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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-07037

Century Capital Group, LLC,

Appellant,

v.

Midtown Development Group, LLC,
Richland Joint Venture Group, LLC,
Windsor Richland Mall, L.P. and BRC
Richland, LLC,

Respondents.

RECORD ON APPEAL
VOLUME I

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Richland County ROD

Richard W. Riddell

RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION

THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION, ("Agreement") is made as of this 1 day of September, 2005, by and between **BRC RICHLAND, LLC**, a Georgia limited liability company ("BRC"), and **WINDSOR RICHLAND MALL, L.P.**, a Texas limited partnership ("Windsor").

WITNESSETH:

WHEREAS, Windsor is the owner of that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and (entire parcel)

WHEREAS, contemporaneous herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless call center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

WHEREAS, the Shopping Mall Parcel, less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

WHEREAS, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 5, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2005 (the "Verizon Lease"); and

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2005072825 John G. Hardy Richland County ROD

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Richard W. Rodden

WHEREAS, it is contemplated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

WHEREAS, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Cellco under the Verizon Lease be protected and preserved;

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

ARTICLE I

EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL

(A) Access. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, those parking areas located on the roof of the Midtown Parcel; and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel; provided that the owner of the Midtown Parcel gives at least twenty (20) days notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) Drainage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

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Richland County ROD

Richard M. Rabbitt

(C) Utilities.

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) installation, maintenance, repair and use of utilities, including specifically fiber optic cable, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Midtown Parcel; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Midtown Parcel may relocate, at its sole expense, such utility lines, so long as utility service to any other Parcel is not interrupted; and (b) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) Signage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusion on any directories located within the Mall, suite entry

CAM change payable to Midtown

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signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Cellco's present signage rights under the Verizon Lease without the prior written approval of Cellco.

(E) Parking. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Cellco and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Cellco has approved the parking change.

ARTICLE II

EASEMENTS BURDENING THE BANK PARCEL

(A) Access, Drainage and Utilities. Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel; (c) installation, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

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power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Parcel owner performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

ARTICLE III

EASEMENTS BURDENING THE VERIZON PARCEL

(A) Access. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the MTB Parcels, for the purpose of: passage and use for the purpose of walking and driving over and across and maintenance and repair of, all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) Parking. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to Section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with threat and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

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Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) Utilities and Drainage. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists; (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Verizon Parcel provided, however: (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) Green Space Amenity Easement. BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

Richland County ROD Richard W. Rawlinson

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(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and rebuild the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is destroyed or substantially modified in connection with a redevelopment (i.e. material structural change in the building on the Verizon Parcel which involves construction of more than two (2) additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

ARTICLE IV

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Richard W. Rodda

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Richland County ROD

Richard W. Rodden

COMMON AREA MAINTENANCE

(A) Definitions. For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) Responsibility. The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation: repaving and re-striping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty; and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel; and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed $10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) Contribution. The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

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Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such TGIF Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such Bank Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

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year in an amount equal to one-twelfth (1/12) of such Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the TGIF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the amount of each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay to the Midtown Parcel owner any deficiency due the Midtown Parcel owner for its Parcel. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right within ninety (90) days of receipt of the statement during its regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year, a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's election and, if the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to such Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is otherwise found to be incorrect, the party found to be owing money shall promptly pay an offsetting sum to the other party.

(D) **Collection; Attorneys' Fees.** Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If, upon expiration of such twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

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Richland County ROD Richland W. Recitals

fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(E) Failure to Maintain. Should the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (herein a "Repairing Owner") shall be entitled to perform such obligations and to bill the owner of the Midtown Parcel or to deduct such reasonable out-of-pocket costs from any sums owed to the owner of the Midtown Parcel, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the default, in writing, and shall permit the same to perform the obligation within twenty (20) days after receipt of written notice. In the event that the owner of the Midtown Parcel fails to perform its obligations upon any Parcel in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Repairing Owner, the Repairing Owner may perform the Common Area repair and upkeep on the Parcel, provided that the owner of the Midtown Parcel is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Repairing Owner shall be immediately due and owing from the Midtown Parcel owner. Such unpaid amounts may be offset against any amounts owing from the Repairing Owner to the Midtown Parcel owner, and until paid or offset the amount owed the Repairing Owner shall constitute a lien upon the Midtown Parcel with a priority relating back to the date hereof. The Midtown Parcel owner shall execute such instruments as the Repairing Owner may request to permit the recordation of such lien, and the Shopping Mall Parcel owner hereby irrevocably designates the Repairing Owner as the Shopping Mall Parcel owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(F) Indemnity. The owner of the Midtown Parcel shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorney's fees, arising out of the owner of the Midtown Parcel's refusal or failure to maintain or repair that portion of the Common Areas for which it is responsible hereunder except as results from the gross negligence or willful act of the owner of the another Parcel owner.

ARTICLE V

INSURANCE

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Area of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least Three Million Dollars ($3,000,000.00) combined single limit for death or injury to one or more persons and property damage, and shall name the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds thereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

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Richard W. Rodden

evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

ARTICLE VI

DAMAGE OR DESTRUCTION

In the event all or any portion of the Common Area on the Mall is destroyed or damaged by fire, casualty or force majeure, the owner of the Midtown Parcel shall forthwith clear such area of debris and restore to the prior condition.

If all or any portion of the Midtown Parcel, including without limitation the Common Area on the Midtown Parcel, is damaged or destroyed in such a manner as prevents or interferes with the operation of the business on the Verizon Parcel, the Bank Parcel, or the TGIF Parcel, then the owner of the Midtown Parcel shall use all commercially reasonable efforts to repair such damaged or destroyed areas in a prompt and thorough fashion.

In the event the owner of the Midtown Parcel fails to perform its obligations under this Article VI, the owners of the other Parcels may perform such work and shall have such rights as are contemplated in Article (IV) (D), (E) and (F) hereof.

ARTICLE VII

EFFECT AND DURATION

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

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reconstruction, expansion or other circumstances. The parties acknowledge and agree that damages from a breach hereof are not readily ascertainable and an injunction and specific performance shall be available in the event of any breach hereunder, in addition to any other remedies available under law. The easements established herein shall be perpetual in duration.

ARTICLE VIII

NO DEDICATION

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

ARTICLE IX

DEFAULT

(A) Default. Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of fifteen (15) days after its receipt of written notice, the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owner, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All reasonable out-of-pocket expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses and any unpaid expenses shall constitute a lien with priority dating to the date of this Agreement. Notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "G" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Tracts"), then from and after the date of any construction loan closing for either Residential Redevelopment Tract, such tract shall be excluded and not subject to subsequently accruing liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Tracts shall be subject to liens which accrued prior to construction loan closing).

(B) Attorneys' Fees. In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to all other expenses incurred by such litigation.

ARTICLE X

OPT OUT

(A) Verizon Parcel. Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice provided to the owner of the Midtown Parcel, to maintain such Verizon Parcel's Common Area and insurance covering the Verizon Parcel and Common Area on such Verizon Parcel. Upon such notice, the owner of the Midtown Parcel owner shall no longer be responsible for these obligations with respect to the Verizon Parcel and the Verizon Parcel owner shall not be obligated to make the

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contributions for such matters contemplated herein; provided that the Verizon Parcel owner shall still be responsible for its Pro Rata Share of only (i) common access facilities and utility facilities benefiting the Verizon Parcel and (ii) liability insurance maintained by the Midtown Parcel owner for the Common Areas.

(B) Bank Parcel. Notwithstanding any provision in this Agreement to the contrary, the Bank Parcel owner may elect, by written notice provided to the owner of the Midtown Parcel, to maintain such Bank Parcel's Common Area and insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such notice, the owner of the Midtown Parcel Owner shall no longer be responsible for these obligations with respect to the Bank Parcel. Thereafter, the owner of the subject Bank Parcel shall no longer be responsible for a Pro Rata Share for Common Area Maintenance Charges; provided, however, that until the Parcels are separately assessed for tax purposes, the owner of the Bank Parcel will in any event be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

ARTICLE XI

RESERVED

ARTICLE XII

ENVIRONMENTAL MATTERS

(A) Regulatory Compliance. Each Parcel owner will not take any action or omit to take any action (including actions taken by or omissions of any contractors or agents of such owner) which would cause the Mall to be subject to any remedial obligations under any applicable environmental laws and regulations and/or any other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions applicable to environmental laws (collectively, "Applicable Environmental Laws"). The Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

(B) Hazardous Waste. Each owner shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including actions or omissions of any contractors or agents of such owner) which would cause the disposal or other release of any hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

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removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense, unless, under then applicable law and prudent real estate practices, no removal or other remedial action with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) Remediation. Should the owner of a Parcel fail to fulfill its obligations under this Article XII (herein a "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to deduct such costs from any sums owed to the Contaminating Owner, provided that, except in the case of an emergency, the Remediating Owner shall first notify Contaminating Owner of the default, in writing, and shall permit the same to perform the obligation within ten (10) days after receipt of written notice. In the event that Contaminating Owner fails to perform its obligation to remediate in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Remediating Owner, the Remediating Owner may perform the remediation on its Parcel, provided that Contaminating Owner is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Remediating Owner shall be immediately due and owing from the Contaminating Owner. Such unpaid amounts may be offset against any amounts owing from the Remediating Owner to the Contaminating Owner, and until paid or offset the amount owed the Remediating Owner shall constitute a lien upon the Contaminating Owner's parcel as of the date of the Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may request to permit the recordation of such lien, and the Contaminating owner hereby irrevocably designates the Remediating Owner as the Contaminating Owner's attorney-in-fact (coupled with an interest) for such purpose.

ARTICLE XIII

RESERVED

ARTICLE XIV

RESERVED

ARTICLE XV

VERIZON EXPENSE CONTRIBUTION

(A) Taxes. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special assessments (including special tax district assessments, if any) applicable to the Verizon Parcel. Once the owner of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Cellco pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

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Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to attempt to obtain separate tax parcels for each Parcel; provided that in all events the Midtown Parcel owner shall be responsible for all taxes on the Verizon Parcel due through November 30, 2010 subject to the reimbursement of the Verizon payment as set forth above; provided taxes due for the final calendar year shall be pro-rated.

(B) Cooled Air. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to maintain, repair and replace as needed the cooled air system and any heating and ventilation systems for the Verizon Parcel and the owner of the Verizon Parcel shall pay to the owner of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 8.4 of the Verizon Lease.

(C) Roof and other Repairs. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, shall make all roof repairs, structural repairs to exterior walls, structural repairs to columns and structural floor (excluding floor coverings) which collectively enclose the building on the Verizon Parcel and the building systems (plumbing, sprinkler, electrical and HVAC) in the building on the Verizon Parcel.

(D) Other Expenses. Until November 30, 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel, as landlord under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. taxes, insurance, utilities, maintenance and repair but not costs of tenant upgrades or concessions) shall be paid by Cellco or the owner of the Midtown Parcel.

(E) Nonperformance or Nonpayment. In the event Windsor or any successor thereto defaults in the obligation at items (A) through (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such amounts immediately upon receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall accrue interest at eighteen percent (18%) and constitute a lien against the Midtown Parcel with a priority of the date of this Agreement (but subject to the release provision for the Residential Redevelopment Tracts contained in Article IX (A)).

(F) In consideration of the Verizon expense contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Cellco, the payment obligations of Cellco for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 8.4 of the Verizon Lease; provided that the Midtown Parcel owner shall not enforce such obligations against Cellco if the payments are made instead by the owner of the Verizon Parcel.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

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(A) Modification and Termination. Except as set forth in Article X hereof, no part of this Agreement may be terminated or modified without the prior consent of the owner of any affected Parcel; provided however, in the event the proposed modification has no material affect on a particular Parcel, then such Parcel owner's consent shall not be required.

(B) No Creation of Agency or Partnership. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) No Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

(E) Notice. All notices, demands, statements, and requests required or permitted to be given under this Agreement shall be in writing and given either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address for which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Parcel, either the owner selling such Parcel or the new owner of such Parcel shall give written notice to each of the parties of the name and address of the new owner. Until such time as any owner shall receive such a notice of the address of a new owner, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road
Atlanta, Georgia 30305
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard
3901 Lewis P. Olds
Raleigh, NC 27612

(F) No Other Agreement. This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

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statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

ARTICLE XVII

REDEVELOPMENT AND OPTION TO PURCHASE

(A) Redevelopment. The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel now covered with surface parking and more particularly described on Exhibit "F" hereto (the "Commercial Development Tract") as a structured parking dock with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (i) $1,000,000.00 or (ii) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

Richland County ROD Howard M. Duncan

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(viii) The Midtown Parcel Owner shall provide the necessary reciprocal easements, etc., in form and substance similar to those provided herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

Witness #1

Witness #2

By: Angela T. Whichard
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

Witness #1

Witness #2

by: Blue Ridge Capital, LLC,
its Manager

By:
Name: Fritz R. McPhail
Title: Manager

[COMPANY SEAL]

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Richard W. Rodda

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

By: _____
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

Witness #1

Witness #2

By: _____
Name: Fritz R. McPhail
Title: Manager

[COMPANY SEAL]

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Richard W. Rodden

ACKNOWLEDGMENTS

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:

_____

STATE OF Georgia
COUNTY OF Fulton

Before me, Kristi A. Lyons, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Atlanta, GA, this 7th day of September, 2005.

Notary Public

KRISTI A. LYONS NOTARY PUBLIC GEORGIA COBB COUNTY

My Commission Expires:
11/29/08

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Richland County ROD

Richard W. Rodden

ACKNOWLEDGMENTS

STATE OF NorthCarolina
COUNTY OF Wake

Before me, Tracy T. Bullock, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Wake County, N.C., this 7 day of September, 2005.

Tracy T. Bullock
Notary Public

TRACY T. BULLOCK NOTARY PUBLIC WAKE COUNTY, N.C.

My Commission Expires:
11-28-2009

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:
_____

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Schedule of Exhibits

Exhibit A	Shopping Mall Parcel Legal Description
Exhibit B	Verizon Parcel Legal Description
Exhibit C	TGIF Parcel Legal Description
Exhibit D	Bank Parcel Legal Description
Exhibit E	Site Plan
Exhibit F	Commercial Development Tract
Exhibit G	Residential Development Tracts

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EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

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George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

Richland County ROD

Richard W. Rodda

405513.1

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Richland County ROD

Richard W. Rodden

EXHIBIT "B"

LEGAL DESCRIPTION
VERIZON PARCEL

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 16, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.

405510.1

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Instrument: 2005072825 Book/Page: R1097 : 2040.11 Date/Time: 9/12/2005 3:17:41 PM

Richland County ROD

Richard W. Rodda

EXHIBIT "C"

LEGAL DESCRIPTION
TGIF PARCEL

COMMENCE at the intersection of the centerline of Forest Drive (S-40-12) and the southwestern right of way of Beltline Boulevard (S-40-16); thence run along the southwestern right of way of Beltline Boulevard a distance of 1,010 feet to a 5/8" rebar found; thence leaving said right of way run South 75 degrees 05 minutes 54 seconds West a distance of 198.59 feet to a building corner, said corner being the POINT OF BEGINNING; thence run South 14 degrees 50 minutes 07 seconds East a distance of 39.49 feet to a building corner; thence run South 75 degrees 09 minutes 53 seconds West a distance of 2.00 feet to a building corner; thence run North 14 degrees 50 minutes 07 seconds West a distance of 0.23 feet to a building corner; thence run South 74 degrees 35 minutes 15 seconds West a distance of 110.05 feet to a calculated point; thence run North 14 degrees 31 minutes 02 seconds West a distance of 56.00 feet to a calculated point; thence run North 30 degrees 27 minutes 08 seconds East a distance of 7.41 feet to a calculated point; thence run North 75 degrees 27 minutes 30 seconds East a distance of 54.76 feet to a calculated point; thence run South 14 degrees 32 minutes 28 East a distance of 1.22 feet to a calculated point; thence run North 75 degrees 27 minutes 32 seconds East a distance of 10.77 feet to a building corner; thence run North 75 degrees 49 minutes 11 seconds East a distance of 13.08 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 4.84 feet to a building corner; thence run South 75 degrees 48 minutes 27 seconds West a distance of 1.44 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 2.33 feet to a building corner; thence run North 75 degrees 12 minutes 04 seconds East a distance of 6.57 feet to a building corner; thence run South 15 degrees 47 minutes 59 seconds East a distance of 5.47 feet to a building corner; thence run North 74 degrees 43 minutes 39 seconds East a distance of 3.43 feet to a building corner; thence run South 60 degrees 42 minutes 40 seconds East a distance of 8.33 feet to a building corner; thence run South 15 degrees 43 minutes 16 seconds East a distance of 0.99 feet to a building corner; thence run North 74 degrees 56 minutes 28 seconds East a distance of 11.33 feet to a building corner; thence run North 15 degrees 16 minutes 21 seconds West a distance of 0.20 feet to a building corner; thence run North 75 degrees 17 minutes 18 seconds East a distance of 1.98 feet to a building corner, said corner being the POINT OF BEGINNING.

Said tract contains 0.143 acres and is more particularly described on that certain Boundary Survey of Richland Mall TGI Friday's, prepared by B. P. Barber & Associates, Inc., dated March 29, 2005, last revised June 17, 2005.

405111.1

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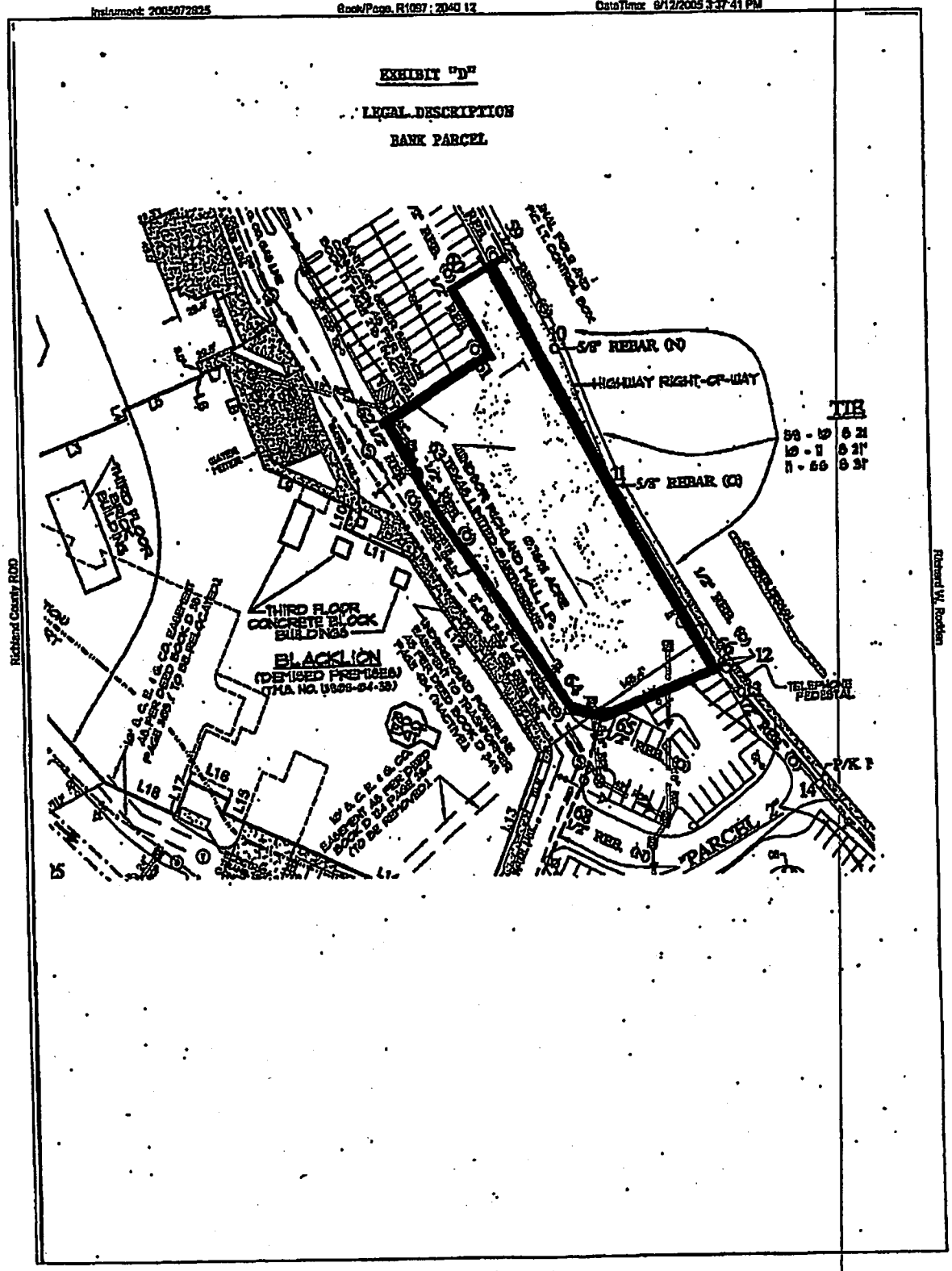
EXHIBIT "D"

LEGAL DESCRIPTION

BANK PARCEL



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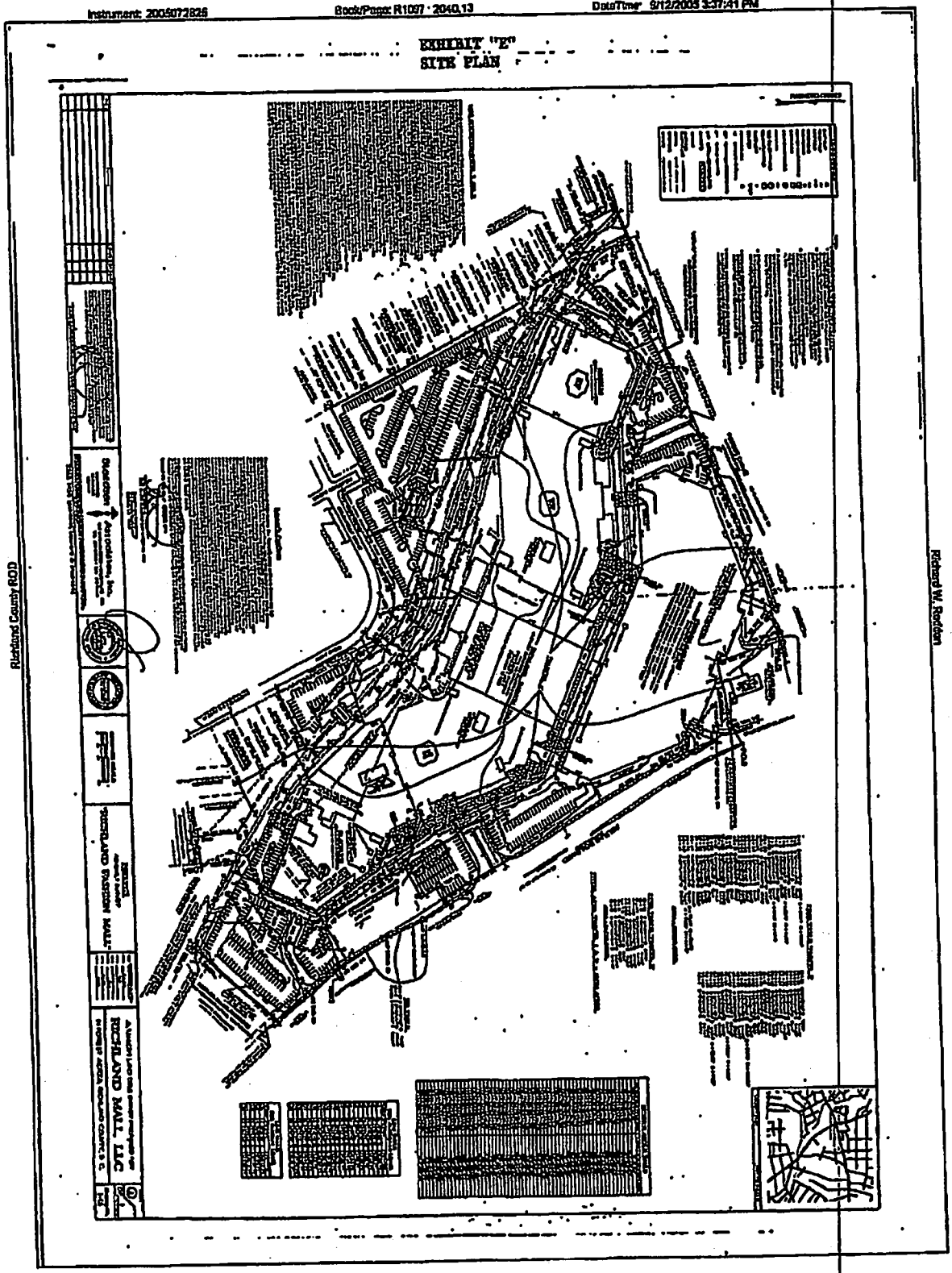
Instrument: 2005072826 Book/Page: R1097 : 2040,13 Date/Time: 9/12/2005 3:37:41 PM

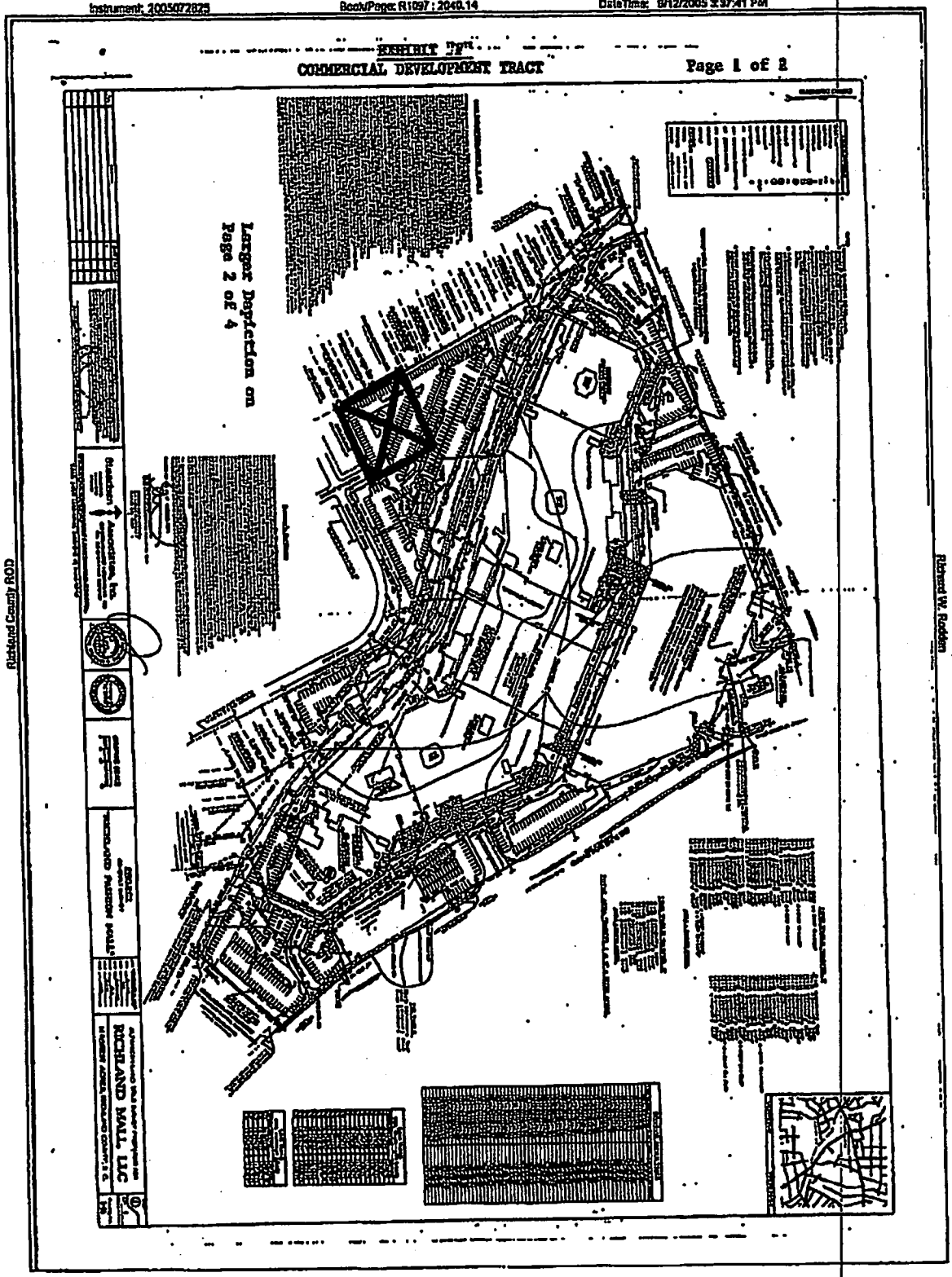
EXHIBIT "E"
SITE PLAN



Instrument: 20050072825 Book/Page: R1097 : 2049.14 Date/Time: 8/12/2005 3:37:41 PM

EXHIBIT "B"

COMMERCIAL DEVELOPMENT TRACT



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RECORD ON APPEAL 031

Instrument: 2005072826 Book/Page: R1097 : 2040,15 DateTime: 9/12/2005 3:37:41 PM

EXHIBIT "F"

Page 2 of 2

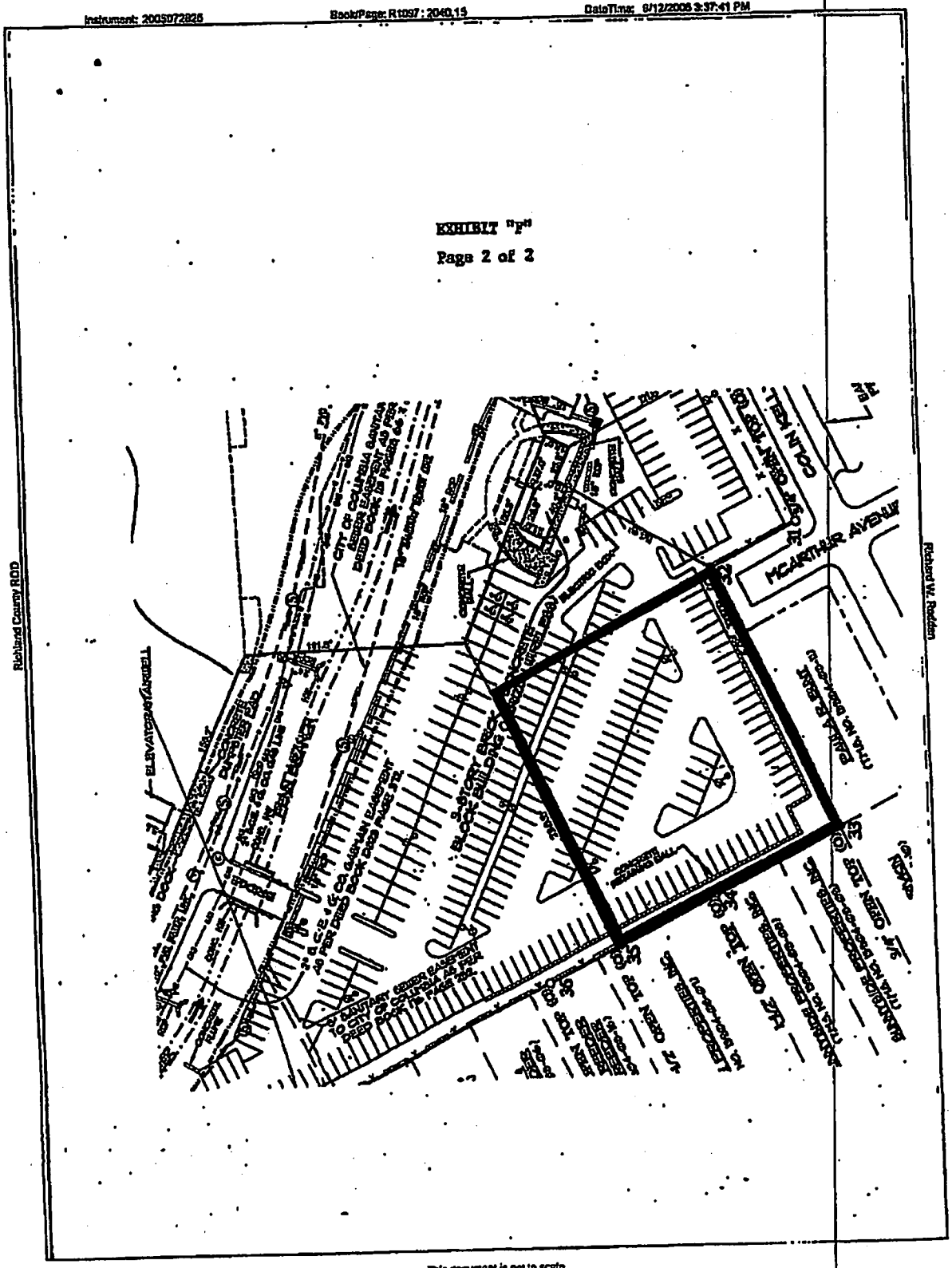
Richland County ROD
Richland Co. Register
McARTHUR AVENUE
COLLEGE TOP
ELEVATOR
TERRACE
BLOCK 1 BRICK STREET BUILDING
CONCRETE WORKING SLAB
NOT OPEN TO USE
NOT OPEN TO USE
NOT OPEN TO USE

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EXHIBIT "G" - RESIDENTIAL DEVELOPMENT TRACT Page 1 of 3

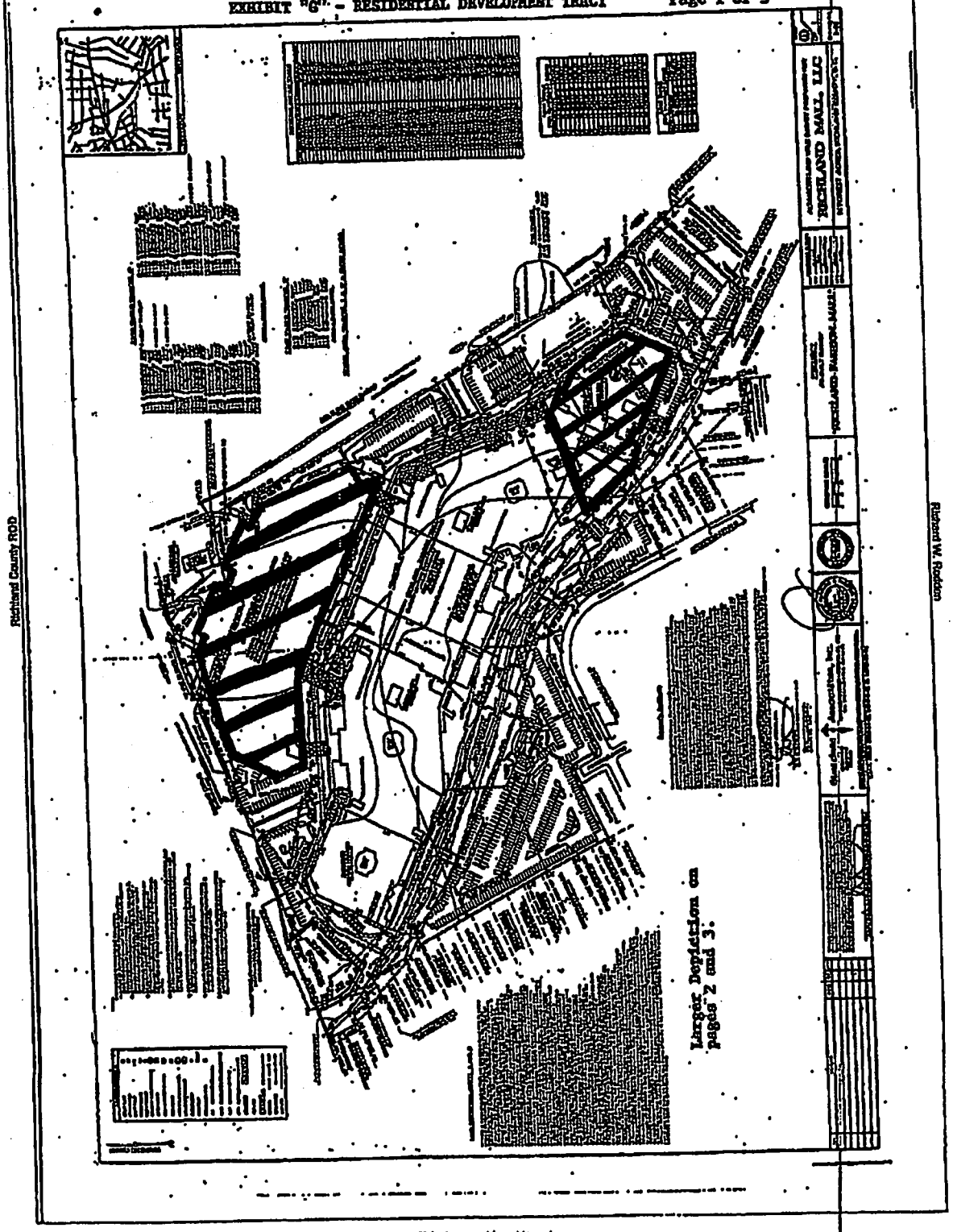

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EXHIBIT "G"- RESIDENTIAL DEVELOPMENT TRACT Page 2 of 3

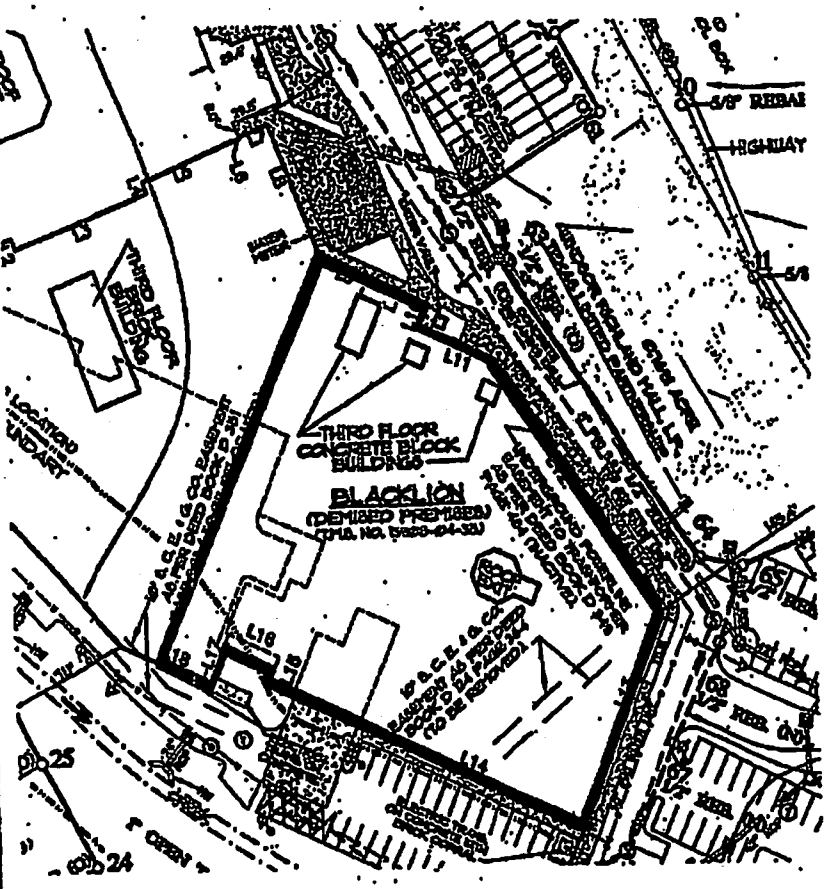

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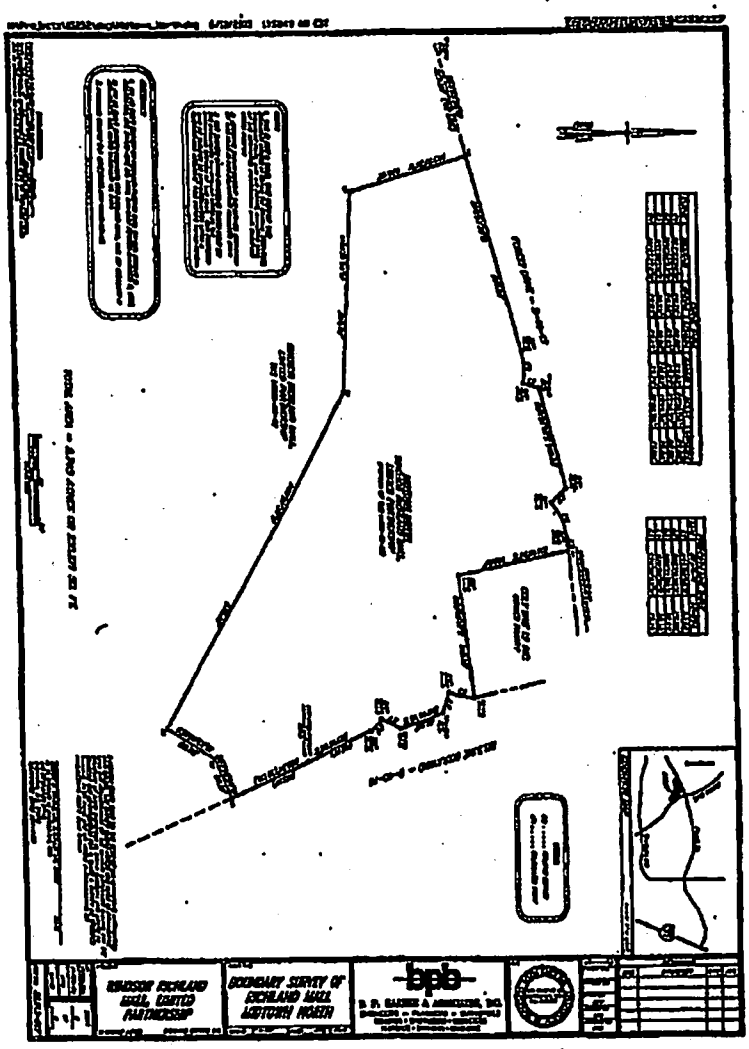
EXHIBIT "G"
RESIDENTIAL DEVELOPMENT TRACT
PAGE 3 of 3



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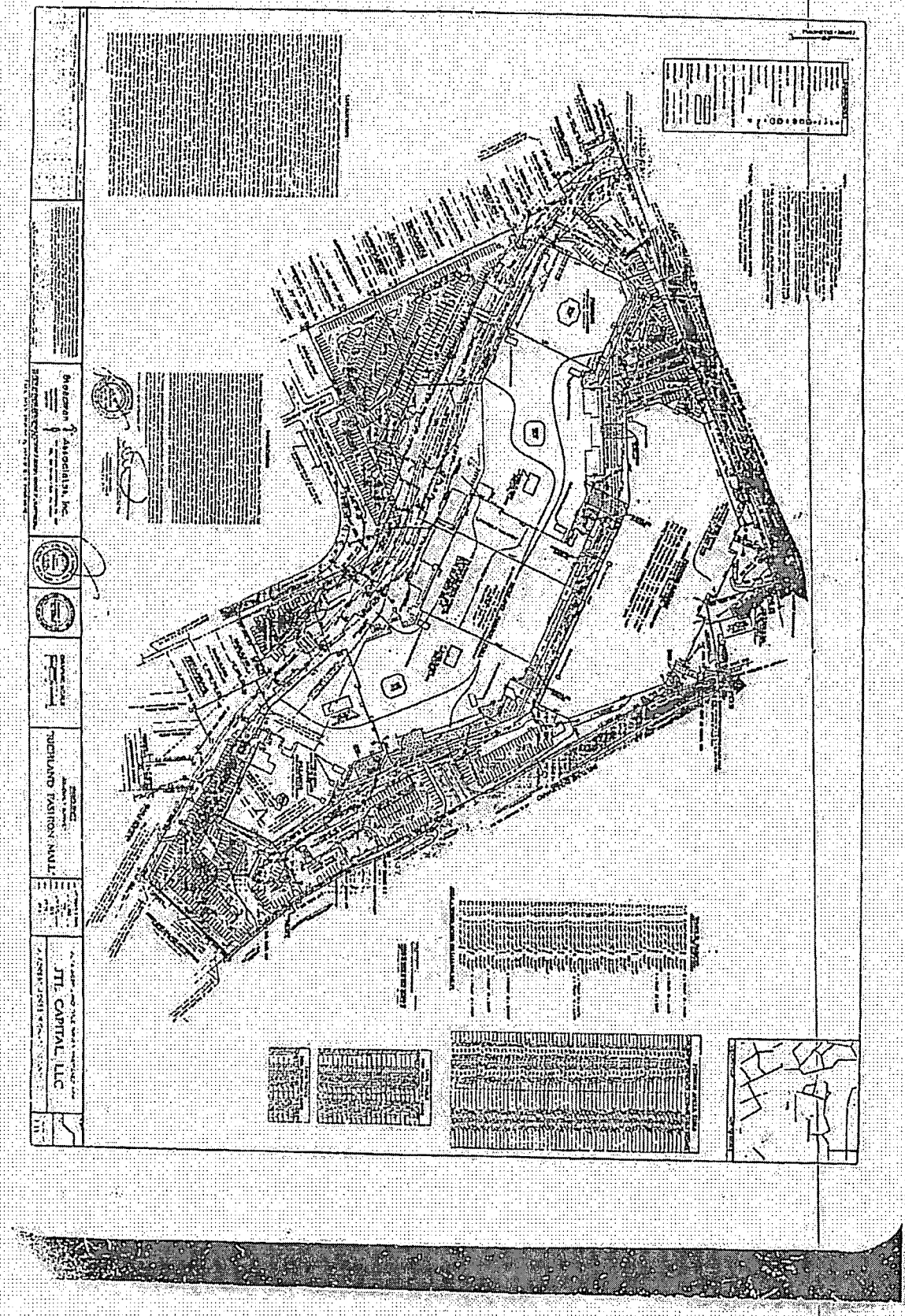
JTL CAPITAL, LLC

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

WHEREAS, Spirit SPE Columbia, LLC ("Spirit") purchased a parcel of property located at 3400 Forest Drive and known as the "Verizon Parcel" in the REA (defined below) in September 2005; and

WHEREAS, Century Capital Group, LLC ("CCG") purchased a parcel of property located at 3400 Forest Drive and known as the "Midtown Parcel" in the REA (defined below) in February 2010; and

WHEREAS, previous owners of the Midtown Parcel and Verizon Parcel entered into that certain Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration dated September 7, 2005, and recorded in Book 1097 at Page 2024 in the Office of the Register of Deeds for Richland County, South Carolina (the "REA"), that runs with the Midtown Parcel and Verizon Parcel and sets forth certain duties, responsibilities, obligations and easements between the owners of the Midtown Parcel, the Verizon Parcel, and the other properties that comprise the property commonly known as Richland Mall and located at 3400 Forest Drive; and

WHEREAS, Spirit and CCG are bound by the terms of the REA and the terms of the REA are incorporated herein by reference; and

WHEREAS, Spirit filed an action, entitled Spirit SPE Columbia, LLC, v. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually, civil action number 2010-CP-40-8407 in the Richland County Court of Common Pleas (hereinafter the "action" or the "lawsuit"), alleging that CCG had breached the terms of the REA in various respects; and

WHEREAS, CCG denied liability to Spirit, raised affirmative defenses and alleged cross-claims against Spirit; and

WHEREAS, the parties to the action desire to resolve the disputes and terminate the pending litigation.

