenience, to pick up the key. Effective date of the lease was June 1, 2014.
2. Plaintiff was granted possession on May 15th as offered by email on May 15th and again on May 18th and again on May 28th, yet Plaintiff failed to pick up the key. I believe that plaintiff deliberately not picking up the key or fulfilling his part of the lease should not give him a right to terminate a legally binding lease. Plaintiff as of May 15th had possession of property as the key was made readily available for him to pick up. Defendant lives in Lake Carolina, Property he leased is in Lake Carolina. It was very easy for him to pick up the key.
3. Defendant could not and did not lease the property to anyone else during this time as Defendant was legally obligated to provide this property to Plaintiff. Defendant turned down requests to lease this property to others during May. When Defendant called the potential tenants back after receipt of Plaintiff's Attorney's letter (June 4th), they had already leased other properties. Property remained vacant for several months afterward, even though it was advertised every day.
4. The Defendant believes that the lease was effective upon signing and the receipt of payment.
5. Defendant received the notice in writing on June 4, 2014 (after start date of lease) from Plaintiff's attorney that Plaintiff wanted to cancel the lease. Envelope it came in was postmarked on May 28, 2014. Plaintiff had not contacted me to request cancellation of lease prior to that.
7. Defendant believes that Plaintiff should be ordered to pay immediately the remaining balance of the judgment against him as provided by the Magistrate.

THEREFORE, based upon the foregoing the Defendant is informed and believes that the Circuit Court should:

1. Uphold the decision of the Magistrate's Court in this matter; and
2. Order Plaintiff to immediately pay the balance of the judgment ordered by the Magistrate to the Defendant.

A handwritten signature in black ink, appearing to be 'Julie Smith', is written over a horizontal line.

Julie Smith
PO Box 291895
Columbia SC 29229
803-476-6450

July 15, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) CASE #: 2014-CP-40-5976

Tracy Fulmore,)
)
 Plaintiff,)
)
vs.)
)
Julie Smith,)
)
 Defendant.)
-----)

MAGISTRATE HEARING

1 **CLERK:** Tracy Fulmore versus Julie Smith.

2 **THE COURT:** Yes, sir.. Would you tell me your name,
3 please?

4 **MR. FULMORE:** Tracy Fulmore.

5 **THE COURT:** All right. Mr. Fulmore, it's good to
6 have you. And, ma'am, your name, please?

7 **MS. SMITH:** Julie Smith.

8 **THE COURT:** All right. Ms. Smith, it's good to have
9 you. And I'd like to ask you, both of you to
10 please raise your right hand, and do you
11 solemnly swear or affirm that the testimony
12 you'll present to the Court will be the truth,
13 the whole truth, and nothing but the truth so
14 help you God?

15 **MS. SMITH:** Yes, sir.

16 **MR. FULMORE:** Yes, Your Honor.

17 **THE COURT:** Okay. Please have a seat. And, Mr.
18 Fulmore, you are -- you filed this action, and
19 I believe there's been a counterclaim filed
20 with regards to -- along with your answer, and
21 he answered the counterclaim. So we'll start
22 with the primary, primary claim. So, Mr.
23 Fulmore, what, what can you tell me? What are
24 you seeking from this Court?

25 **MR. FULMORE:** I'm seeking the amount of \$2200 and \$80

1 for court costs. Those are the checks that I
2 gave to Mrs. Smith on May the 9th for the space
3 at 323 Long Court Lane, that I was trying to
4 lease. You want me to keep going?

5 **THE COURT:** Okay. So what else can you tell me about
6 it? You gave her checks for \$2200?

7 **MR. FULMORE:** Yes, sir.

8 **THE COURT:** Why did you give her those checks?

9 **MR. FULMORE:** That's what she requested. She
10 requested a \$1200 security fee and \$1000 first
11 month's rent. And we had agreed on \$1000 a
12 month rent for the first six months of the
13 contract.

14 **THE COURT:** Uh-huh.

15 **MR. FULMORE:** Yeah.

16 **THE COURT:** Okay, so you were entering into a lease
17 agreement with her?

18 **MR. FULMORE:** Yes, sir.

19 **THE COURT:** And, as I recall, wasn't this a two-year
20 agreement or something like that?

21 **MR. FULMORE:** That's what she's got on the paper, but
22 we discussed a one-year agreement, but she did
23 write two on the contract.

24 **THE COURT:** All right. And did you sign the lease
25 agreement with her?

1 MR. FULMORE: I did, sir.

2 THE COURT: All right. So you signed the lease
3 agreement and, in accordance with the terms of
4 that lease agreement, you were to pay her \$1200
5 down as a deposit; is that correct?

6 MR. FULMORE: That was a security fee.

7 THE COURT: A security fee, okay. And then you were
8 going to pay her \$1000 a month?

9 MR. FULMORE: Correct. But I gave her ---

10 THE COURT: And you gave her the first month's rent?

11 MR. FULMORE: That was the first month's.

12 THE COURT: Okay. And then what happened?

13 MR. FULMORE: Then she -- well, first of all, at the
14 lease signing agreement -- we had a couple of
15 phone calls, I can't remember exactly how many,
16 that I was supposed to lease the place for
17 \$1000 a month. And she said that once I signed
18 the lease that she would give me a key to the
19 lease space and a copy of the contract. And
20 she did neither of those on the day of the
21 signing.

22 THE COURT: Do you have a copy of the lease
23 agreement?

24 MR. FULMORE: Yes, sir. I've got all the paperwork.

25 THE COURT: All right. Well, show it to her first.

1 Ma'am, is this ---

2 MR. FULMORE: This is her complaint.

3 THE COURT: --- is this the lease agreement that
4 y'all entered into?

5 MS. SMITH: It's going to take me a minutes, I'm
6 sorry.

7 THE COURT: That's all right. We've got all day.
8 Just take your time, no rush. I just want to
9 make sure that's the right contract that I'm
10 reviewing.

11 MR. FULMORE: That's her copy, so that's ---

12 MS. SMITH: I have the original here also.

13 THE COURT: Either way.

14 MS. SMITH: Okay. Yes, sir, it looks like the same
15 document.

16 THE COURT: All right. Do you have any objections to
17 my reviewing the ---

18 MS. SMITH: Do you want ---

19 THE COURT: --- this agreement? Either one of you.

20 MR. FULMORE: I'll give it -- it don't matter.

21 MS. SMITH: Okay.

22 THE COURT: All right. We'll mark this as
23 Plaintiff's Exhibit Number One.

24 (Plaintiff's Exhibit Number One was marked for
25 identification.)

1 THE COURT: All right. Mr. Fulmore, so you agree
2 that this is the lease agreement and you signed
3 this lease agreement?

4 MR. FULMORE: Yes, sir.

5 THE COURT: All right, sir. And in this lease
6 agreement that it specified when you would take
7 occupancy of the ---

8 MR. FULMORE: Yes, it did.

9 THE COURT: And when was that?

10 MR. FULMORE: August.

11 THE COURT: In August. All right, sir. And when did
12 you actually -- was there a problem with your
13 taking occupancy in August?

14 MR. FULMORE: Well, I didn't receive a key. First of
15 all, I didn't have occupancy -- I've signed a
16 lease three times. I'm in the barber business.
17 I'm a barber. I leased it for a barber shop.
18 I been in the barber business for about 20
19 years now.

20 THE COURT: All right.

21 MR. FULMORE: And I've done three leases. I've never
22 signed a lease and didn't receive a copy of the
23 contract on the signing day. I've never signed
24 a lease and didn't receive a key to the
25 building on the signing day. So I, I don't

1 know if I have possession of it or not, sir.

2 **THE COURT:** All right. Did you ever move in?

3 **MR. FULMORE:** No, sir.

4 **THE COURT:** And why was that?

5 **MR. FULMORE:** I never got a key.

6 **THE COURT:** You never got a key so ---

7 **MR. FULMORE:** Yeah, June -- on the original leasing
8 of the contract, Ms. Smith told me that she
9 would call me and let me know when I could pick
10 up the keys. And, matter of fact, her and her
11 husband both was at the signing. And they had
12 some birdhouses and a couple of tables in
13 there, and I had spoken to her prior to signing
14 the lease and she said her daughter had made
15 birdhouses and tables. And apparently her
16 daughter -- she said her daughter got
17 disinterested in the business and she left. I
18 don't know when she left, sir, but I live in
19 Lake Carolina and I ride through the town
20 center of Lake Carolina all the time. And I
21 had been riding through there for over a year,
22 watching that space. And then when it went up
23 for lease, that's when I had contacted her in
24 late 2013. And that's how I got involved in
25 this. And she, she said that she would contact

1 me, but she didn't contact me. I actually
2 ended up contacting her on May the 14th, about
3 five days later, asking her what happened, why
4 didn't she call me about the key. And then we
5 got into about a 12-minute phone conversation.
6 I have a copy to show you -- it's in a document
7 right there, where we spoke. And I kind of got
8 under the impression that I was being pulled
9 back and forth because you -- excuse me, Ms.
10 Smith said to me on the phone that she was not
11 going to let me go in and start work, like
12 preparing the place for the barber shop, she
13 won't let me go in there and work because I'd
14 be using her electricity. And then she said,
15 since you're getting six weeks free. And so I
16 took offense to that, that she said I was
17 getting six weeks free after I had already
18 given her \$2200 that she had asked. Everything
19 that she requested that I do leading up to the
20 lease, I'd done it. And then I said, well, is
21 this a trust issue, and we went back and forth.
22 And she dabble-dabbled on the phone, said a few
23 things. And then I said, you know, I said,
24 well, the best thing for me at this moment
25 right now, for you to just send me my two

1 checks back. And then I ended the phone
2 conversation. I haven't contacted her since
3 May the 14th. Now, she sent me a series of
4 emails, it's in the document. She also sent me
5 a text message on my phone I can show you. I
6 felt like I was going back and forth, riding a
7 roller coaster. I feel, I said, if I get in
8 the shop and she's acting like this now I'm not
9 even in there, I felt like it's going to be a
10 lot of issues with her. So I decided I don't
11 want to fool with that. And that's the truth,
12 I mean, that's how it happened.

13 **THE COURT:** All right. And what time frame is that?

14 **MR. FULMORE:** Between -- you mean, when I signed the
15 lease?

16 **THE COURT:** Yes.

17 **MR. FULMORE:** It was on May the 9th.

18 **THE COURT:** All right.

19 **MR. FULMORE:** And I did get a -- she sent me a copy
20 of the lease over the Internet. Her husband
21 even asked her when we were there, did you
22 bring him a copy of the lease. She says, no,
23 I'm going to send it to him over the Internet.
24 Which I thought that was really inappropriate
25 also.

1 **THE COURT:** All right. And you were going to occupy
2 the premises as of June the 1st?

3 **MR. FULMORE:** No, it was supposed to have been
4 August. The agreement was August. I paid her,
5 let me see -- I tried to explain to her that
6 when you -- I'm moving from one barber shop to
7 another.

8 **THE COURT:** Right.

9 **MR. FULMORE:** And I said to her, I said, I have to
10 notify my customers that I'm going to move.
11 That's why I put the time span in between. I
12 wasn't going to occupy the place until the
13 exact date, but I wanted to go in and get set
14 up. I got -- my barber shop now got ten chairs
15 in it. I was downsizing down to two chairs,
16 just me and my son, because the people had
17 left.

18 **THE COURT:** Right.

19 **MR. FULMORE:** And that's what the plan was, I was
20 going to -- she seemed to be concerned about me
21 demolition the place. And I wasn't going in to
22 demolition. I don't know if you've been in a
23 barber shop lately, Judge, but ---

24 **THE COURT:** Why would he say that?

25 **MR. FULMORE:** I'm not trying to be funny. But the

1 way I set up a barber shop, I've got roll carts
2 that sits on four wheels. And it's a one by
3 one by one, but it's -- it's a modern type of
4 station for a barber shop.

5 **THE COURT:** Right.

6 **MR. FULMORE:** All right. And then all I was going to
7 do in there was put mirrors on the wall and
8 have a gentleman to come in and put in one
9 drainpipe for one shampoo bowl. And I
10 explained all of this to her in the beginning,
11 that that's what I was going to do. So to come
12 in and demolition the place wasn't necessary.
13 She had the floor already in. The walls are
14 already painted. The place was ready to go,
15 and so it was a very simple thing. But she had
16 a sign outside also, For Sale. That happened
17 in between the time of me and her talking
18 several months ago, up until the time I leased
19 the building. So I asked her, I said, well,
20 you plan to sell the place? And then she said,
21 if I can. So she wrote, it's on there, she
22 wrote something on there for the tenant,
23 whoever may -- for the people who buy the
24 building, that they could allow me to stay
25 there. She put it all in the contract.