NOW THEREFORE, intending to be legally bound, the parties agree and covenant as follows:

(a) **Payment from CCG to Spirit:** In exchange for the release, covenants and promises contained herein, CCG will pay Spirit the total sum of One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00) as follows:

1. Eight Hundred Thousand and NO/100 Dollars ($800,000.00) upon execution of this Settlement Agreement and Mutual Release ("Settlement Agreement").

2. Six-Hundred Fifty Thousand and NO/100 Dollars ($650,000.00) paid within six (6) months of the execution of this Settlement Agreement pursuant to the terms and conditions set forth herein.

3. CCG releases and waives any and all claims against Spirit to recover payment for providing condenser water or maintenance of the cooling tower prior to June 30, 2013. Spirit releases and waives any and all claims (including without limitation claims for negligence) against

CCG relating to the operation, maintenance or repair of the cooling tower and related piping prior to June 30, 2013.

4. As evidence of the requirement to make the $650,000.00 final payment within six (6) months of the Settlement Agreement, simultaneous with the execution of this Settlement Agreement, Defendant CCG shall execute and deliver to Spirit a Promissory Note in the initial principal amount of $650,000.00 (the "Note"). The Note shall be in the form of that note attached hereto as Exhibit "A". The Defendant CCG's obligations under the Note shall be secured by a first-priority lien on the Midtown Parcel to be evidenced by a mortgage executed by CCG and delivered to Plaintiff in the form of that mortgage attached hereto as Exhibit "B" (the "Spirit Mortgage"). CCG represents and warrants that the Midtown Parcel is currently unencumbered by any lien or mortgage and that the Spirit Mortgage shall be a first-priority lien superior to any other liens (other than possibly liens arising under the REA). Upon receipt of the executed Spirit Mortgage Spirit shall cause title to the Midtown Parcel to be updated in order to confirm that the Spirit Mortgage shall constitute a first-priority lien on the Midtown Parcel. Defendants shall cause any monetary lien shown to be senior to the Spirit Mortgage to be satisfied, released or subordinated to the lien of the Spirit Mortgage. If CCG sells its parcel before the expiration of (6) months, the Spirit Mortgage must be satisfied prior to or at the time of the sale.
5. Upon receipt of payment as required under the terms and conditions of the Note, Spirit will mark the Note and the Spirit Mortgage satisfied.

6. The parties agree that the $1,450,000 payment is provided for the release and extinguishment of any pre-June 30, 2013 liability related to the maintenance and repair of the Spirit parcel and the remaining consideration provided by CCG under this Settlement Agreement is provided for the pre-June 30, 2013 settlement of the CAM, accounting, and other claims asserted by Spirit.

(b) **Management of Common Areas**

Defendants William B. Walkup and Donald E. Taylor will cede management of the Common Areas (as defined in the REA) to a bona fide, independent third-party manager within ninety (90) days of the execution of this Settlement Agreement for so long as CCG owns the Midtown parcel. If Defendant CCG's employees or the third-party manager of the Common Area provide services to both the Common Area and the remainder of the

Midtown parcel, only an agreed upon portion of each such employee's salary or the third-party manager's fees will be allocated to Common Area Maintenance Charges (as defined in the REA) ("CAM"). The parties also agree that, to the extent administrative items relate to both CAM and the remainder of the Midtown parcel, only a portion of certain administrative items may be charged to CAM. Expenses will be determined by the third party manager in accordance with the REA.

(c) **Modification of REA:**

CCG and Spirit will enter into a modification of the REA (with respect to the owner of the Midtown Parcel and the owner of the Verizon Parcel) that reflects the following:

(1) The owner of the Verizon Parcel (currently the Plaintiff (Spirit)) agrees that it will pay Six Thousand Five Hundred and NO/100 Dollars ($6,500.00) per month, subject to annual Consumer Price Index ("CPI") increases, as payment for cooling water provided to the Verizon Parcel. The owner of the Midtown Parcel shall be responsible for the costs associated with maintaining and operating the cooling tower that provides condenser water to the Verizon Parcel. Maintenance shall mean all routine work to operate the cooling tower and to keep it running and shall specifically include chemicals, flushing of the cooling tower, and other routine maintenance of the cooling tower. The owner of the Verizon Parcel agrees to pay its pro-rata share, based on pro-rata design tonnage of the units serviced by the cooling tower, of the cost for repairs (to include replacement of components including motors, fans, cells exceeding $7,500) and replacement of the cooling tower. In the event of replacement of the cooling tower, the amount of the monthly cooling water payment to be delivered by the owner of the

Verizon Parcel may be re-negotiated to reflect its pro rata share of any cost savings achieved by installing a more efficient system.

(2) The owner of the Midtown Parcel shall operate, maintain and repair the cooling tower and also have the authority to continue to charge other users, parcel owners, Common Areas, and CCG tenants for the condenser water service it provides. Spirit shall have the right to continue to seek reimbursement from its tenants for the provision of condenser water to the Verizon Parcel. Under no circumstances shall either CCG or Spirit have the right to interfere with, terminate or disrupt each other's use of condenser water supplied by the cooling tower. In the event that the owner of the Midtown Parcel fails to repair or replace the condenser water system or disrupts the supply of condenser water to the Verizon Parcel, the owner of the Verizon Parcel shall have the right to undertake the necessary repair or replacement and deduct the expenses (less the Verizon Parcel owner's pro rata share, per the above, of such expenses) from future CAM payments.

(3) If the owner of the Verizon Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to pay for cooling water and the repair and replacement of the cooling tower upon one hundred eighty days' prior notice to the owner of the Midtown Parcel. If the owner of the Midtown Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to maintain, operate, repair and replace the cooling tower and provide cooling water for the Verizon Parcel upon one hundred eighty days' prior notice to the owner of the Verizon Parcel. Upon the effectiveness of the termination described in the immediately preceding sentence, the

foregoing paragraphs (1) and (2) shall terminate.

(4) Spirit and CCG agree that under the terms of the REA, with respect to expenses related to the maintenance of the Common Areas as defined in the REA, the REA does not require the owner of the Verizon Parcel to pay for any non-maintenance expense including, but not limited to the following: security, leasing, marketing, wired music, depreciation, travel and entertainment, business license and registration, subscriptions, membership/association fees and business meals. This paragraph (4) does not, however, affect the Verizon Parcel's owner's obligations under Article IV(B) of the REA regarding real property taxes, insurance premiums, deductibles or third-party management expenses.

(5) The parties agree that the Common Areas include the surface lot and landscaping on the Verizon Parcel, and the owner of the Midtown Parcel has an obligation to maintain that surface lot and landscaping subject to the reimbursement provisions of the REA.

(6) The parties agree that no lien placed on the property by one of the parcel owners for breach of the REA will have a priority that relates back to the date the REA was filed. Such a lien will have priority based upon its date of filing. Such a lien will not be subordinated to any other later-filed mortgage or lien unless by written consent of the party who filed the lien.

(7) Roof Leaks

(A) As to the current or any future roof leaks in the Verizon Parcel space that the owner of the Verizon Parcel believes is caused by a leak from the Midtown Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Verizon Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Midtown Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its expense. The Midtown Parcel owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner and must, in the case of the current roof leaks in the PWC space, be completed before CCG sells the Midtown Parcel.

(iii) If the Midtown Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Verizon Parcel owner shall have the right to make the repairs as determined by the independent expert. The Midtown Parcel owner shall be responsible for the costs incurred by the Verizon Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Verizon Parcel owner. In the event that said amounts are not paid to the owner of the Verizon Parcel within said period, such past due amounts shall

constitute a lien on the Midtown Parcel and the owner of the Verizon Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its own expense.

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Midtown Parcel. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Verizon Parcel.

(B) As to any future roof leaks in the Midtown Parcel space that the owner of the Midtown Parcel believes is caused by a leak from the Verizon Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Midtown Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Verizon Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its expense. The Verizon Parcel

owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner.

(iii) If the Verizon Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Midtown Parcel owner shall have the right to make the repairs as determined by the independent expert. The Verizon Parcel owner shall be responsible for the costs incurred by the Midtown Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Midtown Parcel owner. In the event that said amounts are not paid to the owner of the Midtown Parcel within said period, such past due amounts shall constitute a lien on the Verizon Parcel and the owner of the Midtown Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its own expense. .

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Verizon Parcel. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Midtown Parcel.

(C) The parties will submit the following issue to be decided by Judge Howard: "Is the expense for a roof repair to address leaks over a common area to be borne by the owner of the roof above the common area or is it chargeable to CAM?" The

parties will be bound by the Judge's ruling, and there will be no appeal from his ruling. The result will be included in the REA amendment.

(d) **Mutual Release**

1. **Spirit's Release:**

Based upon the foregoing consideration, Spirit, for itself and all of its members, managers, officers, directors, employees, representatives, assigns and successors hereby releases and forever discharges from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of this Settlement Agreement CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, William B. Walkup, and their respective employees, agents, officers, directors, shareholders, managers, members, heirs, executors, administrators, assigns, successors in interest under the REA, their predecessors in interest under the REA, and each predecessor in interest's employees, agents, heirs and assigns. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Midtown Parcel so as to avoid damage to the Verizon Parcel or a release of any claim for breach of this Settlement Agreement.

2. **CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup Release:**

Based upon the foregoing consideration, CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup (collectively "Defendants") for themselves and all of their members, officers, directors, employees, representatives, assigns and successors hereby release and forever discharge Spirit, its

affiliates and each of their successors, assigns, employees, agents and officers from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of the Settlement Agreement. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Verizon Parcel so as to avoid damage to the Midtown Parcel or a release of any claim for breach of this Settlement Agreement. Furthermore, Spirit acknowledges that this release does not release Spirit for any amounts not yet billed to it for the monthly period that includes the date of this Settlement Agreement.

Defendants will hold harmless, indemnify and defend Spirit for any and all costs, expenses and attorney fees arising from any attempt by Defendants to recover any amount paid under this Settlement Agreement from any third party. If any portion of the Amended REA is invalidated, the terms of this Settlement Agreement and Release will remain in force.

(e) **No Liability Admitted**. This Settlement Agreement is a compromise and settlement of a disputed claim and is intended merely to terminate the controversy between the parties and to avoid further litigation between them; it is not and is not to be construed to be an admission of liability on the part of any of the parties hereby released.

(f) **Dismissal with Prejudice**. The parties will, at the time they execute the Settlement Agreement, enter into a Consent Order of dismissal, dismissing the above-referenced lawsuit with prejudice.

(g) **Confidentiality**: Terms of the Settlement Agreement shall be kept

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confidential except to the extent property recordings/agreements need recording, to the extent necessary to sell or lease property, and to the extent necessary for Defendants to prosecute Contribution claims.

(h) **Attorneys' Fees.** Each party hereto shall bear its own attorneys' fees and costs incurred in connection with the lawsuit and/or the Settlement Agreement.

(i) **Miscellaneous Provisions.**

1. Additional Instruments. The Plaintiff and Defendants will each execute and deliver such other and further instruments as may be necessary to implement fully the terms of the Settlement Agreement, and agree to cooperate fully and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Settlement Agreement.

2. Binding Effect. This Settlement Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns, and estates of the Parties.

3. Governing Law. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina.

4. Invalid Provisions. If, after the date hereof, any provision of this Settlement Agreement is held to be invalid or unenforceable under present or future laws, such provision shall be fully severable.

5. Severability. If a provision of this Settlement Agreement is held to be unenforceable, the other provisions will remain in effect. If possible, the offending provision will be modified to the slightest degree necessary to make it enforceable, remaining as close as possible to the parties' original intent for the provision.

6. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the parties pertaining to the subject matter contained herein.

7. Amendment. This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by all of the parties.

WITNESSES:

(1) D. Ryan McLake (signature)

(1) D. Ryan McLake (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

(1) Angela S. Hook (signature)

(1) Angela S. Hook (name, printed)

(2) D. Ryan McLake (signature)

(2) D. Ryan McLake (name, printed)

(1) D. Ryan McLake (signature)

(1) D. Ryan McLake (name, printed)

(2) Angela S. Hook (signature)

W B Walkup
As representative of Century Capital Group, LLC

By: ~~Richard N. Burnside~~ William B. Walkup

Its: Managing Member

Date: 11-20, 2013

As representative of Don E. Taylor Realty Company

By: Donald E. Taylor

Its: President

Date: 11/20/13, 2013

W B Walkup
As representative of Walkup Management, Inc.

By: William B. Walkup

Its: President

(2) Angela S. Hook (name, printed)

Date: 11/20/13, 2013

(1) Angela S. Hook (signature)

Don E. Taylor

(1) Angela S. Hook (name, printed)

(2) D. Ryan McLuke (signature)

(2) D. Ryan McLuke (name, printed)

Date: 11-20-2013, 2013

(1) D. Ryan McLuke (signature)

William B. Walkup

(1) D. Ryan McLuke (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

Date: 11-20, 2013

(1) _____ (signature)

_____
As representative of Spirit SPE Columbia, LLC

(1) _____ (name, printed)

By: _____

(2) _____ (signature)

Its: _____

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
Don E. Taylor

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
William B. Walkup

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1) _____(signature)

(1) Daniel Rosenberg (name, printed)

(2) _____(signature)

_____
As representative of Spirit SPE Columbia, LLC

By: Mark Manheimer

Its: SVP

(2) Catherine Tiffany (name, printed)

Date: 12/4, 2013

For the Plaintiff:

_____

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: _____, 2013

For the Defendants:

_____

D. Ryan. McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: _____, 2013

(2) _____(name, printed)

Date:_____, 2013

For the Plaintiff:

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: 12/6, 2013

For the Defendants:

D. Ryan McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: 11-20, 2013

EXHIBIT "A"

PROMISSORY NOTE

$650,000.00

Columbia, South Carolina
November 20, 2013

FOR VALUE RECEIVED, **Century Capital Group, LLC**, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of **Spirit SPE Columbia, LLC**, a Delaware limited liability company (the "Lender"), at _____, _____, or at such other place or to such other party or parties as Lender may from time to time designate, the principal sum of up to **Six Hundred Fifty Thousand and no/100 ($650,000.00) Dollars**, with interest thereon (to the extent applicable) computed from date of each advance at the fixed rate of 18% per annum. Interest shall be computed on the actual number of days elapsed divided by a 360-day year and shall only accrue in the event of default in payment of this Note.

The entire outstanding principal balance of this Note shall be paid in a single, lump-sum payment be due and payable in full on June 2, 2014 (the "Maturity Date"). If the principal balance of this Note is paid on or before the Maturity Date, no interest shall be payable. Otherwise, accrued interest under this Note shall be payable on the Maturity Date.

All payments under this Note shall be applied first to late charges, if any, then to accrued interest (if applicable) and then to principal. All installments of principal and all interest are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Mortgage executed of even date between Century and Lender, then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any

endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender in such proceedings.

In the event the interest provisions hereof or any exactions provided for herein or in the lien documents or any other instruments securing this Note shall result, because of the monthly deduction of principal or any other reason related or unrelated to the interest provisions, at any time during the life of the loan, in an effective rate of interest which, for any period of time, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to principal immediately upon receipt of such monies by Lender with the same force and effect as though the payor had specifically designated such and agreed to accept such extra payment(s) as a premium free payment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect, by notice in writing to the owners of the property affected by the lien document securing this Note, to reduce or limit the collection of any interest to such sums, which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirement of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this loan transcend the limits imposed or provided by the law applicable to this transaction or Borrower in the jurisdiction in which the land is located for the use or detention of money or for forbearance in seeking its collection.

This Note is secured by a certain first-priority Mortgage of Real Estate and Security Agreement of even date herewith (the "Mortgage"), to which reference is made from the terms thereof, and the same are made a part of this Note.

Lender may collect a late charge of five (5%) percent of any installment of principal or interest which is not paid within five (5) days of the due date thereof to cover the extra time and expense involved in handling delinquent payments. Such late charge shall apply to late payments prior to maturity or acceleration. Upon maturity or acceleration, no further late charges shall be assessed, but Borrower shall pay the Default Rate of interest on all amounts due from the date of maturity or acceleration until the Note is paid in full. The collection of the late charge shall not be deemed a waiver by Lender of interest accruing after the due date of any installment or of any of Lender's other rights under this Note.

Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

Borrower waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in the lien document securing the Note released in whole or in part, or increased, changed or exchanged by agreement between Lender and any owner of premises affected by said lien document securing this Note without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder are to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue therein. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in

personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE MORTGAGE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

IN WITNESS WHEREOF, Borrower has executed this Note under seal, as of the date first above written.

Century Capital Group, LLC,
a South Carolina limited liability company

By: W B Walker
Its: managing member
Address: _____
_____

EXHIBIT "B"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made this 20th day of November 2013, by **Century Capital Group, LLC**, a South Carolina limited liability company whose address is _____, (the "Borrower"), and given **Spirit SPE Columbia, LLC**, a Delaware limited liability company, whose address is _____ (the "Lender").

WITNESSETH:

THAT WHEREAS, Borrower is indebted to Lender in the maximum principal sum of $650,000.00, which indebtedness is evidenced by the Note made by Borrower dated of even date, said principal (plus interest thereon) being payable as provided for in said Note; the terms of said Note and any agreement modifying it are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the said Borrower, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976): (i) all future advances and re-advances that may subsequently be made to Borrower by Lender evidenced by the aforesaid Note, or by other promissory notes, and all modifications, renewals and extensions thereof; and (ii) all other indebtedness of Borrower to Lender, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed $650,000.00, plus interest, charges, expenses and attorneys fees as permitted by the terms of the Promissory Note executed by Borrower on 11/20, 2013, has granted, bargained, sold, released and by these presents does grant, bargain, sell and release unto the Lender, its successors and assigns, the following described property (collectively hereinafter referred to as the "Property" or "Land"):

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

TOGETHER WITH:

(a) all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

(b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures and articles of personal property now or hereafter owned by the Borrower and attached to or contained in and used in connection with the aforesaid Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty");

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (a) and (b) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (a) and (b) hereof or any part hereof, or to any rights appurtenant thereto (together the "Easements and Other Interests");

(d) as additional collateral and further security for the indebtedness, the Borrower hereby conditionally assigns to the Lender all the security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due and all returned or repossessed goods now or hereafter pertaining to or resulting from the Property or any part hereof or constituting or derived from or acquired by any proceeds of the Property or any part thereof (the "Rents and Profits") reserving only the right to the Borrower to collect the same as long as there shall exist no Default (as hereinafter defined).

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Together with all proceeds, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of the Rents and Profits or any part hereof, and all replacements, modifications, renewals and substitutions thereof or therefore;

(e) as additional collateral and further security for the indebtedness, the Borrower does hereby assign to the Lender and grants to the Lender a security interest in all of the right, title and the interest of the Borrower in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architect's contracts, technical services agreements, licenses and permits now or hereafter affecting the Property (the "Intangible Personalty") or any part hereof, and the Borrower agrees to execute and deliver to the Lender such additional instruments, in form and substance satisfactory to the Lender, as may hereafter be requested by the Lender to evidence and confirm said assignment; provided, however, the acceptance of any such assignment shall not be construed as a consent by the Lender to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Lender any obligation with respect hereto;

(f) any proceeds of any sales or other dispositions of the property described in paragraphs (a), (b), and (c), hereof or any part hereof, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing ("Proceeds"); and

(g) all the Tangible Personalty which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the Tangible Personalty and the Intangible Personalty, this Mortgage shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Borrower. In that regard, the Borrower grants to the Lender a security interest in the Tangible Personalty, the Intangible Personalty and the Rents and Profits, and grants to Lender all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors or assigns of Lender forever.

BORROWER covenants that Borrower is lawfully seized of the Property in fee simple absolute, that Borrower has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly disclosed to Lender. This Mortgage shall constitute a first-priority lien on the subject Property. Borrower further covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Borrower and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Borrower and Lender, that if Borrower pays or causes to be paid to Lender the debt secured

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hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect

IT IS AGREED that Borrower shall be entitled to hold and enjoy the Property until a Default has occurred.

BORROWER further covenants and agrees with Lender as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Borrower absolutely and unconditionally assigns to Lender all Rents and Profits arising from the Property; provided however, that so long as no Default has occurred and is continuing, Borrower shall be entitled, as trustee for the use and benefit of the Lender, to collect and retain all such Rents and Profits as they become due and payable (but in no event for more than two (2) months in advance); provided, however, that if the Rents and Profits exceed the payments due under the Note, Borrower may use such excess, first, for the operation and benefit of the Property and, second, for the general benefit of Borrower. Upon the occurrence of a Default, Lender may, at its option, remove the Borrower as trustee for the collection of the Rents and Profits and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such Rents and Profits in payment of the obligations secured by this Mortgage, in such order as Lender shall elect in its sole and absolute discretion, whether or not Lender takes possession of the Property. Upon a Default, Borrower hereby directs each of the respective tenants under all leases of any part of the Property now and hereafter existing (the "Leases"), and any rental agent, to pay to Lender all such Rents and Profits, as may now be due or shall hereafter become due, upon demand for payment thereof by Lender without any obligation on the part of any such tenant or rental agent to determine whether or not a Default has in fact occurred. Upon a Default, the permission hereby given to Borrower to collect, receive and accept such Rents and Profits as trustee shall terminate and such permission shall not be reinstated upon a cure of the Default without Lender's specific written consent. Further, upon a Default, Borrower shall immediately turn over to Lender all Rents and Profits in the actual or constructive possession of Borrower, its affiliates, contractors, or its agents, together with an accounting thereof. Exercise of Lender's rights under this Section, and the application of any such Rents and Profits to the obligations secured by this Mortgage, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Lender.

2. intenance. Borrower will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Borrower will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Borrower will not remove or demolish any improvement or fixture which is now or hereafter part of the Property, other than in the ordinary course of business, without the express written consent of Lender which consent shall not be unreasonably withheld, conditioned or delayed. Lender shall be entitled to specific performance of the provisions of this paragraph.

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3. Insurance. Borrower will keep, or shall cause to be kept, all improvements and fixtures which are now or hereafter part of the Property insured by such company or companies as Lender may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the New York standard form of Lender clause or such other form of Lender clause as may be required by the Lender and will not be cancelable by either the insurer or the insured without at least ten (10) days prior written notice to Lender. Borrower hereby assigns to Lender the right to collect and receive any indemnity payment otherwise owed to Borrower upon any policy of insurance insuring any portion of the Property, regardless of whether Lender is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Lender from any such policy of insurance may, at the option of Lender, (i) be applied by Lender to payment of any sum secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement, repair or restoration to the portion to the Property damaged or destroyed, or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair or restoration to any portion of the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage. Borrower will keep the Property continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Borrower will pay each premium coming due on any such policy of insurance and will deliver to Lender proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Borrower will furnish to Lender at least ten (10) days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements hereof. If Borrower fails to insure the Property as herein required. Lender may, after giving (10) days written notice to Borrower, so insure the Property in the name of Borrower or in the name of Lender or both, and the premiums for any such insurance obtained by Lender shall be the obligation of Borrower. Upon foreclosure to this Mortgage, all right, title and interest of Borrower in and to any policy of insurance upon the Property which is in the custody of Lender, including the right to unearned premiums, shall vest in the purchaser of the Property at foreclosure, and Borrower hereby appoints Lender as the attorney in fact of Borrower to assign all right, title and interest of Borrower in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. Taxes and Assessments. Borrower will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and, if requested by Lender, will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Borrower shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collector of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Borrower deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. Appraisal. Borrower shall pay when due the reasonable cost of providing to Lender, at its request from time to time, a then-current appraisal of the market value of the Property prepared by an appraiser or by another appraiser acceptable to Lender in its discretion; provided, however, that Lender shall make such request no more frequently than once every third year, unless Lender is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such appraisal more frequently than every third year. If Borrower fails to pay such cost when due, Lender may pay such cost on Borrower's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Borrower's failure to pay such amount (with all accrued interest) in full within thirty (30) days of the date of such demand shall constitute an event of Default entitling the Lender to accelerate the maturity of the Note.

6. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter owned by Borrower and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property or any part thereof.

7. Condemnation. Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power or eminent domain of any portion of the Property. Borrower hereby assigns to Lender the right to collect and receive any payment or award to which Borrower would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (i) be applied by Lender to payment to any sums secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration to any portion to the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage.

8. Transfer. At the option of the Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent to the Lender, the Borrower shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever other than by death to the Borrower. It is understood and agreed that in consideration for the consent to the Lender to any transfer of title to the mortgaged premises, the Lender at its option may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments to principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

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9. Default. A "Default" shall be the occurrence or existence of any of the events listed in the Note or the Loan Agreement, including any grace and\or cure periods provided for therein.

10. Remedies. In addition to the remedies set forth in the Note or the Loan Agreement, upon the occurrence of a Default, Lender may, without notice to Borrower, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. If default shall be made in the payment of any amount due under the Note, the Mortgage or any other instrument securing the Note, then, upon Lender's demand Borrower will pay to Lender the whole amount due and payable under the Note and all other sums secured hereby; and if Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Lender's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Lender shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage and the right of Lender to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof. At the foreclosure Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Lender shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised. Without in any way limiting the generality of the foregoing, Lender shall also have the following specific rights and remedies:

(a) To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control.

(b) To cure such defaults, with the result that all costs and expenses incurred or paid by Lender in effecting such cure shall be additional charges on the Note which bear interest at the interest rate of the Note and are payable upon demand.

(c) If the Note is secured by a lien on any real property, to foreclose on such real property and to pursue any and all remedies available to Lender at law or in equity, and in any order Lender may desire, in Lender's sole discretion.

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11. No Waiver of One Default to Affect Another. No waiver of Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Property from the lien of this Mortgage or any other instrument securing the Note, or (e) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, the Mortgage or otherwise of Borrower, or any subsequent purchaser of the Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any event of Default then existing or of any subsequent event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby.

12. Appointment of Receiver. Upon the occurrence of a Default, Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums in insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or left undone by Borrower under this paragraph. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents, Lender, at its sole option, may advance moneys to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. The entering upon and taking and maintaining of control of the Property by

Lender or the receiver and the application of rents as provided herein shall not cure or waive any Default hereunder or invalidate any other right or remedy of Lender hereunder.

13. Waiver by Lender. Lender may, in the sole discretion of Lender, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

14. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid by U.S. Mail, certified mail, return receipt requested to the party to whom directed to the address stated above or to the latest address of such party known to the party sending the same. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

15. Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the indebtedness and the cancellation of this Mortgage of record, Borrower obtains a fee estate in such portion of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of Borrower, be and become subject to the security lien of this Mortgage.

16. Imposition of Tax. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the Borrower will promptly pay any such tax on or before the due date thereof; and if the Borrower fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Lender, unless Borrower agrees in writing to indemnify Lender against any loss or damage associated with such payment or penalty.

17. Changes, etc. Neither the Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Borrower and Lender relating to the Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

18. Partial Foreclosure. In the event the Property is comprised of more than one parcel of real property, Borrower hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

19. Security Agreement; Financing Statement. This Mortgage constitutes a security agreement within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of South Carolina and as amended from time to time. The addresses for the Borrower as debtor and the Lender as secured party are set forth in the introductory paragraph to this Mortgage. Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the County in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as secured party, or the Borrower, as debtor, at the address first shown above.

20. Miscellaneous.

(a) It is understood and agreed that all indebtedness of Borrower to Lender at any time hereafter existing resulting from advances and re-advances heretofore, now or hereafter made by Lender to Borrower, regardless of whether such advances and re-advances are made at the option of the Lender, or otherwise, will be secured by this instrument up to the maximum principal amount hereinabove set forth, plus interest thereon, court costs and attorney's fees until all of said indebtedness has been satisfied in full.

(b) The agreements herein shall inure to the benefit of Lender, its successors and assigns, and any successor or assign of Lender may make advances hereunder, and all advances and all other indebtedness of Borrower to such successor or assign shall be secured hereby.

(c) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.

(d) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

(e) If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve

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transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if such clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage, in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

(f) This Mortgage shall be construed and enforced in accordance with the laws of South Carolina.

(g) Waiver by Borrower. Borrower understands that upon default hereunder, among other remedies set out herein and in the Note, the Lender may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to Section 29-3-660, South Carolina Code of Laws (1976). The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE BORROWER HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Borrower has executed this Mortgage under seal the day and year first above written.

Witnesses:

D. Regan Mcluhe

Angela A. Hoore

BORROWER:

Century Capital Group, LLC

By: W B Walkup

Name: W B WALKUP

Title: MANAGING MEMBER

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ACKNOWLEDGEMENT

I, Angela S. Hook, do hereby certify that William B. Walkup, as the managing member of Century Capital Group, LLC, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 20th day of November, 2013.

Angela S. Hook
Notary Public for South Carolina
My Commission expires: 1/27/2021

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William D. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **PLAINTIFF SPIRIT SPE COLUMBIA, LLC'S THIRD AMENDED COMPLAINT**

The Plaintiff, above named, complaining of Defendants, above named, alleges and says as follows:

JURISDICTION AND VENUE

1. Plaintiff Spirit SPE Columbia, LLC ("Spirit") is a Delaware limited liability company that owns a tract or parcel of land (the "Spirit Parcel") situated in The City of Forest Acres, County of Richland, South Carolina, within what is commonly known as Richland Fashion Mall. The parcel is more particularly described on Exhibit "B" to the Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration attached as hereto as Exhibit 1.

2. Upon information and belief, Defendant Century Capital Group, LLC ("Century") is a South Carolina limited liability company that owns a tract or parcel of land (the "Shopping Mall Parcel") situated in The City of Forest Acres, County of Richland, South Carolina, within what is commonly known as Richland Fashion Mall. The parcel is more particularly described on Exhibit "A" to the Reciprocal Easement,

Covenant, Operation and Restriction Agreement and Declaration attached hereto as Exhibit 1.

3. Upon information and belief, Defendant Walkup Management, Inc. ("Walkup Management"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

4. Upon information and belief, Defendant Don E. Taylor Realty Company ("Taylor Realty"), is a sole proprietorship with its principal place of business in Richland County, South Carolina.

5. Upon information and belief, Defendant Donald E. Taylor, is a citizen and resident of Richland County, South Carolina.

6. Upon information and belief, Defendant William D. Walkup, is a citizen and resident of Richland County, South Carolina.

7. Venue is appropriate in Richland County, South Carolina because the Defendants reside in Richland County, and most of the acts giving rise to the causes of action contained herein occurred in Richland County, South Carolina.

GENERAL ALLEGATIONS

8. A Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration ("REA") filed at Richland County Deed book 1097 page 2024 on September 12, 2005, which is attached hereto as Exhibit "2" and made a part hereof, runs with the land and sets forth certain agreements, easements, covenants, restrictions rights and obligations of the owners of the Shopping Mall Parcel and the Spirit Parcel. The REA specifies, among other things, the owner of the Shopping Mall Parcel is responsible

for performing and paying for all maintenance and repairs to the Common Areas and the maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel prior to November 30, 2010.

9. Since taking possession and operating as manager of the Shopping Mall Property, Defendants have failed to maintain and repair the Spirit Parcel in accordance with the REA, over billed and/or billed for expenses not allowed under the REA, performed what little maintenance work that was undertaken in an unworkmanlike and deficient manner, failed and refused to correct deficient maintenance and refused to cure defective performance or honor express and implied warranties under the REA. As a result of the Defendants' failure to perform as required by the REA, Plaintiff has incurred, and will incur in the future, costs to repair and maintain the HVAC system, roof and other structural systems in the Spirit Parcel and other areas considered common areas under the REA. In addition, Plaintiff has suffered water and mold damage to the interior spaces of the Spirit Parcel as a result of Defendants' failure to properly maintain the Spirit property.

10. All of these costs were incurred as a direct result of Defendants' past and ongoing failure to maintain the Spirit Property as required by the REA.

11. In addition, Plaintiff has been billed for items, including but not limited to "management fees" that were not within the REA and were created as a scheme by which Defendants attempted to enrich themselves without adding any benefit to Plaintiff's ownership and operation of the Spirit Parcel.

12. Notwithstanding that the Defendants' actions were fraudulent, that Defendants have attempted to bill Plaintiff in excess of the amounts allowed under the

REA, and that Defendants knowingly failed and refused to abide by the terms of the REA, specifically as to maintenance of the roof, HVAC and other common areas, Defendants filed liens and a Lis Pendens against the Spirit Property. Defendants never had a legal right to file the liens and Lis Pendens, and their doing so was wrongful, slandered the title of the Plaintiff's property, and constituted a frivolous lien under South Carolina law.

FOR A FIRST CAUSE OF ACTION
(Breach of the REA)

13. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

14. Century failed to properly maintain the common areas and the HVAC systems, roofing system and structural components of the Spirit Parcel prior to November 30, 2010.

15. Spirit demanded that Century maintain and/or repair the common areas, HVAC systems and roofing system on the Spirit Parcel prior to November 30, 2010.

16. Century knew that the repair work demanded by Spirit needed to be done prior to November 30, 2010.

17. Century failed to and refused to maintain and/or repair the common areas, HVAC systems and roofing system if the Spirit Parcel, and is therefore in breach of the REA.

18. Since November 30, 2010, Century continues to refuse to maintain and repair some common areas of the Mall Property, and maintains other common areas of the Mall Property in a substandard manner in violation of the REA.

19. Spirit has incurred and will in the future incur expense to perform the repairs and maintenance that should have been performed by Century prior to November 30, 2010 and to maintain common areas that Century has continued to neglect since November 30, 2010.

20. In addition, the Defendants have failed to repair their roof and common areas, which is causing water to enter Plaintiff's property, damage the interior spaces and disrupt the business activities of Spirit's tenants.

21. The managing members of Century, Defendants Donald Taylor and William Walkup through what are essentially sham business entities, have violated the terms of the REA by hiring each other as "property managers" responsible for maintenance of the common areas.

22. Century is charging Plaintiff for expenses that do not constitute legitimate CAM expenses pursuant to the terms of the REA. In addition, Century is attempting to charge Spirit a "cooling water" charge that is not permitted pursuant to the terms of the REA.

23. All of the aforesaid are breaches of the REA and the direct and proximate causes of damages to the Plaintiff in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

24. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

25. The REA defines the common areas and what expenses constitute legitimate CAM expenses for which Century can seek reimbursement. One of the

expenses allowed is a market rate management fee paid to a third party to manage the common areas.

26. Century is charging Spirit and other parcel owners for expenses that do not constitute legitimate CAM expenses as defined in the REA.

27. Spirit has disputed the legitimacy of amounts charged by Century as CAM expenses.

28. However, in order to have Spirit satisfy the liens filed against its ownership interest in the property, dismiss the counterclaim for foreclosure and remove the Lis Pendens, Spirit paid Century all amounts Century claims it is owed for reimbursement of CAM expenses without waiving its rights to seek a declaration from this Court as to what amounts are properly owed as CAM.

29. Plaintiff seeks a declaration by this Court as to what, if any, additional amounts are owed to Century as reimbursement for legitimate CAM expenses as provided under the terms of the REA. In addition, Spirit seeks a declaration by this Court as to what amounts Century must repay Spirit for illegitimate CAM charges levied by Century.

30. The Defendants refuse to repair their own roof, repair common areas and maintain areas that are defined as common areas by the REA. Their failure to do so is causing damage to Spirit's property and disruption to the business activities of Plaintiff's tenants.

31. Century is also charging Spirit for providing cooling water used in the operation of a cooling water tower situated on Spirit's property. These charges are not permitted under the REA.

32. Defendants have hired entities that they control to act as "management" companies that are not "third parties" as contemplated by the REA, that have an inherent conflict of interest because they are owned by the members of Century, and that have failed to properly maintain the Mall property as required by the REA.

33. Therefore, Plaintiff seeks a declaratory judgment as to (1) what charges constitute legitimate CAM charges under the REA and the proper amounts that can be charged; (2) what areas of the Mall Property that Defendants are required to maintain as common areas under the REA; (3) whether Spirit is required to pay a cooling water charge under the REA; and (4) whether Defendants can appoint themselves or their self-owned business entities as property managers under terms of the REA. The Plaintiff also seeks an Order from this Court requiring the Defendants to repair their roof and common areas so that water does not infiltrate Plaintiff's property and cause damages.

FOR A THIRD CAUSE OF ACTION
(Negligence)

34. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

35. Defendants owed a duty to Plaintiffs under the REA to maintain the Spirit Parcel and other parts of the Mall Property in compliance with applicable building codes, industry standards and the terms of the REA.

36. Defendants breached those duties by failing to maintain the Spirit Property in one or more of the following particulars:

(a) In failing to properly maintain and repair the HVAC, roof system and structural components;

(b) In failing to perform repair work recommended by experts engaged to determine what work needed to be done to stop the roof from leaking on the Spirit parcel;

(c) In failing to use adequate and proper building materials and techniques for maintenance that was undertaken;

(d) In failing to protect interior spaces of the Spirit Parcel and common areas from water damage, mold damage and corrosion;

(e) In failing to use due care in the maintenance of the Spirit Property;

(f) In failing to properly maintain the common areas of the Mall Property as required by the REA; and

(g) In failing to use that degree of care and caution which a reasonable and prudent property manager would have exercised in the maintenance of like structures.

37. Furthermore, Defendants owe a duty to repair and maintain their own roof and property to prevent water from entering Spirit's property and causing water damage and business interruption to Spirit's tenants.

38. Despite repeated demands to repair and maintain their property, the Defendants have failed to take corrective action, which is causing continuing and repeated damage to Spirit's property, resulting in damages that are continuing and repetitive in nature.

39. As a direct and proximate result of Defendants' negligent, reckless, willful and wanton conduct, Plaintiff sustained actual damages, including property damage to the Spirit Parcel and their personal property, and the Spirit Parcel and its occupants were and continue to be subjected to continuous and repeated exposure to harmful conditions, as a result of the acts and/or omissions of all Defendants that combined and concurred to cause and have continued to cause Plaintiff harm, causing damages, necessitating repairs and causing Plaintiff to lose the beneficial use of portions of their property and devaluing

said property; accordingly, Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices)

40. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

41. The actions of all of the Defendants in appointing themselves property managers of the Mall Property created an inherent conflict of interest, which, in turn, allowed Defendants to create a scheme by which they fraudulently charged Plaintiff and other tenants excessive fees and costs, which were not allowed under the REA. In addition, the Defendants intentionally failed and refused to perform maintenance and repair work on the Spirit Parcel and other common areas of the Mall Property before and since November 30, 2010.

42. In addition, Defendants filed liens against Spirit's ownership interest and intentionally refused to satisfy those liens once the liens were paid for the purpose of injuring Spirit.

43. Such actions constitute unfair and deceptive acts or practices in the conduct of trade or commerce and violate the South Carolina Unfair Trade Practices Act § 39-5-20 of the Code of Laws of South Carolina.

44. These acts are capable of repetition and affect the public interest.

45. As a result of Defendants' violation of the Unfair Trade Practices Act, Plaintiff sustained actual damages including paying for fees and costs outside of the REA, and were forced to defend against a Lis Pendens that was wrongfully filed and

includes numerous, inflated charges that resulted from Defendants' appointing themselves as managers of the Mall Property.

46. Defendants' actions were willful and Plaintiff is thereby entitled to treble damages and reasonable attorneys' fees as provided in the statute.

FOR A FIFTH CAUSE OF ACTION
(Fraud)

47. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

48. Prior to the REA, Defendants represented to Plaintiff that they would provide maintenance and repairs to the Mall Property and, in particular, the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel.

49. Subsequent to the REA, Plaintiff made repeated requests for repairs and routine maintenance services on the Spirit Parcel. Defendants continued to represent to Plaintiff that they would provide maintenance and repairs to the Mall Property and the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel.

50. Subsequent to the REA, Defendants represented to Plaintiff that Plaintiff was liable to Defendants for HVAC cooling water charges under the terms of the REA. Defendants also informed Plaintiff on numerous occasions that any failure to pay for HVAC cooling water charges constituted a breach of the REA. Defendants have threatened to terminate cooling water service to the Spirit Parcel, claiming that Plaintiff is obligated to pay such charges pursuant to the REA.

51. Those representations were false in the following respects:

a) Defendants have not provided accurate and truthful responses to Plaintiff's repeated requests for maintenance and repairs to the Mall Property and the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel;

b) Defendants accepted Plaintiff's payment of their CAM charges, while simultaneously refusing and failing to make repairs to the HVAC, roof system and structural components of the Spirit Parcel;

c) Defendants knew they were legally obligated to make repairs to the HVAC, roof system and structural components of the Spirit Parcel under the terms of the REA, but purposely ignored and/or refused to make said repairs;

d) Defendants knew their failure to make repairs to the HVAC, roof system and structural components of the Spirit Parcel under the terms of the REA would cause significant damage to the Spirit Parcel;

e) Defendants knew that they were not allowed to charge Plaintiff for cooling water services under the REA. Despite this knowledge, Defendants continued to charge Plaintiff for cooling water service under the guise of CAM charges and have threatened to terminate cooling water service to the Spirit Parcel when they know they have no grounds, contractually or otherwise, for doing so.

52. These representations were material, in that they were the basis of Plaintiff agreeing to enter into the REA with Defendants, Plaintiff's payment of CAM fees to Defendants for the very purpose of providing maintenance and repair services to the Spirit Parcel, and, moreover, entrusting Defendants with the maintenance and repair of the common areas of the Spirit Parcel and Mall Property in general.

53. Upon information and belief, when Defendants made these representations, they either had knowledge of their falsity, or recklessly disregarded for the falsity of the representations.

54. Defendants manifested their intent that Plaintiff act upon these representations through their actions and conduct. Specifically, Defendants intended to enter into the REA with Plaintiff to induce Plaintiff to pay CAM fees to the Defendants, and to entrust Defendants with management of the maintenance and repair of the common areas of the Spirit Parcel and Mall Property.

55. Plaintiff was ignorant of the falsity of Defendants' representations.

56. Plaintiff relied on these representations, as demonstrated by Plaintiff's actions of entering into the REA with Defendants, continuous payment of Defendants' CAM charges, and entrusting Defendants with the maintenance and repair of the common areas of the Spirit Parcel and Mall Property.

57. Plaintiff had a right to rely on these representations as Plaintiff was unable to uncover the falsity with any further due diligence, Defendants were in sole possession of information regarding the truthfulness of these representations, and Defendants were bound by fiduciary duties to Plaintiff when making these representations.

58. Plaintiff has suffered significant economic losses as the direct and proximate result of Defendants' false representations.

FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud)

59. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

60. In the alternative that Defendants did not have a dishonest purpose or intent to deceive Plaintiff when making the aforesaid representations, Plaintiff asserts that Defendants nevertheless made false, material statements as described in paragraphs 44 to 55.

61. Defendants intended for Plaintiff to rely upon these statements, and Plaintiff did so rightly rely without on them knowledge of their falsity, which could not be uncovered by any further due diligence by Plaintiff. Plaintiff has suffered significant economic losses as the direct and proximate result of Defendant's false representations.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract accompanied by a Fraudulent Act)

62. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

63. Defendants aforesaid breaches of contract were accompanied by fraudulent actions and statements to Plaintiff.

64. Defendants held a fraudulent intent when making the fraudulent acts and statements to Plaintiff while breaching the aforesaid contract.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Misrepresentation)

65. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

66. Defendants falsely represented to Plaintiff that they would make best efforts in their fulfilling their obligation to maintain and repair the HVAC, roof system and structural components of the Spirit Parcel.

67. Defendants had a pecuniary interest in making these representations as they were positioned to make financial gain as a result of the continued operation of the Spirit Parcel and Plaintiff's payment of CAM charges.

68. Defendants owed a duty of care to the Plaintiff because:

a) Of the special and fiduciary relationships between Defendants and Plaintiff;

b) Defendants undertook to act towards Plaintiff on these matters; and

c) Defendants held a pecuniary interest in and peculiar knowledge of the subject of the representations.

69. Defendants failed to exercise due care in making these representations to Plaintiff.

70. Plaintiff's reliance on the false representations was justifiable in light of the circumstances discussed in the preceding paragraphs and the relationship between the parties.

71. As a proximate result of the Defendants' actions, the Spirit Parcel sustained significant damage and Plaintiff suffered significant financial loss.

FOR A TENTH CAUSE OF ACTION
(Restitution/Unjust Enrichment)

72. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

73. In the alternative that the Plaintiff has no available remedy at law, Plaintiff has conferred a non-gratuitous benefit on Defendants in the form of payment of CAM charges.

74. Defendants have realized some value from Plaintiff from the receipt or appropriation of these benefits.

75. In light of Defendants' actions discussed in the proceeding paragraphs, it would be inequitable for Defendants to retain this benefit, giving rise to unjust enrichment.

76. As a result of Defendants' actions and inactions, Plaintiff is entitled to a judgment and an award of damages for the injury it incurred under this claim for Defendants' unjust enrichment, including prejudgment interest and an order establishing a constructive trust over Defendants' assets for purposes of paying for the repairs to the HVAC, roof system and structural components of the Spirit Parcel that were damaged due to Defendants' failure to perform maintenance and repairs on the Spirit Parcel.

FOR A TWELTH CAUSE OF ACTION
(Piercing the Corporate Veil)

77. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

78. Upon information and belief, Defendants Taylor and Walkup have improperly utilized the assets of the Century for their own individual purposes and for the purposes of their respective companies, Don E. Taylor Realty Company and Walkup Management, Inc., which are essentially sham corporate entities put in place to disguise Taylor and Walkup's financial and business activities as it relates to the management of the Spirit Parcel and Mall Property.

79. Defendants Taylor and Walkup have used the corporate entities of Don E. Taylor Realty Company, Walkup Management, Inc. and Century Capital Group, LLC for

their own purposes and profit, such that grave injustices have resulted and will continue to all who do business with Defendants if this conduct is allowed to continue.