1 THE COURT: Right.

2 MR. FULMORE: Okay. So, like I said, the main thing
3 is that I just felt like, you know, I didn't
4 want to go back and forth with her. I don't
5 like getting into things with people. I just
6 wanted to lease the space for the year that I
7 asked her to lease it for. She asked me for
8 the \$2200, I gave her the \$2200. I did expect
9 to get a key on the day of the lease because
10 she said she would give me one, but she didn't.
11 I did expect to get a copy of the contract on
12 the day of the lease. She said she would give
13 me one, but she didn't. Even her husband
14 questioned her, and he was there. And then
15 when she said to him, she said to him, she
16 said, when will you be able to take the -- to
17 clean the place up for Mr. Fulmore so I can
18 give him a key? He says, well, I guess it'll
19 take me a couple of days. So I kept riding
20 through there because it was on my way home.
21 I live in Lake Carolina. This is in the town
22 center. I was riding through there -- I was
23 riding through Lake Carolina -- even to this
24 day I still ride through there three and four
25 times a week.

1 **THE COURT:** Well, let me ask, by not having the key,
2 did that prevent you -- I mean, what did that
3 do to you that would cause you to say, I need
4 to get out of this lease?

5 **MR. FULMORE:** Well, you talk to -- if you talk to
6 Julie over the phone, Julie's very
7 disingenuous. She's saying one thing, but she
8 often does another. You can read a couple of
9 her emails, and you can see it in the email.
10 I'm not making this up. I've got one of them
11 right here, I'll read it to you.

12 **THE COURT:** No, that's okay. I just wanted to ---

13 **MR. FULMORE:** She does one thing and she says
14 another. I got frustrated because nothing that
15 she said she was going to do at the time, she
16 didn't do it.

17 **THE COURT:** Okay.

18 **MR. FULMORE:** You know, I've never -- I don't want to
19 sound like I'm complaining, Judge. I've never
20 in my life signed a lease and didn't receive a
21 key. That doesn't make sense. I never took
22 occupancy of the building. She was supposed to
23 call me; I had to call her.

24 **THE COURT:** Did you ever get a key?

25 **MR. FULMORE:** No.

1 THE COURT: You never got a key.

2 MR. FULMORE: I never got one.

3 THE COURT: So you were never, ever ---

4 MR. FULMORE: I was never in the building except for
5 to sign her lease.

6 THE COURT: And so you never had an opportunity to go
7 forward and make your construction changes ---

8 MR. FULMORE: Remember ---

9 THE COURT: --- that you said ---

10 MR. FULMORE: Remember, Judge, on the 9th, on the 9th
11 we signed the lease.

12 THE COURT: Right.

13 MR. FULMORE: She said she would call me and give me
14 a copy of the key.

15 THE COURT: Right.

16 MR. FULMORE: This is what she told me in front of
17 her husband. Okay? On the 14th, that
18 Wednesday, I called her because I was wondering
19 what was the holdup was. And then we got into
20 a long, 12-minute conversation of her telling
21 me that I was getting six weeks free. And then
22 I got frustrated on the phone and I said, you
23 know what, I said, I don't argue with people
24 about their property. This is your property.
25 I said, either you're going to agree to the

1 terms that we agreed to, or you're not. And
2 then when I got off the phone with her, I had
3 a friend of mine who's a lawyer to send her a
4 copy of a letter, hoping that she would respond
5 to that and return my checks. But she didn't,
6 and that's why we're here, ended up here today.

7 **THE COURT:** All right. Anything else you want to
8 tell me?

9 **MR. FULMORE:** No, not except for the emails. I think
10 you have those.

11 **THE COURT:** I have those. All right. Okay, ma'am,
12 what would you like to tell me?

13 **MS. SMITH:** Okay. We met on May 9th and signed the
14 lease in the space that he was going to lease.
15 I went over the entire contract with him so
16 that he would understand what was in the lease.
17 Everything was agreed to. Everything that was
18 written in here was initialed. I told him my
19 daughter still had items in there. She had a
20 store. She had various furniture items, and it
21 wasn't just a table and some birdhouses. There
22 was quite a bit of stuff in there. So she had
23 to arrange to try to sell out what she had or
24 to put it in storage or get it out of the
25 place. The lease was supposed to begin June 1.

1 And I agreed, after he requested, to give him
2 occupancy earlier than that with no charge so
3 that he could come in, do measurements and get
4 plans drawn up for his shop. And so I agreed
5 to do that. And I told him I would let him
6 know, just like he said, when we get the place
7 cleared out and cleaned up and ready for him.
8 When he called me he asked me, whatever date he
9 called me, I have a time line here, he asked me
10 about getting a key. I said I needed a copy of
11 his liability insurance paperwork, which is
12 part of the lease agreement. He was well aware
13 he needed to provide that, and he said he could
14 at the time we signed it, he said he could give
15 that to me. As far as -- he said that he
16 couldn't give me -- or, he wouldn't give me
17 anything -- he wanted -- I asked him why he
18 didn't want to put the power in his name since
19 I was going to give him possession early, and
20 he said he just didn't want it on. So I turned
21 it off, and I emailed him the very next day
22 saying that I shut the power off to the
23 location and asked him when he wanted to pick
24 up the key. He didn't respond to my email. He
25 hadn't called me or texted me or anything after

1 that. During our conversation he did not ask
2 for the checks back. The first thing I had
3 heard is when I got a letter from his lawyer
4 asking for the checks back. I called the
5 lawyer the next day. I asked the lawyer if he
6 had a copy of the lease. He said no. I asked
7 him if he saw the emails, he said no. So I
8 emailed everything to that lawyer immediately.
9 And he basically didn't do anything after that.
10 As far as agreeing to give him a key, there was
11 no way I could have given him a key on the day
12 that we signed the lease, and he knew that.
13 And I gave him a copy of the lease the same
14 day. I scanned it and emailed it to him. I'm
15 a real estate agent. This is what we do all
16 the time, we scan the documents and send them
17 to each party after they're signed. We don't
18 do multiple copies unless somebody requests
19 that they have an original. He did not request
20 an original. You know, he agreed to the terms,
21 and I did everything that I agreed to do, and
22 more.

23 **THE COURT:** Ma'am, tell me what you are asking for.

24 **MS. SMITH:** In my counterclaim?