80. As a result of Defendants' actions, Plaintiffs respectfully requests and order from this Court finding that the Defendants Don E. Taylor Realty Company, Walkup Management, Inc. and Century Capital Group, LLC corporate veil is pierced of the corporate entities involved herein, and that the judgments Plaintiff obtains herein shall be effective as against all Defendants jointly and severally where appropriate.

FOR A THIRTEENTH CAUSE OF ACTION
(Civil Conspiracy)

81. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

82. Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company have conspired with each other to engage in management and maintenance services in violation of the REA.

83. The purpose of Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company's agreement was to injure Plaintiff and other tenants to cause them damage by violating the REA with respect to management and maintenance of the Spirit Parcel and other common areas of the Mall Property.

84. As a direct and proximate result, Plaintiff has been harmed, and Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company have caused damages to Plaintiff. These special damages are in addition to the damages caused by Defendants' breach of the REA.

FOR A FOURTEENTH CAUSE OF ACTION
(Slander of Title)

85. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

86. Century filed liens against Plaintiff's property as described above, when they knew or should have known that they had no legal right to do so and that the liens included amounts charged by Century as illegitimate CAM charges.

87. Century failed to satisfy those liens when they were paid when they knew or should have known that they had no legal right to maintain those liens as a matter of record and that the liens included amounts charged by Century as illegitimate CAM charges.

88. The filing of the liens was intended to and did, in fact, place a cloud upon and disparage Plaintiff's title to the Spirit Property.

89. As a result of the filing of the liens, Plaintiff's property was impaired and their ability to use it, enjoy the full benefits of it or transfer it was impaired.

90. As a direct and proximate result, Century slandered the title of the Spirit Property, and they are liable for special damages resulting therefrom, including the costs and attorneys' fees associated with removal of the liens and the costs and attorneys' fees incurred in this action.

FOR A FIFTEENTH CAUSE OF ACTION
(Breach of Warranty)

91. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

92. Pursuant to the terms of the REA, Defendants contracted with Plaintiff to provide maintenance and repair services on the Spirit Parcel. These services included,

among other things, maintenance and repair of the HVAC, roof system and structural components on the Spirit Parcel.

93. Defendants and their subcontractors expressly and/or impliedly warranted that their respective services would be performed in a careful, diligent, and workmanlike manner, that their respective maintenance and repair services would be carried out in a manner consistent with standards of proper workmanship, that their respective services would be free of defects, and that the product of their services would be reasonably fitted for their intended purposes.

94. Defendants provided maintenance and repair services on the Spirit Parcel that were negligent, defective, unworkmanlike in manner, and not suitable or appropriate for their intended purpose and the HVAC, roof system, structural components, and interior of the Spirit Parcel sustained damage in excess of $3 million as a result of Defendants faulty and defective maintenance and repair services.

95. As a result of Defendants failure to properly repair and maintain the Spirit Parcel, Defendants breached their express and/or implied warranties, and Plaintiff is entitled to judgment against Defendants and their subcontractors for the costs of all remediation and repairs incurred by Plaintiff on the Spirit Parcel to date.

FOR A SIXTEENTH CAUSE OF ACTION
(Nuisance)

96. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

97. Pursuant to the terms of the REA, the owner of the Shopping Mall Parcel is responsible for performing and paying for all maintenance and repairs to the roof system and structural components of the Spirit Parcel prior to November 30, 2010.

98. Since taking possession and operating as manager of the Shopping Mall Property, Defendants have failed to maintain and repair the roof over the Spirit Parcel in accordance with the REA, performed what little maintenance work that was undertaken on the roof in an unworkmanlike and deficient manner, failed and refused to correct deficient maintenance on the roof and have steadfastly refused to cure defective performance or honor express and implied warranties on the roof as required by the REA. More specifically, Defendants have essentially neglected the roof above the Spirit Parcel.

99. As a result of Defendants neglect of the roof above the Spirit Parcel, Plaintiff has suffered water and mold damage to the interior spaces of the Spirit Parcel.

100. Spirit repaired has repaired its roof. However, Century has failed to properly maintain and repair its roof and other common areas, which has resulted in water passing through their roof and common areas and travelling into Spirit's property causing water damage and interruption to the business activities of Spirit's tenants.

101. To date Defendants have made no repairs to their roof and have done nothing to correct the damages that were sustained in the Spirit Parcel. Moreover, Defendants have made no offer to compensate Spirit or the tenant of the Spirit Parcel for the expenses incurred with their efforts to remedy the damages to the interior of the Spirit Parcel or the damages resulting from the interruption of the business operations of the tenant in the Spirit Parcel.

102. Defendants' neglect of their roof and Mall common areas that continues to cause unfettered water intrusion constitutes an ongoing, unreasonable interference with Spirit's use and enjoyment of the Spirit Parcel and is a permanent nuisance. Moreover,

the water intrusion caused by Defendant's lack of maintenance on the roof has caused continuous, severe interruptions in the business operations at the Spirit Parcel.

103. This permanent nuisance entitles Spirit to equitable relief in the form of an injunction ordering Defendants to immediately remedy the leaks in the roof above the Spirit Parcel. Additionally, Spirit alleges that such nuisance entitles it to recover both actual and punitive damages.

FOR A SEVENTEENTH CAUSE OF ACTION
(Trespass)

104. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

105. Defendants have actual knowledge of the long history of water intrusion from the roof above the Spirit Parcel and have intentionally neglected their duty to remedy this situation. Defendants' knew that their intentional neglect of the roof issues would allow water to penetrate the roof, enter the Spirit Parcel and damage the surrounding areas. All of these actions were taken without Spirit's permission. In fact, Spirit and its representatives have, on countless occasions, brought this problem to Defendants' attention, but Defendants have adamantly refused to repair the roof.

106. Spirit was in lawful possession of the Spirit Parcel at the time of the damages have occurred.

107. Defendants' knew about the water intrusion issues at the Spirit Parcel and intentionally refused to remedy this situation in order to avoid costs associated with repairs to their roof and the common areas.

108. Defendants knew that rainstorms would lead to further water penetration from the roof into the Spirit Parcel.

109. Defendants' intentional refusal to remedy the roof problems has caused and will continue to cause damages to the interior of the Spirit Parcel. Defendants' intentional conduct constitutes a voluntary intrusion in to the Spirit Parcel. This intrusion occurred without Spirit's permission.

110. The intrusion of water from originating from Defendants' roof and mall common areas constitutes a continuing trespass that, based on the intentional refusal of Defendants to act in the face of an open and obvious defect, shows no signs of remedy in the future and will continue to cause damage to the Spirit Parcel.

111. Further, this trespass creates an unreasonably hazardous condition wherein the water intrusion, both seen and unseen, can lead to the development of mold and other issues in the interior of the Spirit parcel.

112. This continuing trespass entitles Spirit to equitable relief in the form of an injunction ordering Defendants to immediately remedy the leaks in the roof above the Spirit Parcel in order to prevent any further invasion of the Spirit Parcel by Defendants. Additionally, Spirit alleges that such trespass entitles it to recover both actual and punitive damages.

WHEREFORE, Plaintiff prays that the Court grant judgment against the Defendants and for the following relief:

a. For a declaration setting forth to the acceptable charges under REA, what areas of the Mall Property that Defendants have to maintain as common areas under the REA; whether Spirit is required to pay a cooling water charge under the REA; whether Defendants can appoint themselves as property managers under terms of the REA without an apparent and/or inherent conflict of interest; and an Order directing the

Defendants to repair their roof and the commons areas so as to stop the water intrusion into Spirit's property.

b. For actual damages against all Defendants in an amount to be determined by the Court;

c. For punitive damages against all Defendants in an amount to be determined by the Court;

d. For attorneys' fees and costs in favor of Plaintiff as the prevailing party under the REA;

e. For attorneys' fees and costs as consequential damages for slander of title;

f. For treble damages, reasonable attorneys' fees and costs pursuant to the Unfair Trade Practices Act;

g. For special damages;

h. For an order piercing the corporate veil as to Defendants Century Capital Group, LLC, Walkup Management, Inc., and Don E. Taylor Realty Company and that the judgments Plaintiff obtains herein be effective as against all Defendants jointly and severally;

i. For pre-judgment interest;

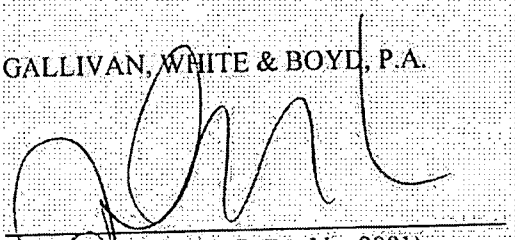
j. For a constructive trust over Defendants' assets for purposes of paying for repairs to the HVAC, roof system and structural components of the Spirit Parcel that were damaged due to Defendants' failure to perform maintenance and repairs; and

k. For an order requiring Defendants to repair the roof above the Spirit Parcel to remedy the constant, unfettered water intrusion that is currently experienced at the

Spirit Parcel and to further order Defendants to repair the damages sustained in the interior of the Spirit Parcel as a result of said water intrusion;

l. For such other and further relief as the Court shall deem just and proper.

GALLIVAN, WHITE & BOYD, P.A.



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Attorneys for the Plaintiff
Spirit SPE Columbia, LLC

Columbia, South Carolina
September 17, 2012

RECORD ON APPEAL 094

EXHIBIT 1

RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION

THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION, ("Agreement") is made as of this 1st day of September, 2005, by and between BRC RICHLAND, LLC, a Georgia limited liability company ("BRC"), and WINDSOR RICHLAND MALL, L.P., a Texas limited partnership ("Windsor").

W I T N E S S E T H:

WHEREAS, Windsor [illegible] that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, contemporaneously herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless retail center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

WHEREAS, the Shopping Mall Parcel less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

WHEREAS, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 5, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2005 (the "Verizon Lease"); and

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WHEREAS, it is anticipated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

WHEREAS, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Verizon under the Verizon Lease be protected and preserved,

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

ARTICLE I

EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL

(A) Access. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel and the Bank Parcel (collectively, the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, non-exclusive easements appurtenant to each of the VTP Parcels, for the purpose of (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic including, without limitation, those parking areas located on the roof of the Midtown Parcel and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel, provided that the owner of the Midtown Parcel gives at least twenty (20) days' notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) Drainage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners, perpetual, non-exclusive easements appurtenant to each of the VTP Parcels, for the purpose of drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

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(C) Utilities.

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of and grant and convey to the owner from time to time of the VTP Parcels for the benefit of such owners, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) installing, maintaining, repairing and using all utilities, including specifically fiber optic cables, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now designated for utility and cabling runs in the improved portions of the Midtown Parcel, provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired by the owner of the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (b) the owner of the Midtown Parcel may relocate, at its own expense, such utility lines, so long as utility service to any other Parcel is not interrupted, and (c) connecting and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the event any connection and/or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; and (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) Signage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusive of any directories located within the Mall, suite entry

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signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Cellco's present signage rights under the Verizon Lease without the prior written approval of Cellco.

(E) Parking. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Cellco and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Cellco has approved the parking change.

ARTICLE II

EASEMENTS BURDENING THE BANK PARCEL

(A) Access, Drainage and Utilities. Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel, construction, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

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power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided, however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Person performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or connection; (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

ARTICLE III

EASEMENTS BURDENING THE VERIZON PARCEL

(A) Access. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Trilt Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, non-exclusive easements appurtenant to each of the MTB Parcels, for the purpose of passage and use for the purpose of walking and driving over and across and maintenance and repair of all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) Parking. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, non-exclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places now or hereafter exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with the right and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) Utilities and Drainage. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists, (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcel through conduits, empty spaces and other areas now being used for utility and drainage purposes in the improved portions of the Verizon Parcel provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed, (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel, provided however, (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed, (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) Green Space Amenity Easement. BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

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(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance [illegible] the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco Company [illegible] of liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost, with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and remove the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is demolished, substantially modified in connection with a redevelopment (as limited to a material change in the building on the Verizon Parcel which involves a minimum of [illegible] additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

ARTICLE IV

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COMMON AREA MAINTENANCE

(A) Definitions. For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) Responsibility. The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation, repaving and restriping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty, and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel, and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed $10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) Contribution. The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

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Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12th) of such TGIF Parcel owner's Pro Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12th) of such Bank Parcel owner's Pro Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to **Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.**

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

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year in an amount equal to one-twelfth (1/12) of each Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the JCHF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the allocable to each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay the Midtown Parcel owner any deficiency due the Midtown Parcel owner for the Common Area Maintenance Charges. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right, within thirty (30) days of receipt of the statement during regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's choosing and at the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to each Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is determined to be incorrect, the party found to be owing money shall promptly pay the amount owing to the other party.

(D) Collection; Attorneys' Fees. Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If upon expiration of said twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(c) Failure to Maintain. In the event the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (each a "Repairing Owner") shall be entitled (but not obligated) to perform such obligation on behalf of the Midtown Parcel or to declare an immediate default under the Declaration, and may thereupon avail itself of any remedies provided therein, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the Repairing Owner's intent to perform such obligation and give such owner thirty (30) days to commence such repair or maintenance. In the event that the owner of the Midtown Parcel is not diligent in performing such obligations after being notified in accordance with the preceding sentence, the Repairing Owner may perform such obligations in a workmanlike, diligent and efficient manner. In the event any Repairing Owner shall undertake any repair or maintenance of the Common Areas pursuant to the provisions of this Section 4.2(c), the Repairing Owner shall pay all costs and expenses incurred in connection therewith, and shall be entitled to a lien upon the Midtown Parcel to secure payment thereof. Any such lien shall be subject and subordinate to the lien of any first mortgage upon the Midtown Parcel, and the Repairing Owner shall execute such instruments as may be reasonably requested from time to time by any mortgagee of the Midtown Parcel to evidence such subordination. Upon payment in full of the amounts secured by such lien, the Repairing Owner shall execute and deliver a release thereof. Each Repairing Owner shall have the right to enforce its lien by appropriate foreclosure proceedings in the name of the Repairing Owner as the mortgagee under a mortgage or as the beneficiary under a deed of trust, and each Owner hereby hereby grants to each Repairing Owner a power of sale in connection with such lien. Each Owner shall execute such instruments as the Repairing Owner may reasonably request to perfect the lien hereby granted. Each Owner hereby irrevocably appoints the Repairing Owner as such Owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(d) Indemnity. The owner of the Midtown Parcel shall indemnify and save harmless the other Owners and Lenders of Parcels from and against all claims, liens, damages and expenses, including reasonable attorneys' fees, resulting from the failure of the Midtown Parcel's repair or failure to maintain or keep in good condition the Common Areas for which it is responsible hereunder except to the extent resulting from the gross negligence or willful act of the owner of the another Parcel owner.

ARTICLE V

INSURANCE

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Areas of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least One Million Dollars ($1,000,000) combined single limit for bodily injury to or death of one person in any one occurrence and shall protect owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds hereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until September 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

ARTICLE VI

[redacted]

Parcel, including without limitation the Common
[illegible] prevents or interferes
Parcel, the Bank Parcel, or the TGIF Parcel,
all commercially reasonable efforts to repair such
[illegible]

In the event the owner of the [illegible]
Article VI, the owners of the other Parcels [illegible]
as contemplated in Article (IV) (D), (E) and (F) [illegible]

ARTICLE VII

EFFECT AND DURATION

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and consist of reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

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reconstruction, repair, or other improvements. The parties acknowledge and agree that damages from a Breach hereof are not readily susceptible of calculation and that specific performance is available for the cure of any breach hereunder, in addition to any other remedies available under law. The easements established hereby shall be perpetual in duration.

ARTICLE VIII

NO DEDICATION

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

ARTICLE IX

DEFAULT

(A) Default. Should a Parcel owner (or any of their respective tenants or such breach continue for a period of fifteen (15) days after the receipt of written notice, the other Parcel owners shall be entitled to cure such default and, in addition to all remedies at law or in equity, provided that such party furnishes written notice to the other owners, and further provided that no notice is required should the breach create an emergency condition. Within ten (10) days after receipt of a bill therefor, the Breach shall be paid by the defaulting owner, which bill shall be accompanied by such evidence confirming the payment of such expenses and amounts as the other owners shall reasonably require. Any unpaid amount shall constitute a lien with priority dating to the date of this Agreement; provided, however, notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "C" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Areas"), such lien shall, after the date of any construction loan closing for the Residential Redevelopment Areas, be subordinate to, excluded and not subject to subsequently recorded liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Areas shall be subject to all liens which accrued prior to construction loan closing).

(B) Attorneys' Fees. In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to such other expenses incurred by such litigation.

ARTICLE X

OPT OUT

(A) Verizon Parcel. Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice delivered to the owner of the Midtown Parcel, to terminate such Verizon Parcel's Common Area maintenance easement (the "Verizon Parcel CAM Easement"). Upon such notice, the Verizon Parcel CAM Easement shall terminate, the Verizon Parcel owner shall no longer be responsible for the obligations with respect to the Verizon Parcel, and the Verizon Parcel owner shall not be obligated to make the

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contributions for such matters shall not be affected thereby. Notwithstanding the foregoing, the Verizon Parcel owner shall still be responsible for its Pro Rata Share of costs of Common Areas and Utility facilities benefiting the Verizon Parcel and the Bank Parcel owner shall be responsible for the Midtown Parcel owner for the Common Areas.

(B) Bank Parcel. Notwithstanding anything contained in this Agreement to the contrary, the Bank Parcel owner may elect by written notice provided to the owner of the Midtown Parcel, to include the Bank Parcel in Common Insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such election, the owner of the Midtown Parcel Owner shall no longer be responsible for the insurance with respect to the Bank Parcel. The owner of the Bank Parcel shall be the owner of the Bank Parcel and shall be responsible for a Pro Rata Share for the Common Area Maintenance Costs, Taxes and Insurance Costs until the Parcel is separately assessed and pays its assessed real property taxes. The owner of the Bank Parcel shall be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

(A) Regulatory Compliance. Each Parcel owner will not take any action or omit to take any action (including causing or allowing the violation of any contractors or agents of such owner) which would cause the Mall to be subject to any material liability under any applicable environmental laws, rules, regulations and/or any other applicable laws, statutes, ordinances, rules, regulations and/or decrees and court decisions applicable to environmental laws (collectively, "Applicable Environmental Laws"), including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

owner shall obtain any permits, licenses or similar to construct buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including causing or allowing the violation of any contractors or agents of such owner) which would cause the disposition, release or threat of hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

465163.1

removal is prohibited by law, [illegible] whatever action is required by law) promptly upon discovery at its sole expense, [illegible] applicable law and prudent real estate practices, no removal or other remedial [illegible] with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) Remediation. Should the owner of a Parcel fail to fulfill its obligations under this Article XII (hereinafter "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to offset such costs against [illegible] owed to the Contaminating Owner; provided that, except [illegible] the Remediating Owner shall [illegible] the same to perform the Contaminating Owner's [illegible] obligations. In the event that Contaminating Owner fails to [illegible] in a workmanlike, diligent or efficient manner, in the reasonable judgment of the Remediating Owner, the Remediating Owner may perform the remediation on the Parcel. [illegible] Remediating Owner is served prior written notice thereof, all costs [illegible] expended by the Remediating Owner shall be immediately reimbursed by the Contaminating Owner. Such unpaid amounts may become a lien against the Parcel [illegible] Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may require [illegible] recordation of such lien, and the Contaminating Owner hereby irrevocably [illegible] Remediating Owner as the Contaminating Owner's attorney-in-fact to [illegible] such lien. Remediation pursuant to this Section 12.3(C) shall be deemed to be for the benefit of all Parcels.

ARTICLE XIII

RESERVED

ARTICLE XIV

RESERVED

ARTICLE XV

VERIZON EXPENSE CONTRIBUTION

(A) Taxes. Until May 31st of the year 2010, Windsor, as owner of the Midtown Parcel and pay assessments thereon, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special [illegible] including special tax district assessments, if any) applicable to the Verizon Parcel. Once the [illegible] of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Cellco pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to allocate such taxes to each Parcel, provided that in all events the Midtown Parcel owner shall not be responsible for all taxes on the Verizon Parcel due through November 30, 2010 and the reimbursement of the Verizon payment as set forth above, provided taxes due in the third calendar year shall be pro-rated.

(B) Cooled Air. Until [illegible], 2010, Windsor, as owner of the Midtown Parcel and successor thereto, agrees to operate, maintain and replace as needed the cooled air system and heating and ventilation system for the Verizon Parcel and the owner of the Verizon Parcel shall pay for the cost of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 5.4 of the Verizon Lease.

(C) Roofing and Base Building. Until [illegible], 2010, Windsor, as owner of the Midtown Parcel, shall be responsible for any repairs, structural repairs to [illegible] (including floor coverings) [illegible] on the Verizon Parcel and the building systems [illegible] the building on the Verizon Parcel.

(D) Other Charges. From and after [illegible], 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel to be paid under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. [illegible] repairs, maintenance and repair but not costs of tenant upgrades or additional services) shall be paid by the owner of the Midtown Parcel.

(E) Non-performance or Non-payment. In the event Windsor or any successor thereto defaults in the obligations under [illegible] (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such expenses [illegible] receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall bear interest at the rate of [illegible] percent (18%) and constitute a lien against the Midtown Parcel senior to [illegible] of the date of this Agreement (but subject to the release provision for the residential Condominium Units contained in Article IX(A)).

(F) In consideration of the reimbursement contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Ceilco, the payment obligations of Ceilco for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 5.4 of the Verizon Lease, provided that the Midtown Parcel owner shall not enforce such obligations against Ceilco if the payments are made instead by the owner of the Verizon Parcel.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

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(A) Modification and Termination. Except as set forth in Article X hereof, no part of this Agreement [illegible] without the prior consent of the owner of any affected Parcel, provided, however, that [illegible] shall not be required.

(B) No Creation of Agency or Partnership. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) No Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected thereby.

(E) Notice. All notices [illegible] Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by Federal Express or other overnight delivery service, or if mailed by registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to the parties hereto at the addresses specified below, or to such other address as any party may designate by written notice to the other parties hereto. Service shall be conclusively deemed made (i) the first business day after delivery to the overnight delivery service, or (ii) on the third business day after the same is deposited in the U.S. mail as aforesaid. Each owner shall give written notice to each of the owners of adjoining Parcels in the event of any sale or transfer of such owner's Parcel, and shall give such notice at least fifteen days prior to the effective date of such sale or transfer. Until such time as any owner shall receive such notice of the change of ownership of any Parcel, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road
Atlanta, Georgia 30305
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard
3901 Lewis P. Olds
Raleigh, NC 27612

(F) No Other Agreement. This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

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statement, representation or promise made by either party or an agent or employee hereof which is not contained herein shall be null and void.

ARTICLE XVII

REDEVELOPMENT AND OPTION TO PURCHASE

(A) Redevelopment. The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel described with surface parking and more particularly described on Exhibit "C" hereto (the "Commercial Development Tract") as a structured parking deck with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption of problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and indemnify the Verizon Parcel Owner and Cellco from any [illegible] from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (i) $1,000,000.00 or (ii) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

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(VIII) The Madison Parcel Owner shall provide the City with any [illegible]

[illegible]

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Witness #1

Witness #2

By: Whichard
Name:
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its

Witness #1

Witness #2

By: McPhail
Name:
Title: Manager

[COMPANY SEAL]

By:
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its

Witness #1

Witness #2

By:
Name: McPhail
Title: Manager

[COMPANY SEAL]

ACKNOWLEDGMENTS

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, _____ Richard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:
_____

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, _____ Fritz R. _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this 7th day of _____, 2005.

_____
Notary Public

My _____

KRISTI LEVONS NOTARY PUBLIC GEORGIA FULTON COUNTY

405153.1

I, Tracy T. Bullock, a Notary Public of the State and County aforesaid, certify that [illegible] personally appeared before me this day and acknowledged that he is Manager of [illegible], a limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by its Manager and sealed with its corporate seal and acknowledged the instrument to be the act and deed of the limited liability company.

Witness my hand at office in Wake County, N.C. this 7 day of September 2005.

Notary Public

My Commission Expires:
11-28-2009

TRACY T. BULLOCK NOTARY PUBLIC WAKE COUNTY, N.C.

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid, certify that [illegible] personally appeared before me this day and acknowledged that he is [illegible] of [illegible], a limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by its Manager and sealed with its corporate seal and acknowledged the instrument to be the act and deed of the limited liability company.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:

_____

405183.1

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, last revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Plat Book 59 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 12) where the subject property corners with property of Colin Site 12, LLC a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 32.61 feet, the chord of which runs S06°00'05"W – 38.52 feet to a rebar; S [illegible] 0'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'55"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.05 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'36"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°15'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'[illegible]"W – 186.52 feet to a rebar; N64°17'05"W – 51.79 feet to an open top; S01°29'55"E – 106.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°31'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°15'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

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George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N63°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail, in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'19"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 294.92 feet to a rebar, in a curve to the right having a radius of 92.93 feet, an arc distance of 43.96 feet, the chord of which runs N81°57'16"E – 44.52 feet to a rebar; N67°22'03"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar, in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°26'39"E – 54.54 feet to a rebar; N78°03'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°07'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

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EXHIBIT "B"

LEGAL DESCRIPTION
VERIZON PARCEL

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 15, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.

EXHIBIT "C"

LEGAL DESCRIPTION
TGIF PARCEL

COMMENCE at the intersection of the centerline of Forest Drive (S-40-12) and the southwestern right of way of Beltline Boulevard (S-40-16); thence run along the southwestern right of way of Beltline Boulevard a distance of 1,010 feet to a 5/8" rebar found; thence leaving said right of way run South 75 degrees 05 minutes 54 seconds West a distance of 198.59 feet to a building corner, said corner being the POINT OF BEGINNING; thence run South 14 degrees 50 minutes 07 seconds East a distance of 39.49 feet to a building corner; thence run South 75 degrees 09 minutes 53 seconds West a distance of 2.00 feet to a building corner; thence run North 14 degrees 50 minutes 07 seconds West a distance of 0.23 feet to a building corner; thence run South 74 degrees 35 minutes 15 seconds West a distance of 110.05 feet to a calculated point; thence run North 14 degrees 31 minutes 02 seconds West a distance of 56.00 feet to a calculated point; thence run North 30 degrees 27 minutes 08 seconds East a distance of 7.41 feet to a calculated point; thence run North 75 degrees 27 minutes 30 seconds East a distance of 54.76 feet to a calculated point; thence run South 14 degrees 32 minutes 28 East a distance of 1.22 feet to a calculated point; thence run North 75 degrees 27 minutes 32 seconds East a distance of 10.77 feet to a building corner, thence run North 75 degrees 49 minutes 11 seconds East a distance of 13.08 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 4.84 feet to a building corner; thence run South 75 degrees 48 minutes 27 seconds West a distance of 1.44 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 2.33 feet to a building corner; thence run North 75 degrees 12 minutes 04 seconds East a distance of 6.57 feet to a building corner; thence run South 15 degrees 47 minutes 59 seconds East a distance of 5.47 feet to a building corner; thence run North 74 degrees 43 minutes 39 seconds East a distance of 3.43 feet to a building corner; thence run South 60 degrees 42 minutes 40 seconds East a distance of 8.33 feet to a building corner; thence run South 15 degrees 43 minutes 16 seconds East a distance of 0.99 feet to a building corner; thence run North 74 degrees 56 minutes 28 seconds East a distance of 11.33 feet to a building corner; thence run North 15 degrees 16 minutes 21 seconds West a distance of 0.20 feet to a building corner; thence run North 75 degrees 17 minutes 18 seconds East a distance of 1.98 feet to a building corner, said corner being the POINT OF BEGINNING.

Said tract contains 0.143 acres and is more particularly described on that certain Boundary Survey of Richland Mall TGI Friday's, prepared by B. P. Barber & Associates, Inc., dated March 29, 2005, last revised June 17, 2005.

EXHIBIT "D"

LEGAL DESCRIPTION

BANK PARCEL

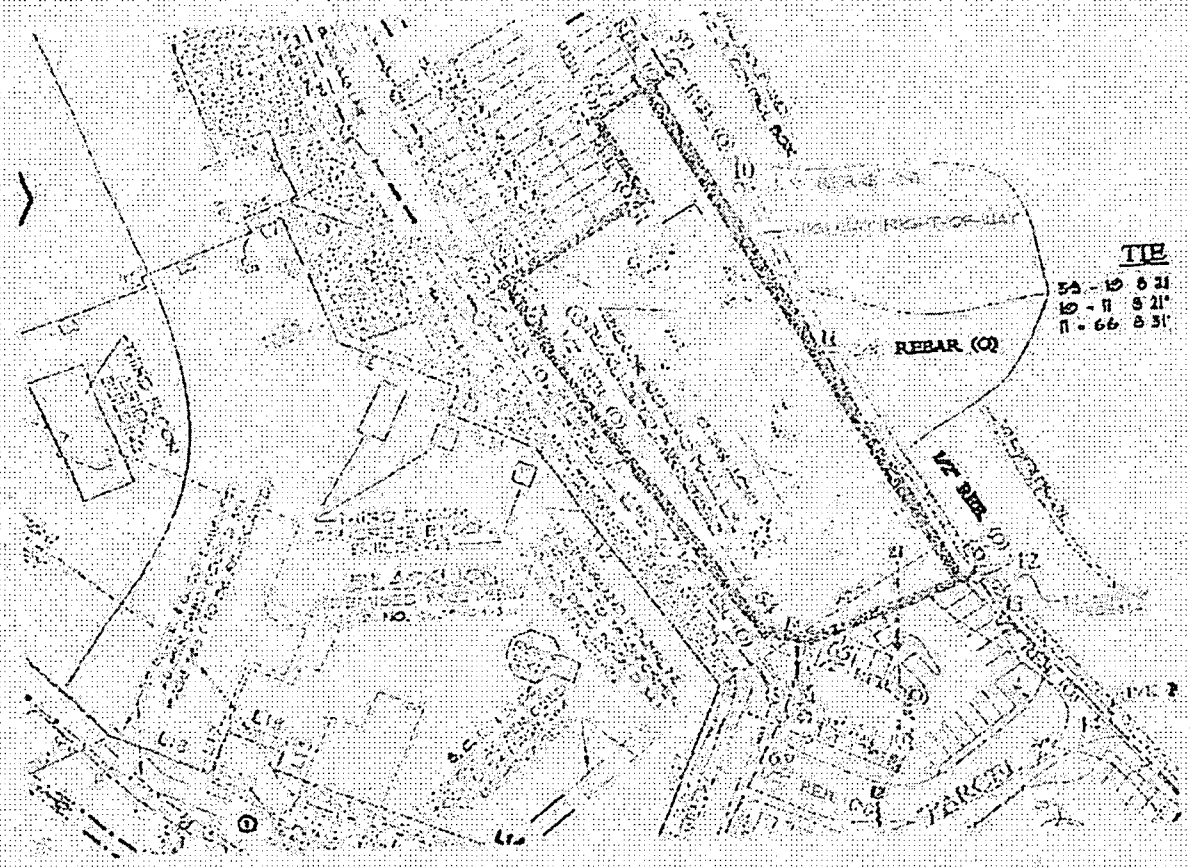

EXHIBIT "B"
SITE PLAN

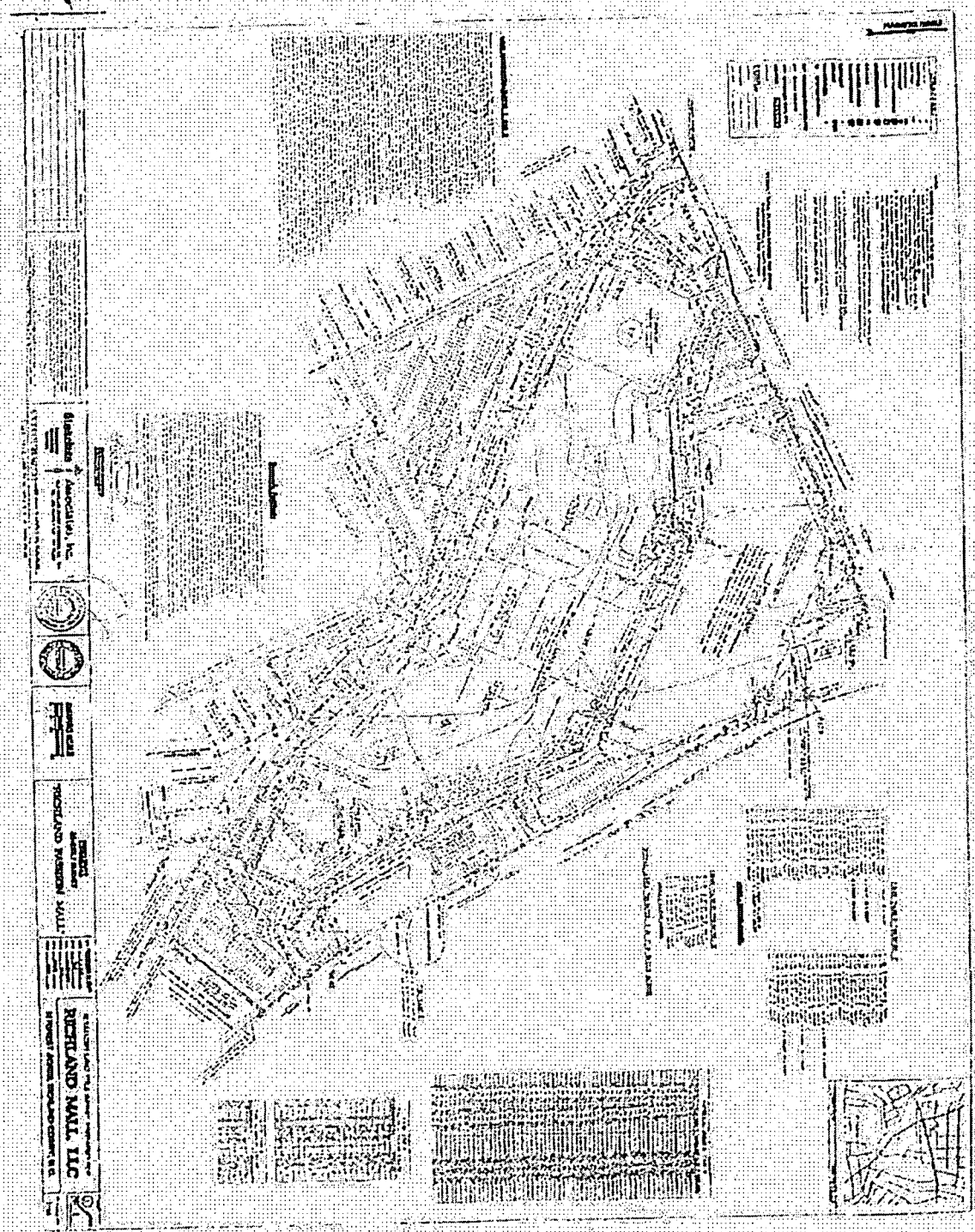

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EXHIBIT "F"
Page 2 of 2

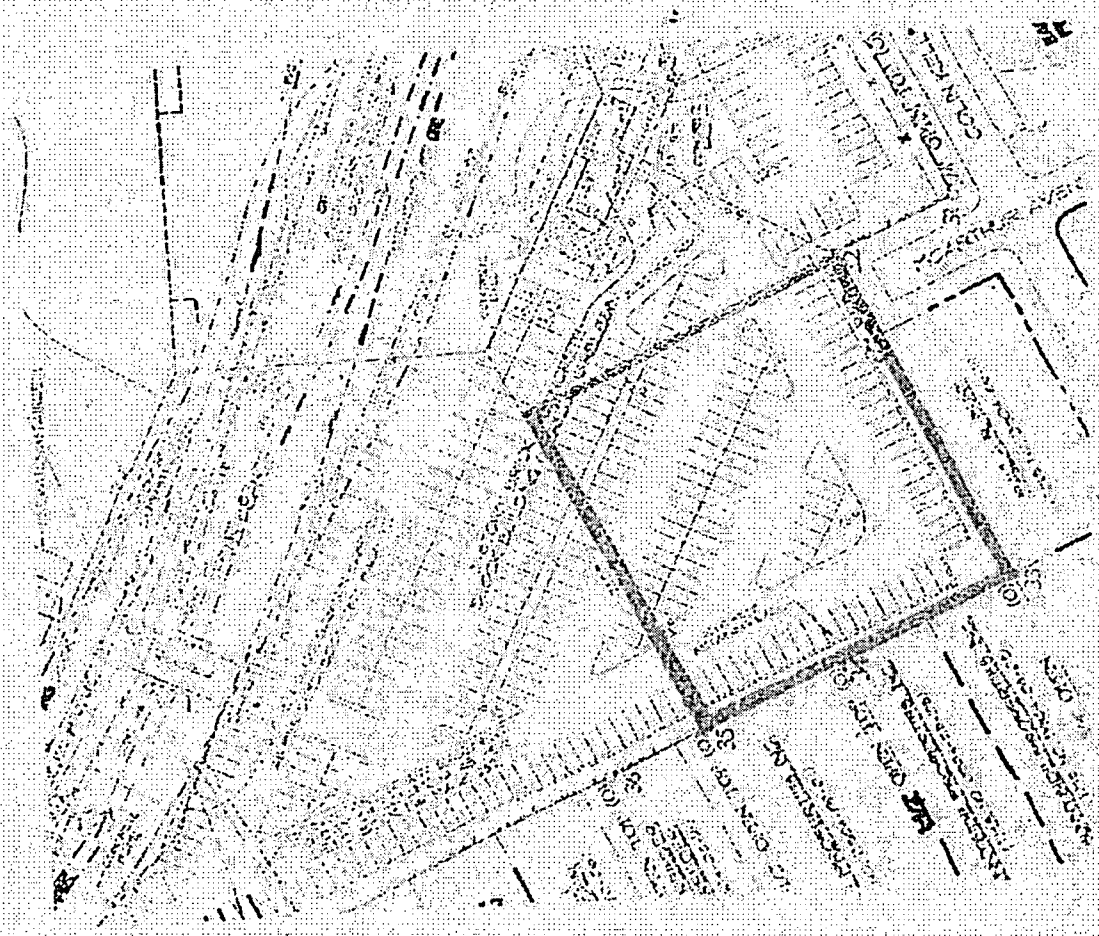


EXHIBIT "C" - RESIDENTIAL DEVELOPMENT TRACT
Page 1 of 3
RICHLAND MALL, LLC

EXHIBIT "G"— RESIDENTIAL DEVELOPMENT TRACT

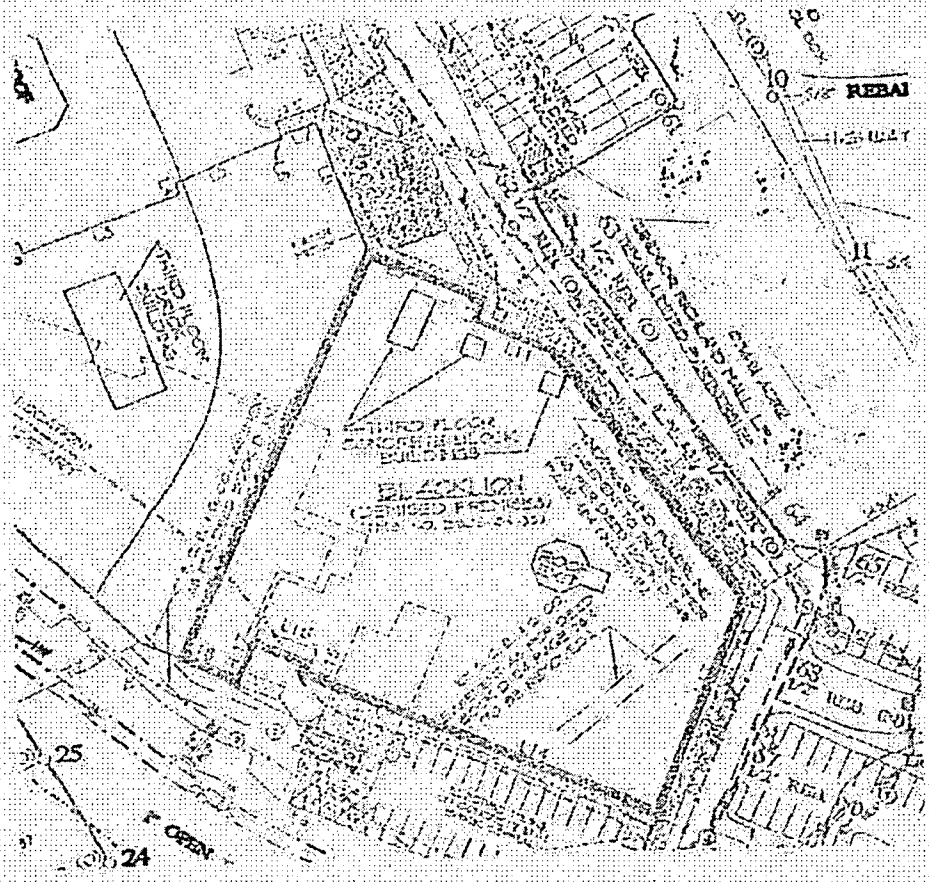
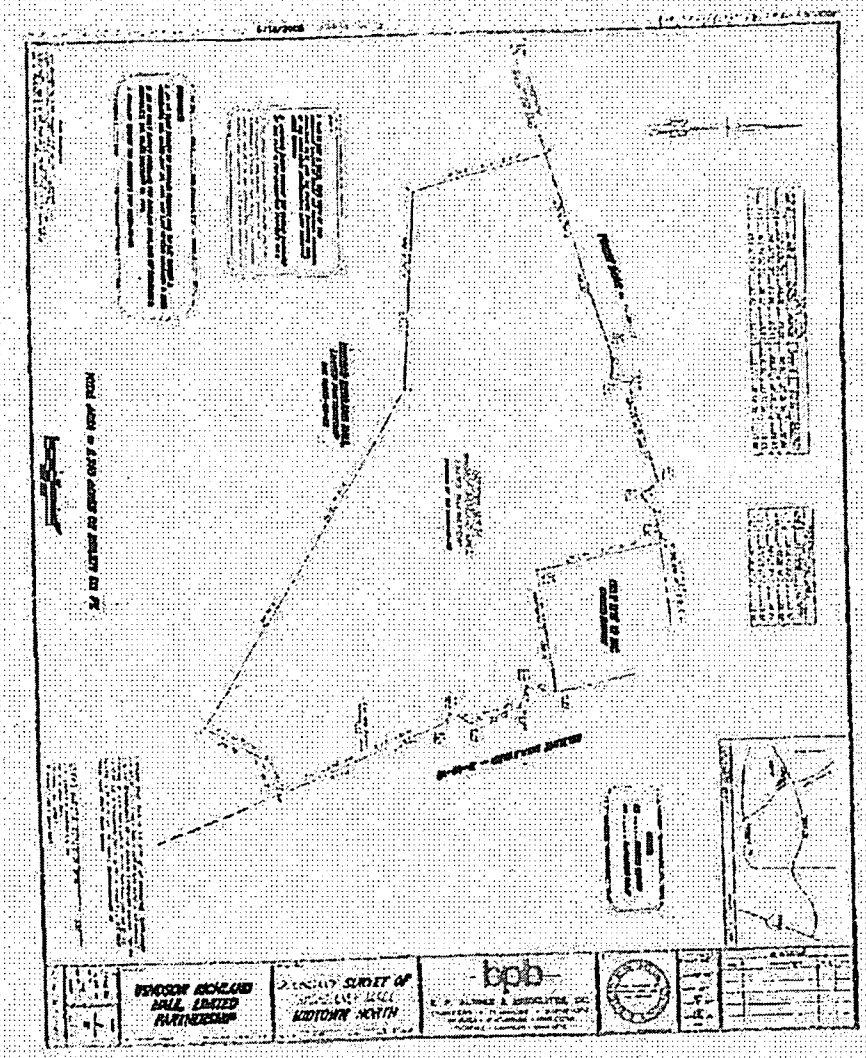


EXHIBIT "G"
RESIDENTIAL DEVELOPMENT TRACT
PAGE 3 of 3



STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William D. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 17, 2012, she served a copy of the Plaintiff Spirit SPE Columbia, LLC's Third Amended Complaint on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

D. Ryan McCabe
Brian Gambrell
McCabe, Trotter, Gambrell & Beverly, PC
140 Stonebridge Drive, Suite 650
Columbia, SC 29210

Heather Hagen

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2014-CP-40-07037
Century Capital Group, LLC, Plaintiff, vs. Midtown Development Group, LLC, Richland Joint Venture Group, LLC, Windsor Richland Mall, L.P. and BRC Richland, LLC, Defendants. (696.72)	**SECOND AMENDED SUMMONS** **[Jury Trial Demanded]**

RICHLAND COUNTY
FILED
2014 DEC -8 PM 4:15
JEANNETTE W. MORRIS
C.C.P. & G.S.

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the attorney for the aforesaid Plaintiff, on the Law Firm of McCabe, Trotter & Beverly, PC, 140 Stoneridge Drive, Suite 650 (29210), Post Office Box 212069, Columbia, South Carolina, 29221 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

D. Ryan McCabe
McCabe, Trotter & Beverly, PC
P.O. Box 212069
Columbia, South Carolina 29211
Phone: 803-724-5000
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Attorney for Plaintiff

Columbia, South Carolina
December 8, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2014-CP-40-07037
Century Capital Group, LLC, Plaintiff, vs. Midtown Development Group, LLC, Richland Joint Venture Group, LLC, Windsor Richland Mall, L.P. and BRC Richland, LLC, Defendants. (696.72)	**SECOND AMENDED COMPLAINT** **[Jury Trial Demanded]**

RICHLAND COUNTY
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JEANNETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff herein, complaining of the acts or omissions of the Defendants, would show unto this Honorable Court as follows:

1. The Plaintiff, Century Capital Group, LLC ("Century") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

2. Upon information and belief, Defendant Midtown Development Group, LLC ("Midtown") is a limited liability company organized and existing under the laws of the State of South Carolina.

3. Upon information and belief, Defendant Richland Joint Venture Group, LLC ("RJVG") is a limited liability company organized and existing under the laws of the State of Florida.

4. Upon information and belief, Defendant Windsor Richland Mall, L.P. ("Windsor") is a limited partnership organized and existing under the laws of Texas.

5. Upon information and belief, BRC Richland, LLC ("BRC") is a limited liability company organized and existing under the laws of Georgia.

6. Venue is proper because the acts giving rise to the cause of action herein occurred in Richland County, South Carolina.

FACTUAL ALLEGATIONS

7. On or about December 23, 2002, Defendant Windsor took title to the Richland Fashion Mall ("Mall") situated in the City of Forest Acres, County of Richland, South Carolina by deed recorded in the Richland County Register of Deeds in Book D0739 at Page 11. Windsor simultaneously split the Mall into distinct parcels (the "Midtown Parcel", the "Verizon Parcel", the "TGI Fridays Parcel" and the "Bank Parcel."

8. Also on or about December 23, 2002, Windsor sold the Verizon Parcel to Defendant BRC by deed recorded in the Richland County Register of Deeds in Book R0739 at Page 11.

9. On or about September 7, 2005, Defendants BRC and Windsor negotiated and executed that certain Reciprocal Easement, Covenant Operation and Restriction Agreement and Declaration ("REA") attached hereto as **Exhibit 1**. The REA was filed in the Richland County Register of Deeds Office in Book 1097 at Page 2024 on September 12, 2005. The REA runs with the land and sets forth certain agreements, easements, covenants, restrictions, rights and obligations of the owners of the Parcels that comprise the Mall. Specifically, the REA obligated the owner of the Midtown Parcel to perform and pay for all maintenance and repairs to the Common Areas and perform all maintenance and repair to the HVAC system, roof system and structural components of the Verizon Parcel prior to November 30, 2010.

10. On or about September 12, 2005, BRC sold the Verizon Parcel to Spirit SPE Columbia, LLC ("Spirit") by Deed recorded in the Richland County Register of Deeds Office in Book R1097 at Page 2057.

11. On or about November 4, 2005, Windsor sold Defendant Midtown the Midtown Parcel by Deed recorded in the Richland County Register of Deeds in Book R1118 at Page 2107.

12. On or around May 25, 2007, Defendant RJVG took title the Midtown Parcel by deed of Defendant Midtown recorded in the Richland County Register of Deeds in Book R1317 at Page 1439.

13. On or about February 16, 2010, RJVG sold 79% of its interest in the Midtown Parcel to Plaintiff and 21% of its interest to Investment Property Exchange Services by Deed Recorded in the Richland County Register of Deeds Office in Book R1587 at Page 2061. On or about February 17, 2010, Investment Property Exchange Services transferred its 21% interest in the Midtown Parcel to Plaintiff by Deed Recorded in the Richland County Register of Deeds Office in Book R1587 at Page 2068.

FOR A FIRST CAUSE OF ACTION
(Contribution)

14. Plaintiff incorporates all preceding paragraphs as if repeated verbatim herein.

15. Defendants negligently maintained and negligently repaired the Verizon Parcel, common areas, roof and HVAC system, thus subjecting Plaintiff to claims by Spirit, the current owner of the Verizon Parcel.

16. As of a result of those claims being made against the Plaintiff, it resolved and settled those claims for payments totaling One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00).

17. Plaintiff was less than 50% at fault.

18. The claims and damages which Plaintiff has paid were a direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of the Defendants as referenced above.

19. The settlement made by Plaintiff with regard to the claims referenced above was advisable, provident, reasonable and prudent.

20. The settlement made by Plaintiff extinguished and discharged the common liability of Plaintiff and Defendants to Spirit.

21. By reason of the foregoing, the Defendants as joint tortfeasors with the Plaintiff are legally liable to contribute their pro-rata share of liability for the claims, which Plaintiff has settled,

in that the Plaintiff has paid more than its pro-rata share of the common liability, pursuant to the South Carolina Uniform Contribution among Tortfeasors Act, Section 15-38-10 *et. seq.*, S.C. Code (1976, as amended).

22. The Plaintiff is entitled to recover against the Defendants the pro-rata share of payments made by Plaintiff for claims resulting from the damages described above.

WHEREFORE, Plaintiff prays unto this Honorable Court as follows:

a. A jury trial;

b. Judgment against the Defendants for contribution of their pro-rata share of liability for settlement of claims arising out of the claims described; and

c. For costs and attorney's fees pursuant to SC Code 27-1-15 and such other and further relief as this Court deems just and proper.

D. Ryan McCabe
McCabe, Trotter & Beverly, PC
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Email: ryan.mccabe@mccabetrotter.com
Attorney for Plaintiff

Columbia, South Carolina
December 8, 2014

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EXHIBIT 1

RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION

THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION, ("Agreement") is made as of this 1 day of September, 2005, by and between **BRC RICHLAND, LLC**, a Georgia limited liability company ("BRC"), and **WINDSOR RICHLAND MALL, L.P.**, a Texas limited partnership ("Windsor").

WITNESSETH:

WHEREAS, Windsor is the owner of that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and (entire parcel)

WHEREAS, contemporaneous herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless call center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

WHEREAS, the Shopping Mall Parcel, less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

WHEREAS, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 5, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2005 (the "Verizon Lease"); and

Book 1097-2024
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Richard W. Rodden

WHEREAS, it is contemplated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

WHEREAS, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Cellco under the Verizon Lease be protected and preserved;

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

ARTICLE I

EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL

(A) Access. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, those parking areas located on the roof of the Midtown Parcel; and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel; provided that the owner of the Midtown Parcel gives at least twenty (20) days notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) Drainage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

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(C) Utilities.

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) installation, maintenance, repair and use of utilities, including specifically fiber optic cable, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Midtown Parcel; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Midtown Parcel may relocate, at its sole expense, such utility lines, so long as utility service to any other Parcel is not interrupted; and (b) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) Signage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusion on any directories located within the Mall, suite entry

CAM change payable to Midtown

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signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Cellco's present signage rights under the Verizon Lease without the prior written approval of Cellco.

(E) Parking. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Cellco and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Cellco has approved the parking change.

ARTICLE II

EASEMENTS BURDENING THE BANK PARCEL

(A) Access, Drainage and Utilities. Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel; (c) installation, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

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power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Parcel owner performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

ARTICLE III

EASEMENTS BURDENING THE VERIZON PARCEL

(A) Access. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the MTB Parcels, for the purpose of: passage and use for the purpose of walking and driving over and across and maintenance and repair of, all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) Parking. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to Section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with threat and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

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Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) Utilities and Drainage. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists; (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Verizon Parcel provided, however: (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) Green Space Amenity Easement. BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

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(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and rebuild the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is destroyed or substantially modified in connection with a redevelopment (i.e. material structural change in the building on the Verizon Parcel which involves construction of more than two (2) additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

ARTICLE IV

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COMMON AREA MAINTENANCE

(A) Definitions. For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) Responsibility. The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation: repaving and re-striping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty; and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel; and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed $10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) Contribution. The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

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Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such TGIF Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such Bank Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

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year in an amount equal to one-twelfth (1/12) of such Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the TGIF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the amount of each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay to the Midtown Parcel owner any deficiency due the Midtown Parcel owner for its Parcel. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right within ninety (90) days of receipt of the statement during its regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year, a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's election and, if the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to such Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is otherwise found to be incorrect, the party found to be owing money shall promptly pay an offsetting sum to the other party.

(D) **Collection; Attorneys' Fees.** Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If, upon expiration of such twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

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fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(E) Failure to Maintain. Should the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (herein a "Repairing Owner") shall be entitled to perform such obligations and to bill the owner of the Midtown Parcel or to deduct such reasonable out-of-pocket costs from any sums owed to the owner of the Midtown Parcel, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the default, in writing, and shall permit the same to perform the obligation within twenty (20) days after receipt of written notice. In the event that the owner of the Midtown Parcel fails to perform its obligations upon any Parcel in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Repairing Owner, the Repairing Owner may perform the Common Area repair and upkeep on the Parcel, provided that the owner of the Midtown Parcel is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Repairing Owner shall be immediately due and owing from the Midtown Parcel owner. Such unpaid amounts may be offset against any amounts owing from the Repairing Owner to the Midtown Parcel owner, and until paid or offset the amount owed the Repairing Owner shall constitute a lien upon the Midtown Parcel with a priority relating back to the date hereof. The Midtown Parcel owner shall execute such instruments as the Repairing Owner may request to permit the recordation of such lien, and the Shopping Mall Parcel owner hereby irrevocably designates the Repairing Owner as the Shopping Mall Parcel owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(F) Indemnity. The owner of the Midtown Parcel shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorney's fees, arising out of the owner of the Midtown Parcel's refusal or failure to maintain or repair that portion of the Common Areas for which it is responsible hereunder except as results from the gross negligence or willful act of the owner of the another Parcel owner.

ARTICLE V

INSURANCE

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Area of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least Three Million Dollars ($3,000,000.00) combined single limit for death or injury to one or more persons and property damage, and shall name the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds thereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

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evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

ARTICLE VI

DAMAGE OR DESTRUCTION

In the event all or any portion of the Common Area on the Mall is destroyed or damaged by fire, casualty or force majeure, the owner of the Midtown Parcel shall forthwith clear such area of debris and restore to the prior condition.

If all or any portion of the Midtown Parcel, including without limitation the Common Area on the Midtown Parcel, is damaged or destroyed in such a manner as prevents or interferes with the operation of the business on the Verizon Parcel, the Bank Parcel, or the TGIF Parcel, then the owner of the Midtown Parcel shall use all commercially reasonable efforts to repair such damaged or destroyed areas in a prompt and thorough fashion.

In the event the owner of the Midtown Parcel fails to perform its obligations under this Article VI, the owners of the other Parcels may perform such work and shall have such rights as are contemplated in Article (IV) (D), (E) and (F) hereof.

ARTICLE VII

EFFECT AND DURATION

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

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reconstruction, expansion or other circumstances. The parties acknowledge and agree that damages from a breach hereof are not readily ascertainable and an injunction and specific performance shall be available in the event of any breach hereunder, in addition to any other remedies available under law. The easements established herein shall be perpetual in duration.

ARTICLE VIII

NO DEDICATION

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

ARTICLE IX

DEFAULT

(A) Default. Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of fifteen (15) days after its receipt of written notice, the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owner, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All reasonable out-of-pocket expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses and any unpaid expenses shall constitute a lien with priority dating to the date of this Agreement. Notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "G" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Tracts"), then from and after the date of any construction loan closing for either Residential Redevelopment Tract, such tract shall be excluded and not subject to subsequently accruing liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Tracts shall be subject to liens which accrued prior to construction loan closing).

(B) Attorneys' Fees. In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to all other expenses incurred by such litigation.

ARTICLE X

OPT OUT

(A) Verizon Parcel. Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice provided to the owner of the Midtown Parcel, to maintain such Verizon Parcel's Common Area and insurance covering the Verizon Parcel and Common Area on such Verizon Parcel. Upon such notice, the owner of the Midtown Parcel owner shall no longer be responsible for these obligations with respect to the Verizon Parcel and the Verizon Parcel owner shall not be obligated to make the

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contributions for such matters contemplated herein; provided that the Verizon Parcel owner shall still be responsible for its Pro Rata Share of only (i) common access facilities and utility facilities benefiting the Verizon Parcel and (ii) liability insurance maintained by the Midtown Parcel owner for the Common Areas.

(B) Bank Parcel. Notwithstanding any provision in this Agreement to the contrary, the Bank Parcel owner may elect, by written notice provided to the owner of the Midtown Parcel, to maintain such Bank Parcel's Common Area and insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such notice, the owner of the Midtown Parcel Owner shall no longer be responsible for these obligations with respect to the Bank Parcel. Thereafter, the owner of the subject Bank Parcel shall no longer be responsible for a Pro Rata Share for Common Area Maintenance Charges; provided, however, that until the Parcels are separately assessed for tax purposes, the owner of the Bank Parcel will in any event be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

ARTICLE XI

RESERVED

ARTICLE XII

ENVIRONMENTAL MATTERS

(A) Regulatory Compliance. Each Parcel owner will not take any action or omit to take any action (including actions taken by or omissions of any contractors or agents of such owner) which would cause the Mall to be subject to any remedial obligations under any applicable environmental laws and regulations and/or any other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions applicable to environmental laws (collectively, "Applicable Environmental Laws"). The Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

(B) Hazardous Waste. Each owner shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including actions or omissions of any contractors or agents of such owner) which would cause the disposal or other release of any hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

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removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense, unless, under then applicable law and prudent real estate practices, no removal or other remedial action with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) Remediation. Should the owner of a Parcel fail to fulfill its obligations under this Article XII (herein a "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to deduct such costs from any sums owed to the Contaminating Owner, provided that, except in the case of an emergency, the Remediating Owner shall first notify Contaminating Owner of the default, in writing, and shall permit the same to perform the obligation within ten (10) days after receipt of written notice. In the event that Contaminating Owner fails to perform its obligation to remediate in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Remediating Owner, the Remediating Owner may perform the remediation on its Parcel, provided that Contaminating Owner is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Remediating Owner shall be immediately due and owing from the Contaminating Owner. Such unpaid amounts may be offset against any amounts owing from the Remediating Owner to the Contaminating Owner, and until paid or offset the amount owed the Remediating Owner shall constitute a lien upon the Contaminating Owner's parcel as of the date of the Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may request to permit the recordation of such lien, and the Contaminating owner hereby irrevocably designates the Remediating Owner as the Contaminating Owner's attorney-in-fact (coupled with an interest) for such purpose.

ARTICLE XIII

RESERVED

ARTICLE XIV

RESERVED

ARTICLE XV

VERIZON EXPENSE CONTRIBUTION

(A) Taxes. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special assessments (including special tax district assessments, if any) applicable to the Verizon Parcel. Once the owner of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Cellco pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

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Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to attempt to obtain separate tax parcels for each Parcel; provided that in all events the Midtown Parcel owner shall be responsible for all taxes on the Verizon Parcel due through November 30, 2010 subject to the reimbursement of the Verizon payment as set forth above; provided taxes due for the final calendar year shall be pro-rated.

(B) Cooled Air. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to maintain, repair and replace as needed the cooled air system and any heating and ventilation systems for the Verizon Parcel and the owner of the Verizon Parcel shall pay to the owner of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 8.4 of the Verizon Lease.

(C) Roof and other Repairs. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, shall make all roof repairs, structural repairs to exterior walls, structural repairs to columns and structural floor (excluding floor coverings) which collectively enclose the building on the Verizon Parcel and the building systems (plumbing, sprinkler, electrical and HVAC) in the building on the Verizon Parcel.

(D) Other Expenses. Until November 30, 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel, as landlord under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. taxes, insurance, utilities, maintenance and repair but not costs of tenant upgrades or concessions) shall be paid by Cellco or the owner of the Midtown Parcel.

(E) Nonperformance or Nonpayment. In the event Windsor or any successor thereto defaults in the obligation at items (A) through (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such amounts immediately upon receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall accrue interest at eighteen percent (18%) and constitute a lien against the Midtown Parcel with a priority of the date of this Agreement (but subject to the release provision for the Residential Redevelopment Tracts contained in Article IX (A)).

(F) In consideration of the Verizon expense contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Cellco, the payment obligations of Cellco for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 8.4 of the Verizon Lease; provided that the Midtown Parcel owner shall not enforce such obligations against Cellco if the payments are made instead by the owner of the Verizon Parcel.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

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(A) Modification and Termination. Except as set forth in Article X hereof, no part of this Agreement may be terminated or modified without the prior consent of the owner of any affected Parcel; provided however, in the event the proposed modification has no material affect on a particular Parcel, then such Parcel owner's consent shall not be required.

(B) No Creation of Agency or Partnership. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) No Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

(E) Notice. All notices, demands, statements, and requests required or permitted to be given under this Agreement shall be in writing and given either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address for which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Parcel, either the owner selling such Parcel or the new owner of such Parcel shall give written notice to each of the parties of the name and address of the new owner. Until such time as any owner shall receive such a notice of the address of a new owner, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road
Atlanta, Georgia 30305
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard
3901 Lewis P. Olds
Raleigh, NC 27612

(F) No Other Agreement. This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

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statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

ARTICLE XVII

REDEVELOPMENT AND OPTION TO PURCHASE

(A) Redevelopment. The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel now covered with surface parking and more particularly described on Exhibit "F" hereto (the "Commercial Development Tract") as a structured parking dock with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (i) $1,000,000.00 or (ii) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

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(viii) The Midtown Parcel Owner shall provide the necessary reciprocal easements, etc., in form and substance similar to those provided herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

Witness #1

Witness #2

By: Angela T. Whichard
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

Witness #1

Witness #2

by: Blue Ridge Capital, LLC,
its Manager

By:
Name: Fritz R. McPhail
Title: Manager

[COMPANY SEAL]

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

By: _____
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

Witness #1

Witness #2

By: _____
Name: Fritz R. McPhail
Title: Manager

[COMPANY SEAL]

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ACKNOWLEDGMENTS

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:

_____

STATE OF Georgia
COUNTY OF Fulton

Before me, Kristi A. Lyons, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Atlanta, GA, this 7th day of September, 2005.

Notary Public

KRISTI A. LYONS NOTARY PUBLIC GEORGIA COBB COUNTY

My Commission Expires:
11/29/08

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Richland County ROD

Richard W. Reddick

ACKNOWLEDGMENTS

STATE OF NorthCarolina
COUNTY OF Wake

Before me, Tracy T. Bullock, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Wake County, N.C., this 7 day of September, 2005.

Tracy T. Bullock
Notary Public

TRACY T. BULLOCK NOTARY PUBLIC WAKE COUNTY, N.C.

My Commission Expires:
11-28-2009

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:
_____

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Instrument: 2005072825 Book/Page: R1097 : 2040.7 Date/Time: 9/12/2005 3:37:41 PM

Richland County ROD

Richard W. Rodden

Schedule of Exhibits

Exhibit A	Shopping Mall Parcel Legal Description
Exhibit B	Verizon Parcel Legal Description
Exhibit C	TGIF Parcel Legal Description
Exhibit D	Bank Parcel Legal Description
Exhibit E	Site Plan
Exhibit F	Commercial Development Tract
Exhibit G	Residential Development Tracts

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Instrument: 2005072825 Book/Page: R1097 : 2040.8 Date/Time: 9/12/2005 3:37:41 PM

Richland County ROD

Richard W. Rodden

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

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George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

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Richland County ROD

Richard W. Rabon

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Richland County ROD

Richard W. Rodden

EXHIBIT "B"

LEGAL DESCRIPTION
VERIZON PARCEL

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 16, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.

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Instrument: 2005072826 Book/Page: R1097 : 2040.11 DateTime: 8/12/2005 3:37:41 PM

Richland County ROD

Richard W. Rodden

EXHIBIT "C"

LEGAL DESCRIPTION
TGIF PARCEL

COMMENCE at the intersection of the centerline of Forest Drive (S-40-12) and the southwestern right of way of Beltline Boulevard (S-40-16); thence run along the southwestern right of way of Beltline Boulevard a distance of 1,010 feet to a 5/8" rebar found; thence leaving said right of way run South 75 degrees 05 minutes 54 seconds West a distance of 198.59 feet to a building corner, said corner being the POINT OF BEGINNING; thence run South 14 degrees 50 minutes 07 seconds East a distance of 39.49 feet to a building corner; thence run South 75 degrees 09 minutes 53 seconds West a distance of 2.00 feet to a building corner; thence run North 14 degrees 50 minutes 07 seconds West a distance of 0.23 feet to a building corner; thence run South 74 degrees 35 minutes 15 seconds West a distance of 110.05 feet to a calculated point; thence run North 14 degrees 31 minutes 02 seconds West a distance of 56.00 feet to a calculated point; thence run North 30 degrees 27 minutes 08 seconds East a distance of 7.41 feet to a calculated point; thence run North 75 degrees 27 minutes 30 seconds East a distance of 54.76 feet to a calculated point; thence run South 14 degrees 32 minutes 28 East a distance of 1.22 feet to a calculated point; thence run North 75 degrees 27 minutes 32 seconds East a distance of 10.77 feet to a building corner; thence run North 75 degrees 49 minutes 11 seconds East a distance of 13.08 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 4.84 feet to a building corner; thence run South 75 degrees 48 minutes 27 seconds West a distance of 1.44 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 2.33 feet to a building corner; thence run North 75 degrees 12 minutes 04 seconds East a distance of 6.57 feet to a building corner; thence run South 15 degrees 47 minutes 59 seconds East a distance of 5.47 feet to a building corner; thence run North 74 degrees 43 minutes 39 seconds East a distance of 3.43 feet to a building corner; thence run South 60 degrees 42 minutes 40 seconds East a distance of 8.33 feet to a building corner; thence run South 15 degrees 43 minutes 16 seconds East a distance of 0.99 feet to a building corner; thence run North 74 degrees 56 minutes 28 seconds East a distance of 11.33 feet to a building corner; thence run North 15 degrees 16 minutes 21 seconds West a distance of 0.20 feet to a building corner; thence run North 75 degrees 17 minutes 18 seconds East a distance of 1.98 feet to a building corner, said corner being the POINT OF BEGINNING.

Said tract contains 0.143 acres and is more particularly described on that certain Boundary Survey of Richland Mall TGI Friday's, prepared by B. P. Barber & Associates, Inc., dated March 29, 2005, last revised June 17, 2005.

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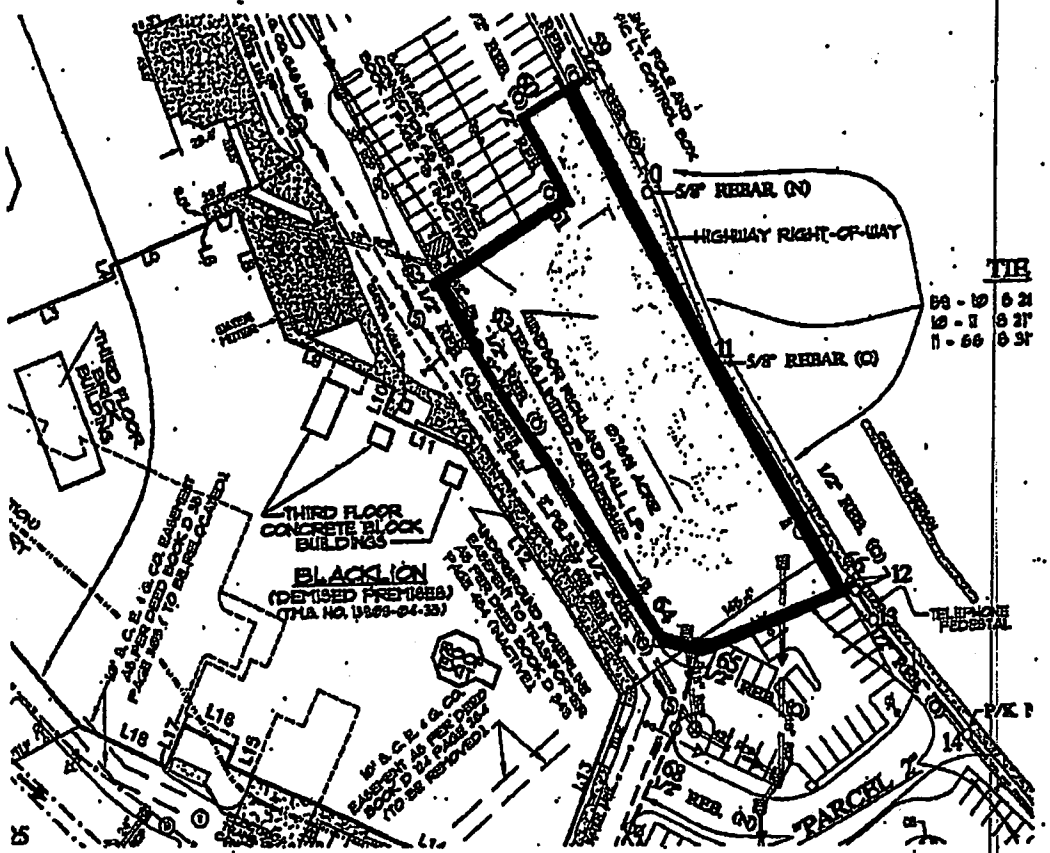
Richland County ROD

Richard W. Rodden

EXHIBIT "D"

LEGAL DESCRIPTION

BANK PARCEL



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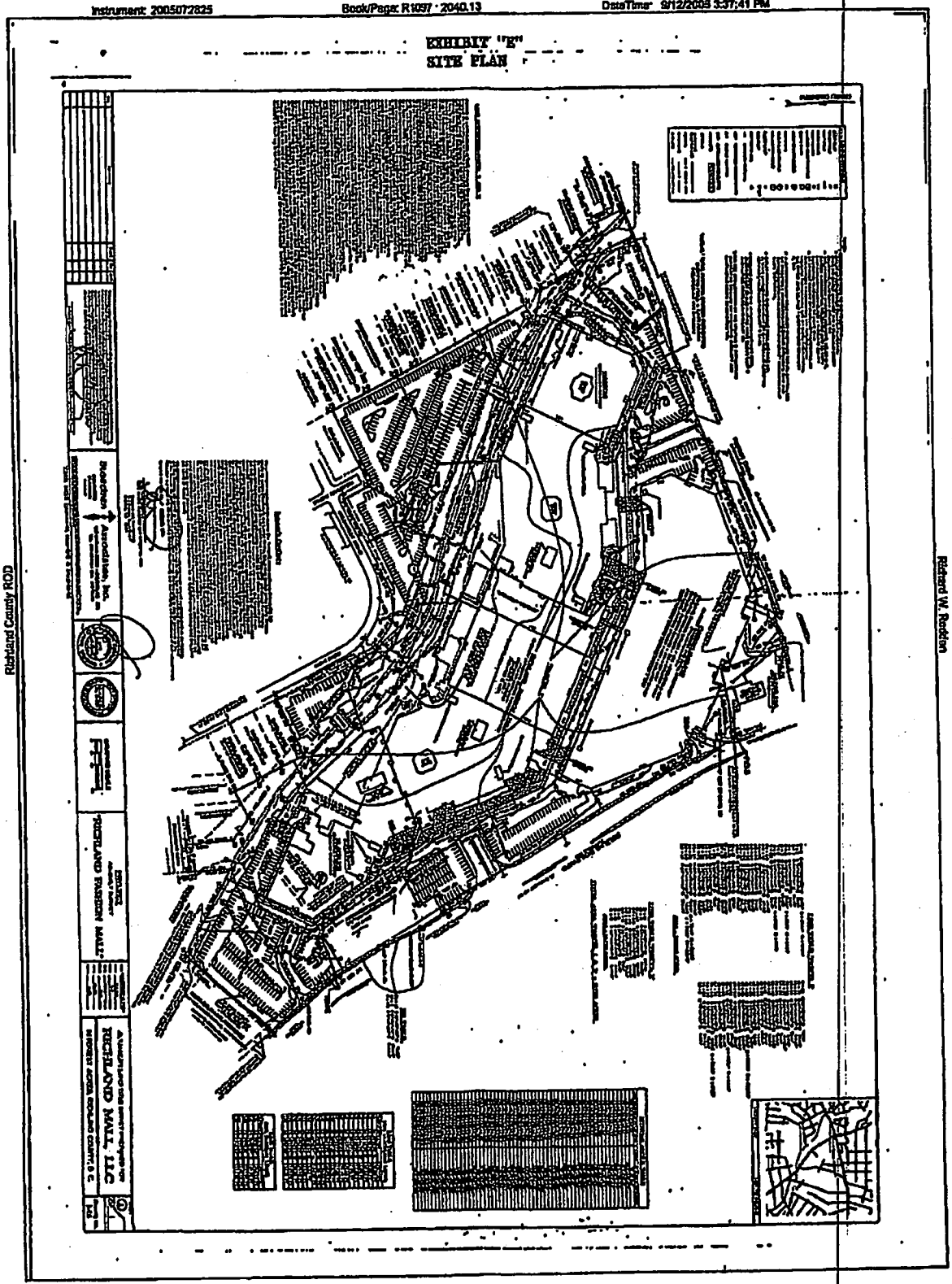
Instrument: 2005072825 Book/Page: R1097 : 2040.13 DateTime: 9/12/2005 3:37:41 PM

EXHIBIT "E"
SITE PLAN



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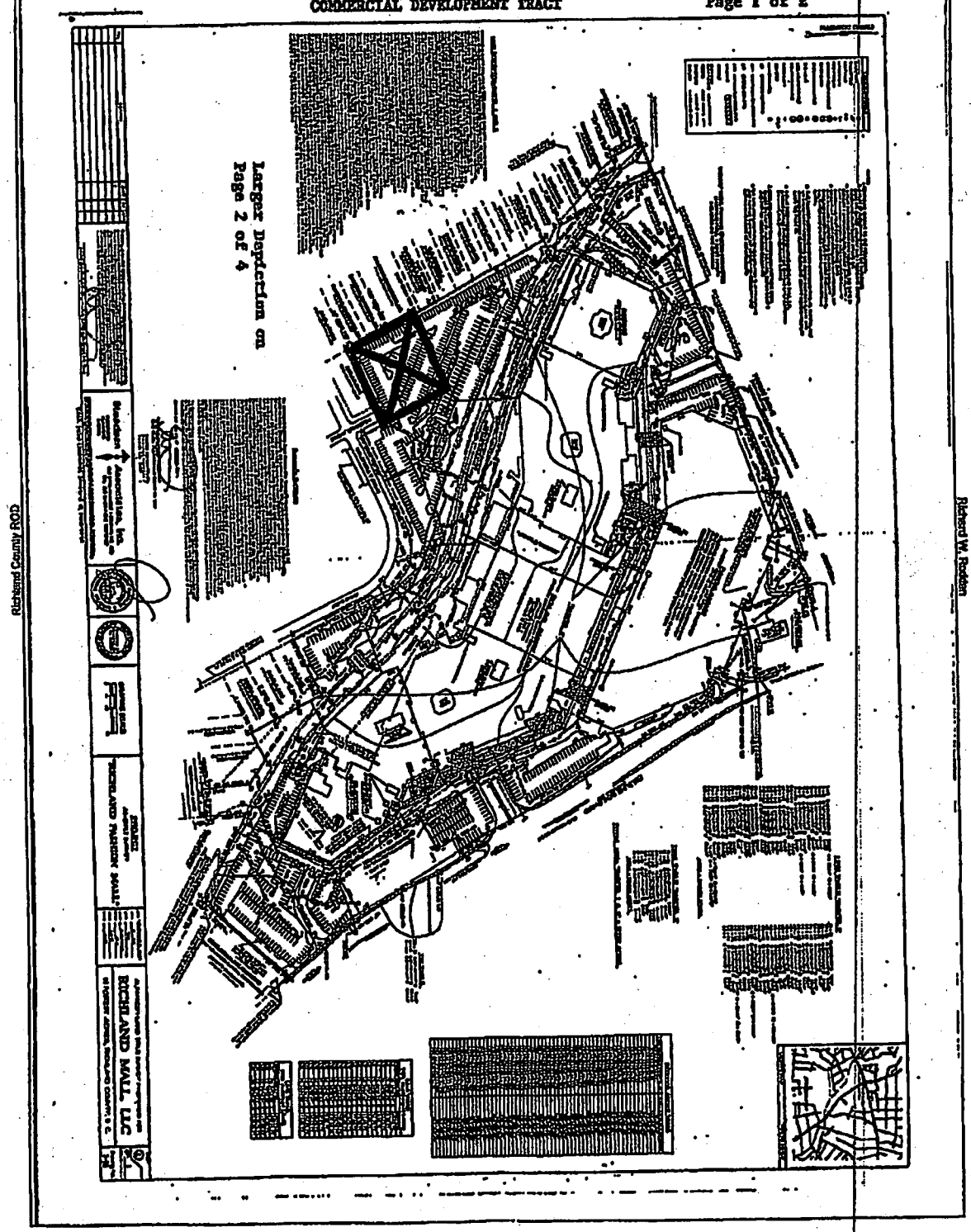
Instrument: 2005072825 Book/Page: R1097 : 2040.14 DateTime: 9/12/2005 3:37:41 PM

EXHIBIT "F"

COMMERCIAL DEVELOPMENT TRACT



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Instrument: 2005072825 Book/Page: R1097 : 2040,15 Date/Time: 9/12/2005 3:37:41 PM

EXHIBIT "F"

Page 2 of 2

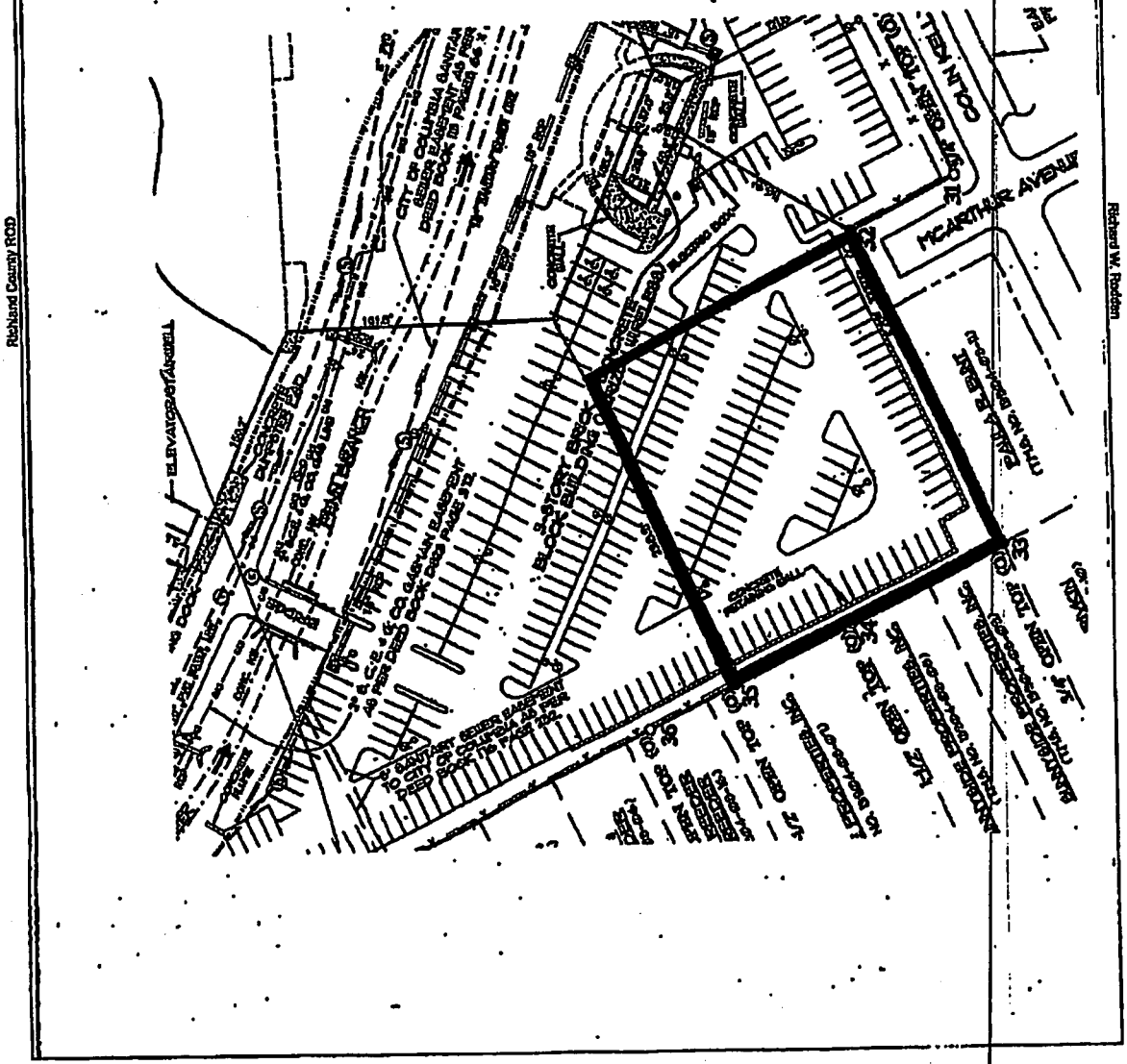
Richland County ROD
Richard M. Rabon
MCARTHUR AVENUE
COLIN KELLY
ELEVATOR OF ANGELL
BOARDWALK
CONCRETE BLOCK BUILDING
CONCRETE PATIO
CONCRETE PAVING WALL
CONCRETE SIDEWALK
BLACKTOP ROAD
BLACKTOP PARKING
CITY OF COLUMBIA SANITARY SEWER EASEMENT DEED BOOK 19 PAGE 45
CITY OF COLUMBIA SANITARY SEWER EASEMENT DEED BOOK D69 PAGE 312
CITY OF COLUMBIA SANITARY SEWER EASEMENT DEED BOOK 19 PAGE 102
1915'
1915'
1915'

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EXHIBIT "G" - RESIDENTIAL DEVELOPMENT TRACT Page 1 of 3

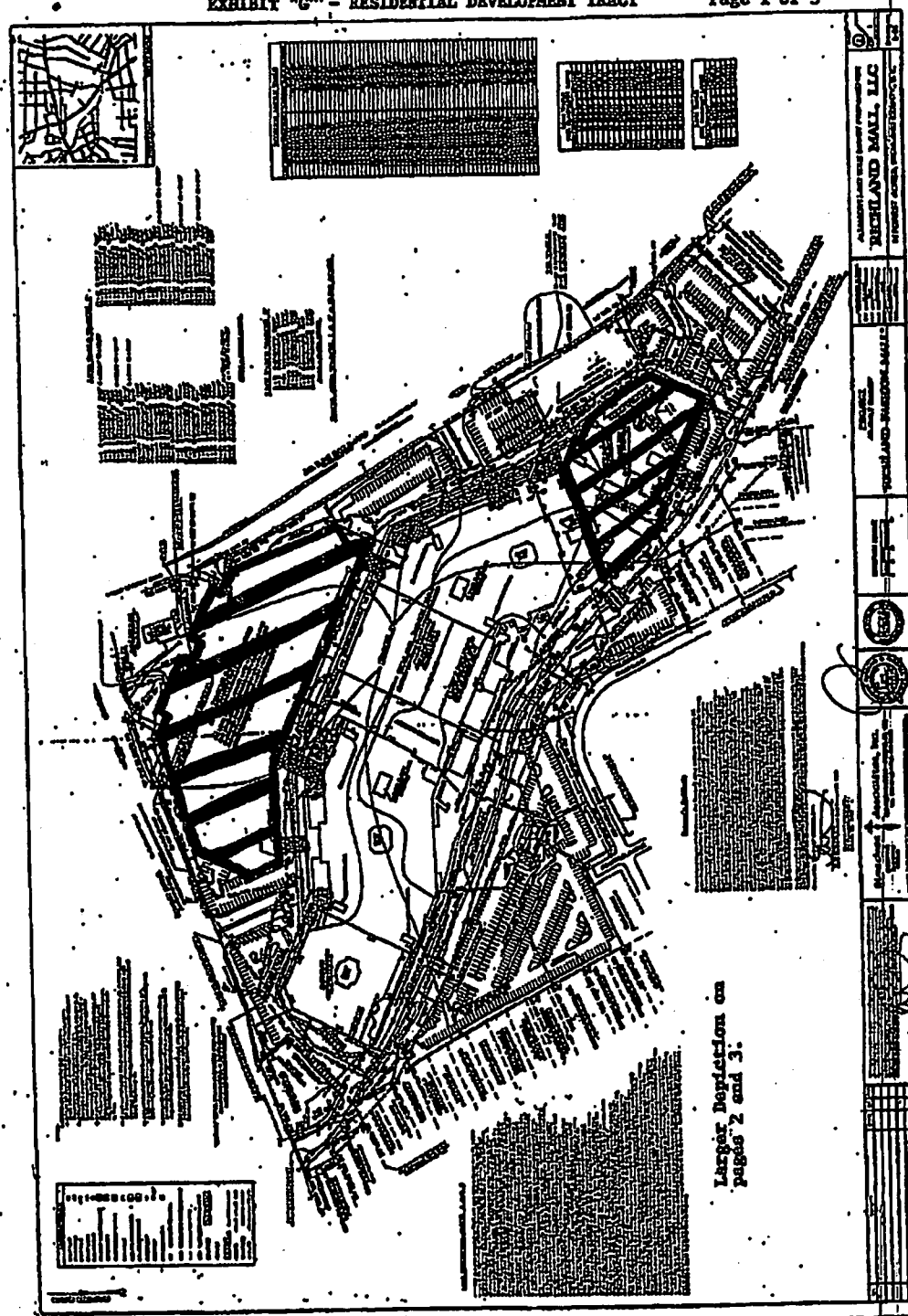

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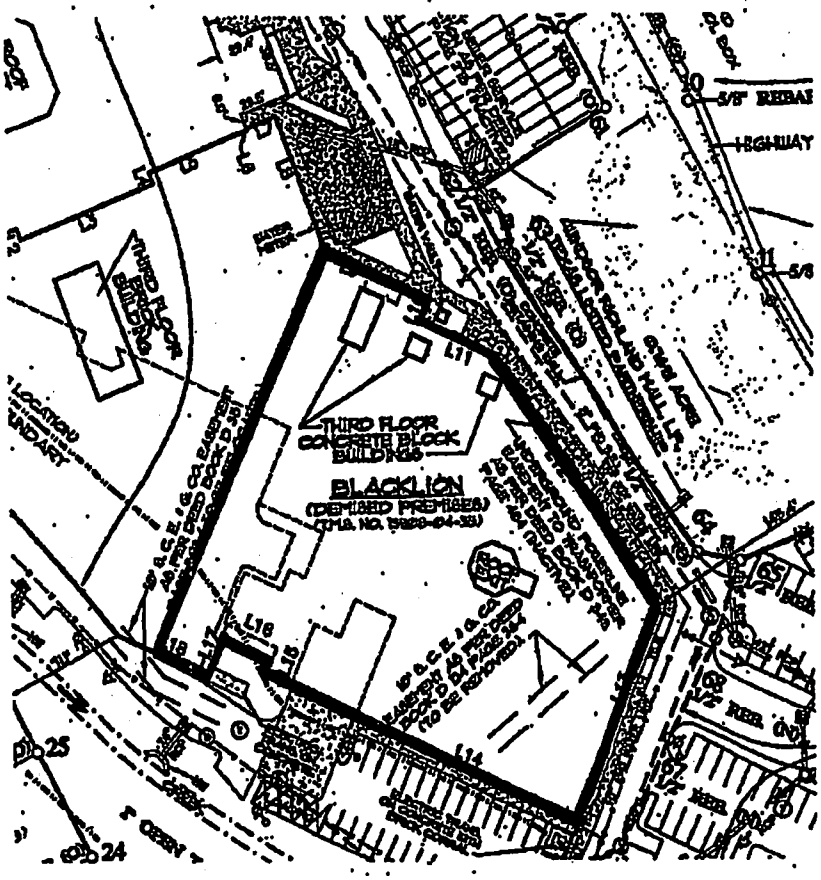
EXHIBIT "G"- RESIDENTIAL DEVELOPMENT TRACT Page 2 of 3



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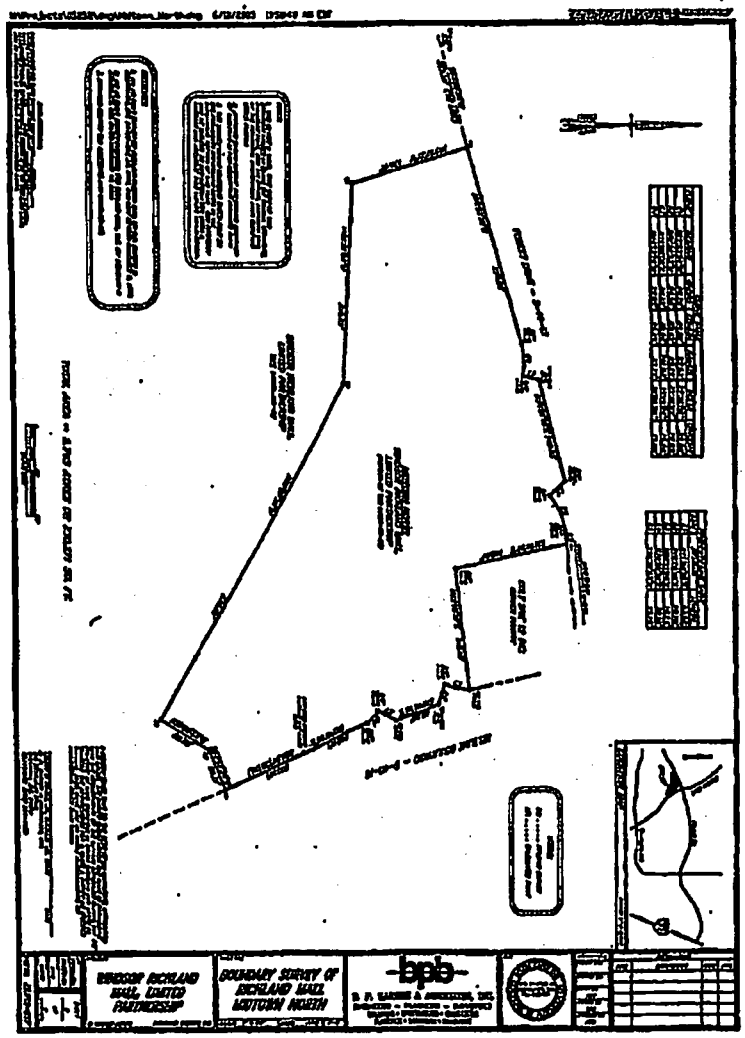
Instrument: 2005072826 Book/Page: R1097 : 2040.18 DateTime: 9/12/2005 3:37:41 PM

Richland County ROD

Richard W. Rodden

EXHIBIT "C"
RESIDENTIAL DEVELOPMENT TRACT
PAGE 3 of 3



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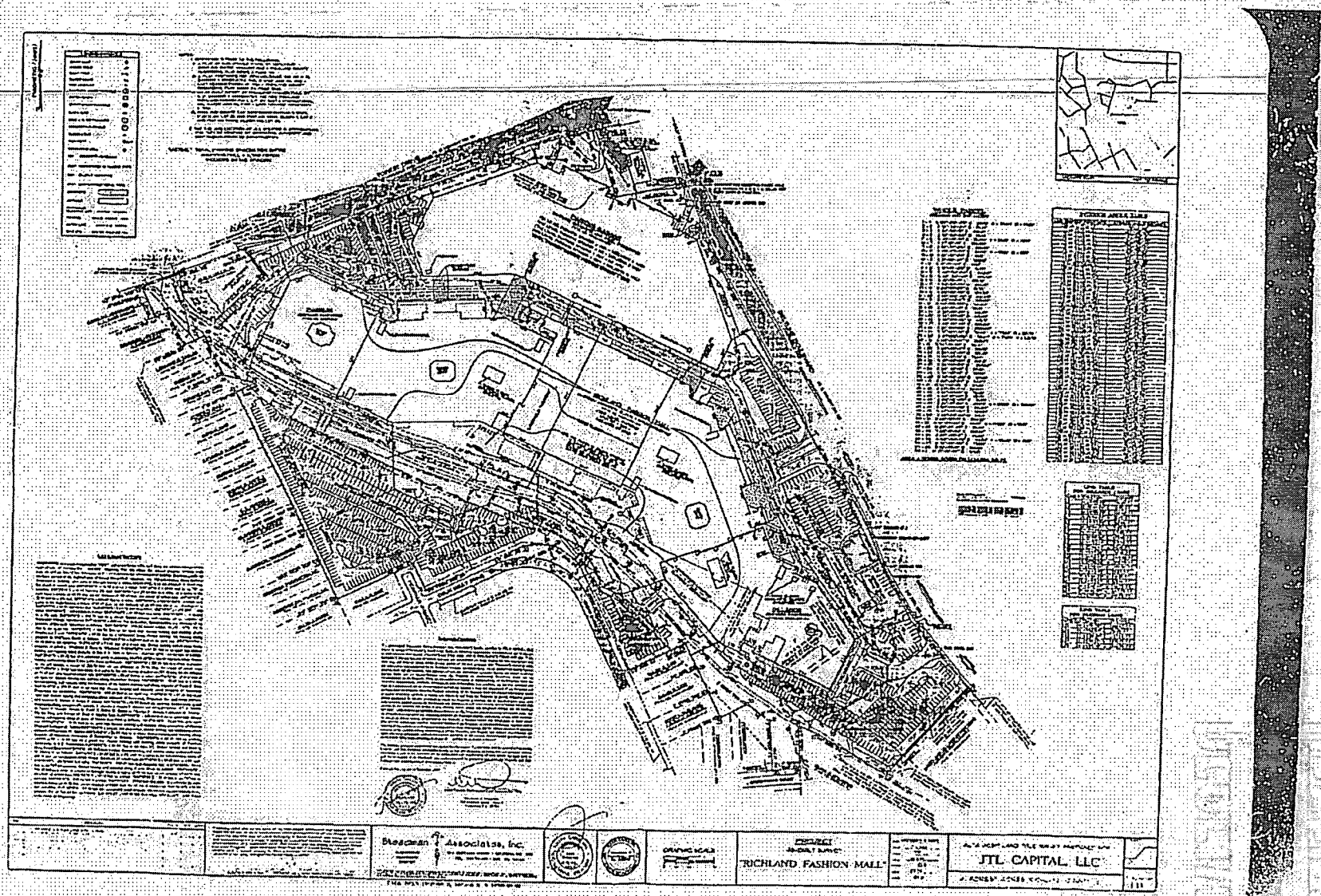
Associates, Inc.
RICHLAND FASHION MALL
JTL CAPITAL, LLC

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND CENTURY CAPITAL GROUP, LLC, Plaintiff, vs. MIDTOWN DEVELOPMENT GROUP, LLC, RICHLAND JOINT VENTURE GROUP, LLC, WINDSOR RICHLAND MALL, L.P., AND BRC RICHLAND, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-40-07037 **DEFENDANT MIDTOWN DEVELOPMENT GROUP, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Midtown Development Group, LLC, by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment as to all of Plaintiff Century Capital Group, LLC's causes of action against it as set forth in their Second Amended Complaint.