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

1 MS. SMITH: I'm asking for \$7500 to release him from
2 the contract.

3 THE COURT: Have you rented the place?

4 MS. SMITH: I have not.

5 THE COURT: Have you advertised it?

6 MS. SMITH: Yes. I have it listed in the MLS. It
7 has been listed in there continuously.

8 THE COURT: How many months has it been on the market
9 since ---

10 MS. SMITH: Since it ended? Or since he told me he
11 didn't want it?

12 THE COURT: Right.

13 MS. SMITH: The entire time.

14 THE COURT: Which is?

15 MS. SMITH: I found out ---

16 THE COURT: Two months or ---

17 MS. SMITH: --- in June, so June, July, August. But
18 I could have rented it after he signed the
19 document ---

20 THE COURT: So basically so far about three months,
21 four months?

22 MS. SMITH: Yeah -- well ---

23 THE COURT: Y'all signed it this year?

24 MS. SMITH: Yeah, we signed May 9th. So, May ---

25 THE COURT: June, July ---

1 MS. SMITH: --- June, July, August.

2 THE COURT: --- and August.

3 MS. SMITH: In the lease, that is part of what it
4 says, is that he would need to continue to pay
5 me until I get it leased to someone else.
6 That's one of the items in here, and I can find
7 that for you.

8 THE COURT: Do you have any copies of advertising
9 that you've done to show the Court that ---

10 MS. SMITH: Yes, sir.

11 THE COURT: --- (inaudible).

12 MS. SMITH: I'm sure I have them right here.

13 THE COURT: You are also in the process of selling
14 the place, as well?

15 MS. SMITH: We have it advertised for sale, but we do
16 not have an offer on it.

17 THE COURT: All right.

18 MS. SMITH: Which actually, the for sale has expired
19 and I did not re-list it. I wanted to wait a
20 little bit to do that. But it is still for
21 lease.

22 THE COURT: (Inaudible) that this place is for sale
23 or lease (inaudible)?

24 MS. SMITH: Okay. Two different documents. Two
25 different advertising. Let me just give this

1 to you so you can see what it is.

2 **THE COURT:** If I were a prospective -- if I were
3 interested in leasing the place, would I know
4 that it was also for sale?

5 **MS. SMITH:** Yes, sir. The last page of the lease
6 agreement that Mr. Fulmore signed mentions on
7 there ---

8 **THE COURT:** So it was mentioned to him that he needs
9 to let prospective clients come in to look at
10 and inspect the place?

11 **MS. SMITH:** Correct. And I made provisions for him
12 in case I did sell it so that he would have
13 time and receive money, or he could stay if the
14 new buyers decided they wanted to keep him
15 there.

16 **THE COURT:** All right.

17 **MS. SMITH:** I'm trying to find the -- get the right
18 documents here for you. I thought I had them
19 in order. I'm so sorry.

20 **THE COURT:** Basically what I'm looking for is
21 documentation that would show to me that you
22 did post this as an available space and you
23 published it in whatever it is you publish it
24 in so that people could see that this was an
25 available space that you wanted to lease or

1 that you wanted to sell.

2 **MS. SMITH:** Okay. I don't want to give you
3 duplicates, and I've got some duplicates here
4 and that's what I'm concerned about. I'm
5 sorry.

6 **THE COURT:** Take your time.

7 **MS. SMITH:** Just bear with me here a moment. Okay,
8 that's the for sale and that's the -- I
9 apologize about this one. (Inaudible) shows on
10 here the pricing, the dates that I listed it,
11 the date it's expired, and I continued to list
12 it. I did not re-list it for sale because I
13 decided I wanted to keep the building, but this
14 is the For Sale document. And in that last
15 number, sir, at the top, these listings showed
16 up on ---

17 **THE COURT:** So it was April that it was listed for
18 sale?

19 **MS. SMITH:** Listed April 22nd and expired -- I can't
20 read it. I need new glasses I think.

21 **THE COURT:** Well, that's all right. Looks like it
22 expired as of June 22nd.

23 **MS. SMITH:** Okay. That's fine. And that was the
24 sale document. When items are listed in the
25 MLS, they go onto every website, all agents'

1 websites, Zillow, Trulia, Realtor.com, every
2 website where you would find listings.

3 **THE COURT:** Mr. Fulmore, you want to just take a look
4 at these and -- what she's indicated to me that
5 these are, are documents showing that she had
6 listed the property, A, for sale. The top one
7 shows that it was listed, starting in April and
8 going through June.

9 **MR. FULMORE:** Of this year?

10 **THE COURT:** Yes, sir. And also, some other documents
11 showing that she had listed the property as it
12 being available for lease. I just want you to
13 see if you have any objections to my
14 considering those documents.

15 **MR. FULMORE:** Well, I don't -- you know, I'm not
16 objecting to it, even though I would ride, ride
17 by there three or four times every week. You
18 know how you have tunnel vision, I was looking
19 at the space and not the sign.

20 **THE COURT:** Right.

21 **MR. FULMORE:** If that makes sense to you.

22 **THE COURT:** Okay. All right.

23 **MR. FULMORE:** But I did want to say a couple other
24 things once I get the chance.

25 **THE COURT:** All right, I'll give you -- yeah, let you

1 have an opportunity for re-direct questioning.

2 MR. FULMORE: All right, thank you.

3 MS. SMITH: He did ask me about the For Sale sign up
4 front, and I told him that if it was ---

5 MR. FULMORE: That was ---

6 MS. SMITH: --- something he wanted, I would remove
7 it.

8 MR. FULMORE: That was when I signed the lease, I saw
9 the sign on the 9th.

10 THE COURT: And you are seeking \$7500 for ---

11 MS. SMITH: Yes, sir.

12 THE COURT: --- breach of contract?

13 MS. SMITH: Yes. Because it may take me longer than
14 that to lease it again, and he could end up, if
15 he had to continue to pay, he could end up
16 paying much more than that.

17 THE COURT: Yeah. Okay. All right. And, sir, what
18 would you like to tell me?

19 MR. FULMORE: Judge, I know you don't know me, and I
20 don't know if it matters on the contract, but
21 if you look on her paperwork that she -- the
22 copy of her response to my complaint, there's
23 a series of phone calls. Now, I made one phone
24 call to her late, about October, November of
25 2013. She called me several times. She told

1 me somebody was about to lease the place, but
2 she really wanted me to have it. Now, she
3 didn't know me, she was talking to me over the
4 phone. She said, if you don't get it now,
5 somebody else is going to get it. And that's
6 standard real estate -- she's a realtor.
7 That's standard practice from a realtor, they
8 want you to move when they want you to move.
9 But, as I said to her, I said, until I can sell
10 the place that I'm in, I won't be moving. I
11 said, but I would not try to keep you on the
12 line to try to give it to me, telling you I
13 want it. I don't think -- I said, if somebody
14 wants the place, ma'am, I said, by all means,
15 let them have it. I said to you just a minute
16 ago, she's very disingenuous. I'm not trying
17 to attack her; I'm telling you the truth, she
18 -- between that time, it took about seven
19 months before we actually got -- till May the
20 9th, to sign the lease. There were several
21 phone calls in between that time where she was
22 calling me, telling me that she wanted me to
23 have the space. So I did not lead her on, you
24 know. When we got down to the signing of the
25 lease, she just didn't do what she said she was

1 going to do. And I felt like that just --
2 there was going to be a problem down the road.

3 **THE COURT:** Okay. Anything else from you?

4 **MS. SMITH:** I'd like to know what I didn't do that I
5 said I was going to do.

6 **THE COURT:** Do you understand what, what she's ---

7 **MR. FULMORE:** I've already said, she said that ---

8 **THE COURT:** The key ---

9 **MR. FULMORE:** She said she would give me a key when I
10 signed the lease. And she would give me a copy
11 of the lease.

12 **THE COURT:** Yeah.

13 **MR. FULMORE:** She didn't. And then after that, the
14 phone call on March the -- May 14th, five days
15 later, I asked her what was the problem, and
16 that's when we went into another conversation
17 about how I was getting six weeks free and, you
18 know, that's what she said, and I was like,
19 okay, I don't want to go back ---

20 **THE COURT:** Didn't feel like you were getting any
21 free time because you'd already paid \$2200?

22 **MR. FULMORE:** Well, that was the agreement. We
23 agreed that -- her and Steve was there. We
24 agreed that it would take me between May the
25 9th until the 1st of August before I moved in.

1 That's why I gave her -- she said, well, then
2 I need \$2200 from you, so I wrote two checks,
3 for \$1200 and one for a thousand. I gave her
4 what she asked me to give her, and I thought we
5 had an agreement. But then when I spoke to her
6 five days later, she had changed her story.

7 **THE COURT:** Okay. Well, here's where we are. We
8 have an agreement that's been signed by two
9 parties. They both agree that this is the
10 document, and the terms of the lease are the
11 terms that have been stated here today. It was
12 potentially a two-year lease, but there's also
13 sufficient notice to show that the lease may
14 not have been allowed to run the full two years
15 because the property was being offered for
16 sale. At some point it was pulled off, but
17 during the period of time that he was
18 negotiating and engaging, your intent and hope
19 was that you could sell the property, because
20 you advertised it for sale. So, even though
21 it's a two-year contract, there's a strong
22 possibility that the contract could not have
23 lasted for two years, unless there were
24 provisions in the sale that would require the
25 new owners to accept that contract. I don't

1 know whether that would have taken place or
2 not. But, anyway, there was an agreement to
3 lease the property for a two-year period. The
4 lease was scheduled to actually begin on June
5 the 1st. And during the period of May,
6 preceding the June, you were going to be
7 allowed some time to get in if she had provided
8 a key or something for April. But that didn't
9 transpire. There were some telephone
10 conversations that went back and forth, there
11 were emails that went back and forth, that you
12 found disturbing to you. But those aren't
13 really a part of the contract. Now, whether
14 there's a personality involved that you don't
15 like, what I'm governed by is the contract and
16 the terms and conditions of the contract;
17 that's what legally binding on me to review,
18 accept, and to rule on. She has filed a
19 counterclaim asking the Court for \$7500 because
20 you have broken the lease agreement and she has
21 had to bear the burden of that and pay the
22 mortgage or whatever she has on that space and
23 wasn't able to lease it right away. And feels
24 that she is entitled that because there is an
25 agreement, and the lease agreement is actually

1 for 24 months, not just five or six months.
2 And the reasons that you have provided to the
3 Court as your reasons for breaking the lease
4 are because she didn't give you a key in a
5 timely fashion and she didn't give you a copy
6 of the lease in a timely fashion. And she
7 didn't allow you to basically enter into the
8 property before the actual lease agreement
9 began. There's nothing in the contract that
10 says she's required to do that. That was just
11 an off-contract oral agreement between the two
12 parties. So I do feel like the plaintiff has
13 breached the contract. I think that's very
14 clear, given the terms and conditions of the
15 contract. I also believe that the contract
16 probably would not have existed for the full
17 24-month period, but you're not asking for the
18 full 24-month period. Basically you're asking
19 for basically a seven-month period. You've
20 been damaged June, July, August, probably
21 September. At least, you know, certainly those
22 -- June, July, and August, you've certainly
23 been damaged. But he has already presented to
24 you at least two months' worth, one through the
25 security deposit, the other through the first

1 month's rent, which would have covered June and
2 July. And ---

3 **MS. SMITH:** Okay, well, even -- I'm sorry.

4 **THE COURT:** --- so what I'm going to allow is, I'm
5 going to allow you to have the \$7500; you're
6 entitled to that, but I'm going to minus from
7 that the \$2200 that he's already paid. Okay?
8 And grant you the court costs. Okay?

9 **MS. SMITH:** Okay. Because even if I had a contract
10 on it today, for sale, you know, somebody
11 wanted to buy it, it would take a couple of
12 months for that to go through.

13 **THE COURT:** Did ---

14 **MS. SMITH:** And then I was going to allow him three
15 months to stay.

16 **THE COURT:** You've asked the Court for \$7500.

17 **MS. SMITH:** Yes, sir.

18 **THE COURT:** And the Court's going to give you that.
19 And -- what is her costs? \$10, so ---

20 **MS. SMITH:** And that was in addition to the \$2200
21 that he had already paid.

22 **THE COURT:** Well, I know that \$7500 is what you've
23 asked for, and I'm going to give you that minus
24 the time period that he's already paid. Okay?
25 All right.

1 **MS. SMITH:** Thank you, sir.

2 **THE COURT:** And I'm going to minus -- my clerk says
3 you didn't pay \$10 for the counterclaim, so
4 we'll deduct that off for you. All right? All
5 right. Ladies and gentlemen, thank you very
6 much.

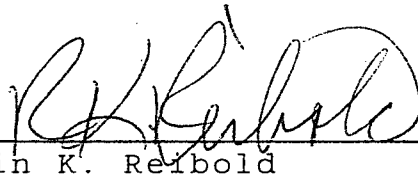
7 **(There being nothing further, the hearing was**
8 **concluded.)**

CERTIFICATE

This is to certify the transcript of the hearing consists of thirty (30) pages. This transcript was prepared by me without the benefit of my being present during the hearing. Additionally, this transcript was prepared from a audio recording provided to me.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this July 10, 2015.



Robin K. Reibold

Notary Public for South Carolina
My Commission Expires: April 28, 2021

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

STATE OF SOUTH CAROLINA
OF THE COUNTY OF RICHLAND

IN THE COMMON PLEAS COURT
FIFTH JUDICIAL CIRCUIT

TRACY FULMORE,

Plaintiff,

-VS-

JULIE SMITH,

Defendant.