FACTS AND PROCEDURAL HISTORY

This is a contribution action wherein Plaintiff Century Capital Group, LLC (hereinafter referred to as "Century") seeks recovery from Defendants Midtown Development Group, LLC (herein after referred to as "Midtown"), Richland Joint Venture Group, LLC (hereinafter referred to as "Richland"), Windsor Richland Mall, L.P. (hereinafter referred to as "Windsor") and BRC Richland, LLC (hereinafter referred to as "BRC")(herein collectively referred to as "Defendants") for their respective pro-rata shares of a settlement entered into between Century and Spirit SPE Columbia, LLC (hereinafter referred to as "Spirit").

In 2002, Windsor purchased the Richland Fashion Mall in the City of Forest Acres, Richland County and subdivided the property into four (4) distinct parcels: 1) the TGI Friday

Parcel; 2) the Bank Parcel; 3) the Verizon Parcel; and 4) the Midtown Parcel. (Plaintiff's Second Amended Complaint, ¶ 7). At the same time, Windsor sold the Verizon Parcel to BRC. (*Id.* at ¶ 8).

On or about September 7, 2005, Windsor, as then-owner of the Midtown Parcel, and BRC, as then-owner of the Verizon Parcel, entered into a Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration (the "REA")(attached hereto as Exhibit "A"). (*Id.* at ¶ 9). Among other things, the REA created a contractual duty on behalf of the owner of the Midtown Parcel to perform and pay for maintenance and repairs to the Common Areas and to the HVAC system, roof system and structural components of the Verizon Parcel, until November 30, 2010. (*Id.* at ¶ 9). The property then changed hands in several transactions.

On or about September 12, 2005, BRC sold the Verizon Parcel to Spirit. (*Id.* at ¶ 10). On or about November 4, 2005, Windsor sold Midtown the Midtown Parcel. (*Id.* at ¶ 11). On or about May 25, 2007, Midtown deeded the Midtown Parcel to Richland. (*Id.* at ¶ 12). Thereafter, on or about February 16, 2010, Richland sold 79% of its interest in the Midtown Parcel to Century and the remaining 21% interest in the Midtown Parcel to Investment Property Exchange Services. (*Id.* at ¶ 13). On or about February 17, 2010, Investment Property Exchange Services transferred this 21% interest in the Midtown Parcel back to Richland. (*Id.* at ¶ 13).

On or about September 12, 2005, after the REA went into effect, BRC conveyed the Verizon Parcel to Spirit. However, Spirit is not a party this case.

Spirit filed a lawsuit against Century and its associated entities/individuals, as owners of the Midtown Parcel, on November 30, 2010. This litigation between Spirit and Century involved seventeen (17) causes of action, including breach of the REA, negligence, unfair trade practices and fraud. These claims were based on allegations that Century had failed to maintain and repair

portions of Richland Mall that Century was contractually obligated to maintain and that Century improperly overbilled Spirit for the repairs that were undertaken to the Verizon Parcel.

In or around November of 2013, Century and Spirit settled their litigation and entered a Settlement Agreement and Mutual Release (the "Settlement Agreement")(attached hereto as Exhibit "B"). Among other things, the Settlement Agreement provided that Century would pay Spirit an amount totaling $1,450,000.00. (Plaintiff's Second Amended Complaint, ¶ 16). More specifically, Paragraph (a)(6) of the Settlement Agreement states that:

> The parties agree that the $1,450,000 payment is provided for the release and extinguishment of any pre-June 30, 2013 liability related to the maintenance and repair of the [Verizon Parcel] and the remaining consideration provided by [Century] under this Settlement Agreement is provided for the pre-June 30, 2013 settlement of the CAM, accounting, and other claims asserted by Spirit.

Other than this paragraph, the Settlement Agreement in no way delineates the reason for the payment of $1,450,000.00. In other words, the Settlement Agreement neither explains if the payment is pursuant to the breach of contract claims, the negligence claims or any of the several other claims brought against Century by Spirit, nor does the Settlement Agreement explain how the payment may be allocated among any particular maintenance or repair failure. Century now relies upon this purported extinguishment of liability within the settlement as the primary ground for seeking contribution from the above listed Defendants, including Midtown.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R.Civ.P. 56(c). In determining whether any triable issues of fact exist, the Court must view

the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Brock Bank v. Best Capital Corp.*, 341 S.C. 372, 534 S.C.2d 688 (2000).

In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. *NationsBank v. Scott Farm*, 320 S.C. 299, 302 (1995). When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying on the allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or the proof. *Shupe v. Settle*, 315, S.C. 510, 516 (1994). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment. *Id.* at 516-517. A trial court should grant summary judgment against a party who fails to make and show insufficient to establish the existence of an essential element of the party's case. *Defender and Latham, Inc. v. First Union Nat. Bank of S.C.*, 316 S.C. 48, 50 (1994). "Where there is present on a motion for summary judgment a question as to the construction of a written agreement that can be determined by consideration of the plain and unambiguous language of the contract, the question is one of law that may be resolved by the court." *Lyles v. BMI, Inc.*, 292 S.C. 153, 157 (1987)(*quoting First Citizens Bank and Trust Co. v. Conway National Bank*, 282 S.C. 303 (1984)).

ARGUMENT

I. MIDTOWN IS ENTITLED TO SUMMARY JUDGMENT ON CENTURY'S CLAIMS FOR CONTRIBUTION.

The sole cause of action in this case is one for contribution pursuant to the South Carolina Uniform Contribution Among Tortfeasors Act (the "Act") regarding the $1,450,000.00 payment

that Century made to Spirit under the terms of their Settlement Agreement. (Plaintiff's Second Amended Complaint, ¶ 21).

The Act only applies to tort claims. *See* S.C. Code Ann. § 15-38-20 (1976)(as amended). Accordingly, to the extent Century settled breach of contract as opposed to tort claims with Spirit in the course of their litigation, Century plainly has no right to recover for those claims in this case. However, Century alleges that Defendants "negligently repaired the Verizon Parcel, common areas, roof and HVAC system, thus subjecting [Century] to claims by Spirit, the current owner of the Verizon Parcel." (Plaintiff's Second Amended Complaint, ¶ 15). In other words, Century contends that each owner of the Midtown Parcel, during its period of ownership, undertook repairs of the Verizon Parcel, as the REA required of the owner of the Midtown Parcel, but performed such repairs negligently, thereby giving rise to a tort.

The settlement entered into between Spirit and Century in the underlying case was finalized and signed on December 6, 2013. The settlement purported to extinguish liability for both the claims against Century as well as the potential and unfiled claims against Century's "predecessors in interest under the REA, and each predecessor in interest's employees, agents, heirs and assigns." Nevertheless, the settlement provides no insight into how liability could be allocated between these predecessors in interest in the event a contribution action was filed. Spirit listed seventeen (17) causes of action in their Third Amended Complaint, including both contractual and equitable causes of action. Of these seventeen causes of action, only certain causes of action are based in tort and some of these causes of actions are intentional torts for which contribution may not be sought under S.C. Code Ann. § 15-38-20(C). Lastly, some of the tort claims relate to specific billing representations by Century which Midtown could not be jointly liable for in tort, such as Spirit's negligent misrepresentation cause of action. In total,

there is only one cause of action out of seventeen in which Midtown could conceivably be held jointly liable: negligence.

Further, Midtown could not be jointly liable for any of the allegations that Century overbilled Spirit for repairs once it took over maintenance duties under the REA described above. Spirit was granted partial summary judgment as to liability for overbilling, so the only issue left to be decided at trial was the amount of damages recoverable by Spirit. However, it is impossible to decipher from the language of the lump-sum settlement what percentage of the total settlement concerned the causes of action for which contribution could be sought versus which portion of the settlement concerned Spirit's allegations of improper overbilling. Any attempt to determine what percentage of the settlement did include recoverable damages on a contribution claim would be purely speculative such that a fact finder cannot logically allocate damages to Midtown for contribution.

The issues in this case are similar to those presented in *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 356 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). That case involved a settlement that extinguished liability for both a well pled strict liability products liability claim and a potential loss of consortium claim that had not yet been sought by the wife of the plaintiff injured by the defective product. The South Carolina Court of Appeals held that it could not permit the settling tortfeasor to pursue a contribution claim to recover funds paid in extinguishing liability for the wife's potential and unfiled loss of consortium claim because the agreement failed to put a specific value on that individual theory of liability. The Court of Appeals stated:

> The settlement agreement does not place a specific value on any potential claim by Mrs. Causey. Under the agreement, no portion of the settlement is allocated to her for any potential loss of consortium claim. We cannot, therefore, determine whether Vermeer paid more than its pro rata share of liability to Mrs.

> Causey. *See* S.C.Code Ann. § 15-38-20(B) (Supp.1998)(right of contribution exists only in favor of tortfeasor who has paid more than his pro rata share of common liability, and his total recovery is limited to amount paid by him in excess of his pro rata share) . . . [W]e rule there is no contribution available to Vermeer under the South Carolina Contribution Among Tortfeasors Act. Accordingly, the order of the trial court granting summary judgment to Wood/Chuck is Affirmed.

Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 70-72, 518 S.E.2d 301, 310-11.

In coming to this conclusion, the Court of Appeals noted the parties could not cite any South Carolina case involving a settlement agreement that did not contain an allocation of damages, leaving the Court to consider the case of *Houser v. Witt*, 111 Ill.App.3d 123, 443 N.E.2d 725 (Ill. App. 1982). In *Houser v. Witt*, Plaintiff Houser ("Houser") was driving a vehicle in which his wife was a passenger when they collided with another vehicle driven by the Defendant Witt ("Witt"). All three parties entered into a settlement and Witt filed a contribution action against Houser, claiming he was a joint tortfeasor along with Witt in causing wife's injuries. The *Houser* court noted the settlement did not provide any way to determine whether the amount paid by Witt was in excess of his pro-rata share:

> In short, the open-end, blanket, joint release gives no indication as to how the amount paid for the release relates to any present or future damage to either party. In this case lack of apportionment may work a hardship on Witt, but it is one which he could have avoided by a properly drawn release.

Houser v. Witt, 111 Ill.App.3d 123, 443 N.E.2d 725, 728. The Court of Appeals cited this same language in reaching its conclusion in *Vermeer*.

In the underlying case between Century and Spirit, Midtown was not a party and not involved in the ultimate settlement discussions and subsequent settlement. Therefore, Midtown has no way of knowing what portion of the settlement money was paid towards any claims that

may now be covered in Century's contribution action. A party drafting a settlement agreement has a duty to help draft the settlement agreement in such a way as to place a specific value on claims so that the fact finder is not left to speculate as to what portion of the settlement relates to specific claims and the fact finder can accordingly determine whether the settling defendant has paid more than its pro rata share of liability on the claims for which contribution is sought. *Vermeer*, 356 S.C.at 70-72, 518 S.E.2d at 310-11.

In this case, the entire settlement—which included both claims based in contract and based in equity related to overbilling—is not subject to contribution. However, with the settlement already finalized, any discussion of how much of the settlement contemplated damages that might have been recoverable from Midtown under a theory of contribution would be purely speculative. The settlement signed by Century epitomizes the "open-end, blanket, joint release [that] gives no indication as to how the amount paid for the release relates to any present or future damage to either party." *Id.*

Further, by its own terms, the settlement agreement expressly provides that it "constitutes the entire agreement among the parties pertaining to the subject matter contained herein" and "[t]his Settlement Agreement shall not be modified or amended except by an instrument in writing signed by all of the parties." (Settlement Agreement and Mutual Release, p. 13). As a result and in the absence of an instrument signed by all the parties to the agreement—including Spirit—no additional evidence may be proffered to delineate how the settlement contemplated the apportionment of liability between the allegations that might have been jointly recoverable. The South Carolina Supreme Court has recently held that when a writing, upon its face, imports to be a complete expression of the whole agreement and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item

and term and parol evidence is not admissible to add another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed. *Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 568, 577-78, 762 S.E.2d 696, 701 (2014).

An example of a similar argument to Century's current claim can be found in a recent Charleston County case that involved questions of contribution among several defendants arising out of a construction defect claim concerning the construction of a single family residence.[1]

In *D.R. Horton, Inc. f/k/a C. Richard Dobson Builders, Inc. v. Builders Firstsource-Southeast Group, LLC, et al*, D.R. Horton ("DRH") filed a lawsuit seeking contribution from Builders Firstsource ("BFS") for an unreasoned arbitration award in the construction defect litigation by the homeowner. (Order Granting Defendants Builders Firstsource-Southeast Group, LLC, and Builders Firstsource, Inc. Partial Summary Judgment, Civil Action No. 2010-CP-10-10355, September 5, 2014). Arbitration was requested after the homeowner filed her Complaint alleging construction defects in the original construction of her home. (*Id.*). The homeowner's lawsuit alleged causes of action for breach of contract, breach of warranty, negligence and violations of the South Carolina Unfair Trade Practices Act. The Order notes that "[t]he parties to the Homeowner's Suit requested an unreasoned arbitration award that would not contain findings of fact or conclusions of law." (Order, p. 3, ¶ 9). Further, the Order sets out that the arbitration award "does not indicate what amounts, if any, were awarded for specific defects. Nor does the award specify which of the causes of action asserted in the Homeowner's Suit were successful." (*Id.*). Finally, the Order found that "there is no basis in the record to find that DRH

[1] Midtown acknowledges that this circuit court opinion is not binding precedent. However, Midtown believes this Order is useful as persuasive authority insofar as it is essentially an application of the *Vermeer* holding to similar facts and it reaches the same conclusion presented by Midtwon in the present case.

has sustained tort liability. The plaintiff in the Homeowner's Suit alleged causes of action for breach of contract, breach of warranty, negligence and violations of the UTPA. The parties to the Homeowner's Suit requested an award from the arbitrator that does not specify the legal basis for his award of damages." (*Id.* at p. 4, ¶ 15).

Based on this lack of specificity, the Order states that "[e]ven if, somehow, DRH was able to establish its own tort liability, and that BF's work was determined to be defective in the Homeowner's Suit, there is no way to determine what portion of the Judgment is related to said liability." (*Id.* at p. 5, ¶ 18). Lastly, summary judgment was granted on the contribution claim based on the *Vermeer* case because "[a]ny attempt to determine what portion of the Judgment is attributable to the joint negligence of BFS and DRH would be an exercise in impermissible guesswork." (*Id.* atp. 6, ¶ 19).

Based on the above, the settlement agreement, as drafted, is incapable of being apportioned in any rational, logical way so as to enable a fact finder to determine what portion of the settlement might be subject to contribution by Midtown and any attempt to do so is purely speculative. Midtown is not jointly liable with Century for the allegations that Century overbilled Spirit or for the allegations by Spirit that were set forth in the contractual, equitable or intentional tort causes of action. However, it is impossible to tell from the terms of the blanket settlement what portion of the settlement the parties intended to be subject to contribution. The settlement agreement further provides that it cannot be modified or amended in order to show how the parties intended to allocate settlement costs. As stated by the *Houser v. Witt* court, cited with approval by the South Carolina Court of Appeals, a "lack of apportionment may work a hardship on [the plaintiff], but it is one which he could have avoided by a properly drawn release." *Vermeer*, 356 S.C. at 70, 518 S.E.2d at 310.

Finally, the Settlement Agreement does not address any specific injury for which the payment of $1,450,000 was made by Century to Spirit. However, recovery under the Act requires the party from whom recovery is sought to have been "jointly or severally liable in tort for the *same injury*" with the party who seeks contribution. S.C. Code Ann. § 15-38-20(A)(emphasis added). Century bases its current case on each of the Defendants having performed negligent repairs to the Verizon Parcel. However, there is no evidence that all Defendants performed negligent repairs on the same portion of the Verizon Parcel, or otherwise contributed to a single injury. *See Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 306, 504 S.E.2d 347, 356 (Ct. App. 1998)(explaining that two tortfeasors are not jointly and severally liable unless they are "responsible for a *single* injury").

Instead, the finder of fact would be left to engage in impermissible guesswork as to what amounts of the payment pertained to any of the allegedly negligent repairs performed by any one of the above Defendants over the several years each has held an ownership stake in the property.

For these reasons, there exists no genuine issue of material fact and Midtown is entitled to judgment as a matter of law on Century's claims for contribution. The Settlement Agreement is silent as to which portion of the monies paid can be subject to contribution by Midtown—or any of the other named Defendants—and, therefore, Century's claims must fail. Further, a fact finder is left to guess at the amount of the settlement funds paid by Century concerned any of the allegedly negligent repairs cited by Century. As a result, Century cannot point to one piece of evidence that shows Midtown is responsible for the same injury Century paid to settle with Spirit.

CONCLUSION

For the foregoing reasons, Midtown Development Group, LLC is entitled to judgment as a matter of law on Plaintiff Century Capital, LLC's cause of action for contribution.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR DEFENDANT MIDTOWN DEVELOPMENT GROUP, LLC

May 1, 2015
Columbia, South Carolina

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RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION

THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION, ("Agreement") is made as of this 11 day of September, 2005, by and between BRC RICHLAND, LLC, a Georgia limited liability company ("BRC"), and WINDSOR RICHLAND MALL, L.P., a Texas limited partnership ("Windsor").

WITNESSETH:

WHEREAS, Windsor is the owner of that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and (entire parcel)

WHEREAS, contemporaneous herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless call center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

WHEREAS, the Shopping Mall Parcel, less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

WHEREAS, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 9, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2003 (the "Verizon Lease"); and

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Richland County RMD
Richland County ROD
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EXHIBIT A

EXHIBIT 1

WHEREAS, it is contemplated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

WHEREAS, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Cellco under the Verizon Lease be protected and preserved;

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

ARTICLE I

EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL

(A) Access. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, those parking areas located on the roof of the Midtown Parcel; and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel; provided that the owner of the Midtown Parcel gives at least twenty (20) days notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) Drainage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

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(C) Utilities.

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of (a) installation, maintenance, repair and use of utilities, including specifically fiber optic cable, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Midtown Parcel; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Midtown Parcel may relocate, at its sole expense, such utility lines, so long as utility service to any other Parcel is not interrupted; and (b) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) Signage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusion on any directories located within the Mall, suite entry

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signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Celico's present signage rights under the Verizon Lease without the prior written approval of Celico.

(E) Parking. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Celico and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Celico has approved the parking change.

ARTICLE II

EASEMENTS BURDENING THE BANK PARCEL

(A) Access, Drainage and Utilities. Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel; (c) installation, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

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power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Parcel owner performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

ARTICLE III

EASEMENTS BURDENING THE VERIZON PARCEL

(A) Access. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the MTB Parcels, for the purpose of passage and use for the purpose of walking and driving over and across and maintenance and repair of, all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) Parking. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to Section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with threat and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

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Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) Utilities and Drainage. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists; (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Verizon Parcel provided, however: (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) Green Space Amenity Easement. BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

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(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and rebuild the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is destroyed or substantially modified in connection with a redevelopment (i.e. material structural change in the building on the Verizon Parcel which involves construction of more than two (2) additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

ARTICLE IV

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COMMON AREA MAINTENANCE

(A) Definitions. For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) Responsibility. The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation: repaving and re-striping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty; and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel; and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed $10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) Contribution. The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leasable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

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Richard W. Rodda

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Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such TGIF Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such Bank Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

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year in an amount equal to one-twelfth (1/12) of such Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the TGIF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the amount of each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay to the Midtown Parcel owner any deficiency due the Midtown Parcel owner for its Parcel. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right within ninety (90) days of receipt of the statement during its regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year, a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's election and, if the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to such Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is otherwise found to be incorrect, the party found to be owing money shall promptly pay an offsetting sum to the other party.

(D) Collection; Attorneys' Fees. Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If, upon expiration of such twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

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fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(E) Failure to Maintain. Should the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (herein a "Repairing Owner") shall be entitled to perform such obligations and to bill the owner of the Midtown Parcel or to deduct such reasonable out-of-pocket costs from any sums owed to the owner of the Midtown Parcel, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the default, in writing, and shall permit the same to perform the obligation within twenty (20) days after receipt of written notice. In the event that the owner of the Midtown Parcel fails to perform its obligations upon any Parcel in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Repairing Owner, the Repairing Owner may perform the Common Area repair and upkeep on the Parcel, provided that the owner of the Midtown Parcel is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Repairing Owner shall be immediately due and owing from the Midtown Parcel owner. Such unpaid amounts may be offset against any amounts owing from the Repairing Owner to the Midtown Parcel owner, and until paid or offset the amount owed the Repairing Owner shall constitute a lien upon the Midtown Parcel with a priority relating back to the date hereof. The Midtown Parcel owner shall execute such instruments as the Repairing Owner may request to permit the recordation of such lien, and the Shopping Mall Parcel owner hereby irrevocably designates the Repairing Owner as the Shopping Mall Parcel owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(F) Indemnity. The owner of the Midtown Parcel shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorney's fees, arising out of the owner of the Midtown Parcel's refusal or failure to maintain or repair that portion of the Common Areas for which it is responsible hereunder except as results from the gross negligence or willful act of the owner of the another Parcel owner.

ARTICLE V

INSURANCE

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Area of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least Three Million Dollars ($3,000,000.00) combined single limit for death or injury to one or more persons and property damage, and shall name the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds thereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

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evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

ARTICLE VI

DAMAGE OR DESTRUCTION

In the event all or any portion of the Common Area on the Mall is destroyed or damaged by fire, casualty or force majeure, the owner of the Midtown Parcel shall forthwith clear such area of debris and restore to the prior condition.

If all or any portion of the Midtown Parcel, including without limitation the Common Area on the Midtown Parcel, is damaged or destroyed in such a manner as prevents or interferes with the operation of the business on the Verizon Parcel, the Bank Parcel, or the TGIF Parcel, then the owner of the Midtown Parcel shall use all commercially reasonable efforts to repair such damaged or destroyed areas in a prompt and thorough fashion.

In the event the owner of the Midtown Parcel fails to perform its obligations under this Article VI, the owners of the other Parcels may perform such work and shall have such rights as are contemplated in Article (IV) (D), (E) and (F) hereof.

ARTICLE VII

EFFECT AND DURATION

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

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reconstruction, expansion or other circumstances. The parties acknowledge and agree that damages from a breach hereof are not readily ascertainable and an injunction and specific performance shall be available in the event of any breach hereunder, in addition to any other remedies available under law. The easements established herein shall be perpetual in duration.

ARTICLE VIII

NO DEDICATION

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

ARTICLE IX

DEFAULT

(A) Default. Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of fifteen (15) days after its receipt of written notice, the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owner, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All reasonable out-of-pocket expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses and any unpaid expenses shall constitute a lien with priority dating to the date of this Agreement. Notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "G" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Tracts"), then from and after the date of any construction loan closing for either Residential Redevelopment Tract, such tract shall be excluded and not subject to subsequently accruing liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Tracts shall be subject to liens which accrued prior to construction loan closing).

(B) Attorneys' Fees. In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to all other expenses incurred by such litigation.

ARTICLE X

OPT OUT

(A) Verizon Parcel. Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice provided to the owner of the Midtown Parcel, to maintain such Verizon Parcel's Common Area and insurance covering the Verizon Parcel and Common Area on such Verizon Parcel. Upon such notice, the owner of the Midtown Parcel owner shall no longer be responsible for those obligations with respect to the Verizon Parcel and the Verizon Parcel owner shall not be obligated to make the

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contributions for such matters contemplated herein; provided that the Verizon Parcel owner shall still be responsible for its Pro Rata Share of only (i) common access facilities and utility facilities benefiting the Verizon Parcel and (ii) liability insurance maintained by the Midtown Parcel owner for the Common Areas.

(B) Bank Parcel. Notwithstanding any provision in this Agreement to the contrary, the Bank Parcel owner may elect, by written notice provided to the owner of the Midtown Parcel, to maintain such Bank Parcel's Common Area and insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such notice, the owner of the Midtown Parcel Owner shall no longer be responsible for these obligations with respect to the Bank Parcel. Thereafter, the owner of the subject Bank Parcel shall no longer be responsible for a Pro Rata Share for Common Area Maintenance Charges; provided, however, that until the Parcels are separately assessed for tax purposes, the owner of the Bank Parcel will in any event be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

ARTICLE XI

RESERVED

ARTICLE XII

ENVIRONMENTAL MATTERS

(A) Regulatory Compliance. Each Parcel owner will not take any action or omit to take any action (including actions taken by or omissions of any contractors or agents of such owner) which would cause the Mall to be subject to any remedial obligations under any applicable environmental laws and regulations and/or any other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions applicable to environmental laws (collectively, "Applicable Environmental Laws"). The Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

(B) Hazardous Waste. Each owner shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including actions or omissions of any contractors or agents of such owner) which would cause the disposal or other release of any hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

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removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense, unless, under then applicable law and prudent real estate practices, no removal or other remedial action with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) Remediation. Should the owner of a Parcel fail to fulfill its obligations under this Article XII (herein a "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to deduct such costs from any sums owed to the Contaminating Owner; provided that, except in the case of an emergency, the Remediating Owner shall first notify Contaminating Owner of the default, in writing, and shall permit the same to perform the obligation within ten (10) days after receipt of written notice. In the event that Contaminating Owner fails to perform its obligation to remediate in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Remediating Owner, the Remediating Owner may perform the remediation on its Parcel, provided that Contaminating Owner is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Remediating Owner shall be immediately due and owing from the Contaminating Owner. Such unpaid amounts may be offset against any amounts owing from the Remediating Owner to the Contaminating Owner, and until paid or offset the amount owed the Remediating Owner shall constitute a lien upon the Contaminating Owner's parcel as of the date of the Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may request to permit the recordation of such lien, and the Contaminating owner hereby irrevocably designates the Remediating Owner as the Contaminating Owner's attorney-in-fact (coupled with an interest) for such purpose.

ARTICLE XIII

RESERVED

ARTICLE XIV

RESERVED

ARTICLE XV

VERIZON EXPENSE CONTRIBUTION

(A) Taxes. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special assessments (including special tax district assessments, if any) applicable to the Verizon Parcel. Once the owner of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Cellco pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

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Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to attempt to obtain separate tax parcels for each Parcel; provided that in all events the Midtown Parcel owner shall be responsible for all taxes on the Verizon Parcel due through November 30, 2010 subject to the reimbursement of the Verizon payment as set forth above; provided taxes due for the final calendar year shall be pro-rated.

(B) Cooled Air. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to maintain, repair and replace as needed the cooled air system and any heating and ventilation systems for the Verizon Parcel and the owner of the Verizon Parcel shall pay to the owner of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 8.4 of the Verizon Lease.

(C) Roof and Other Repairs. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, shall make all roof repairs, structural repairs to exterior walls, structural repairs to columns and structural floor (excluding floor coverings) which collectively enclose the building on the Verizon Parcel and the building systems (plumbing, sprinkler, electrical and HVAC) in the building on the Verizon Parcel.

(D) Other Expenses. Until November 30, 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel, as landlord under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. taxes, insurance, utilities, maintenance and repair but not costs of tenant upgrades or concessions) shall be paid by Celico or the owner of the Midtown Parcel.

(E) Nonperformance or Nonpayment. In the event Windsor or any successor thereto defaults in the obligation at items (A) through (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such amounts immediately upon receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall accrue interest at eighteen percent (18%) and constitute a lien against the Midtown Parcel with a priority of the date of this Agreement (but subject to the release provision for the Residential Redevelopment Tracts contained in Article IX (A)).

(F) In consideration of the Verizon expense contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Celico, the payment obligations of Celico for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 8.4 of the Verizon Lease; provided that the Midtown Parcel owner shall not enforce such obligations against Celico if the payments are made instead by the owner of the Verizon Parcel.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

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Robert W. Rodden

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(A) Modification and Termination. Except as set forth in Article X hereof, no part of this Agreement may be terminated or modified without the prior consent of the owner of any affected Parcel; provided however, in the event the proposed modification has no material affect on a particular Parcel, then such Parcel owner's consent shall not be required.

(B) No Creation of Agency or Partnership. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) No Waiver. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

(E) Notice. All notices, demands, statements, and requests required or permitted to be given under this Agreement shall be in writing and given either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address for which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Parcel, either the owner selling such Parcel or the new owner of such Parcel shall give written notice to each of the parties of the name and address of the new owner. Until such time as any owner shall receive such a notice of the address of a new owner, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road
Atlanta, Georgia 30305
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard
3901 Lewis P. Olds
Raleigh, NC 27612

(F) No Other Agreement. This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

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statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

ARTICLE XVII

REDEVELOPMENT AND OPTION TO PURCHASE

(A) Redevelopment. The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel now covered with surface parking and more particularly described on Exhibit "F" hereto (the "Commercial Development Tract") as a structured parking deck with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (I) $1,000,000.00 or (II) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

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(viii) The Midtown Parcel Owner shall provide the necessary reciprocal easements, etc., in form and substance similar to those provided herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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Richard M. Rodden

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

Witness #1

Witness #2

By: Angela T. Whichard
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

Witness #1

Witness #2

By:
Name: Eric R. McPhail
Title: Manager

[COMPANY SEAL]

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

By: _____
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

Witness #1

Witness #2

By: _____
Name: Eric R. McPhail
Title: Manager

[COMPANY SEAL]

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ACKNOWLEDGMENTS

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:

_____

STATE OF Georgia
COUNTY OF Fulton

Before me, Kristi A. Lyons, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Atlanta, GA, this 7th day of September, 2005.

Notary Public

My Commission Expires:
11/29/08

KRISTI A. LYONS
NOTARY PUBLIC
GEORGIA
PUBLIC
COBB COUNTY

- 21 -

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ACKNOWLEDGMENTS

STATE OF North Carolina
COUNTY OF Wake

Before me, Tracy T. Bullock, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Wake County, N.C., this 7 day of September, 2005.

Tracy T. Bullock
Notary Public

TRACY T. BULLOCK NOTARY PUBLIC WAKE COUNTY, N.C.

My Commission Expires:
11.28.2009

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:
_____

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Instrument: 1005972019 Book/Page R1037 : 7049 Date/Time: 9/13/2005 2:37:41 PM

Schedule of Exhibits

Exhibit A	Shopping Mall Parcel Legal Description
Exhibit B	Verizon Parcel Legal Description
Exhibit C	TGIF Parcel Legal Description
Exhibit D	Bank Parcel Legal Description
Exhibit E	Site Plan
Exhibit F	Commercial Development Tract
Exhibit G	Residential Development Tracts

Richland County 800

Richland Rd. Section

9

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Instrument# 2006073618 Book/Page Num: 1:2048 Date/Time: 9/12/2006 3:37:41 PM

Richland County 0000

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 19, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Cell Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: In a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S05°00'05"W – 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 65.01 feet to a PK nail; S29°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'05"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°33'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.60 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S65°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 130.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula B. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N25°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°38'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderson,

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Instrument: 2006072618 Book/Page: R1697: 2010-9 Date/Time: 6/12/2006 9:37:01 PM

George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N61°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tubias N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tubias S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S69°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S33°10'53"E – 82.09 feet to a PK nail; S56°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 39.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.01 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.60 feet to a calculated point in grate; thence turning and running along property of Cell Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N71°22'02"E – 169.17 feet to the Point of Beginning.

Richland County ROD

Richland Co. Register

2 of 2

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Instrument: 2005072819 Book/Page: R1097 : 2048-19 Date/Time: 6/13/2005 3:37:41 PM

EXHIBIT "B"

LEGAL DESCRIPTION
VERIZON PARCEL

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 16, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.

Richland County ROD

Richland Mall Boundary

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EXHIBIT "C"

LEGAL DESCRIPTION
TGIF PARCEL

COMMENCE at the intersection of the centerline of Forest Drive (S-40-12) and the southwestern right of way of Beltline Boulevard (S-40-16); thence run along the southwestern right of way of Beltline Boulevard a distance of 1,010 feet to a 5/8" rebar found; thence leaving said right of way run South 75 degrees 05 minutes 54 seconds West a distance of 198.39 feet to a building corner, said corner being the POINT OF BEGINNING; thence run South 14 degrees 50 minutes 07 seconds East a distance of 39.49 feet to a building corner; thence run South 75 degrees 09 minutes 53 seconds West a distance of 2.00 feet to a building corner; thence run North 14 degrees 50 minutes 07 seconds West a distance of 0.23 feet to a building corner; thence run South 74 degrees 35 minutes 15 seconds West a distance of 110.05 feet to a calculated point; thence run North 14 degrees 31 minutes 02 seconds West a distance of 56.00 feet to a calculated point; thence run North 30 degrees 27 minutes 08 seconds East a distance of 7.41 feet to a calculated point; thence run North 75 degrees 27 minutes 30 seconds East a distance of 54.76 feet to a calculated point; thence run South 14 degrees 32 minutes 28 East a distance of 1.22 feet to a calculated point; thence run North 75 degrees 27 minutes 32 seconds East a distance of 10.77 feet to a building corner; thence run North 75 degrees 49 minutes 11 seconds East a distance of 13.08 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 4.84 feet to a building corner; thence run South 75 degrees 48 minutes 27 seconds West a distance of 1.44 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 2.33 feet to a building corner; thence run North 75 degrees 12 minutes 04 seconds East a distance of 6.57 feet to a building corner; thence run South 15 degrees 47 minutes 59 seconds East a distance of 5.47 feet to a building corner; thence run North 74 degrees 43 minutes 39 seconds East a distance of 3.43 feet to a building corner; thence run South 60 degrees 42 minutes 49 seconds East a distance of 8.33 feet to a building corner; thence run South 15 degrees 43 minutes 16 seconds East a distance of 0.99 feet to a building corner; thence run North 74 degrees 56 minutes 28 seconds East a distance of 11.33 feet to a building corner; thence run North 15 degrees 16 minutes 21 seconds West a distance of 0.20 feet to a building corner; thence run North 75 degrees 17 minutes 18 seconds East a distance of 1.98 feet to a building corner, said corner being the POINT OF BEGINNING.

Said tract contains 0.143 acres and is more particularly described on that certain Boundary Survey of Richland Mall TGI Friday's, prepared by B. P. Barber & Associates, Inc., dated March 29, 2005, last revised June 17, 2005.

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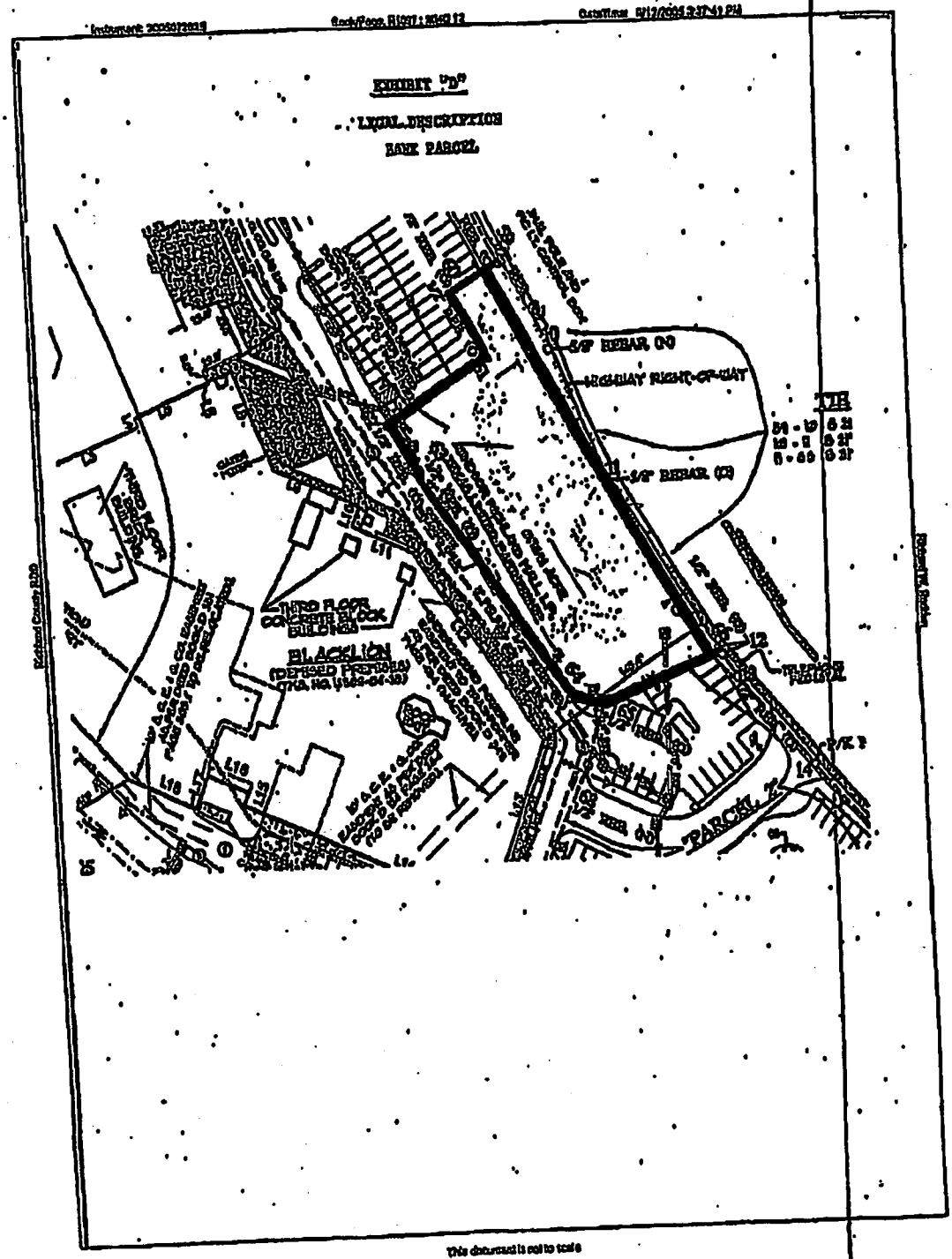
EXHIBIT "D"
LEGAL DESCRIPTION
BANK PARCEL
5/8" REBAR (R)
ARCHWAY RIGHT-OF-WAY
5/8" REBAR (R)
BLACKLION
(DEMISED PREMISES)
PARCEL 'A'
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Print Job: 216677
Page 47 of 62
RICHLAND MALL, LLC

Instrument: 1005071619 Book/Page: 01971 2548.14 Date/Time: 9/12/2005 3:37:41 PM

EXHIBIT "B"

COMMERCIAL DEVELOPMENT TRACT

Page 1 of 2

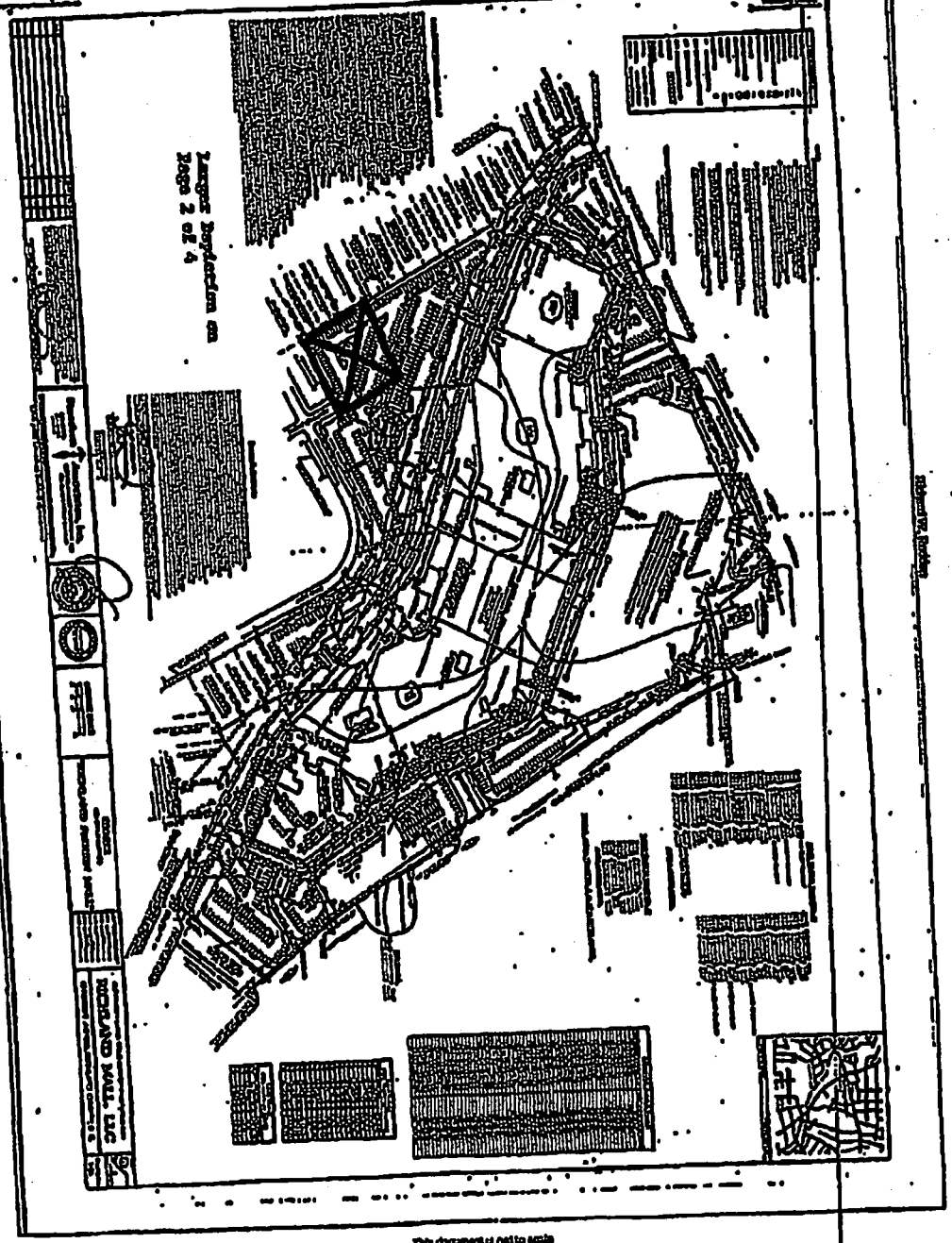
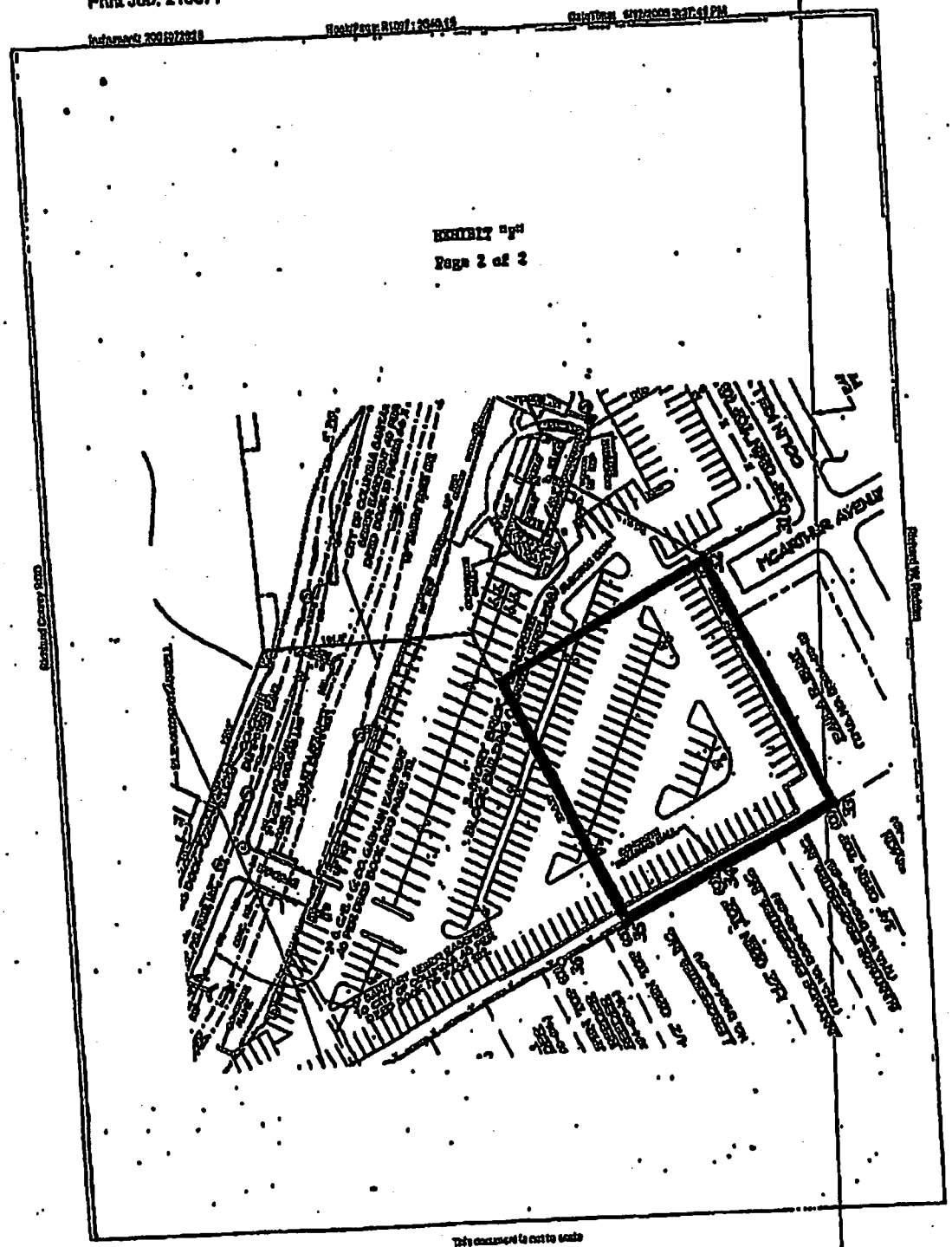