TRANSCRIPT OF RECORD
2014-CP-40-05976

July 7, 2015
Columbia, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Presiding Judge

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

ATTORNEY FOR THE PLAINTIFF:
Charles T. Brooks, III

Cheryl M. St. Germain

Court Reporter

Post Office Box 2443

Rock Hill, South Carolina 29732-4443

1 THE CLERK: This is case number 2014-CP-40-
2 05976. Tracy Fulmer vs. Julie Smith.

3 THE COURT: All right. What have we got here?
4 This is an appeal --

5 MR. BROOKS: Yes, sir.

6 THE COURT: -- from a civil action in
7 magistrate's court?

8 MR. BROOKS: Yes, sir.

9 THE COURT: All right. If you will give me
10 just a moment, I'm going to briefly review the
11 magistrate's return.

12 All right. Mr. Brooks?

13 MR. BROOKS: Yes, sir. I'll be brief in this.
14 Mr. Fulmore was engaged with Ms. Smith to rent from her
15 and basically, Judge, he put down -- the total amount he
16 had paid her was \$2,200, and the lease was signed on May
17 9th. I believe that's in the file.

18 He subsequently contacted us to notify her that
19 he no longer wanted to rent the premises, and he did so.
20 We sent a letter on his behalf on May 22, 2014, which
21 should also be in the file saying he doesn't want to rent
22 the premises. The lease was scheduled to go into effect
23 on June 1st. Mr. Fulmore never received a key, and I
24 think all of that is undisputed. Testimony should be in
25 the file.

1 And, therefore according to the lease,
2 subsection 6 talks about if the tenant has not taken
3 possession and if he sends and he's not in default --
4 obviously, 13 days after signing a lease he's not in
5 default, he has the right to terminate the lease and ask
6 for all his money back. So we think it's clear there.

7 Unfortunately, we think the magistrate has
8 errored and not only did he not rule in favor of the
9 plaintiff to receive his money back but also found him to
10 be in default and awarded the defendant a judgment in the
11 amount of \$5,300 -- \$7,500 minus the 2,200 he had paid.

12 So it is our position that the magistrate used
13 his discretion and that this case should be reversed and
14 remanded. And even looking at the magistrate's return,
15 it states --

16 THE COURT: Mr. Brooks, I don't mean to
17 interrupt you, but I want to be on the same page that
18 you're on. You referred to the lease.

19 MR. BROOKS: I referred to the lease, and you
20 should --

21 THE COURT: And could you direct me to the
22 subsection that you're referring to?

23 MR. BROOKS: Do you have the lease in your
24 hands, Judge?

25 THE COURT: I think I do, yeah.

1 MR. BROOKS: Look at page 3. Let me know if
2 you're on page 3.

3 THE COURT: Under the right of possession?

4 MR. BROOKS: Correct.

5 THE COURT: All right.

6 MR. BROOKS: I want to take you --

7 THE COURT: Give me one minute and let me look
8 at it.

9 MR. BROOKS: Judge, we feel that that's pretty
10 clear, and he says 13 days after this, the lease doesn't
11 set to begin until June 1st. Give me my money back.

12 THE COURT: Well, read the paragraph. It's not
13 clear. First of all, you've got to look at those
14 connective words.

15 MR. BROOKS: I understand.

16 THE COURT: I think the first part of that
17 paragraph doesn't apply because we're not dealing with
18 that.

19 But the part, you go down there, it's the one,
20 two, three, fourth line, about half way down the fourth
21 line, if landlord however is unable to deliver possession
22 of the premises to the tenant by -- and then it's got N/A
23 -- and if the tenant, in fact, shall not have accepted
24 the possession of the premises, and if the tenant shall
25 not be in default, the tenant shall have the right to

1 cancel this lease upon written notice.

2 MR. BROOKS: Correct.

3 THE COURT: Well, where is it that the landlord
4 is unable to deliver possession of the premises?

5 MR. BROOKS: She would never give him a key.

6 THE COURT: It didn't begin until June 1st.

7 MR. BROOKS: Correct.

8 THE COURT: She didn't have to give him the key
9 until June 1st.

10 MR. BROOKS: Correct. So, therefore, the lease
11 never started. He says I don't want to go forward with
12 it in May.

13 THE COURT: But you don't have the first part
14 of that where the landlord is unable to deliver
15 possession of the premises.

16 MR. BROOKS: But, Judge, he never takes
17 possession. He never gets a key.

18 THE COURT: I understand he doesn't, but he's
19 not entitled to it until June 1.

20 MR. BROOKS: Right, but prior to that he says,
21 I don't want to rent; go ahead and give me my security
22 deposit back and my first month's rent.

23 THE COURT: I'm not sure that's what that
24 paragraph says.

25 MR. BROOKS: I understand, Judge, but our point

1 is the magistrate is clearly errored in this case because
2 first off he couldn't be in default when he sent a letter
3 in May saying give me my money back, and he never gets
4 the key to accept the premises.

5 THE COURT: I understand that.

6 MR. BROOKS: So he first, he can't be in
7 default.

8 THE COURT: I don't think he is in default.

9 MR. BROOKS: I --

10 THE COURT: I don't think it was ever claimed
11 that he was in default.

12 MR. BROOKS: The magistrate does because he
13 gives her a judgment for \$5,300.

14 THE COURT: Doesn't the magistrate refer to it
15 as basically a breach of his obligation?

16 MR. BROOKS: But basically, Judge, he gives her
17 a judgment of \$5,300.

18 THE COURT: Okay.

19 MR. BROOKS: He hasn't even been in default in
20 order to do that.

21 THE COURT: He has indicated --

22 MR. BROOKS: In May before the lease has ever
23 begins.

24 THE COURT: -- that he is not going to honor
25 this lease. That he is not going to honor this contract.

1 MR. BROOKS: He says I don't want to do this,
2 please return my money.

3 THE COURT: Right.

4 MR. BROOKS: There's no prejudice. It's only
5 13 days since we signed the lease.

6 THE COURT: Well, I mean, there may be
7 prejudice. You and I, an arm's length transaction, we
8 come into an agreement and I bind myself to you and you
9 bind yourself to me. We've got a meeting of the minds.
10 We've got an agreement. And you're going to take
11 possession at the end of this month. Why isn't that a
12 binding agreement just because you bail before the end of
13 the month?

14 MR. BROOKS: Judge, we feel that the magistrate
15 is wrong. It's clearly in the lease it gives him that
16 right to exercise before the lease is done and before
17 he's even got a key. He's never gotten a key. He's
18 never even had access to the premises.

19 THE COURT: Okay.

20 MS. SMITH: Your Honor, if I may?

21 THE COURT: In just a moment. I'm going to
22 hear from Mr. Brooks, and I'm going to hear from you,
23 ma'am. I'm going to hear from everybody, okay?

24 MR. BROOKS: So we feel that he should be --
25 the magistrate erred. He should have awarded his money

1 back. I mean just what else can you do?

2 THE COURT: You can honor your agreement.

3 MR. BROOKS: But his position was that she
4 never gave him possession of the premises.

5 THE COURT: We're like a dog chasing our tail.

6 MR. BROOKS: But, Judge --

7 THE COURT: He wasn't entitled to the premises
8 until June 1.

9 MR. BROOKS: But he still has the right to come
10 back and --

11 THE COURT: If you buy my car and our agreement
12 is you can pick up my car on August 1st, that's when this
13 sale is going to be complete --

14 MR. BROOKS: But, Judge, hold on a second. If
15 going back to what you said in the lease, if the N/A
16 under that subsection, under that line of sentence if
17 landlord however is unable to deliver possession of the
18 premises to the tenant by N/A, that means that particular
19 phrase is not applicable, and the only thing you have to
20 look at is if tenant shall not have accepted -- shall
21 have accepted possession of the premises and if tenant
22 shall not be in default.

23 So we only looking at those two prongs and none
24 of those two prongs exist, so therefore, he had the right
25 to ask for his money back. He asked for it in May, and

1 he should have been entitled to get his money back..

2 Therefore, the magistrate errored in his
3 ruling.

4 THE COURT: All right. Thank you, sir. Yes,
5 ma'am.

6 MS. SMITH: Okay, first, the letter I received
7 from Mr. Brooks was postmarked May 28th. I received it on
8 June 4th which is the first indication I had that he
9 wanted to cancel the lease.

10 Second, is when the lease was signed we had a
11 legally binding contract. I reserved the property for
12 the plaintiff and did not lease it to someone else
13 because he wanted the property.

14 I contacted, several times, the plaintiff
15 offering to give him a key by email which was submitted
16 to the magistrate's court when he filed for me to come to
17 court. The plaintiff attached those emails to his court
18 documents so he received my emails that offered him May
19 15th -- I was going to give him a key, give him access
20 early.

21 I offered again on May 18th. I offered him
22 again on May 28th. Just him not coming or not wanting to
23 pick up a key, maybe he just wasn't ready to get the key.
24 I had no indication he actually didn't want to lease.

25 And sometimes somebody may not take a property

1 for a month or two after they've leased it. Just his
2 inaction to pick up the key when he has been offered it
3 several times should not be a good reason for him to
4 cancel the lease.

5 I also had given copies of the emails and the
6 lease agreement to Mr. Brooks the day after I received
7 notification from him that the plaintiff wanted to
8 cancel. I emailed him all the documents because he
9 didn't have copies.

10 THE COURT: All right. Anything further?

11 MS. SMITH: I think not.

12 THE COURT: All right. I want to give you the
13 opportunity if you wish for me to review the transcript
14 that we talked about earlier. You expect to get that
15 tomorrow is my understanding?

16 MR. BROOKS: According to the email that the
17 Creel Court Reporting Agency sent to us -- this was per
18 Judge Benjamin's instructions. I mean usually, Judge, to
19 piggy back on what you just said in an earlier hearing
20 most of the time we --

21 THE COURT: You wouldn't have ordered it on
22 your own?

23 MR. BROOKS: Exactly. She instructed me in
24 Richland County you need to have a transcript. That's
25 what she told me back in May so she continued the hearing

1 in order for us to do that.

2 We contacted the magistrate's office. They
3 don't have any record of it because they said they sent
4 the disc to the clerk of court down here. And when we
5 contacted Creel about doing this coming down here,
6 basically burning a copy of the disc that the clerk of
7 court had and then going back and transcribing it
8 because --

9 THE COURT: And that was done, right, because I
10 have a disc here.

11 MR. BROOKS: Right, that's just that. Creel
12 told me and sent an email where we got a notice of
13 today's hearing. We sent an email to them asking them
14 when would this be prepared because we got a hearing on
15 July 7th. They said we expect it to be ready July 8th.

16 THE COURT: Okay.

17 MR. BROOKS: And, Judge, I wasn't involved in
18 the magistrate's court hearing below just so you know.
19 What I did was he had contacted me --

20 THE COURT: Right.

21 MR. BROOKS: -- wrote the letter, and then he
22 went and filed his own pro se pleadings as to the return
23 in the magistrate's file, and then he came back to me,
24 and we took care of this appeal.

25 THE COURT: All right. And simply what I am

1 asking -- I'm going to take it under advisement so that I
2 can review this lease in more detail, but if you want me
3 to consider that transcript, I'm happy to. If you don't
4 care whether it's considered or not, I mean I won't do
5 it.

6 MR. BROOKS: Well, I think since we've taken
7 the time to order it, I'm sure they will send me a bill
8 for it.

9 THE COURT: I'm confident.

10 MR. BROOKS: We would ask -- they sent me an
11 email Wednesday or Thursday of last week. That's why I
12 sent the motion in.

13 THE COURT: Okay.

14 MR. BROOKS: Because --

15 THE COURT: All right. Are they going to --
16 are they emailing you the transcript, or is it going to
17 be a hard copy?

18 MR. BROOKS: I don't know. What I was telling
19 you earlier, Judge, is I was going to ask the Court if
20 you wanted to hear our arguments which you have
21 obviously. We can supplement it with the transcript when
22 it comes in.

23 THE COURT: Okay, do that because I'm going to
24 take some time to look at the lease anyway, but if you
25 want to submit that transcript --

1 MR. BROOKS: And I will --

2 THE COURT: -- submit it to me.

3 MR. BROOKS: -- since you know I'm already on
4 the hook. I'm sure if they told me they were going to be
5 finishing it up. I'm sure that's not going to stop them
6 from sending us a bill for it so I would out of an
7 abundance of caution ask Your Honor to -- we would send
8 that to you.

9 THE COURT: Well if you would send that to
10 me --

11 MR. BROOKS: And I'll send her a copy.

12 THE COURT: -- and I'll consider that as well.

13 All right.

14 MR. BROOKS: Thank you, Judge, .

15 THE COURT: Thank you, folks.

16 (Whereupon, the hearing was concluded)

17 -----

18

19

20

21

22

23

24

25

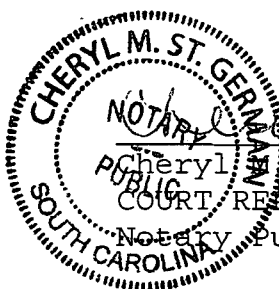
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C E R T I F I C A T E

I, the undersigned, Cheryl St. Germain, Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the hearing of the captioned case, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 7th day of July 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



NOTARY
PUBLIC
CHERYL M. ST. GERMAIN
COURT REPORTER

Notary Public for the State of SC



COMMERCIAL LEASE

In consideration of the covenants herein contained, Tracy Fulmore, hereinafter called "Tenant" and Steve + Julie Smith, hereinafter called "Landlord", agree as follows.