EXHIBIT "F"
Page 2 of 2



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Page 50 of 52
Page 1 of 3
Legal Depiction on pages 2 and 3.
RICHLAND MALL, LLC

EXHIBIT "G"- RESIDENTIAL DEVELOPMENT TRACT , Page 2 of 3

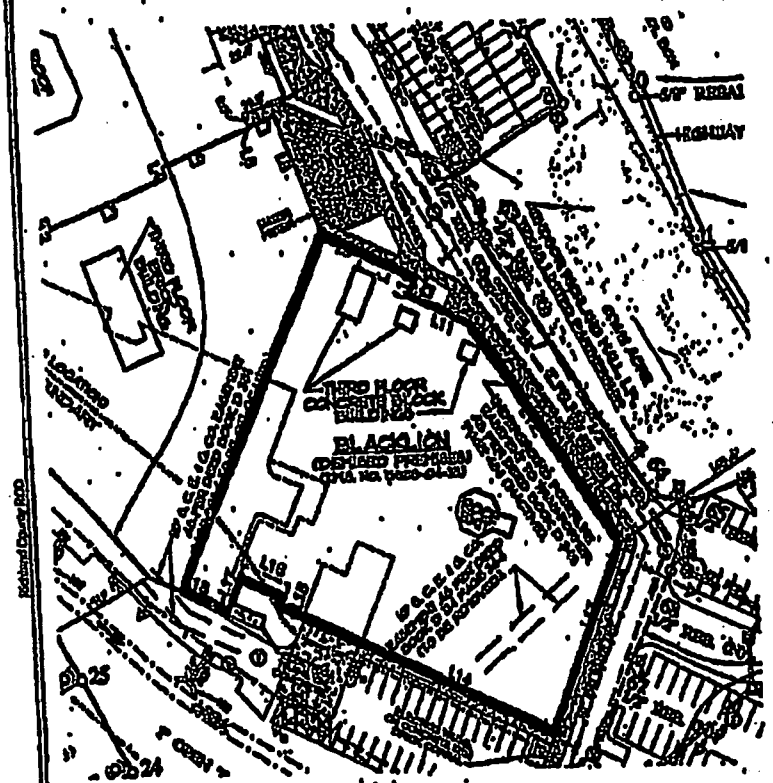

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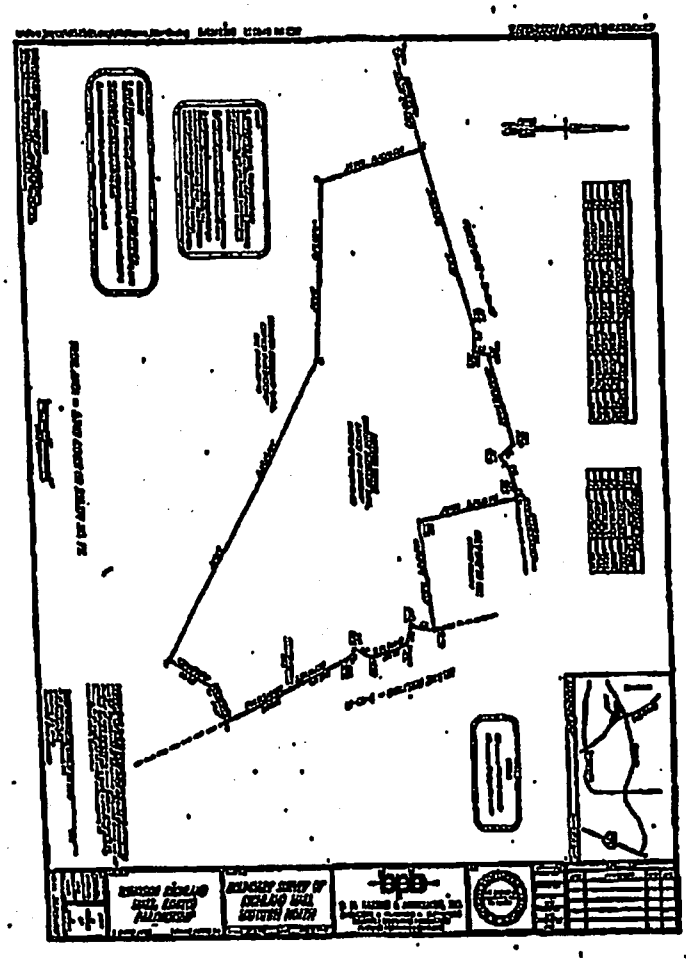
EXHIBIT "C"
RESIDENTIAL DEVELOPMENT TRACT
PAGE 3 of 3



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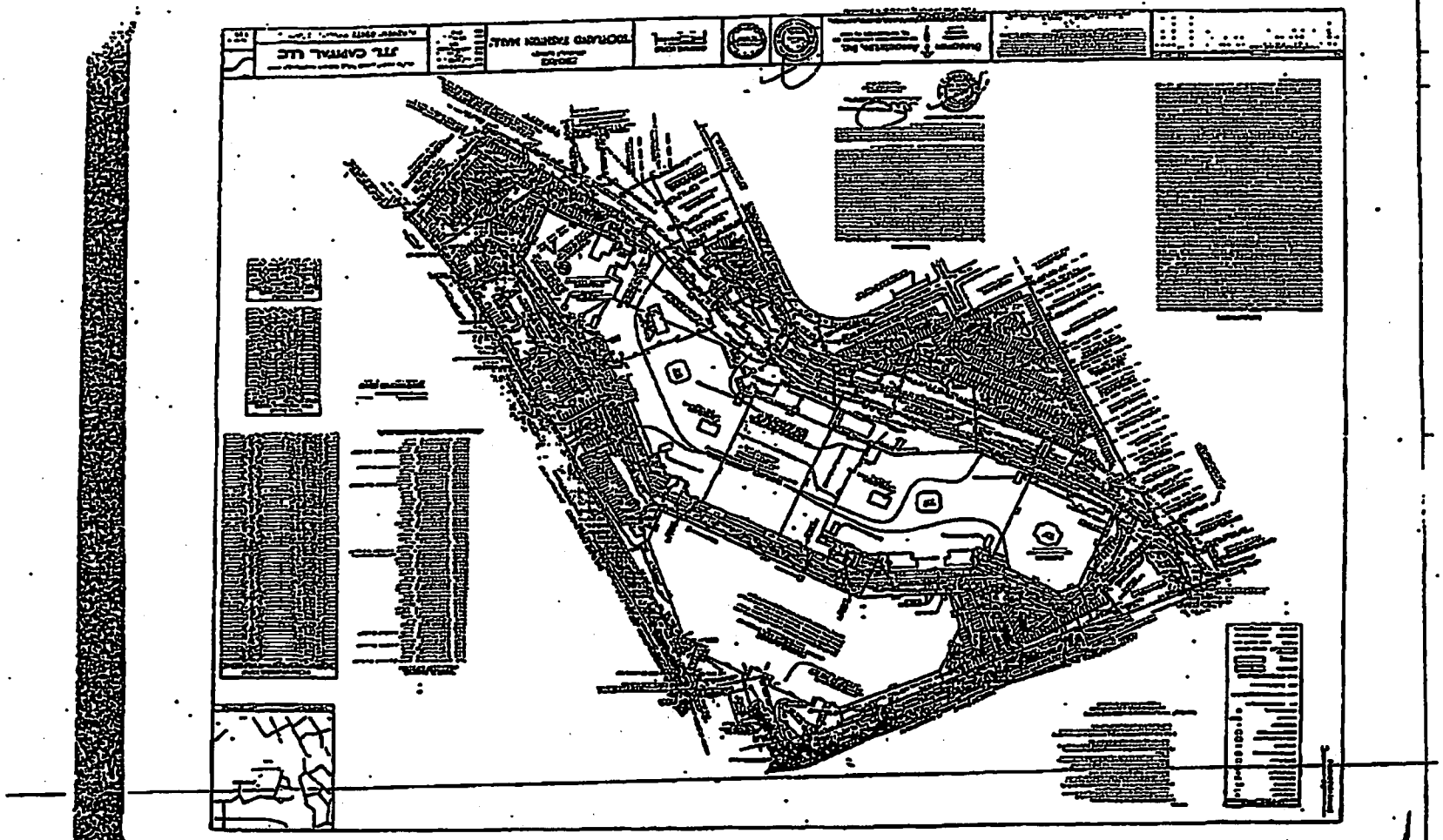

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

WHEREAS, Spirit SPE Columbia, LLC ("Spirit") purchased a parcel of property located at 3400 Forest Drive and known as the "Verizon Parcel" in the REA (defined below) in September 2005; and

WHEREAS, Century Capital Group, LLC ("CCG") purchased a parcel of property located at 3400 Forest Drive and known as the "Midtown Parcel" in the REA (defined below) in February 2010; and

WHEREAS, previous owners of the Midtown Parcel and Verizon Parcel entered into that certain Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration dated September 7, 2005, and recorded in Book 1097 at Page 2024 in the Office of the Register of Deeds for Richland County, South Carolina (the "REA"), that runs with the Midtown Parcel and Verizon Parcel and sets forth certain duties, responsibilities, obligations and easements between the owners of the Midtown Parcel, the Verizon Parcel, and the other properties that comprise the property commonly known as Richland Mall and located at 3400 Forest Drive; and

EXHIBIT
B

WHEREAS, Spirit and CCG are bound by the terms of the REA and the terms of the REA are incorporated herein by reference; and

WHEREAS, Spirit filed an action, entitled Spirit SPE Columbia, LLC, v. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually, civil action number 2010-CP-40-8407 in the Richland County Court of Common Pleas (hereinafter the "action" or the "lawsuit"), alleging that CCG had breached the terms of the REA in various respects; and

WHEREAS, CCG denied liability to Spirit, raised affirmative defenses and alleged cross-claims against Spirit; and

WHEREAS, the parties to the action desire to resolve the disputes and terminate the pending litigation.

NOW THEREFORE, intending to be legally bound, the parties agree and covenant as follows:

(a) Payment from CCG to Spirit: In exchange for the release, covenants and promises contained herein, CCG will pay Spirit the total sum of One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00) as follows:

1. Eight Hundred Thousand and NO/100 Dollars ($800,000.00) upon execution of this Settlement Agreement and Mutual Release ("Settlement Agreement").

2. Six-Hundred Fifty Thousand and NO/100 Dollars ($650,000.00) paid within six (6) months of the execution of this Settlement Agreement pursuant to the terms and conditions set forth herein.

3. CCG releases and waives any and all claims against Spirit to recover payment for providing condenser water or maintenance of the cooling tower prior to June 30, 2013. Spirit releases and waives any and all claims (including without limitation claims for negligence) against

CCG relating to the operation, maintenance or repair of the cooling tower and related piping prior to June 30, 2013.

4. As evidence of the requirement to make the $650,000.00 final payment within six (6) months of the Settlement Agreement, simultaneous with the execution of this Settlement Agreement, Defendant CCG shall execute and deliver to Spirit a Promissory Note in the initial principal amount of $650,000.00 (the "Note"). The Note shall be in the form of that note attached hereto as Exhibit "A". The Defendant CCG's obligations under the Note shall be secured by a first-priority lien on the Midtown Parcel to be evidenced by a mortgage executed by CCG and delivered to Plaintiff in the form of that mortgage attached hereto as Exhibit "B" (the "Spirit Mortgage"). CCG represents and warrants that the Midtown Parcel is currently unencumbered by any lien or mortgage and that the Spirit Mortgage shall be a first-priority lien superior to any other liens (other than possibly liens arising under the REA). Upon receipt of the executed Spirit Mortgage Spirit shall cause title to the Midtown Parcel to be updated in order to confirm that the Spirit Mortgage shall constitute a first-priority lien on the Midtown Parcel. Defendants shall cause any monetary lien shown to be senior to the Spirit Mortgage to be satisfied, released or subordinated to the lien of the Spirit Mortgage. If CCG sells its parcel before the expiration of (6) months, the Spirit Mortgage must be satisfied prior to or at the time of the sale.
5. Upon receipt of payment as required under the terms and conditions of the Note, Spirit will mark the Note and the Spirit Mortgage satisfied.

6. The parties agree that the $1,450,000 payment is provided for the release and extinguishment of any pre-June 30, 2013 liability related to the maintenance and repair of the Spirit parcel and the remaining consideration provided by CCG under this Settlement Agreement is provided for the pre-June 30, 2013 settlement of the CAM, accounting, and other claims asserted by Spirit.

(b) <u>Management of Common Areas</u>

Defendants William B. Walkup and Donald E. Taylor will cede management of the Common Areas (as defined in the REA) to a bona fide, independent third-party manager within ninety (90) days of the execution of this Settlement Agreement for so long as CCG owns the Midtown parcel. If Defendant CCG's employees or the third-party manager of the Common Area provide services to both the Common Area and the remainder of the

Midtown parcel, only an agreed upon portion of each such employee's salary or the third-party manager's fees will be allocated to Common Area Maintenance Charges (as defined in the REA) ("CAM"). The parties also agree that, to the extent administrative items relate to both CAM and the remainder of the Midtown parcel, only a portion of certain administrative items may be charged to CAM. Expenses will be determined by the third party manager in accordance with the REA.

(c) Modification of REA:

CCG and Spirit will enter into a modification of the REA (with respect to the owner of the Midtown Parcel and the owner of the Verizon Parcel) that reflects the following:

(1) The owner of the Verizon Parcel (currently the Plaintiff (Spirit)) agrees that it will pay Six Thousand Five Hundred and NO/100 Dollars ($6,500.00) per month, subject to annual Consumer Price Index ("CPI") increases, as payment for cooling water provided to the Verizon Parcel. The owner of the Midtown Parcel shall be responsible for the costs associated with maintaining and operating the cooling tower that provides condenser water to the Verizon Parcel. Maintenance shall mean all routine work to operate the cooling tower and to keep it running and shall specifically include chemicals, flushing of the cooling tower, and other routine maintenance of the cooling tower. The owner of the Verizon Parcel agrees to pay its pro-rata share, based on pro-rata design tonnage of the units serviced by the cooling tower, of the cost for repairs (to include replacement of components including motors, fans, cells exceeding $7,500) and replacement of the cooling tower. In the event of replacement of the cooling tower, the amount of the monthly cooling water payment to be delivered by the owner of the

Verizon Parcel may be re-negotiated to reflect its pro rata share of any cost savings achieved by installing a more efficient system.

(2) The owner of the Midtown Parcel shall operate, maintain and repair the cooling tower and also have the authority to continue to charge other users, parcel owners, Common Areas, and CCG tenants for the condenser water service it provides. Spirit shall have the right to continue to seek reimbursement from its tenants for the provision of condenser water to the Verizon Parcel. Under no circumstances shall either CCG or Spirit have the right to interfere with, terminate or disrupt each other's use of condenser water supplied by the cooling tower. In the event that the owner of the Midtown Parcel fails to repair or replace the condenser water system or disrupts the supply of condenser water to the Verizon Parcel, the owner of the Verizon Parcel shall have the right to undertake the necessary repair or replacement and deduct the expenses (less the Verizon Parcel owner's pro rata share, per the above, of such expenses) from future CAM payments.

(3) If the owner of the Verizon Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to pay for cooling water and the repair and replacement of the cooling tower upon one hundred eighty days' prior notice to the owner of the Midtown Parcel. If the owner of the Midtown Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to maintain, operate, repair and replace the cooling tower and provide cooling water for the Verizon Parcel upon one hundred eighty days' prior notice to the owner of the Verizon Parcel. Upon the effectiveness of the termination described in the immediately preceding sentence, the

foregoing paragraphs (1) and (2) shall terminate.

(4) Spirit and CCG agree that under the terms of the REA, with respect to expenses related to the maintenance of the Common Areas as defined in the REA, the REA does not require the owner of the Verizon Parcel to pay for any non-maintenance expense including, but not limited to the following: security, leasing, marketing, wired music, depreciation, travel and entertainment, business license and registration, subscriptions, membership/association fees and business meals. This paragraph (4) does not, however, affect the Verizon Parcel's owner's obligations under Article IV(B) of the REA regarding real property taxes, insurance premiums, deductibles or third-party management expenses.

(5) The parties agree that the Common Areas include the surface lot and landscaping on the Verizon Parcel, and the owner of the Midtown Parcel has an obligation to maintain that surface lot and landscaping subject to the reimbursement provisions of the REA.

(6) The parties agree that no lien placed on the property by one of the parcel owners for breach of the REA will have a priority that relates back to the date the REA was filed. Such a lien will have priority based upon its date of filing. Such a lien will not be subordinated to any other later-filed mortgage or lien unless by written consent of the party who filed the lien.

(7) Roof Leaks

(A) As to the current or any future roof leaks in the Verizon Parcel space that the owner of the Verizon Parcel believes is caused by a leak from the Midtown Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Verizon Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Midtown Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its expense. The Midtown Parcel owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner and must, in the case of the current roof leaks in the PWC space, be completed before CCG sells the Midtown Parcel.

(iii) If the Midtown Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Verizon Parcel owner shall have the right to make the repairs as determined by the independent expert. The Midtown Parcel owner shall be responsible for the costs incurred by the Verizon Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Verizon Parcel owner. In the event that said amounts are not paid to the owner of the Verizon Parcel within said period, such past due amounts shall

constitute a lien on the Midtown Parcel and the owner of the Verizon Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its own expense.

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Midtown Parcel. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Verizon Parcel.

(B) As to any future roof leaks in the Midtown Parcel space that the owner of the Midtown Parcel believes is caused by a leak from the Verizon Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Midtown Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Verizon Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its expense. The Verizon Parcel

owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner.

(iii) If the Verizon Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Midtown Parcel owner shall have the right to make the repairs as determined by the independent expert. The Verizon Parcel owner shall be responsible for the costs incurred by the Midtown Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Midtown Parcel owner. In the event that said amounts are not paid to the owner of the Midtown Parcel within said period, such past due amounts shall constitute a lien on the Verizon Parcel and the owner of the Midtown Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its own expense.

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Verizon Parcel. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Midtown Parcel.

(C) The parties will submit the following issue to be decided by Judge Howard: "Is the expense for a roof repair to address leaks over a common area to be borne by the owner of the roof above the common area or is it chargeable to CAM?" The

parties will be bound by the Judge's ruling, and there will be no appeal from his ruling. The result will be included in the REA amendment.

(d) Mutual Release

1. Spirit's Release:

Based upon the foregoing consideration, Spirit, for itself and all of its members, managers, officers, directors, employees, representatives, assigns and successors hereby releases and forever discharges from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of this Settlement Agreement CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, William B. Walkup, and their respective employees, agents, officers, directors, shareholders, managers, members, heirs, executors, administrators, assigns, successors in interest under the REA, their predecessors in interest under the REA, and each predecessor in interest's employees, agents, heirs and assigns. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Midtown Parcel so as to avoid damage to the Verizon Parcel or a release of any claim for breach of this Settlement Agreement.

2. CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup Release:

Based upon the foregoing consideration, CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup (collectively "Defendants") for themselves and all of their members, officers, directors, employees, representatives, assigns and successors hereby release and forever discharge Spirit, its

affiliates and each of their successors, assigns, employees, agents and officers from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of the Settlement Agreement. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Verizon Parcel so as to avoid damage to the Midtown Parcel or a release of any claim for breach of this Settlement Agreement. Furthermore, Spirit acknowledges that this release does not release Spirit for any amounts not yet billed to it for the monthly period that includes the date of this Settlement Agreement.

Defendants will hold harmless, indemnify and defend Spirit for any and all costs, expenses and attorney fees arising from any attempt by Defendants to recover any amount paid under this Settlement Agreement from any third party. If any portion of the Amended REA is invalidated, the terms of this Settlement Agreement and Release will remain in force.

(e) No Liability Admitted. This Settlement Agreement is a compromise and settlement of a disputed claim and is intended merely to terminate the controversy between the parties and to avoid further litigation between them; it is not and is not to be construed to be an admission of liability on the part of any of the parties hereby released.

(f) Dismissal with Prejudice. The parties will, at the time they execute the Settlement Agreement, enter into a Consent Order of dismissal, dismissing the above-referenced lawsuit with prejudice.

(g) Confidentiality: Terms of the Settlement Agreement shall be kept

confidential except to the extent property recordings/agreements need recording, to the extent necessary to sell or lease property, and to the extent necessary for Defendants to prosecute Contribution claims.

(h) Attorneys' Fees. Each party hereto shall bear its own attorneys' fees and costs incurred in connection with the lawsuit and/or the Settlement Agreement.

(i) Miscellaneous Provisions.

1. Additional Instruments. The Plaintiff and Defendants will each execute and deliver such other and further instruments as may be necessary to implement fully the terms of the Settlement Agreement, and agree to cooperate fully and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Settlement Agreement.

2. Binding Effect. This Settlement Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns, and estates of the Parties.

3. Governing Law. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina.

4. Invalid Provisions. If, after the date hereof, any provision of this Settlement Agreement is held to be invalid or unenforceable under present or future laws, such provision shall be fully severable.

5. Severability. If a provision of this Settlement Agreement is held to be unenforceable, the other provisions will remain in effect. If possible, the offending provision will be modified to the slightest degree necessary to make it enforceable, remaining as close as possible to the parties' original intent for the provision.

6. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the parties pertaining to the subject matter contained herein.

7. Amendment. This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by all of the parties.

WITNESSES:

(1) D. Ryan McLabe (signature)

(1) D. Ryan McLabe (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

(1) Angela S. Hook (signature)

(1) Angela S. Hook (name, printed)

(2) D. Ryan McLabe (signature)

(2) D. Ryan McLabe (name, printed)

(1) D. Ryan McLabe (signature)

(1) D. Ryan McLabe (name, printed)

(2) Angela S. Hook (signature)

W B Walkup
As representative of Century Capital Group, LLC
By: ~~Richard N. Burnside~~ William B. Walkup
Its: Managing Member

Date: 11-20, 2013

As representative of Don E. Taylor Realty Company
By: Donald E. Taylor
Its: President

Date: 11/20/13, 2013

W B Walkup
As representative of Walkup Management, Inc.
By: William B. Walkup
Its: President

(2) Angela S. Hook (name, printed)

Date: 11/20/13, 2013

(1) Angela S. Hook (signature)

Don B. Taylor

(1) Angela S. Hook (name, printed)

(2) D. Ryan McCabe (signature)

(2) D. Ryan McCabe (name, printed)

Date: 11-20-2013, 2013

(1) D. Ryan McCabe (signature)

William B. Walkup

(1) D. Ryan McCabe (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

Date: 11-20, 2013

(1) _____ (signature)

As representative of Spirit SPE Columbia, LLC

(1) _____ (name, printed)

By: _____

(2) _____ (signature)

Its: _____

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
Don E. Taylor

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
William B. Walkup

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

(1) Daniel Rosenberg _____(name, printed)

(2) _____(signature)

_____
As representative of Spirit SPE Columbia, LLC

By: Mark Manheimer

Its: SVP

(2) Catherine Tiffany (name, printed)

Date: 12/4, 2013

For the Plaintiff:

_____

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: _____, 2013

For the Defendants:

_____

D. Ryan. McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: _____, 2013

(2) _____(name, printed)

Date:_____, 2013

For the Plaintiff:

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: 12/6 _____, 2013

For the Defendants:

D. Ryan. McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: 11 - 20 _____, 2013

EXHIBIT "A"

PROMISSORY NOTE

$650,000.00

Columbia, South Carolina
November 20, 2013

FOR VALUE RECEIVED, Century Capital Group, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Spirit SPE Columbia, LLC, a Delaware limited liability company (the "Lender"), at _____, _____, or at such other place or to such other party or parties as Lender may from time to time designate, the principal sum of up to Six Hundred Fifty Thousand and no/100 ($650,000.00) Dollars, with interest thereon (to the extent applicable) computed from date of each advance at the fixed rate of 18% per annum. Interest shall be computed on the actual number of days elapsed divided by a 360-day year and shall only accrue in the event of default in payment of this Note.

The entire outstanding principal balance of this Note shall be paid in a single, lump-sum payment be due and payable in full on June 2 2014 (the "Maturity Date"). If the principal balance of this Note is paid on or before the Maturity Date, no interest shall be payable. Otherwise, accrued interest under this Note shall be payable on the Maturity Date.

All payments under this Note shall be applied first to late charges, if any, then to accrued interest (if applicable) and then to principal. All installments of principal and all interest are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Mortgage executed of even date between Century and Lender, then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any

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endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender in such proceedings.

In the event the interest provisions hereof or any exactions provided for herein or in the lien documents or any other instruments securing this Note shall result, because of the monthly deduction of principal or any other reason related or unrelated to the interest provisions, at any time during the life of the loan, in an effective rate of interest which, for any period of time, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to principal immediately upon receipt of such monies by Lender with the same force and effect as though the payor had specifically designated such and agreed to accept such extra payment(s) as a premium free payment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect, by notice in writing to the owners of the property affected by the lien document securing this Note, to reduce or limit the collection of any interest to such sums, which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirement of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this loan transcend the limits imposed or provided by the law applicable to this transaction or Borrower in the jurisdiction in which the land is located for the use or detention of money or for forbearance in seeking its collection.

This Note is secured by a certain first-priority Mortgage of Real Estate and Security Agreement of even date herewith (the "Mortgage"), to which reference is made from the terms thereof, and the same are made a part of this Note.

Lender may collect a late charge of five (5%) percent of any installment of principal or interest which is not paid within five (5) days of the due date thereof to cover the extra time and expense involved in handling delinquent payments. Such late charge shall apply to late payments prior to maturity or acceleration. Upon maturity or acceleration, no further late charges shall be assessed, but Borrower shall pay the Default Rate of interest on all amounts due from the date of maturity or acceleration until the Note is paid in full. The collection of the late charge shall not be deemed a waiver by Lender of interest accruing after the due date of any installment or of any of Lender's other rights under this Note.

Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

Borrower waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in the lien document securing the Note released in whole or in part, or increased, changed or exchanged by agreement between Lender and any owner of premises affected by said lien document securing this Note without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder are to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue therein. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in

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personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE MORTGAGE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

IN WITNESS WHEREOF, Borrower has executed this Note under seal, as of the date first above written.

Century Capital Group, LLC,
a South Carolina limited liability company

By: W B Walker
Its: Managing Member
Address: _____

EXHIBIT "B"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MORTGAGE OF REAL ESTATE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made this 20th day of November 2013, by **Century Capital Group, LLC, a South Carolina limited liability company** whose address is _____, (the "Borrower"), and given **Spirit SPE Columbia, LLC, a Delaware limited liability company**, whose address is _____ (the "Lender").

WITNESSETH:

THAT WHEREAS, Borrower is indebted to Lender in the maximum principal sum of $650,000.00, which indebtedness is evidenced by the Note made by Borrower dated of even date, said principal (plus interest thereon) being payable as provided for in said Note; the terms of said Note and any agreement modifying it are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the said Borrower, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976): (i) all future advances and re-advances that may subsequently be made to Borrower by Lender evidenced by the aforesaid Note, or by other promissory notes, and all modifications, renewals and extensions thereof; and (ii) all other indebtedness of Borrower to Lender, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed $650,000.00, plus interest, charges, expenses and attorneys fees as permitted by the terms of the Promissory Note executed by Borrower on 11/25, 2013, has granted, bargained, sold, released and by these presents does grant, bargain, sell and release unto the Lender, its successors and assigns, the following described property (collectively hereinafter referred to as the "Property" or "Land"):

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

TOGETHER WITH:

(a) all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

(b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures and articles of personal property now or hereafter owned by the Borrower and attached to or contained in and used in connection with the aforesaid Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty");

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (a) and (b) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (a) and (b) hereof or any part hereof, or to any rights appurtenant thereto (together the "Easements and Other Interests");

(d) as additional collateral and further security for the indebtedness, the Borrower hereby conditionally assigns to the Lender all the security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due and all returned or repossessed goods now or hereafter pertaining to or resulting from the Property or any part hereof or constituting or derived from or acquired by any proceeds of the Property or any part thereof (the "Rents and Profits") reserving only the right to the Borrower to collect the same as long as there shall exist no Default (as hereinafter defined).

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Together with all proceeds, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of the Rents and Profits or any part hereof, and all replacements, modifications, renewals and substitutions thereof or therefore;

(e) as additional collateral and further security for the indebtedness, the Borrower does hereby assign to the Lender and grants to the Lender a security interest in all of the right, title and the interest of the Borrower in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architect's contracts, technical services agreements, licenses and permits now or hereafter affecting the Property (the "Intangible Personalty") or any part hereof, and the Borrower agrees to execute and deliver to the Lender such additional instruments, in form and substance satisfactory to the Lender, as may hereafter be requested by the Lender to evidence and confirm said assignment; provided, however, the acceptance of any such assignment shall not be construed as a consent by the Lender to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Lender any obligation with respect hereto;

(f) any proceeds of any sales or other dispositions of the property described in paragraphs (a), (b), and (c), hereof or any part hereof, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing ("Proceeds"); and

(g) all the Tangible Personalty which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the Tangible Personalty and the Intangible Personalty, this Mortgage shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Borrower. In that regard, the Borrower grants to the Lender a security interest in the Tangible Personalty, the Intangible Personalty and the Rents and Profits, and grants to Lender all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors or assigns of Lender forever.

BORROWER covenants that Borrower is lawfully seized of the Property in fee simple absolute, that Borrower has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly disclosed to Lender. This Mortgage shall constitute a first-priority lien on the subject Property. Borrower further covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Borrower and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Borrower and Lender, that if Borrower pays or causes to be paid to Lender the debt secured

hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect

IT IS AGREED that Borrower shall be entitled to hold and enjoy the Property until a Default has occurred.

BORROWER further covenants and agrees with Lender as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Borrower absolutely and unconditionally assigns to Lender all Rents and Profits arising from the Property; provided however, that so long as no Default has occurred and is continuing, Borrower shall be entitled, as trustee for the use and benefit of the Lender, to collect and retain all such Rents and Profits as they become due and payable (but in no event for more than two (2) months in advance); provided, however, that if the Rents and Profits exceed the payments due under the Note, Borrower may use such excess, first, for the operation and benefit of the Property and, second, for the general benefit of Borrower. Upon the occurrence of a Default, Lender may, at its option, remove the Borrower as trustee for the collection of the Rents and Profits and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such Rents and Profits in payment of the obligations secured by this Mortgage, in such order as Lender shall elect in its sole and absolute discretion, whether or not Lender takes possession of the Property. Upon a Default, Borrower hereby directs each of the respective tenants under all leases of any part of the Property now and hereafter existing (the "Leases"), and any rental agent, to pay to Lender all such Rents and Profits, as may now be due or shall hereafter become due, upon demand for payment thereof by Lender without any obligation on the part of any such tenant or rental agent to determine whether or not a Default has in fact occurred. Upon a Default, the permission hereby given to Borrower to collect, receive and accept such Rents and Profits as trustee shall terminate and such permission shall not be reinstated upon a cure of the Default without Lender's specific written consent. Further, upon a Default, Borrower shall immediately turn over to Lender all Rents and Profits in the actual or constructive possession of Borrower, its affiliates, contractors, or its agents, together with an accounting thereof. Exercise of Lender's rights under this Section, and the application of any such Rents and Profits to the obligations secured by this Mortgage, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Lender.

2. intenance. Borrower will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Borrower will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Borrower will not remove or demolish any improvement or fixture which is now or hereafter part of the Property, other than in the ordinary course of business, without the express written consent of Lender which consent shall not be unreasonably withheld, conditioned or delayed. Lender shall be entitled to specific performance of the provisions of this paragraph.

3. Insurance. Borrower will keep, or shall cause to be kept, all improvements and fixtures which are now or hereafter part of the Property insured by such company or companies as Lender may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the New York standard form of Lender clause or such other form of Lender clause as may be required by the Lender and will not be cancelable by either the insurer or the insured without at least ten (10) days prior written notice to Lender. Borrower hereby assigns to Lender the right to collect and receive any indemnity payment otherwise owed to Borrower upon any policy of insurance insuring any portion of the Property, regardless of whether Lender is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Lender from any such policy of insurance may, at the option of Lender, (i) be applied by Lender to payment of any sum secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement, repair or restoration to the portion to the Property damaged or destroyed, or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair or restoration to any portion of the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage. Borrower will keep the Property continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Borrower will pay each premium coming due on any such policy of insurance and will deliver to Lender proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Borrower will furnish to Lender at least ten (10) days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements hereof. If Borrower fails to insure the Property as herein required. Lender may, after giving (10) days written notice to Borrower, so insure the Property in the name of Borrower or in the name of Lender or both, and the premiums for any such insurance obtained by Lender shall be the obligation of Borrower. Upon foreclosure to this Mortgage, all right, title and interest of Borrower in and to any policy of insurance upon the Property which is in the custody of Lender, including the right to unearned premiums, shall vest in the purchaser of the Property at foreclosure, and Borrower hereby appoints Lender as the attorney in fact of Borrower to assign all right, title and interest of Borrower in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. Taxes and Assessments. Borrower will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and, if requested by Lender, will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Borrower shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collector of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Borrower deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. Appraisal. Borrower shall pay when due the reasonable cost of providing to Lender, at its request from time to time, a then-current appraisal of the market value of the Property prepared by an appraiser or by another appraiser acceptable to Lender in its discretion; provided, however, that Lender shall make such request no more frequently than once every third year, unless Lender is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such appraisal more frequently than every third year. If Borrower fails to pay such cost when due, Lender may pay such cost on Borrower's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Borrower's failure to pay such amount (with all accrued interest) in full within thirty (30) days of the date of such demand shall constitute an event of Default entitling the Lender to accelerate the maturity of the Note.

6. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter owned by Borrower and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property or any part thereof.

7. Condemnation. Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power or eminent domain of any portion of the Property. Borrower hereby assigns to Lender the right to collect and receive any payment or award to which Borrower would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (i) be applied by Lender to payment to any sums secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration to any portion to the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage.

8. Transfer. At the option of the Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent to the Lender, the Borrower shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever other than by death to the Borrower. It is understood and agreed that in consideration for the consent to the Lender to any transfer of title to the mortgaged premises, the Lender at its option may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments to principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

9. Default. A "Default" shall be the occurrence or existence of any of the events listed in the Note or the Loan Agreement, including any grace and\or cure periods provided for therein.

10. Remedies. In addition to the remedies set forth in the Note or the Loan Agreement, upon the occurrence of a Default, Lender may, without notice to Borrower, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. If default shall be made in the payment of any amount due under the Note, the Mortgage or any other instrument securing the Note, then, upon Lender's demand Borrower will pay to Lender the whole amount due and payable under the Note and all other sums secured hereby; and if Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Lender's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Lender shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage and the right of Lender to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof. At the foreclosure Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Lender shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised. Without in any way limiting the generality of the foregoing, Lender shall also have the following specific rights and remedies:

(a) To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control.

(b) To cure such defaults, with the result that all costs and expenses incurred or paid by Lender in effecting such cure shall be additional charges on the Note which bear interest at the interest rate of the Note and are payable upon demand.

(c) If the Note is secured by a lien on any real property, to foreclose on such real property and to pursue any and all remedies available to Lender at law or in equity, and in any order Lender may desire, in Lender's sole discretion.

11. No Waiver of One Default to Affect Another. No waiver of Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Property from the lien of this Mortgage or any other instrument securing the Note, or (e) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, the Mortgage or otherwise of Borrower, or any subsequent purchaser of the Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any event of Default then existing or of any subsequent event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby.

12. Appointment of Receiver. Upon the occurrence of a Default, Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums in insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or left undone by Borrower under this paragraph. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents, Lender, at its sole option, may advance moneys to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. The entering upon and taking and maintaining of control of the Property by

Lender or the receiver and the application of rents as provided herein shall not cure or waive any Default hereunder or invalidate any other right or remedy of Lender hereunder.

13. Waiver by Lender. Lender may, in the sole discretion of Lender, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

14. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid by U.S. Mail, certified mail, return receipt requested to the party to whom directed to the address stated above or to the latest address of such party known to the party sending the same. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

15. Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the indebtedness and the cancellation of this Mortgage of record, Borrower obtains a fee estate in such portion of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of Borrower, be and become subject to the security lien of this Mortgage.

16. Imposition of Tax. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the Borrower will promptly pay any such tax on or before the due date thereof; and if the Borrower fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Lender, unless Borrower agrees in writing to indemnify Lender against any loss or damage associated with such payment or penalty.

17. Changes, etc. Neither the Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Borrower and Lender relating to the Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

18. Partial Foreclosure. In the event the Property is comprised of more than one parcel of real property, Borrower hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

19. Security Agreement; Financing Statement. This Mortgage constitutes a security agreement within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of South Carolina and as amended from time to time. The addresses for the Borrower as debtor and the Lender as secured party are set forth in the introductory paragraph to this Mortgage. Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the County in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as secured party, or the Borrower, as debtor, at the address first shown above.

20. Miscellaneous.

(a) It is understood and agreed that all indebtedness of Borrower to Lender at any time hereafter existing resulting from advances and re-advances heretofore, now or hereafter made by Lender to Borrower, regardless of whether such advances and re-advances are made at the option of the Lender, or otherwise, will be secured by this instrument up to the maximum principal amount hereinabove set forth, plus interest thereon, court costs and attorney's fees until all of said indebtedness has been satisfied in full.

(b) The agreements herein shall inure to the benefit of Lender, its successors and assigns, and any successor or assign of Lender may make advances hereunder, and all advances and all other indebtedness of Borrower to such successor or assign shall be secured hereby.

(c) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.

(d) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

(e) If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve

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transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if such clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage, in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

(f) This Mortgage shall be construed and enforced in accordance with the laws of South Carolina.

(g) Waiver by Borrower. Borrower understands that upon default hereunder, among other remedies set out herein and in the Note, the Lender may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to Section 29-3-660, South Carolina Code of Laws (1976). The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE BORROWER HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Borrower has executed this Mortgage under seal the day and year first above written.

Witnesses:

D Regan Mehrle

Angela A. Hoore

BORROWER:

Century Capital Group, LLC

By: W B Walkup

Name: W B WALKUP

Title: MANAging member

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ACKNOWLEDGEMENT

I, Angela S. Hook, do hereby certify that William B. Walker, as the managing member of Century Capital Group, LLC, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 20th day of November, 2013.

Angela S. Hook
Notary Public for South Carolina
My Commission expires: 1/27/2021

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON D.R. HORTON, INC. f/k/a C. RICHARD DOBSON BUILDERS, INC., Plaintiff, v. BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; and BUILDERS FIRSTSOURCE, INC., and JOSEPH NACCARI, Individually and d/b/a MASTER FRAMERS, Defendants. JOSEPH NACCARI, Individually, and d/b/a MASTER FRAMERS, Third-Party Plaintiff, v. JAIME ARREGUIN d/b/a MAYA CONSTRUCTION, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NO. 2010-CP-10-10355 **ORDER GRANTING DEFENDANTS BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, AND BUILDERS FIRSTSOURCE, INC. SUMMARY JUDGMENT**

FILED
2014 SEP -5 AM 10: 28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court on Defendants Builders FirstSource-Southeast Group, LLC, and Builders FirstSource, Inc.'s (hereinafter collectively "BFS") Second Motion for Summary Judgment. A hearing on this motion was held on August 13, 2014. Plaintiff D.R. Horton, Inc., f/k/a C. Richard Dobson Builders, Inc., ("DRH"), and Defendant BFS appeared at the hearing through their respective counsel. After considering the entire record in this matter, including all motions, memoranda of law, deposition testimony submitted by the parties, exhibits submitted by the parties, and the arguments of counsel, the Court finds that BFS should be, and

EXHIBIT
C

hereby is, GRANTED SUMMARY JUDGMENT.

I. FINDINGS OF FACT AND PROCEDURAL BACKGROUND

1. DRH was the general contractor for the construction of a single family residential home at 403 Milner Court, Charleston, South Carolina (the "Residence"). The Residence was constructed in 2001. BFS, as a subcontractor for DRH, provided and installed framing materials and windows at the Residence.

2. Prior to construction of the Residence, DRH and BFS entered into an Independent Contractor Agreement (the "Contract") that contains an indemnity agreement. The Contract was drafted by DRH.

3. In addition to acting as the general contractor, DRH also owned the Residence. DRH sold the Residence to Patricia Clark.

4. In 2008, Patricia Clark filed *Patricia Clark v. D.R. Horton, Inc.*, Case No. 2008-CP-08-1633, in the Circuit Court of Berkeley County, South Carolina (the "Homeowner's Suit"). The Homeowner's Suit alleged causes of action against DRH for negligence, breach of contract, breach of warranty, and violations of the South Carolina Unfair Trade Practices Act ("UTPA"). The complaint in the Homeowner's Suit alleged that the Residence was defective because of, among other things, improper installation of siding, improper installation of the exterior wall system, improper flashing, improper installation of a moisture barrier, improper water management system, improper installation of framing, improper installation of the concrete slab and driveway, improper installation of the roof and shingles, and improper installation of a gas hot water heater.

5. It is undisputed that some of the allegations in the complaint filed in the

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Homeowner's Suit related to materials supplied and installed by BFS and other allegations in the complaint filed in the Homeowner's Suit were related to the work of others. BFS did not install the driveway, concrete slab, siding, roofing or hot water heater at the Residence.

6. While the parties disagree on whether DRH gave BFS oral notice of the Homeowner's Suit, it is undisputed that DRH did not provide BFS with any written notice or tender of defense for the Homeowner's Suit.

7. DRH filed a Motion to Compel Arbitration and to Stay the Homeowner's Suit and on April 1, 2009, the Berkeley County Circuit Court entered a consent Order Referring Claims to Arbitration whereby the Homeowner's Suit was referred to binding arbitration.

8. The Homeowner's Suit was arbitrated during a two day period on December 10th and 11th 2009. There is no transcript or other formal record of the evidence presented at the arbitration.

9. The parties to the Homeowner's Suit agreed to request an unreasoned arbitration award that would not contain findings of fact or conclusions of law. The arbitrator awarded Patricia Clark $150,000. Said award states that "Counsel for the parties have requested an Order containing a monetary award only." It does not indicate what amounts, if any, were awarded for specific defects. Nor does the award specify which of the causes of action asserted in the Homeowner's Suit were successful.

10. The record in this case indicates that DRH was represented by counsel at all times during the Homeowner's Suit and was advised by counsel that requesting an unreasoned arbitration award would make any future indemnity claim against BFS uncertain.

11. On February 26, 2010, the arbitration award was filed, confirmed and made a

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final judgment of the Berkeley County Circuit Court. (the "Judgment"). No party objected to the confirmation of the arbitration award.

12. On March 24, 2010, a Satisfaction of Judgment was entered in the Berkeley County Circuit Court indicating that DRH had satisfied the Judgment.

13. On December 17, 2010, DRH filed the instant action against BFS seeking contribution pursuant to S.C. Code Ann. § 15-38-10, et seq., and contractual indemnity. DRH alleges that BFS is responsible, in whole or in part, for the Judgment and for $155,717.05, in attorney's fees and costs associated with the defense of the Homeowner's Suit.

II. CONCLUSIONS OF LAW

A. BFS IS ENTITLED TO SUMMARY JUDGMENT ON DRH'S CLAIMS FOR CONTRIBUTION PURSUANT TO THE UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT, § 15-38-10, et seq.

14. The statutory right of contribution among joint tortfeasors is in derogation of the common law and thus the South Carolina Contribution Among Tortfeasors Act must be strictly construed. *G & P Trucking v. Parks Auto Sales Service & Salvage, Inc.*, 357 S.C. 82, 87 (Ct.App. 2003). "Moreover, in a suit in which contribution is sought from a joint tortfeasor, the claimant obviously must prove facts sufficient under the statutes and the common law . . . to establish a right of contribution between wrongdoers." *Id.*

15. Here, there is no basis in the record to find that DRH has sustained tort liability. The plaintiff in the Homeowner's Suit alleged causes of action for breach of contract, breach of warranty, negligence and violations of the UTPA. The parties to the Homeowner's Suit requested an award from the arbitrator that does not specify the legal basis for his award of damages.