For the period of time beginning on June 1, 2014, and ending at midnight on May 30, 2016, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision Lake Carolina-Harborside Town Center

Address _____

Tax Map # _____ City _____ Zip _____

County of _____ 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 First 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 See below Dollars (\$ See below).

(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: \$1,000/month for 1st 6 months (thru Nov)
Beginning Dec 1, 2014 rent to increase to \$1,100/mth. Beginning of 2nd
year rent to increase to \$1,200/mth

(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 2013, 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 N/A % of gross sales, as herein defined, in excess of N/A Dollars, (\$ N/A), 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

77 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 proceeding 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 NA Dollars (\$ NA) 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): Only on building - Not tenant's property
☒ INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premium for the year of 2013 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.

☒ 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 55% percent (55 %).

☒ 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 2 of 10

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.

147. LATE RENT. If rent is not paid within five days after due date, the Tenant is subject to a one-time late fee of 100- () 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 (\$ 1,200-) twelve hundred 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. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: excess garbage, water more than \$30/month, sewer

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for barber shop 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 N/A, 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: Single parking pad at rear of building. May park in front.

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,

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE

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 \$ 1,000,000 -

Aggregate \$ 2,000,000 -

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 4 of 10

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 at 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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 5 of 10

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: _____

Fulmore TLESbell south.net

Landlord Address: _____

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE

Form 400 Page 6 of 10

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

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

Form 400 Page 7 of 10

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 Steve or Julie Smith 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): All changes to premises must be approved in writing + performed by licensed + insured professionals. Space must be returned to same condition. No excessive noise to bother upstairs tenants.

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

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 8 of 10

40. **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 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 WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.**

41. **FACSIMILE:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

42. **MEGAN'S LAW:** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

43. **NON-RELIANCE CLAUSE:** Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

[Signature] _____
Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

Tenant Date Witness to Tenant
Tenant's Email Address: _____

Phone: _____ Fax: _____

[Signature] 5/9/14
Landlord Date Witness to Landlord

Landlord's Email Address: j.smithrealtor@gmail.com
Phone: 476-6450 Fax: _____

LANDLORD'S AGENT AND COMPANY _____
TENANT'S AGENT AND COMPANY _____

☐ 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.

 5-9-14
GUARANTOR Date

Witness to GUARANTOR

GUARANTOR Date

Witness to GUARANTOR

Tenant acknowledges that building is for sale and agrees to allow prospective buyers to inspect property upon reasonable notice. Tenant's lease terms to remain in effect upon sale with the exception that building owner may require cancellation of this lease upon payment to lessee of \$5,000 upon sale closing. Tenant may stay in property for 3 months after closing and must pay rent amounts during that period to new owner. New owner may allow tenant to remain longer upon mutual agreement.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

© 2006 South Carolina Association of REALTORS®. 1/06

☐ TENANT, ☐ TENANT, AND ☒ LANDLORD HAVE READ THIS PAGE.

Form 400 Page 10 of 10

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

May 22, 2014

Ms. Julie Smith
Post Office Box 291895
Columbia, South Carolina 29229

RE: 333 Long Pointe Ln. #100, Columbia, SC

Dear Ms. Smith:

Please be advised that my offices have been retained by Mr. Fulmore with regards to his lease for the above property.

It is Mr. Fulmore's position that he no longer desires to lease these premises and is requesting the funds paid to you to be returned to him immediately. As Mr. Fulmore has not taken possession of the premises and has not been provided access to this property this return of funds should not be an issue.

Please refund Mr. Fulmore his money within the next ten (10) business days.

If you have any other questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III

CTB,III/jlm

cc: Tracey E. Fulmore

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Thursday, May 15, 2014 2:39 PM
To: fulmoretle@bellsouth.net
Subject: Key

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tracy,
Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Sunday, May 18, 2014 2:02 PM
To: fulmoretle@bellsouth.net
Subject: Keys

Follow Up Flag: Follow up
Flag Status: Flagged

Tracy, I haven't heard back from you. Let me know when you are ready to get the key.

Julie Smith
476-6450

Julie Smith

From: Julie Smith <jsmithrealtor@gmail.com>
Sent: Wednesday, May 28, 2014 8:53 AM
To: fulmoretle@bellsouth.net
Subject: FW: Key

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tracy,

I'm just checking in again on when you will be ready to pick up a key.

To clear up any confusion, I understand that your first month rent begins June 1, although you won't be paying for it until after the second year of your lease is up and that a payment is not due until August 1, 2014 as you have already paid for July.

Julie Smith

From: Julie Smith [<mailto:jsmithrealtor@gmail.com>]
Sent: Thursday, May 15, 2014 2:39 PM
To: fulmoretle@bellsouth.net
Subject: Key

Hi Tracy,

Since you would like the power turned off, I am doing so. (Please notify when you are ready to place the power in your name).

Do you want to meet to pick up a key? Please remember that an insurance certificate must be provided and a plan of changes must be shown to me prior to commencing any construction work in the space. You may simply email a sketch if that works best for you.

Julie Smith

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 01 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2014-CP-40-5976

Tracy Fulmore.....Appellant
v.
Julie Smith Respondent

NOTICE OF APPEAL

Tracy Fulmore, Appeals the Order Denying Appeal in this matter. The Order was imposed and signed by the Honorable Thomas A. Russo, on February 5, 2016 and recorded in the Office of the Clerk of Court for Richland County on February 18, 2016.


Charles T. Brooks, III
Post Office Box 3512
309 Broad Street
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

March 30, 2016

Other Parties on Record:

Ms. Julie Smith (Pro-Se)
Post Office Box 291895
Columbia, South Carolina 29229

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable Thomas A. Russo, Circuit Court Judge

Case No: 2016-000505

Tracy Fulmore.....Appellant

v.

Julie Smith Respondent

RECORD ON APPEAL

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


Charles T. Brooks, III
The Brooks Law Offices, LLC
Post Office Box 3512
Sumter, South Carolina 29150
803-418-5708
Attorney for Appellant

Sumter, South Carolina

RECEIVED
JAN 09 2017
SC Court of Appeals