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16. In order for a party who has litigated a case to judgment to maintain an action as a joint tortfeasor that party must have first been adjudicated to have committed a tort. *See* S.C. Code Ann. § 15-38-40(B)("*Once the issue of liability has been resolved* . . . a defendant has the right to seek contribution . . ."); *See also Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403, 406 (2005)(No right of contribution against negligent employer because workers compensation laws prevent employer from being subject to tort liability). The record before the Court does not contain any finding of tort liability from the Homeowner's Suit and therefore DRH is not entitled to contribution. *See Jenkins v. Few*, 391 S.C. 209, 221 (Ct.App. 2010)("Because the verdict was a general verdict, it is impossible to determine how the jury allocated damages between civil conspiracy, conversion, and trespass to personal property. We will not speculate as to how the jury allocated damages.").

17. In addition to the absence of a finding of tort liability, there is no record evidence that the Judgment is attributable to defects in the materials supplied and installed by BFS. Because the arbitration award contains no findings of fact or conclusions of law, it is impossible for the Court to determine what defects the arbitrator found at the Residence.

18. Even if, somehow, DRH were able to establish its own tort liability, and that BFS's work was determined to be defective in the Homeowner's Suit, there is no way to determine what portion of the Judgment is related to said liability. BFS is not liable; jointly, severally, or otherwise, for defects in the work of other subcontractors employed by DRH at the Residence. Moreover, portions of the Judgment attributable to the work of others, and any portion of the Judgment attributable to BFS, are for different injuries to property, not "the same injury to . . . property." *See* S.C. Code Ann. § 15-38-20(A).

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19. Any attempt to determine what portion of the Judgment is attributable to the joint negligence of BFS and DRH would be an exercise in impermissible guesswork. *See Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 70-71 (Ct.App. 1999)(refusing to allow contribution when "The settlement agreement does not place a specific value on any potential claim . . ." and the court "cannot, therefore, determine whether [the party seeking contribution] paid more than its pro rata share of liability . . ."). *See Also Jenkins v. Few*, 391 S.C. 209, 221 (Ct.App. 2010)(refusing to speculate as to how jury allocated damages among various causes of action when defendant "contributed to drafting and agreed to use a general verdict form that did not include a separate damages award for each cause of action.").

20. As stated by the *Vermeer* Court, "[i]n this case the lack of apportionment may work a hardship . . . but it is one which he could have avoided by a properly drawn" award. *Vermeer* 336 S.C. at 70. The record indicates that DRH, with the advice of counsel, made a strategic decision to agree to an unreasoned arbitration award. Having failed to obtain a finding of tort liability or findings regarding what portions of the Residence were ultimately determined to be defective, DRH cannot now maintain this action for contribution.

B. BFS IS ENTITLED TO SUMMARY JUDGMENT ON DRH'S CLAIM FOR CONTRACTUAL INDEMNITY.

i. There is no evidence that any portion of the Judgment is attributable to materials supplied and installed by BFS.

21. Because the arbitration award contains no findings of fact or conclusions of law, there is no evidence that the Judgment is attributable to property damage caused by defects in the materials supplied and installed by BFS. Based on the record before the Court, DRH, as the Plaintiff, cannot meet its burden of proving that a Judgment was entered against it because of

property damage caused by defects in the materials supplied and installed by BFS.

ii. There is no evidence in the record indicating what portions of the Judgment are attributable to the work of others.

22. Even if DRH could prove that the arbitrator concluded that defects in the materials supplied and installed by BFS caused property damage at the Residence, it is impossible to determine what portion of the Judgment is attributable to said property damage. Because the parties to the arbitration did not request an award with findings of fact or conclusions of law, there is no record before the Court to indicate what portion of the Judgment is attributable to the various distinct defects alleged in the Homeowner's Suit.

23. The Contract does not require BFS to indemnify DRH for judgments based on defects in the work of others. *See* Contract ¶ 11 (requiring indemnification for "(I) A BREACH OF THE WARRANTIES . . . PROVIDED HEREIN BY CONTRACTOR; (II) THE WORK PERFORMED . . . BY CONTRACTOR).

24. Applicable law does not permit BFS to indemnify DRH for judgments based on defects in the work of others. *See* S.C. Code Ann. § 32-2-10 (prohibiting agreements whereby subcontractor agrees to indemnify general contractor for general contractor's sole negligence or the negligence of its "independent contractors.").

iii. The Contract provides that BFS has the right to defend any suit implicating its contractual indemnity obligations.

25. The plain language of the indemnity agreement provides that BFS "AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD OWNER . . . FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS, OR OTHER LITIGATION . . ." The parties plainly agreed that BFS, not DRH, would

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defend any lawsuit alleging property damage caused by BFS's work. The Contract not only obligates BFS to defend any suits alleging property damage associated with defects in its work, it also gives BFS the right to defend any such claims. The Contract does not provide that DRH can defend itself, control the defense, select the attorneys of its choice, provide no notice to BFS, and nonetheless require BFS to indemnify it.

26. It is undisputed that DRH did not give BFS written notice of the Homeowner's Suit and did not tender the defense of the Homeowner's Suit to BFS. Because DRH undertook the defense of the Homeowner's Suit without providing BFS an opportunity to defend said suit, DRH cannot pursue indemnity under the Contract.

iv. The Contract provides that BFS will receive written notice of any suit implicating its contractual indemnity obligations.

27. "As a rule of construction, the Court must consider the entire contract between the parties to determine the meaning of its provisions. That construction will be adopted which will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592 (1976). "A contract includes not only what is expressly stated but also what is necessarily to be implied from the language used . . ." *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 367 (1966).

28. Paragraph 19 of the Contract provides: "*Notices. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of the Parties.*".

29. The indemnity provision in the Contract, upon which DRH relies in this case, provides that BFS will "protect" DRH against, and "defend" DRH from, allegations of property

damage caused by BFS's work. BFS cannot protect and defend DRH from lawsuits implicating BFS's work without being provided notice that a suit has been filed. Therefore, it is implied in the Contract that DRH will provide BFS with notice of any suit implicating its indemnity obligations. *See Commercial Credit Corp*, 247 S.C. at 367 ("In the absence of an express provision therefor, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made.").

30. Other portions of the Contract also demonstrate that the parties intended that BFS should get notice of homeowner lawsuits implicating BFS's indemnity obligations. Indeed, with reference to the factual scenario presented in this case, the Contract provides that BFS "agrees to participate in, and be bound by, any arbitration proceeding between [DRH] and any third party relating to the Work . . ." Contract ¶ 22. Clearly, BFS must be given notice of the third-party suit in order to "participate in" the arbitration.

v. The implied covenant of good faith and fair dealing requires DRH to provide BFS with notice of any suit implicating its indemnity obligations.

31. "There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G. J. Creel and Sons, Inc.*, 320 S.C. 274, 277 (1995). Here, good faith and fair dealing require DRH to notify BFS of any lawsuit which DRH contends implicates BFS's indemnity obligations. DRH's actions in litigating the Homeowner's Suit without notifying BFS, in failing to make any transcript of the arbitration hearing, and in failing to request an award with factual findings and legal conclusions, all violate the implied covenant of good faith and fair dealing and prohibit DRH from requiring BFS to indemnify it for any portion of the Judgment or defense costs.

vi. DRH waived its right to contractual indemnification by failing to give BFS notice of the Homeowner's Suit and failing to request an award with factual findings and conclusions of law.

32. "Waiver is an intentional relinquishment of a known right and may be implied from circumstances indicating an intent to waive. Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute a waiver." *Freeman v. McBee*, 280 S.C. 490, 493 (Ct.App. 1984).

33. Here, DRH's failure to give BFS notice of the Homeowner's Suit is inconsistent with its assertion of a right to indemnity. In fact, the record reveals that DRH was informed by counsel that it should provide BFS with notice of the Homeowner's Suit and that DRH declined to provide BFS notice.

34. Additionally, DRH intentionally relinquished its right to indemnity by failing to request an arbitration award containing findings of fact and conclusions of law. The record reveals that DRH made a strategic decision not to request findings of fact or conclusions of law with the express purpose of making it difficult to determine what was decided in the Homeowner's Suit. Additionally, the decision not to request a reasoned award was made after being advised by counsel that an unreasoned award would make any future case against BFS uncertain.

35. The record conclusively indicates that DRH knowingly waived its right to seek indemnity from BFS.

vii. DRH is equitably estopped from seeking contractual indemnity.

36. "Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to

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equity." *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 290 (Ct. App. 2012). "Silence, when it is intended, or when it has the effect of misleading a party, may operate as equitable estoppel." *Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority*, 311 S.C. 29, 33 (1993). "Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts." *Id.*

37. By DRH's own theory of this case, DRH had knowledge of a lawsuit alleging defects in BFS's work and implicating BFS's indemnity obligations. Rather than giving BFS written notice of the Homeowner's Suit, DRH remained silent. DRH's silence deprived BFS of the right to participate in discovery, to cross-examine witnesses at depositions, and to participate in the arbitration hearing. DRH is now equitably estopped from seeking indemnification from BFS.

viii. The indemnification clause in the Contract violates S.C. Code Ann. § 32-2-10.

38. In relevant part, the indemnity clause in the Contract provides that BFS will indemnify DRH for "ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, EVEN WHEN THE LOSS IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNITEE . . ."

39. The Contract purports to require BFS to indemnify DRH for DRH's own negligent acts or omissions "even when the loss is caused by the fault or negligence of" DRH. The clause violates S.C. Code Ann. § 32-2-10 and thus the "agreement" is "unenforceable." *See* S.C. Code Ann. § 32-2-10 ("a promise or agreement in connection with the . . . construction . . . of a building . . . purporting to indemnify the promisee, its independent contractors, agents,

employees, or indemnitees against liability for damages arising out of . . . damage proximately caused by or resulting from the sole negligence of the promisee, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable.).

40. The only caveat to the above rule, that a promisor (BFS), may agree to indemnify the promisee (DRH), in connection with "liability for damages resulting from the negligence, in whole or in part, of the promisor," has no application to DRH's attempt to require BFS to indemnify it for "liability for damages resulting from the negligence" of DRH's other independent contractors. The indemnity agreement is unenforceable.

ix. Having failed to obtain findings of fact and conclusions of law in the Homeowner's Suit, DRH cannot litigate the issue of what was decided in the Homeowner's Suit in this action.1

41. DRH cannot litigate, in this action, the issue of what portion of a judgment entered in a previous action is attributable to property damage caused by materials supplied and installed by BFS. Principles of waiver, the requirement of proving damages to a reasonable certainty, and collateral estoppel prevent DRH from maintaining an independent action in order to apportion the Judgment.

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1 Significantly, even if DRH were able to present competent evidence that some particular portion of the Judgment is attributable to property damage caused by defects in work performed by BFS, BFS, as a non-party without notice, would not be bound to pay that amount. *See Robins v. First Federal Sav. Bank*, 294 S.C. 219, 223 (Ct. App. 1987)("absent party's interests can rarely be legally bound by principles of res judicata in proceedings to which he was not a party."). There is a well-established procedure whereby an indemnitee may bind a nonparty indemnitor to the findings made in a suit against the indemnitee by a third-party. *See Black v. Patel*, 353 S.C. 76, fn 2 (Ct. App. 2002)("Vouching in is a common law 'procedural device by which a defendant may give notice of suit to a third party who is liable over to the defendant on the subject-matter of the suit, so that the third party will be bound by the court's decision.' The device has been largely replaced by third-party practice."). *See also* S.C. Code Ann. § 36-2-607(5)(recognizing "the common law procedural device of 'vouching in' a seller who is answerable over to a buyer for a breach of warranty or other obligation on which the buyer is being sued." (Citing *Mauldin v. Milford*, 127 S.C. 508, (1923); *Newell Contracting Co. v. Blankenship*, 130 S.C. 131 (1924)). Because BFS was not "vouched in" to the Homeowner's Suit, even if DRH could prove what portion of the Judgment was awarded for defects in BFS's work, BFS could require DRH to prove, from scratch, the existence of defects in BFS's work and the amount of damage caused thereby. *See* 47 Am.Jur.3d Judgments § 606 ("The effect of the omission of such notice and opportunity is that the judgment is not binding on the person liable over, who has the right to litigate every essential fact necessary to support the judgment.").

42. "[A]n arbitration award is a final, binding award on the merits." *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 494 (Ct.App. 2003). "[A]n arbitration award is conclusive and binding . . . as to all matters submitted to the arbitrators." *Id.* at 494. As stated above, in this case the arbitration award was made a final judgment of the Berkeley County Circuit Court.

43. Having fully litigated the Homeowner's Suit, without requesting findings of fact, DRH has waived the right to make those findings of fact in this case. The failure to request findings of fact in the Homeowner's Suit constitutes a waiver of a judicial ruling on those omitted factual issues. *See Moore v. Moore*, 360 S.C. 241, 257 (Ct.App. 2004)("Without a special verdict form, we cannot speculate as to what portion of the award the jury attributed to lost profit as opposed to other tort damages."); *Armstrong v. Collins*, 366 S.C. 204, 227 (Ct.App. 2005) ("Because the verdict was a general verdict, we cannot now speculate as to how the jury allocated damages."). A litigant who has requested a ruling that does not include findings of fact cannot file a second independent action and ask a second trier of fact to determine what was decided by the first finder of fact.

44. "[I]n order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 570-571 (1971). Any attempt by a judge or jury in this action to determine what portion of the Judgment, if any, is attributable to property damage caused by products installed by BFS would be an exercise in rank guesswork and speculation.

45. Additionally, collateral estoppel prevents DRH from re-litigating issues decided

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in the Homeowner's Suit. In order to maintain its case, DRH must take the position that the issue of defects in BFS's work, and the amount of damage caused thereby, was actually litigated and decided in the Homeowner's Suit. "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc.* v. SCDOT, 385 S.C. 550, 554 (Ct.App. 2009); *See also Crosby v. Prysmian Communications Cables and Systems USA, LLC*, 397 S.C. 101, 111 (Ct.App. 2011)(giving preclusive effect to findings of Workers Compensation Commission in subsequent retaliatory discharge litigation). "The doctrine of collateral estoppel prevents the relitigation of *issues*, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Id.*.at 556.

46. "As far back as 1982, our supreme court held the doctrine of collateral estoppel barred the plaintiff from relitigating an issue even though the defendant was not a party, or in privity with a party, to the initial action." *Id.* at 555. "[T]he identity of the parties, and their relationship to one another, is simply not a concern when deciding whether to apply the doctrine of collateral estoppel." *Id.*

47. Here, DRH necessarily contends that it has already litigated the issue of whether BFS's work was defective, and the damages caused thereby, in the Homeowner's Suit. DRH is collaterally estopped from litigating those issues anew in this case.

III. CONCLUSION

48. Pursuant to the Contract, and applicable law, DRH was required to give BFS notice of the Homeowner's Suit in order to trigger BFS's indemnity obligations. Further, DRH's

complete failure to make any record of what was determined in the Homeowner's Suit precludes it from maintaining an action based on the Judgment. There is no basis in the Contract, or in any other applicable law, whereby BFS can be held responsible for portions of the Judgment or attorney's fees attributable to the fault of others. Furthermore, there is no evidence available whereby the Court can conclude what portion of the Judgment, if any, is attributable to property damage associated with the products installed by BFS. For all of the above reasons, BFS is hereby GRANTED SUMMARY JUDGMENT AS TO ALL OF DRH'S CLAIMS.

AND IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge, Ninth Judicial Circuit

August 20, 2014

Charleston, South Carolina

Civil Action No. 2014-CP-40-07037

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of May, 2015 served a copy of Defendant Midtown Development Group, LLC's Notice of Motion and Motion for Summary Judgment and Defendant Midtown Development Group, LLC's Memorandum in Support of its Motion for Summary Judgment, by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Century Capital Group, LLC,	)	Civil Action No. 14-CP-40-07037
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY DEFENDANT RICHLAND JOINT VENTURE GROUP, LLC**
Midtown Development Group, LLC, Richland Joint Venture Group, LLC, Windsor Mall, LP, and BRC Richland, LLC.	)	
	)	
Defendants.	)	

Defendant Richland Joint Venture Group, LLC (hereinafter "RJVG") respectfully submits this memorandum in support of its Motion for Summary Judgment as to the claims of Plaintiff Century Capital Group, LLC ("Century"), on the following bases: (1) Defendant RJVG is not a joint tortfeasor with respect to the Plaintiff; (2) the settlement agreement which the Plaintiff alleges created its right to contribution is incapable of having damages properly allocated against Defendant RJVG; and (3) the Plaintiff waived any claims against Defendant RJVG when it accepted the subject property "*as-is, where-is*[,]" with full knowledge of the patent defects for which the Plaintiff presently seeks pro-rata contribution.

FACTS AND PROCEDURAL HISTORY

The present lawsuit is a contribution action seeking recovery from the Defendants for their allegedly respective pro-rata shares of a settlement entered into between Plaintiff Century Capital Group, LLC (hereinafter "Century") and non-party Spirit SPE Columbia, LLC (hereinafter "Spirit"). The underlying lawsuit between Spirit and Century that preceded the

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settlement agreement involved allegations that Century had failed to maintain and repair portions of Richland Mall that Century was contractually obligated to maintain.

In 2002, Richland Mall was subdivided into four distinct parcels: the TGI Friday Parcel, the Bank Parcel, the Spirit Parcel, and the Midtown Parcel. On September 7, 2005, the owners of the four parcels entered into a Reciprocal Easement, Covenant, Operation and Restriction Agreement (hereinafter "REA"), which summarily provided that the owner of the Midtown Parcel would be responsible for the commercially reasonable maintenance of the common areas and parking decks at Richland Mall. In accordance with this duty, the REA provided that the owner of the Midtown Parcel would be entitled to the recovery of pro-rata maintenance fees from the owners of the remaining three parcels for reasonable repairs that had to be undertaken by the owner of the Midtown Parcel. A copy of the REA is attached as Exhibit 1

By its terms, the covenants and duties set forth in the REA ran with the land to all successive purchasers of the four parcels at Richland Mall. Defendant RJVG became the owner of the Midtown Parcel on May 25, 2007. Century then became owner of the Midtown Parcel on February 16, 2010, when it purchased the Midtown Parcel from Defendant RJVG. Spirit filed the underlying lawsuit against Century and its associated entities/individuals on November 30, 2010. Spirit summarized its general allegations against Century in Paragraph 9 of its Third Amended Complaint, as follows:

> ***Since taking possession and operating as manager of the Shopping Mall Property, Defendants have failed to maintain and repair the Spirit Parcel in accordance with the REA, over billed and/or billed for expenses not allowed under the REA, performed what little maintenance work that was undertaken in an unworkmanlike and deficient manner, failed and refused to correct deficient maintenance and refused to cure defective performance or honor express and implied warranties under the REA. As a result of Defendants' failure to perform as required by the REA, Plaintiff has incurred, and will incur in the future, costs to repair and maintain the HVAC system, roof and other structural systems in the Spirit Parcel and other areas considered***

> *common areas under the REA. In addition, [Spirit] has suffered water and mold damage to the interior spaces of the Spirit Parcel as a result of Defendants' failure to properly maintain the Spirit property* (emphasis added).

The underlying complaint and its seventeen causes of action contained therein clearly indicate that Spirit was seeking a recovery solely for the deficient maintenance that had occurred since Century took possession and began operating as the manager of the Midtown Parcel on February 16, 2010. A copy of Spirit's Third Amended Complaint from the underlying lawsuit is attached as Exhibit 2. This was the only relief that Spirit could have sought from Century, because the owner of the Midtown Parcel is only liable for maintenance obligations under the REA during the period of each owner's respective ownership. Century was not responsible for maintenance obligations which arose prior to its ownership on February 16, 2010, and Defendant RVJG was not responsible for any maintenance obligations arising on or after February 16, 2010. Spirit did not name Defendant RJVG or the other prior owners of the Midtown Parcel in its lawsuit against Century.

The settlement between Spirit and Century was finalized on December 6, 2013, for the sum of One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00). A copy of the settlement agreement is attached as Exhibit 3. In the settlement, Century attempted to extinguish liability and discharge all claims against both Century and its predecessors in title under the REA, which included the Defendants in the present case. Century now relies upon this purported extinguishment of liability within the settlement and its allegation of a joint-tortfeasor relationship as the basis for seeking contribution from Defendant RJVG.

SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438

(2003). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Dawkins, 354 S.C. at 69, 580 S.E.2d at 439.

"Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a *genuine issue for trial.*'" Id.

LAW AND ANALYSIS – ABSENCE OF JOINT TORTFEASOR RELATIONSHIP

In the present case, Century is seeking pro-rata contribution from Defendant RJVG for the sum of One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00) that Century paid to settle the underlying lawsuit with Spirit, which alleged that Century failed to reasonably maintain the common areas and parking decks at Richland Mall under the REA. The underlying complaint did not allege that any predecessors in title to the Midtown Parcel were negligent in their respective duties under the REA towards Spirit. The Courts of South Carolina "*will not, under the guise of liberal construction of the pleadings, write into the complaint allegations that are not presented.*." Davis v. Monteith, 289 S.C. 176, 182, 345 S.E.2d 724, 727 (1986). If Spirit intended to recover the total sum for all deficient maintenance that had occurred since the inception of the REA in September 2005, then Spirit would have necessarily had to

name Defendant RJVG as a defendant in order to recoup damages for any harm the Spirit Parcel would have incurred from any allegedly deficient maintenance under the REA from May 2007 – February 2010. *See* Blackburn and Co., Inc. v. Dudley, 289 S.C. 415, 418, 338 S.E.2d 151, 152 (1985) ("*[A] plaintiff who has pled one theory should not be allowed to recover upon another*"). However, there are no allegations in the underlying complaint regarding deficient maintenance by Defendant RJVG or any other predecessors in title to the Midtown Parcel.

It is clear that any duty involved in this case amongst the defendants regarding maintenance to the Spirit Parcel was primarily a contractual duty arising from the REA. "*It is settled law that if a tort arises out of a contract there must also exist a relationship, irrespective of the contract, that gives rise to a duty[,] because a mere breach of contract is not actionable as a tort in South Carolina, no matter what the intent of the breaching party was.*" Troutman v. Facetglas, Inc., 281 S.C. 598, 601, 316 S.E.2d 424, 426 (Ct. App. 1984). Pursuant to S.C. Code Ann. § 15-38-20(A), joint tortfeasors are those who "*become jointly or severally liable in tort for the same injury to person or property.*" Even assuming that the duty involved in this case is a tortious duty and not a contractual one, South Carolina courts which have examined the joint tortfeasor relationship have held that the key characteristic among joint tortfeasors is that the parties owe the same duty of care to the injured party and share a common liability. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 67, 518 S.E.2d 301, 309 (Ct. App. 1999). If there is no common liability between the parties, a contribution action will not lie even if the settlement agreement purports to extinguish liability against the party from whom contribution is sought. Id. at 309-10 ("*Vermeer did not extinguish any liability of Wood/Chuck to Causey because no liability of Wood/Chuck to Causey existed to be extinguished. In the same*

vein, there was no 'common liability' that could have been discharged by the settlement agreement. . . . Vermeer could not discharge what did not exist.")

In examining whether parties owe a common duty of care to an injured party, courts across the country, including those in South Carolina, have noted that the temporal relationship between the parties and the injured party is an important consideration. *See* Foulke v. Dugan, 212 F.R.D. 265, 270 (E.D.Pa. 2002) ("*Two persons are not acting jointly for the purposes of committing a joint tort if the acts of the original wrongdoer and the joint tortfeasor are severable as to time, neither having the opportunity to guard against the other's acts, and each breaching a different duty owed to the injured plaintiff*"). In Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 504 S.E.2d 347 (Ct. App. 1998), a driver (Collins) was injured in an automobile accident with another driver (Wiles). After an ambulance arrived to transport Collins to the hospital, the ambulance was involved in a second car accident with an automobile owned by Bisson Moving & Storage, Incorporated (Bisson). Collins later entered into a settlement with Wiles, and Bisson attempted to claim that Bisson and Wiles were joint tortfeasors, such that Bisson was entitled to an offset for the settlement funds paid by Wiles. The Court of Appeals addressed its response to Bisson's argument as follows:

> *Bisson's argument for an offset is valid only if Bisson and Wiles are co-tortfeasors, jointly and severally liable for Collins's injuries. This is patently erroneous. Bisson clearly has no liability for the first accident, and Wiles has no liability for the second accident. The amount Wiles paid to Collins was for the settlement of her own accident with Collins and was not made on behalf of Bisson. Moreover, Collins received different injuries in the two accidents. Joint and several liability arises only when two or more tortfeasors are responsible for a single injury. . . . That Wiles and Bisson were responsible for separate tortious acts resulting in separate injuries is immaterial to the jury's award of $600,000 to Collins from the accident with Bisson. Accordingly, the trial court correctly denied Bisson's request for an offset for the amount paid by Wiles to Collins in settlement of the first accident.*

Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 306, 504 S.E.2d 347, 356 (Ct. App. 1998).

The present case is analogous to *Collins v. Bisson*. Although both Wiles and the truck driver for Bisson owed the same duty of care to Collins to operate their respective vehicles with reasonable care, they owed those duties at temporally severable times and could not be jointly and severally liable in tort for breaching the same duty at separate and distinct times, with neither defendant having an opportunity to guard against the other's acts. In the present case, the duties owed by both Century and Defendant RJVG to Spirit to properly maintain the common areas and parking decks at Richland Mall were completely severable temporally. The duty owed by Defendant RJVG under the REA existed from May 25, 2007, until February 15, 2010, while the duty owed by Century began on February 16, 2010, and continues until the present day. Spirit only sought damages from Century for the timeframe when Century owned the Midtown Parcel. As described in *Foulke v. Dugan*, supra, Defendant RJVG had no opportunity to guard against the maintenance acts of Century once the transfer of ownership of the Midtown Parcel was completed, and Century had no opportunity to guard against the acts of Defendant RJVG while RJVG owned the Midtown Parcel from May 25, 2007, until February 15, 2010. At no point in time did Defendant RJVG and Century ever concurrently owe a duty of care to Spirit so as to justify holding that there was common liability amongst the parties.

In sum, the question of whether two entities are joint tortfeasors is a matter of law to be determined by the court under the undisputed or admitted facts in evidence. *See* Gordon v. Phillips Utilities, Inc., 362 S.C. 403, 407, 608 S.E.2d 425, 427 (2005); Edwards v. Atlantic Coast Line R. Co., 148 S.C. 266, 146 S.E. 97, 103 (1928). Any duty in tort requiring Century to maintain the common areas and parking areas at Richland Mall would have arisen strictly from the REA when Century became the owner of the Midtown Parcel on February 16, 2010. *See*

Exhibit 1; Waterpointe I Property Owner's Ass'n, Inc. v. Paragon, Inc., 342 S.C. 454, 460, 536 S.E.2d 878, 881 (Ct. App. 2000) ("*Clearly, there is a breach of duty alleged; however, that duty arose solely from the contract*"). It is also fundamental that Spirit limited the recovery sought against Century to the deficient maintenance that had occurred since Century began maintaining the common areas at Richland Mall on February 16, 2010. *See* Exhibit 3.

If Spirit had attempted to recover from Century the full cost of all deficient maintenance which had occurred since the REA was first signed in September 2005, Century would surely have been entitled to partial summary judgment on the issue of liability which predated its ownership of the Midtown Parcel on February 16, 2010, because Century had no duty to maintain the common areas prior to that date. *See* Roe v. Bibby, 410 S.C. 287, 292, 763 S.E.2d 645, 648 (Ct. App. 2014) (*Without a duty, there is no actionable negligence*"). Nevertheless, Century now claims it is entitled to contribution for discharging co-tortfeasor liability from May 2007 – February 2010, on behalf of Defendant RJVG, that Century could never have been liable for in the first place. *See* Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 67, 518 S.E.2d 301, 309-10 (Ct. App. 1999) ("*Vermeer could not discharge what did not exist*"). Under the undisputed facts of this case, there was no joint tortfeasor relationship between Defendant RJVG and Century, and Century accordingly has no right to seek contribution from Defendant RJVG under S.C. Code Ann. § 15-38-20.

LAW AND ANALYSIS – NO ALLOCATION OF DAMAGES POSSIBLE

The settlement entered into between Spirit and Century in the underlying case was signed on December 6, 2013. The settlement purported to extinguish liability for both the claims against Century that were set forth in Spirit's Third Amended Complaint, as well as the potential and unfiled claims against Century's "*predecessors in interest under the REA, and each predecessor*

in interest's employees, agents, heirs and assigns." Nevertheless, the settlement provides no insight into how liability could be allocated between the predecessors in interest in the event a contribution action was filed. There were seventeen causes of action listed in Spirit's Third Amended Complaint, with contractual and equitable causes of action included. Of these seventeen causes of action, only certain causes of action are tortious in nature, and some of these causes of actions are intentional torts for which contribution may not be sought, according to S.C. Code Ann. § 15-38-20(C). Lastly, some of the tortious causes of action relate to specific billing representations by Century which Defendant RJVG could not be jointly liable for in tort, such as the negligent misrepresentation cause of action. In total, there is only one cause of action out of seventeen which Defendant RJVG could conceivably be jointly liable for in the Third Amended Complaint: negligence.

The settlement between Spirit and Century sets forth in Paragraph (a)(6) that "*[t]he parties agree that the $1,450,000 payment is provided for the release and extinguishment of any pre-June 30, 2013 liability related to the maintenance and repair of the Spirit parcel and the remaining consideration provided by CCG under this Settlement Agreement is provided for the pre-June 30, 2013 settlement of the CAM, accounting, and other claims asserted by Spirit.*". This language represents the only attempt within the settlement to breakdown the settlement in any meaningful way, and this language fails to breakdown the "*maintenance and repair*" payment by the intentional tort, negligence, contractual, and equitable causes of action. Any attempt to determine what percentage of the settlement did contemplate recoverable damages in a contribution action at this point would be purely speculative at this point such that a fact finder cannot logically allocate damages to Defendant RJVG under a theory of contribution.

This same issue arose in the case of Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). That case involved a settlement that extinguished liability for both a strict liability products liability claim, which was properly pleaded in the Complaint, and a potential loss of consortium claim that had not yet been sought by the wife of the plaintiff injured by the defective product. Our Court of Appeals held that it could not permit the settling tortfeasor to pursue a contribution claim to recover funds paid in extinguishing liability for the wife's potential and unfiled loss of consortium claim because the agreement failed to put a specific value on that individual theory of liability:

> *The settlement agreement does not place a specific value on any potential claim by Mrs. Causey. Under the agreement, no portion of the settlement is allocated to her for any potential loss of consortium claim. We cannot, therefore, determine whether Vermeer paid more than its pro rata share of liability to Mrs. Causey. See S.C.Code Ann. § 15-38-20(B) (Supp.1998) (right of contribution exists only in favor of tortfeasor who has paid more than his pro rata share of common liability, and his total recovery is limited to amount paid by him in excess of his pro rata share) . . . [W]e rule there is no contribution available to Vermeer under the South Carolina Contribution Among Tortfeasors Act. Accordingly, the order of the trial court granting summary judgment to Wood/Chuck is Affirmed.*
>
> Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 70-72, 518 S.E.2d 301, 310-11 (Ct. App. 1999).

In coming to this conclusion, our Court of Appeals noted the parties could not cite any South Carolina case involving a settlement agreement that did not contain an allocation of damages, so the Court sought advice from the case of Houser v. Witt, 111 Ill.App.3d 123, 443 N.E.2d 725 (Ill. App. 1982). In *Houser v. Witt*, Plaintiff Houser was driving a vehicle in which his wife was a passenger when they collided with another vehicle driven by the defendant Witt. All three parties entered into a settlement and defendant Witt filed a contribution action against Mr. Houser, claiming he was a joint tortfeasor along with defendant Witt in causing Mrs. Houser's injuries. The *Houser* court noted the settlement did not provide any way to determine whether

the amount paid by Witt was in excess of his pro-rata share: "*In short, the open-end, blanket, joint release gives no indication as to how the amount paid for the release relates to any present or future damage to either party. In this case lack of apportionment may work a hardship on Witt, but it is one which he could have avoided by a properly drawn release.*" Id. at 728. Our Court of Appeals cited this same language in reaching its conclusion in Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).

It is plain that Century was contemplating a contribution action against Defendant RJVG at the time it engaged in discussions leading up to the settlement of December 6, 2013, as Paragraph (g) of the settlement contains a confidentiality clause and an exception "*to the extent necessary for Defendants to prosecute Contribution claims.*" Century had every opportunity to coordinate with Spirit and draft the settlement agreement in such a way as to help discern what portions of the settlement contemplated the tortious causes of action as opposed to the contractual or equitable causes of action or what portion of the settlement contemplated the wrongful acts of Century as opposed to wrongful acts, if any, of its predecessors in interest under the REA. A party drafting a settlement agreement must not leave the fact finder to speculate as to what portion of the settlement relates to specific claims so that the fact finder can determine whether the settling defendant has paid more than its pro rata share of liability on the claims for which contribution is sought. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 70-72, 518 S.E.2d 301, 310-11 (Ct. App. 1999).

It is clear in the present case that the entire settlement, which included contractual causes of action and equitable causes of action, is not subject to contribution. At this point in time, however, with the settlement already finalized, any discussion of how much of the settlement contemplated damages that might have been recoverable from Defendant RJVG under a theory

of contribution would be purely speculative. The settlement signed by Century epitomizes the "*open-end, blanket, joint release [that] gives no indication as to how the amount paid for the release relates to any present or future damage to either party.*" Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 70-72, 518 S.E.2d 301, 310-11 (Ct. App. 1999).

Additionally, the settlement agreement expressly provides within its own terms on Page 13 that it "*constitutes the entire agreement among the parties pertaining to the subject matter contained herein.*" Accordingly, no additional evidence may be proffered to delineate how the settlement contemplated the apportionment of liability between the allegations that might have been jointly recoverable. This is supported by a recent ruling of our Supreme Court, which stated that when a writing, upon its face, purports to be a complete expression of the whole agreement, and contains all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, and parol evidence is not admissible to add another term to the agreement, although the writing contains nothing on the particular item to which the parol evidence is directed. Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 568, 577-78, 762 S.E.2d 696, 701 (2014).

The impossibility of allocating damages is highlighted by the most recent demand letter sent to the Defendants in this lawsuit by Century, dated January 20, 2015, which claims that the entire settlement amount is subject to contribution. The demand letter attempts to use a "time on the risk" method of allocating liability simply by looking to the date of each party's maintenance obligation under the REA. *See* Exhibit 4. The defendants in this case are not insurance companies, and a "time-on-the-risk" analysis would not be proper as it improperly assumes that all defendants were equally negligent on a day-to-day basis.

Defendant RJVG also attaches, as Exhibit 5, a copy of the Charleston County Order Granting Defendants Builders Firstsource-Southeast Group, LLC, and Builders Firstsource, Inc., Summary Judgment, dated August 20, 2014, in Case Number 2010-CP-10-10355. Defendant RJVG acknowledges that this circuit court opinion is not binding precedent on this Court. However, Defendant RJVG believes this Order is useful as persuasive authority insofar as it is essentially an application of the *Vermeer* holding to similar facts and it reaches the same conclusion requested by Defendant RJVG in the present case. The Order attached as Exhibit 5 pertains to a contribution action that was filed by D.R. Horton ("DRH") seeking contribution from Builder Firstsource ("BFS") for an arbitration award. Arbitration was requested after the Complaint had been filed seeking recovery in a construction defect action for breach of contract, breach of warranty, negligence, and violations of the South Carolina Unfair Trade Practices Act. The Order notes in Paragraph Fifteen (15) that "*[t]he parties to the Homeowner's Suit requested an award from the arbitrator that does not specify the legal basis for his award of damages.*" Based on this lack of specificity, the Order notes in Paragraph Eighteen (18) that "*[e]ven if, somehow, DRH was able to establish its own tort liability, and that BFS's work was determined to be defective in the Homeowner's Suit, there is no way to determine what portion of the Judgment is related to said liability.*" Lastly, in Paragraphs Nineteen (19) and Twenty (20) of the Order, summary judgment was granted on the contribution claim based on the *Vermeer* case because "*[a]ny attempt to determine what portion of the Judgment is attributable to the joint negligence of BFS and DRH would be an exercise in impermissible guesswork.*"

Based on the foregoing, Defendant RJVG asserts that the settlement agreement, as drafted, is incapable of being apportioned in any rational, logical way so as to enable a fact finder to determine what portion of the settlement might be subject to contribution by Defendant

RJVG, and any attempt to do so is purely speculative. Defendant RJVG is clearly not jointly liable for the allegations by Spirit that were set forth in the contractual, equitable, or intentional tort causes of action. However, it is impossible to tell from the terms of the blanket settlement what portion of the settlement, if any, the parties intended to be subject to contribution, and the settlement agreement further provides that it cannot be modified or amended in order to show how the parties intended to allocate settlement costs. As stated by the *Houser v. Witt* court and cited by our Court of Appeals, "*lack of apportionment may work a hardship on [the plaintiff], but it is one which he could have avoided by a properly drawn release.*" Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 356 S.C. 53, 70, 518 S.E.2d 301, 310 (Ct. App. 1999).

LAW AND ANALYSIS – ACCEPTANCE OF PATENT DEFECT

It has long been the law of South Carolina that a person who knowingly accepts property with a patent defect waives claims arising out of that defect, and that the law thus only protects the purchaser from defects that a reasonably careful inspection would not reveal. *See* Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 563, 658 S.E.2d 80, 90 (2008); Monroe v. Wood, 186 S.C. 507, 197 S.E. 39, 43 (1938); Hooper v. Columbia and Greenville R.R. Co.., 21 S.C. 541, 1884 WL 4606 (1884). In the present case, Article 3.2 of the Purchase and Sale Agreement between Defendant RJVG and Century, dated December 22, 2009, unambiguously provided the following disclosure of patent defects:

> **3.2 Condition of Property**. Seller has disclosed to Buyer that the Mall and its HVAC systems (collectively the 'Facilities') have defects and require ongoing maintenance. The Property is being sold subject to such defects, and in its 'as-is, where-is' condition. Nevertheless, so that Buyer may assess the extent of such defects and maintenance requirements, Buyer shall have from the effective date of this Agreement until January 29, 2010 (the 'Facilities Review Period') to undertake, at Buyer's sole expense, an examination and review of the condition of the structural, functional, and environmental condition of the Facilities. . . . Buyer acknowledges that the Mall roof develops leaks from time to time and that the repair of such leaks will be required on an ongoing basis.

A copy of the Purchase and Sale Agreement between Defendant RJVG and Century is attached as Exhibit 6 to this Memorandum. Articles 3.3 and 3.4 of the Agreement expressly provided Century with full access to Richland Mall and Defendant RJVG's records pertaining to Richland Mall during the Facilities Review Period. The Purchase and Sale Agreement further provided in Article 3.2 that, if Century discovered the need for repairs or remediation at Richland Mall during the Facilities Review Period in an amount that exceeded Two Hundred Fifty Thousand Dollars and NO/100 ($250,000.00), Century would be entitled to a credit at closing in the amount of the repair or remediation cost estimate. If Defendant RJVG refused to provide such a credit, Century could elect to terminate the Purchase and Sale Agreement in full. Despite these provisions, no notice of the need for repairs or remediation was ever provided to Defendant RJVG by Century during the Facilities Review Period.

Throughout the course of the Facilities Review Period, a dispute arose between Spirit and its chief tenant, Verizon Wireless, which maintained a call center at Richland Mall. Verizon Wireless did not believe that Spirit was fulfilling its duty under the lease to properly maintain the roof and HVAC systems surrounding the Verizon Wireless call center. Century became aware of this dispute during the Facilities Review Period and feared that it would be drawn into litigation between Verizon Wireless and Spirit as soon as the closing of the Midtown Parcel was completed. Accordingly, an amendment to the Purchase and Sale Agreement was drafted and signed on January 12, 2010, to address these issues. This amendment, provided within Exhibit 6, expressly provided that Richland Mall was subject to the REA, and that there was a pending threat of litigation surrounding the roof leaks and the HVAC issues at the Spirit Parcel. The amendment ultimately provided that Defendant RJVG would set aside Twenty Thousand Dollars and NO/100 ($20,000.00) in escrow for attorney's fees in the event that Verizon Wireless filed

suit against Century. The potential lawsuit between Spirit and Verizon Wireless never materialized. However, this amendment supplements the disclosure of defects set forth in Article 3.2 of the Purchase and Sale Agreement, and it further solidifies that Century knew there were defects and leaks associated with the roof of the Spirit Parcel and that Century would have to undertake commercially reasonable repairs under the REA to maintain the Spirit Parcel.

Century may not maintain the present contribution action against Defendant RJVG, which is premised on the same patent defects that were fully disclosed to Century in the Purchase and Sale Agreement and accepted "*as-is, where-is*[,]"pursuant to Article 3.2. The amendment to the Purchase and Sale Agreement, dated January 12, 2010, provided even more direct notice that there were roofing and HVAC defects surrounding the Spirit Parcel. Most importantly, Century was invited under the Purchase and Sale Agreement to conduct a full investigation of Richland Mall and its records prior to the finalization of the Purchase and Sale Agreement, and Article 3.2 provided Century with the right to receive a credit for any extensive repairs or remediation it deemed necessary during its investigation. Century was entitled to void the agreement in full if the credit was not provided. Nevertheless, Century chose to proceed ahead with the purchase of the Midtown Parcel, after acknowledging that there were defects and ongoing maintenance obligations with the property under the REA. Century should now be barred from maintaining the present contribution action against Defendant RJVG under the common law rule regarding the acceptance of patent defects.

CONCLUSION

Based on the foregoing, Defendant RJVG hereby asserts that Plaintiff's cause of action for contribution against Defendant RJVG should be dismissed pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure.

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Attorneys for Defendant Richland Joint Venture Group, LLC

May 5, 2015
Columbia, South Carolina

EXHIBIT 1

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EXHIBIT 1

Exhibit

RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION

THIS RECIPROCAL EASEMENT, COVENANT, OPERATION AND RESTRICTION AGREEMENT AND DECLARATION, ("Agreement") is made as of this 1 day of September, 2005, by and between **BRC RICHLAND, LLC**, a Georgia limited liability company ("BRC"), and **WINDSOR RICHLAND MALL, L.P.**, a Texas limited partnership ("Windsor").

WITNESSETH:

WHEREAS, Windsor is the owner of that certain tract or parcel of land (the "Shopping Mall Parcel") situated in the City of Forest Acres, County of Richland and State of South Carolina, which Shopping Mall Parcel is more particularly described on Exhibit "A" attached hereto and made a part hereof; and (entire parcel)

WHEREAS, contemporaneous herewith BRC has acquired from Windsor and is the owner of that certain tract or parcel of land adjacent to the Shopping Mall Parcel, which parcel is currently used and operated as a Verizon Wireless call center (the "Verizon Parcel"), which Verizon Parcel is more particularly described on Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, Windsor is the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a TGI Friday's Restaurant (the "TGIF Parcel"), which TGIF Parcel is more particularly described on Exhibit "C" attached hereto and made a part hereof; and

WHEREAS, Windsor is also the owner of that certain separately platted tract or parcel of land within the Shopping Mall Parcel, which parcel is currently used and operated as a Bank of America (the "Bank Parcel"), which Bank Parcel is more particularly described on Exhibit "D" attached hereto and made a part hereof; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, and the Bank Parcel are depicted graphically on the Site Plan attached hereto as Exhibit "E" and made a part hereof (the "Site Plan"); and

WHEREAS, the Shopping Mall Parcel, less and except the TGIF Parcel and the Bank Parcel, is hereinafter referred to as the Midtown Parcel; and

WHEREAS, the Shopping Mall Parcel, the Verizon Parcel, the TGIF Parcel, the Bank Parcel and the Midtown Parcel are sometimes collectively referred to herein as the "Parcels" and individually as a "Parcel", and are collectively referred to herein as the "Mall"; and

WHEREAS, the Verizon Parcel is leased to Cellco Partnership ("Cellco") pursuant to a Lease Agreement dated May 5, 1999, as amended by First, Second and Third amendments dated respectively May 25, 1999, September 6, 2000 and March 4, 2005 (the "Verizon Lease"); and

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WHEREAS, it is contemplated that after recordation of this Agreement, Windsor may convey the Midtown Parcel to Midtown at Forest Acres North, LLC which may continue to operate the Midtown Parcel as an enclosed mall or may redevelop the Midtown Parcel as a lifestyle shopping center with residential and other planned uses; and

WHEREAS, it is the desire of the parties that, notwithstanding the division of ownership of the Mall, the parties and each of the Parcels be protected in their continuing rights of access, parking, utilities and other features necessary to operate viable businesses on the Parcels and that as a paramount matter all of the rights of Cellco under the Verizon Lease be protected and preserved;

NOW THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

ARTICLE I

EASEMENTS BURDENING THE MIDTOWN PARCEL IN FAVOR OF THE VERIZON PARCEL, TGIF PARCEL AND BANK PARCEL

(A) Access. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Verizon Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "VTP Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, parking upon, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Midtown Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, those parking areas located on the roof of the Midtown Parcel; and (b) passage and use for the purpose of walking upon the interior corridors of the enclosed mall on the Midtown Parcel.

The owner of the Midtown Parcel may relocate, modify or alter any of the existing driveways, sidewalks, curb cuts or mall interior doorways or hallways in a manner which would not materially adversely affect access to the Verizon Parcel; provided that the owner of the Midtown Parcel gives at least twenty (20) days notice of the proposed relocation, modification, or alteration to the owner of the Verizon Parcel.

(B) Drainage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: drainage of surface water over, across and under the Midtown Parcel using pipes, ditches, and/or similar features presently in place to handle surface water drainage.

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(C) Utilities.

Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of: (a) installation, maintenance, repair and use of utilities, including specifically fiber optic cable, serving any portion of the VTP Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Midtown Parcel; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Midtown Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Midtown Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner performing such work shall indemnify and hold the owner of the Midtown Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Midtown Parcel may relocate, at its sole expense, such utility lines, so long as utility service to any other Parcel is not interrupted; and (b) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Midtown Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Midtown Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Midtown Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the VTP parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Midtown Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Midtown Parcel; (iv) any and all damage to the Midtown Parcel shall be promptly repaired by the owner performing such work, the Midtown Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Midtown Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Midtown Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the other Parcels is not interrupted.

(D) Signage. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the VTP Parcels, for the purpose of erecting, using, and maintaining such signage on the Midtown Parcel as (i) presently exists, including without limitation signage on any pylon signs or monument signs on the Midtown Parcel, inclusion on any directories located within the Mall, suite entry

CAM change payable to Midtown

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signage, and directional signage or (ii) is otherwise required by the Verizon Lease. Each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining, repairing, and replacing such signage, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV below. The owner of the Midtown Parcel agrees not to make any signage changes on the Midtown Parcel which would change Cellco's present signage rights under the Verizon Lease without the prior written approval of Cellco.

(E) Parking. Windsor, as owner of the Midtown Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the VTP Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the VTP Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Midtown Parcel. The Midtown Parcel owner shall not relocate or reduce the parking on the Midtown Parcel without the prior written consent of Cellco and the owner of the Verizon Parcel, which owner's consent will not be unreasonably withheld, conditioned or delayed if Cellco has approved the parking change.

ARTICLE II

EASEMENTS BURDENING THE BANK PARCEL

(A) Access, Drainage and Utilities. Windsor, as owner of the Bank Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the Verizon Parcel and the TGIF Parcel (collectively the "MVT Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to the MVT Parcels, for the purpose of: (a) passage and use for the purpose of walking and driving over and across, and maintenance and repair of, all those sidewalks, entrances, drives, lanes, parking lots and service drives on the Bank Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, (b) drainage of surface water over, across and under the Bank Parcel; (c) installation, maintenance, repair and use of utilities serving any portion of the MVT Parcels across and under such portions of the Bank Parcel that are not presently improved with buildings; provided, however, (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Bank Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Bank Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the Parcel owner performing such work shall indemnify and hold the owner of the Bank Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MVT Parcels is not interrupted; and (d) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone,

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power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Bank Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Bank Parcel; (ii) all such work shall be scheduled and coordinated with the owner of the Bank Parcel and performed in such a manner and at such time that will minimize any disruption to the operation of any business on the Bank Parcel; (iii) any and all damage to the Bank Parcel shall be promptly repaired by the Parcel owner performing such work, the Bank Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Bank Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (iv) the owner of the Bank Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MVT Parcels is not interrupted.

ARTICLE III

EASEMENTS BURDENING THE VERIZON PARCEL

(A) Access. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owners from time to time of the Midtown Parcel, the TGIF Parcel, and the Bank Parcel (collectively the "MTB Parcels") for the benefit of such owners and such owners' tenants, and their respective customers, employees and invitees, perpetual, nonexclusive easements appurtenant to each of the MTB Parcels, for the purpose of passage and use for the purpose of walking and driving over and across and maintenance and repair of, all those sidewalks, entrances, drives, lanes and service drives on the Verizon Parcel which are now or may hereafter from time to time be used for pedestrian and vehicular traffic, including, without limitation, passage through those parking areas located on the roof of the Verizon Parcel.

(B) Parking. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners and such owners' tenants, and their customers, employees and invitees, a perpetual, nonexclusive easement appurtenant to the MTB Parcels for the purpose of parking vehicles upon such parking places as presently exist on the Verizon Parcel; provided, however, (i) such parking shall not apply to those parking spaces which are expressly reserved for Cellco pursuant to Section 8.5 of the Verizon Lease and (ii) in the event of any complaint from Cellco or any subsequent tenant of the Verizon Parcel for problems with shortage of parking for Cellco or the business conducted on the Verizon Parcel, the owner of the Verizon Parcel shall be entitled to terminate the parking rights granted by this sub-article (B) and take such steps as the Verizon Parcel owner deems appropriate to secure exclusive parking of all parking spaces located on the Verizon Parcel, which steps may include designating parking spaces as Verizon Parcel only, with threat and right to tow or otherwise to enforce exclusive parking; provided that no such action shall impair access to and across driveways on the Verizon Parcel so that pedestrian and vehicular traffic and circulation for the Mall would be impaired. The owner of the Verizon Parcel shall not take any action to reduce the total number of parking spaces on the

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Verizon Parcel (but such spaces may be exclusive to the Verizon Parcel) if such reduction would cause the Mall to fail to comply with the overall ratio required for code compliance.

(C) Utilities and Drainage. BRC, as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, and grant and convey to, the owner from time to time of the MTB Parcels, for the benefit of such owners, perpetual, nonexclusive easements appurtenant to the MTB Parcels for the purpose of: (a) drainage of surface water over, across and under the Verizon Parcel in the manner that presently exists; (b) installation, maintenance, repair and use of utilities serving any portion of the MTB Parcels through conduits, empty spaces and other areas now being used for utility and cabling runs in the improved portions of the Verizon Parcel provided, however: (i) all such work shall be performed pursuant to plans and specifications approved in advance by the owner of the Verizon Parcel, such approval not to be unreasonably withheld, conditioned or delayed; (ii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will cause a minimum of disruption to the operation of any business on the Verizon Parcel; (iii) any and all damage caused by such work shall be promptly repaired, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Parcel performing such work shall indemnify and hold the owner of the Verizon Parcel harmless from any cost, expense, liability, claim or lien associated with such work or use; and (iv) the owner of the Verizon Parcel may relocate, at its sole expense, such utility lines, so long as utility service to the MTB Parcel is not interrupted; and (c) connecting into, using and maintaining any water, sewer, storm drainage, gas, telephone, power or other utility lines and storm drainage, gas, telephone, power or other utility lines and storm water retention facilities and detention pond(s) now or hereafter constructed on the Verizon Parcel; provided however: (i) such connection and use shall not interfere with or adversely affect the operation of any business on the Verizon Parcel; (ii) in the case of any connection into or use of existing storm water retention facilities and/or detention pond(s), the owner of the Verizon Parcel determines the existing storm water retention facilities and/or detention pond(s) are adequate to handle any additional storm water drainage the MTB Parcels could contribute, such determination not to be unreasonably withheld, conditioned or delayed; (iii) all such work shall be scheduled and coordinated with the owner of the Verizon Parcel and performed in such a manner and at such times as will minimize any disruption to the operation of any business on the Verizon Parcel; (iv) any and all damage to the Verizon Parcel shall be promptly repaired by the owner of the Parcel performing such work, the Verizon Parcel shall be restored to the condition that existed prior to the performance of such work and the owner of the Verizon Parcel shall be held harmless from any cost, expense, liability, attorneys' fees, claim or lien associated with such work or use; and (v) the owner of the Verizon Parcel may relocate, at its own expense, such connecting and main lines and facilities so long as utility service to and storm water retention for the MTB Parcel is not interrupted.

(D) Green Space Amenity Easement. BRC as owner of the Verizon Parcel, does hereby declare, establish for the benefit of, grant and convey to, the owner from time to time of the Midtown Parcel for the benefit of such owner and such owner's tenants, employees and invitees, a perpetual nonexclusive easement appurtenant to the Midtown Parcel for the purpose of constructing, using and maintaining an elevated green space amenity on a to-be-constructed level above the current rooftop parking on the building on the Verizon Parcel. The foregoing grant is subject to the following:

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(a) The Verizon Parcel Owner shall have the right to approve all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(b) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(c) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (D).

(d) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(e) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may (i) terminate this easement and (ii) complete construction or demolish any improvements and the owner of the Midtown Parcel shall be obligated to reimburse the owner of the Verizon Parcel for all costs incurred by the owner of the Verizon Parcel.

(f) The Midtown Parcel Owner shall maintain the green space facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(g) The Verizon Parcel Owner shall have the right, if the green space facility has been constructed, to demolish and rebuild the green space facility at the cost of the Verizon Parcel Owner if the Verizon Parcel Owner does a vertical expansion of the building on the Verizon Parcel.

(h) The Verizon Parcel Owner may terminate this easement if the existing building on the Verizon Parcel is destroyed or substantially modified in connection with a redevelopment (i.e. material structural change in the building on the Verizon Parcel which involves construction of more than two (2) additional stories on the existing building or which involves demolition of all or a material part of the building and construction of a new facility) of the Verizon Parcel.

(i) In the event that the owner of the Midtown Parcel fails to perform its obligations under this Article III (D), the owner of the Verizon Parcel may perform such work and shall have the rights as are contemplated in Article IV (D) and (E).

ARTICLE IV

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Richland Co. Recitals

COMMON AREA MAINTENANCE

(A) Definitions. For purposes hereof, Common Areas shall mean (i) as to exterior areas curb cuts, driveways, parking decks, rooftop parking, parking areas, commonly used utility lines, storm drainage lines and detention facilities, exterior lighting, pylon and monument and directional signs, and similarly used common facilities and (ii) as to interior areas, common doorways, used by multiple owners or tenants, interior corridors, used by multiple owners or tenants, commonly used corridor lighting and commonly used corridor heating and air conditioning and commonly used elevators, escalators and stairways.

(B) Responsibility. The Common Areas, including parking lots, curb cuts, driveways and detention facilities and pylon and monument signs and parking lot lighting fixtures on the Midtown Parcel, the Bank Parcel, the TGIF Parcel and the Verizon Parcel shall be maintained in good condition and repair in accordance with standards of well maintained shopping centers in Richland and Lexington Counties, South Carolina, by the owner of the Midtown Parcel, at the expense of the owner of the Midtown Parcel, subject to reimbursement as described below, at all times during the term of this Agreement, which maintenance shall include, without limitation: repaving and re-striping of all parking areas, maintenance of directional signs and other markers and bumpers, all canopy lighting, parking area lighting, utility charges incurred in connection with lighting the Common Area, providing water to the Common Area landscaping, maintenance and replacement of landscaping, sweeping, cleaning and snow removal charges, and other maintenance charges pertaining to driveways and other access areas. Common Area maintenance shall also include maintenance, lighting and cleaning of interior common lobbies, elevators, hallways and walkways.

The costs incurred in the course of such maintenance are the "Common Area Maintenance Charges." In addition, Common Area Maintenance Charges will include the following: coverage and premiums for liability, property damage, flood, rental loss, fire and extended coverage or other casualty; and property taxes attributable to the Midtown Parcel, the Verizon Parcel (including all insurance required to be paid by the owner of the Verizon Parcel under the Verizon Lease), the Bank Parcel and the TGIF Parcel; and any market rate management fees paid to a third-party hired by the owner of the Midtown Parcel to manage the Common Areas. Common Area Maintenance charges shall include the amount of any deductible, not to exceed $10,000.00 paid in connection with a casualty claim. Common Area Maintenance Charges shall not include any penalties or interest incurred by the Midtown Parcel owner as a result of its failure to pay for any expenses in a timely manner, or any sums expended by the Shopping Mall Parcel owner directly and solely related to tenants of the Shopping Mall Parcel.

(C) Contribution. The owners of the Bank Parcel and the TGIF Parcel shall pay their Pro-Rata Share of the Common Area Maintenance Charges as follows:

The TGIF Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the TGIF Parcel and the denominator of which shall be the gross leasable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the

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Verizon Parcel, the Bank Parcel and the TGIF Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The TGIF Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the TGIF Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such TGIF Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the TGIF Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The Bank Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Bank Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the TGIF Parcel and the Bank Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

The Bank Parcel's Pro Rata Share of the Common Area Maintenance Charges shall be paid by the owner of the Bank Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar year in an amount equal to one-twelfth (1/12) of such Bank Parcel owner's Pro-Rata Share of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Bank Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

The owner of the Verizon Parcel shall not be responsible for any Common Area Maintenance Charges of any kind until November 30, 2010. In consideration of the Midtown Parcel owner's maintenance of the Common Area, the Verizon Parcel owner shall pay to the Midtown Parcel owner all sums received by the Verizon Parcel owner from Cellco pursuant to Section 10.3 of the Verizon Lease. For purposes of billing Cellco, it is agreed that the pro-rata share of the Verizon Parcel shall in no event be less than the "proportionate share" as set forth in the Verizon lease.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" shall be computed by multiplying the Common Area Maintenance Charges by a fraction, the numerator of which shall be the floor area of the improvements on the Verizon Parcel and the denominator of which shall be the gross leaseable floor area of all of the buildings from time to time constructed on the Midtown Parcel, the Verizon Parcel, the Bank Parcel and the Verizon Parcel, whether or not actually occupied, including all gross leaseable floor area within any multi-floor structures.

After November 30, 2010, the Verizon Parcel's "Pro-Rata Share" of the Common Area Maintenance Charges shall be paid by the owner of the Verizon Parcel to the Midtown Parcel owner in equal monthly installments on or before the first day of every month in the calendar

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year in an amount equal to one-twelfth (1/12) of such Verizon Parcel owner's "Pro-Rata Share" of the Common Area Maintenance Charges as estimated by the Midtown Parcel owner for the Calendar Year. "Calendar Year" is defined as January 1 through December 31. The Midtown Parcel owner shall provide the owner of the Verizon Parcel with an estimate of the coming Calendar Year's Common Area Maintenance Charges on or before January 31st of such Calendar Year.

Within sixty (60) days after the end of each Calendar Year, the Midtown Parcel owner shall furnish the TGIF Parcel owner and the Bank Parcel owner (and the Verizon Parcel owner, if applicable) with a written statement in reasonable detail of the actual Common Area Maintenance Charges and the amount of each Parcel owner's proportionate share thereof for the preceding Calendar Year. Within thirty (30) days after receipt of said statement by such Parcel owner, each such owner shall pay to the Midtown Parcel owner any deficiency due the Midtown Parcel owner for its Parcel. Any surplus paid by a Parcel owner shall be credited against the next ensuing installment of such Parcel owner's proportionate share of the Common Area Maintenance Charges.

The Midtown Parcel Owner shall keep full, complete and proper books, records and accounts of Common Area Maintenance Charges. Upon reasonable notice, a Parcel owner and its tenants, agents and employees shall have the right within ninety (90) days of receipt of the statement during its regular business hours to examine and inspect all books and records of the Midtown Parcel owner pertaining to Common Area Maintenance Charges for the purpose of investigating and verifying the accuracy of any statement of Common Area Maintenance Charges. Once in any Calendar Year, a Parcel owner may cause an audit of Common Area Maintenance Charges to be made by an independent certified accountant of such owner's election and, if the Common Area Maintenance Charges for the accounting period covered by the statement which is the subject of the audit are found to be overstated by more than five percent (5%), the Midtown Parcel owner shall immediately pay to such Parcel owner conducting the audit the cost of such audit and shall pay to such Parcel owner and to the other Parcel owners the amount of any overpayment made by any Parcel owners; otherwise, the cost of such audit shall be paid by the Parcel owner who conducted the audit. If the statement of Common Area Maintenance Charges is otherwise found to be incorrect, the party found to be owing money shall promptly pay an offsetting sum to the other party.

(D) Collection; Attorneys' Fees. Should the owner of any Parcel (herein a "Delinquent Owner") fail to timely pay its Pro-Rata Share of the Common Area Maintenance Charges as required by this Article, then the owner of the Midtown Parcel may at any time notify the Delinquent Owner of such failure and demand that such payment be made within twenty (20) days. If, upon expiration of such twenty (20) day period, the Delinquent Owner has not paid its Pro-Rata Share of the Common Area Maintenance, then such unpaid amounts shall accrue interest at eighteen percent (18%) from its due date, and such unpaid amounts and interest together with all collection costs incurred and to be incurred in collecting such unpaid amounts (including reasonable attorneys' fees) shall become a lien on the Parcel owned by the Delinquent Owner. The Delinquent Owner shall execute such instruments as the owner of the Midtown Parcel may request to permit the recordation of such lien, and the Delinquent Owner hereby irrevocably designates the owner of the Midtown Parcel as the Delinquent Owner's attorney-in-

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fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(E) Failure to Maintain. Should the owner of the Midtown Parcel fail to repair or maintain the Common Areas on any Parcel, including without limitation the Midtown Parcel, any other Parcel owner (herein a "Repairing Owner") shall be entitled to perform such obligations and to bill the owner of the Midtown Parcel or to deduct such reasonable out-of-pocket costs from any sums owed to the owner of the Midtown Parcel, provided that, except in the case of an emergency, the Repairing Owner shall first notify the owner of the Midtown Parcel of the default, in writing, and shall permit the same to perform the obligation within twenty (20) days after receipt of written notice. In the event that the owner of the Midtown Parcel fails to perform its obligations upon any Parcel in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Repairing Owner, the Repairing Owner may perform the Common Area repair and upkeep on the Parcel, provided that the owner of the Midtown Parcel is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Repairing Owner shall be immediately due and owing from the Midtown Parcel owner. Such unpaid amounts may be offset against any amounts owing from the Repairing Owner to the Midtown Parcel owner, and until paid or offset the amount owed the Repairing Owner shall constitute a lien upon the Midtown Parcel with a priority relating back to the date hereof. The Midtown Parcel owner shall execute such instruments as the Repairing Owner may request to permit the recordation of such lien, and the Shopping Mall Parcel owner hereby irrevocably designates the Repairing Owner as the Shopping Mall Parcel owner's attorney-in-fact (coupled with an interest) for such purpose. Such lien may be foreclosed in the same manner as a first mortgage lien.

(F) Indemnity. The owner of the Midtown Parcel shall indemnify and save harmless the other Parcel owners and their tenants and licensees from all claims, liens, damages, and expenses, including reasonable attorney's fees, arising out of the owner of the Midtown Parcel's refusal or failure to maintain or repair that portion of the Common Areas for which it is responsible hereunder except as results from the gross negligence or willful act of the owner of the another Parcel owner.

ARTICLE V

INSURANCE

The owner of the Midtown Parcel shall maintain, for the mutual benefit of the owners of the Midtown Parcel and the Verizon Parcel, the Bank Parcel and the TGIF Parcel commercial general liability insurance covering the Common Area of all Parcels from a reputable insurance company authorized to do business in the state of South Carolina. Such insurance shall provide coverage of at least Three Million Dollars ($3,000,000.00) combined single limit for death or injury to one or more persons and property damage, and shall name the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel as additional insureds thereunder. Such insurance shall not be cancelable without thirty (30) days notice to the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel. The owner of the Midtown Parcel shall supply certificates

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evidencing maintenance of the insurance required hereunder within ten (10) days of request by any Parcel owner.

With respect to the casualty, rental loss and other hazard related insurance required hereunder, each of the owner of the Bank Parcel and the owner of TGIF Parcel, but not the owner of the Verizon Parcel until November 30, 2010, shall be responsible for its Pro Rata Share of the cost of maintaining such insurance, which shall be reimbursable to the owner of the Midtown Parcel as a Common Area Maintenance Charge under Article IV above. The Midtown Parcel owner shall provide the Verizon Parcel owner, the Bank Parcel owner and the TGIF Parcel owner with a certificate of the company issuing such insurance, certifying that the same is in full force and effect. The Midtown Parcel owner may, at its option, bring its obligations to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of the owners of the Verizon Parcel, the Bank Parcel and the TGIF Parcel shall be as fully protected thereby as if the owner of the Midtown Parcel obtained individual policies of insurance.

ARTICLE VI

DAMAGE OR DESTRUCTION

In the event all or any portion of the Common Area on the Mall is destroyed or damaged by fire, casualty or force majeure, the owner of the Midtown Parcel shall forthwith clear such area of debris and restore to the prior condition.

If all or any portion of the Midtown Parcel, including without limitation the Common Area on the Midtown Parcel, is damaged or destroyed in such a manner as prevents or interferes with the operation of the business on the Verizon Parcel, the Bank Parcel, or the TGIF Parcel, then the owner of the Midtown Parcel shall use all commercially reasonable efforts to repair such damaged or destroyed areas in a prompt and thorough fashion.

In the event the owner of the Midtown Parcel fails to perform its obligations under this Article VI, the owners of the other Parcels may perform such work and shall have such rights as are contemplated in Article (IV) (D), (E) and (F) hereof.

ARTICLE VII

EFFECT AND DURATION

The covenants, easements and restrictions provided for herein shall be effective upon the date hereof and shall run with the land and constitute reciprocal benefits to and burdens upon the Parcels. The covenants, easements and restrictions provided for herein shall inure to the benefit of and be binding upon the Parcels and the owners thereof and their respective successors, successors-in-title, assigns and tenants, and the customers, employees and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership or possession of the Parcels, or any of them, or by any change of use, demolition,

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reconstruction, expansion or other circumstances. The parties acknowledge and agree that damages from a breach hereof are not readily ascertainable and an injunction and specific performance shall be available in the event of any breach hereunder, in addition to any other remedies available under law. The easements established herein shall be perpetual in duration.

ARTICLE VIII

NO DEDICATION

This Agreement is not intended, and shall not be construed, to dedicate any portion of the Parcels to the general public.

ARTICLE IX

DEFAULT

(A) Default. Should a Parcel owner breach any of its obligations hereunder and such breach continue for a period of fifteen (15) days after its receipt of written notice, the other Parcel owners shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that such party furnish prior notice to the other owner, and further provided that no notice is required should the breach create an emergency or interfere with use of a Parcel. All reasonable out-of-pocket expenses required to cure the breach shall be paid by the defaulting owner within thirty (30) days after receipt of written evidence confirming the payment of such expenses and any unpaid expenses shall constitute a lien with priority dating to the date of this Agreement. Notwithstanding the foregoing, in the event of the redevelopment of those portions of the Midtown Parcel identified on Exhibit "G" hereto as residential spaces or assisted living or senior facilities (the "Residential Redevelopment Tracts"), then from and after the date of any construction loan closing for either Residential Redevelopment Tract, such tract shall be excluded and not subject to subsequently accruing liens which would otherwise apply against the Midtown Parcel (but the Residential Redevelopment Tracts shall be subject to liens which accrued prior to construction loan closing).

(B) Attorneys' Fees. In the event of litigation by reason of this Agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees actually incurred in addition to all other expenses incurred by such litigation.

ARTICLE X

OPT OUT

(A) Verizon Parcel. Notwithstanding any provision in this Agreement to the contrary, the Verizon Parcel owner may elect at any time, by written notice provided to the owner of the Midtown Parcel, to maintain such Verizon Parcel's Common Area and insurance covering the Verizon Parcel and Common Area on such Verizon Parcel. Upon such notice, the owner of the Midtown Parcel owner shall no longer be responsible for these obligations with respect to the Verizon Parcel and the Verizon Parcel owner shall not be obligated to make the

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contributions for such matters contemplated herein; provided that the Verizon Parcel owner shall still be responsible for its Pro Rata Share of only (i) common access facilities and utility facilities benefiting the Verizon Parcel and (ii) liability insurance maintained by the Midtown Parcel owner for the Common Areas.

(B) Bank Parcel. Notwithstanding any provision in this Agreement to the contrary, the Bank Parcel owner may elect, by written notice provided to the owner of the Midtown Parcel, to maintain such Bank Parcel's Common Area and insurance covering the Bank Parcel and the Common Area on such Bank Parcel. Upon such notice, the owner of the Midtown Parcel Owner shall no longer be responsible for these obligations with respect to the Bank Parcel. Thereafter, the owner of the subject Bank Parcel shall no longer be responsible for a Pro Rata Share for Common Area Maintenance Charges; provided, however, that until the Parcels are separately assessed for tax purposes, the owner of the Bank Parcel will in any event be responsible for its Pro Rata Share of real property taxes.

(C) No opting-out by any Parcel owner hereunder shall relieve such owner of the obligation to maintain the Parcel in good condition and repair.

ARTICLE XI

RESERVED

ARTICLE XII

ENVIRONMENTAL MATTERS

(A) Regulatory Compliance. Each Parcel owner will not take any action or omit to take any action (including actions taken by or omissions of any contractors or agents of such owner) which would cause the Mall to be subject to any remedial obligations under any applicable environmental laws and regulations and/or any other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions applicable to environmental laws (collectively, "Applicable Environmental Laws"). The Applicable Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended), and any local or state laws, rules or regulations.

(B) Hazardous Waste. Each owner shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of its Parcel by reason of any Applicable Environmental Laws. Each owner shall not take any action or omit to take any action (including actions or omissions of any contractors or agents of such owner) which would cause the disposal or other release of any hazardous substance or solid waste on or to the Mall and covenants and agrees to keep or cause its Parcel to be kept free of any hazardous substance or solid waste and to remove the same (or if

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Richland County ROD

Richard M. Rocker

removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense, unless, under then applicable law and prudent real estate practices, no removal or other remedial action with respect to such hazardous waste or substances is required, due to the concentration of such substances or waste being below the mandated minimum limits for removal or remediation.

(C) Remediation. Should the owner of a Parcel fail to fulfill its obligations under this Article XII (herein a "Contaminating Owner"), any other Parcel owner (herein a "Remediating Owner") shall be entitled to perform such obligations and to bill the Contaminating Owner or to deduct such costs from any sums owed to the Contaminating Owner, provided that, except in the case of an emergency, the Remediating Owner shall first notify Contaminating Owner of the default, in writing, and shall permit the same to perform the obligation within ten (10) days after receipt of written notice. In the event that Contaminating Owner fails to perform its obligation to remediate in a workmanlike, diligent or efficient manner, in the reasonable judgment of a Remediating Owner, the Remediating Owner may perform the remediation on its Parcel, provided that Contaminating Owner is served prior written notice thereof, and all such reasonable out-of-pocket amounts expended by the Remediating Owner shall be immediately due and owing from the Contaminating Owner. Such unpaid amounts may be offset against any amounts owing from the Remediating Owner to the Contaminating Owner, and until paid or offset the amount owed the Remediating Owner shall constitute a lien upon the Contaminating Owner's parcel as of the date of the Remediating Owner's demand for reimbursement thereof. The Contaminating Owner shall execute such instruments as the Remediating Owner may request to permit the recordation of such lien, and the Contaminating owner hereby irrevocably designates the Remediating Owner as the Contaminating Owner's attorney-in-fact (coupled with an interest) for such purpose.

ARTICLE XIII

RESERVED

ARTICLE XIV

RESERVED

ARTICLE XV

VERIZON EXPENSE CONTRIBUTION

(A) Taxes. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to pay all real estate taxes, ad valorem taxes and assessments and general and special assessments (including special tax district assessments, if any) applicable to the Verizon Parcel. Once the owner of the Verizon Parcel is shown evidence of paid tax bills, the owner of the Verizon Parcel shall pay to the owner of the Shopping Mall Parcel all tax Payments made by Calico pursuant to Section 6.1 of the Verizon Lease. After November 30, 2010 the owner of the Midtown Parcel shall be entitled to reimbursement from the Verizon

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Parcel owner of taxes in a proportionate amount. The parties agree, on the request of any party, to cooperate in good faith to attempt to obtain separate tax parcels for each Parcel; provided that in all events the Midtown Parcel owner shall be responsible for all taxes on the Verizon Parcel due through November 30, 2010 subject to the reimbursement of the Verizon payment as set forth above; provided taxes due for the final calendar year shall be pro-rated.

(B) Cooled Air. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, agrees to maintain, repair and replace as needed the cooled air system and any heating and ventilation systems for the Verizon Parcel and the owner of the Verizon Parcel shall pay to the owner of the Midtown Parcel, for such services, all sums received from Verizon pursuant to Section 8.4 of the Verizon Lease.

(C) Roof and other Repairs. Until November 30, 2010, Windsor, as owner of the Midtown Parcel and any successor thereto, shall make all roof repairs, structural repairs to exterior walls, structural repairs to columns and structural floor (excluding floor coverings) which collectively enclose the building on the Verizon Parcel and the building systems (plumbing, sprinkler, electrical and HVAC) in the building on the Verizon Parcel.

(D) Other Expenses. Until November 30, 2010, Windsor, as owner of the Midtown Parcel, and any successor thereto, agrees to pay all costs and expenses which are the obligation of the owner of the Verizon Parcel, as landlord under the Verizon Lease, such that, until November 30, 2010, the Verizon Lease will be "triple net" and all customary "triple net" obligations (e.g. taxes, insurance, utilities, maintenance and repair but not costs of tenant upgrades or concessions) shall be paid by Cellco or the owner of the Midtown Parcel.

(E) Nonperformance or Nonpayment. In the event Windsor or any successor thereto defaults in the obligation at items (A) through (D) above, the owner of the Verizon Parcel may perform such obligations and the owner of the Midtown Parcel will reimburse the owner of the Verizon Parcel for such amounts immediately upon receipt of a bill with reasonable back-up documentation thereof from the owner of the Verizon Parcel. If not paid within ten (10) days of demand, the sums due hereunder shall accrue interest at eighteen percent (18%) and constitute a lien against the Midtown Parcel with a priority of the date of this Agreement (but subject to the release provision for the Residential Redevelopment Tracts contained in Article IX (A)).

(F) In consideration of the Verizon expense contributions which burden the owner of the Midtown Parcel and the Midtown Parcel, the owner of the Verizon Parcel hereby assigns to the Owner of the Midtown Tract the right to enforce against Cellco, the payment obligations of Cellco for tax contributions under Section 6.1 of the Verizon Lease and HVAC and cooled air contributions under Section 8.4 of the Verizon Lease; provided that the Midtown Parcel owner shall not enforce such obligations against Cellco if the payments are made instead by the owner of the Verizon Parcel.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

Richland County ROD

Richard M. Rosier

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Richland County ROD

Richard W. Rawlinson

(A) Modification and Termination. Except as set forth in Article X hereof, no part of this Agreement may be terminated or modified without the prior consent of the owner of any affected Parcel; provided however, in the event the proposed modification has no material affect on a particular Parcel, then such Parcel owner's consent shall not be required.

(B) No Creation of Agency or Partnership. This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the owners of the Parcels or their tenants or licensees.

(C) No Waiver. No waives of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

(D) Partial Invalidity. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

(E) Notice. All notices, demands, statements, and requests required or permitted to be given under this Agreement shall be in writing and given either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address for which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any Parcel, either the owner selling such Parcel or the new owner of such Parcel shall give written notice to each of the parties of the name and address of the new owner. Until such time as any owner shall receive such a notice of the address of a new owner, the previous owner shall be deemed to be the agent for any such new owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRC Richland, LLC:

340 E. Paces Ferry Road
Atlanta, Georgia 30305
Attention: Fritz R. McPhail

If to Windsor Richland Mall, L.P.:

c/o Mrs. Angela Whichard
3901 Lewis P. Olds
Raleigh, NC 27612

(F) No Other Agreement. This Agreement contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any

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statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

ARTICLE XVII

REDEVELOPMENT AND OPTION TO PURCHASE

(A) Redevelopment. The owner of the Midtown Parcel desires the right to develop a portion of the Verizon Parcel now covered with surface parking and more particularly described on Exhibit "F" hereto (the "Commercial Development Tract") as a structured parking dock with a commercial development on top. The owner of the Verizon Parcel is conceptually amenable to such a concept and willing to grant to the owner of the Midtown Parcel an option to acquire the Commercial Development Tract subject to the following:

(i) The Verizon Parcel Owner shall have the right to approve the specific location and all plans and specifications for any such facility and it shall be constructed by a bonded contractor approved by the Verizon Parcel Owner.

(ii) If the Verizon Lease is in effect, no construction shall occur without the written consent and approval of Cellco and Cellco's written agreement that any disruption or problem stemming from construction shall not affect the Verizon Lease.

(iii) The Midtown Parcel Owner shall at all times maintain insurance satisfactory to the Verizon Parcel Owner and shall indemnify the Verizon Parcel Owner and Cellco from any loss, cost, expense, claim liability or other matter or issue whatsoever arising from exercise by the Midtown Parcel Owner of rights under this subsection (A).

(iv) During construction, replacement parking shall be provided for spaces temporarily lost with all replacement parking to be satisfactory to Cellco and the Verizon Parcel Owner and in no event shall the number of permanent parking spaces be reduced.

(v) Once commenced, construction shall continue diligently to completion and if not, the Verizon Parcel Owner may terminate this easement. Upon termination the Verizon Parcel Owner shall have the right to complete and be reimbursed for the same by the Midtown Parcel Owner.

(vi) The Midtown Parcel Owner shall maintain the new facility in good condition and repair at the Midtown Parcel Owner's sole cost and expense and be solely responsible for all safety and security issues.

(vii) The Midtown Parcel Owner shall exercise and close the purchase right contemplated herein no later than ten (10) years after the date hereof and shall pay to the owner of the Verizon Parcel or its designee an amount equal to the greater of (i) $1,000,000.00 or (ii) the fair market value of the Commercial Development Tract as determined by a mutually approved MAI appraiser.

Richland County ROD

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(viii) The Midtown Parcel Owner shall provide the necessary reciprocal easements, etc., in form and substance similar to those provided herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Richland County ROD

Richland Mail Room

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IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

Witness #1

Witness #2

By: Angela T. Whichard
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

Witness #1

Witness #2

By:
Name: Fritz R. McPhail
Title: Manager

[COMPANY SEAL]

Richland County ROD

Richard W. Rodden

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Instrument# 2005072825 Book/Page: R1097 : 2040.4 Date/Time: 9/12/2005 3:37:41 PM

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date and year first above written.

WINDSOR RICHLAND MALL, LP,
a Texas limited partnership
by: Windsor Investments, LLC
General Partner

By: _____
Name: Angela T. Whichard
Title: Manager

[COMPANY SEAL]

BRC RICHLAND, LLC,
a Georgia limited liability company

by: Blue Ridge Capital, LLC,
its Manager

By: _____
Name: Britt R. McPhail
Title: Manager

[COMPANY SEAL]

Witness #1

Witness #2

Richland County ROD

Richard M. Rodden

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Instrument# 2005072826 Book/Page: R 1097 : 2040-5 Date/Time: 8/12/2005 3:37:41 PM

Richard County ROD

Richard M. Rapton

ACKNOWLEDGMENTS

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:

_____

STATE OF Georgia
COUNTY OF Fulton

Before me Kristi A. Lyons, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Atlanta, GA, this 7th day of September, 2005.

Notary Public

My Commission Expires:
11/29/08

KRISTI A. LYONS NOTARY PUBLIC GEORGIA COBB COUNTY

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ACKNOWLEDGMENTS

STATE OF North Carolina
COUNTY OF Wake

Before me, Tracy T. Bullock, a Notary Public of the state and county aforesaid, personally appeared Angela T. Whichard, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be the Manager (or other officer authorized to execute the instrument) of WINDSOR RICHLAND MALL, LP, the within named bargainor, a limited liability company, and that she as such Manager, executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in Wake County, N.C., this 7 day of September, 2005.

Tracy T. Bullock
Notary Public

TRACY T. BULLOCK NOTARY PUBLIC WAKE COUNTY, N.C.

My Commission Expires:
11-28-2009

STATE OF _____
COUNTY OF _____

Before me, _____, a Notary Public of the state and county aforesaid, personally appeared Fritz R. McPhail, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Manager (or other officer authorized to execute the instrument) of BLUE RIDGE CAPITAL, LLC, a limited liability company which is the Manager of BRC RICHLAND, LLC, the within named bargainor, a limited liability company, and that he as such Manager executed the foregoing instrument for the purpose therein contained, by personally signing as Manager.

Witness my hand at office in _____, this _____ day of _____, 2005.

_____
Notary Public

My Commission Expires:
_____

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Richland County ROD
Richard W. Rodden
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Richland County ROD

Richard W. Rodda

Schedule of Exhibits

Exhibit A	Shopping Mall Parcel Legal Description
Exhibit B	Verizon Parcel Legal Description
Exhibit C	TGIF Parcel Legal Description
Exhibit D	Bank Parcel Legal Description
Exhibit E	Site Plan
Exhibit F	Commercial Development Tract
Exhibit G	Residential Development Tracts

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Richland County ROD

Richland Co. Recitals

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'05"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderson,

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George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 160.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

Richland County ROD

Richard W. Rawlinson

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Richland County ROD

Richard W. Rodden

EXHIBIT "B"

LEGAL DESCRIPTION
VERIZON PARCEL

All that certain piece, parcel or tract of land with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina; the same being shown as 9.391 acres on a Boundary Survey of Richland Mall Verizon Wireless for Windsor Richland Mall, Limited Partnership by B. P. Barber & Associates, Inc. dated April 4, 2005, revised April 16, 2005, last revised June 7, 2005 and recorded in the Office of the Register of Deeds for Richland County on June 14, 2005 in Book 1063 at page 652.

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Richland County ROD

Richland PA Recorder

EXHIBIT "C"

LEGAL DESCRIPTION
TGIF PARCEL

COMMENCE at the intersection of the centerline of Forest Drive (S-40-12) and the southwestern right of way of Beltline Boulevard (S-40-16); thence run along the southwestern right of way of Beltline Boulevard a distance of 1,010 feet to a 5/8" rebar found; thence leaving said right of way run South 75 degrees 05 minutes 54 seconds West a distance of 198.59 feet to a building corner, said corner being the POINT OF BEGINNING; thence run South 14 degrees 50 minutes 07 seconds East a distance of 39.49 feet to a building corner; thence run South 75 degrees 09 minutes 53 seconds West a distance of 2.00 feet to a building corner; thence run North 14 degrees 50 minutes 07 seconds West a distance of 0.23 feet to a building corner; thence run South 74 degrees 35 minutes 15 seconds West a distance of 110.05 feet to a calculated point; thence run North 14 degrees 31 minutes 02 seconds West a distance of 56.00 feet to a calculated point; thence run North 30 degrees 27 minutes 08 seconds East a distance of 7.41 feet to a calculated point; thence run North 75 degrees 27 minutes 30 seconds East a distance of 54.76 feet to a calculated point; thence run South 14 degrees 32 minutes 28 East a distance of 1.22 feet to a calculated point; thence run North 75 degrees 27 minutes 32 seconds East a distance of 10.77 feet to a building corner; thence run North 75 degrees 49 minutes 11 seconds East a distance of 13.08 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 4.84 feet to a building corner; thence run South 75 degrees 48 minutes 27 seconds West a distance of 1.44 feet to a building corner; thence run South 14 degrees 11 minutes 33 seconds East a distance of 2.33 feet to a building corner; thence run North 75 degrees 12 minutes 04 seconds East a distance of 6.57 feet to a building corner; thence run South 15 degrees 47 minutes 59 seconds East a distance of 5.47 feet to a building corner; thence run North 74 degrees 43 minutes 39 seconds East a distance of 3.43 feet to a building corner; thence run South 60 degrees 42 minutes 40 seconds East a distance of 8.33 feet to a building corner; thence run South 15 degrees 43 minutes 16 seconds East a distance of 0.99 feet to a building corner; thence run North 74 degrees 56 minutes 28 seconds East a distance of 11.33 feet to a building corner; thence run North 15 degrees 16 minutes 21 seconds West a distance of 0.20 feet to a building corner; thence run North 75 degrees 17 minutes 18 seconds East a distance of 1.98 feet to a building corner, said corner being the POINT OF BEGINNING.

Said tract contains 0.143 acres and is more particularly described on that certain Boundary Survey of Richland Mall TGI Friday's, prepared by B. P. Barber & Associates, Inc., dated March 29, 2005, last revised June 17, 2005.

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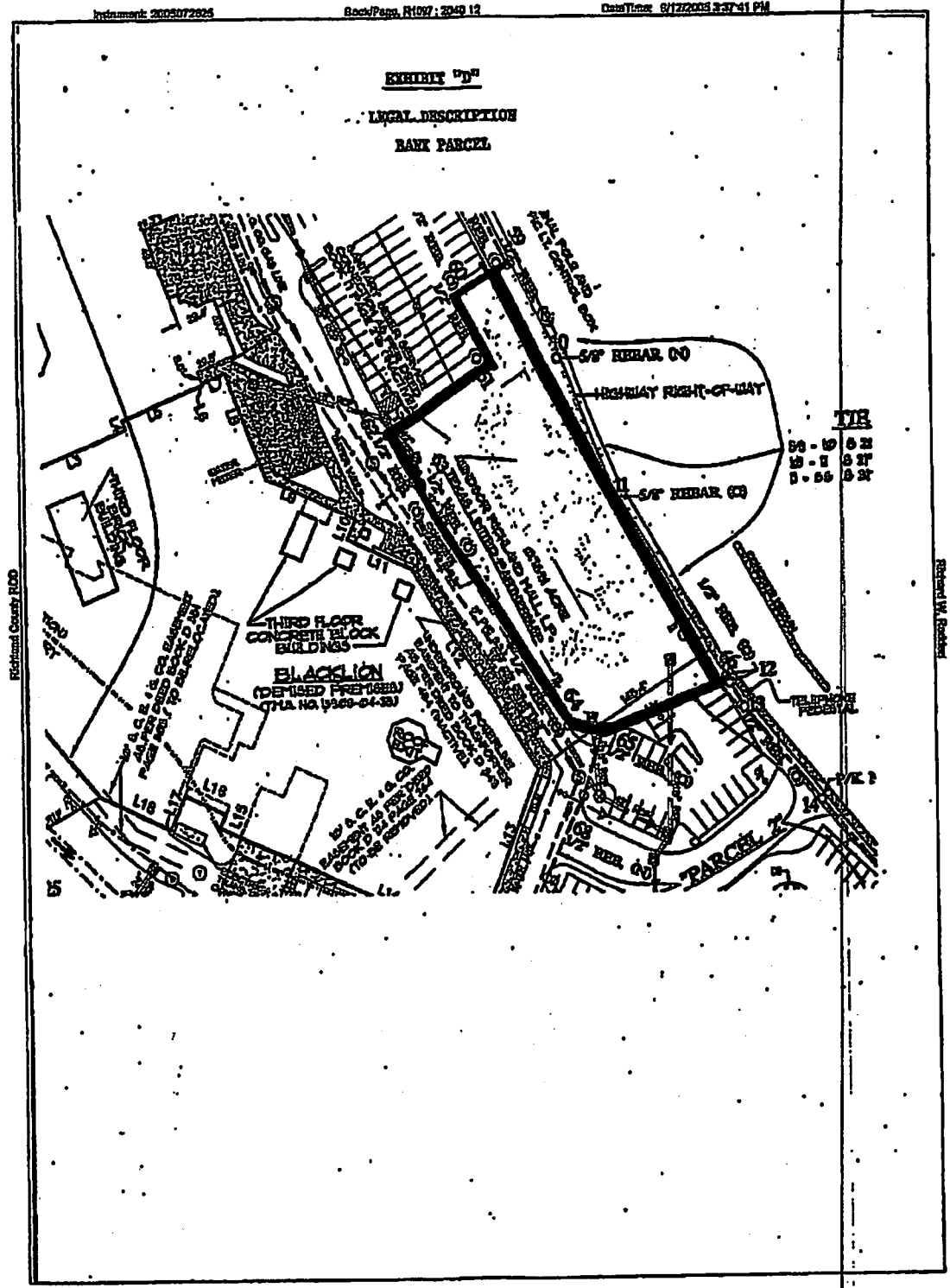
EXHIBIT "D"

LEGAL DESCRIPTION

BANK PARCEL



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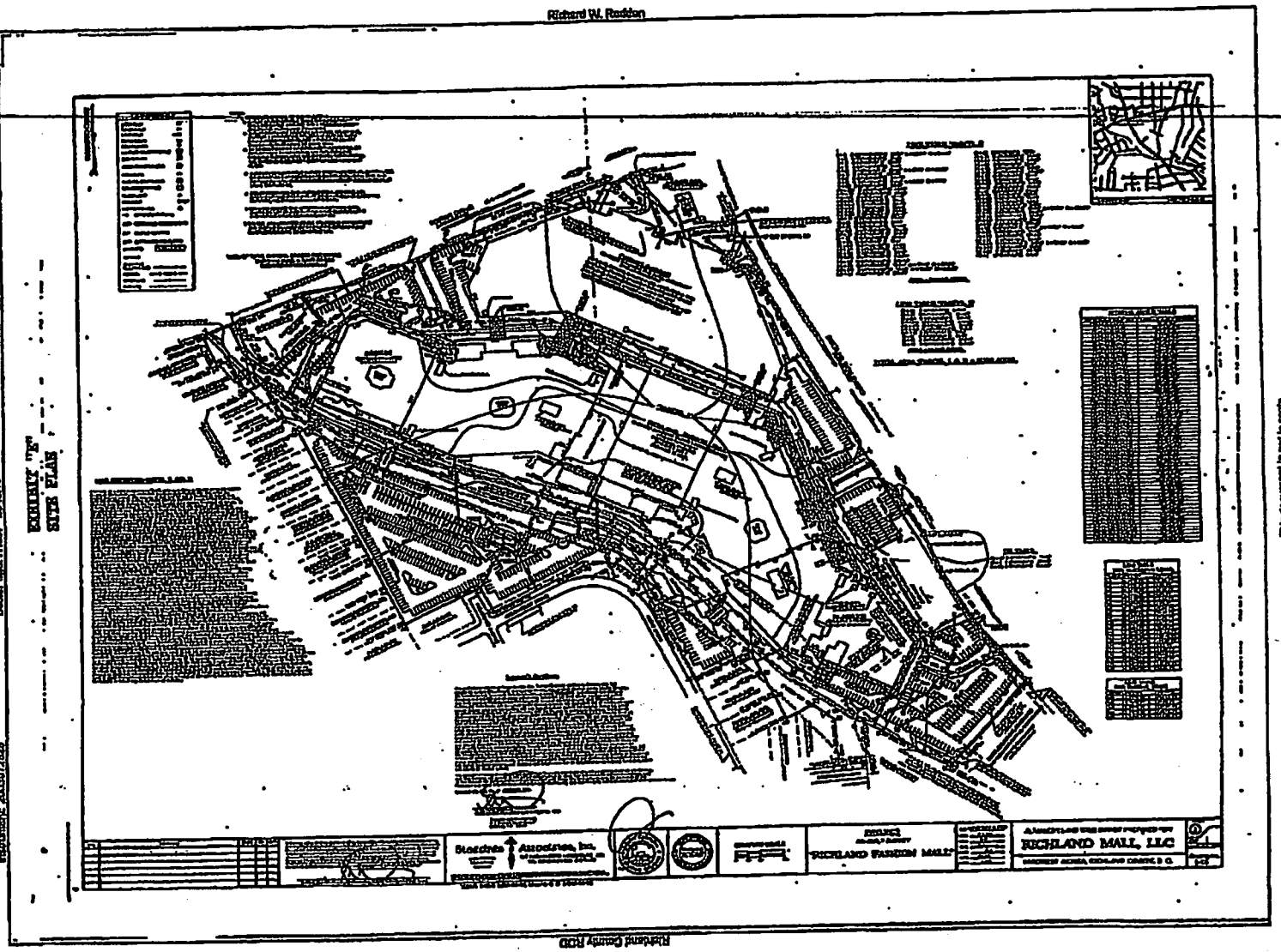

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EXHIBIT "B"

COMMERCIAL DEVELOPMENT TRACT

Page 1 of 2

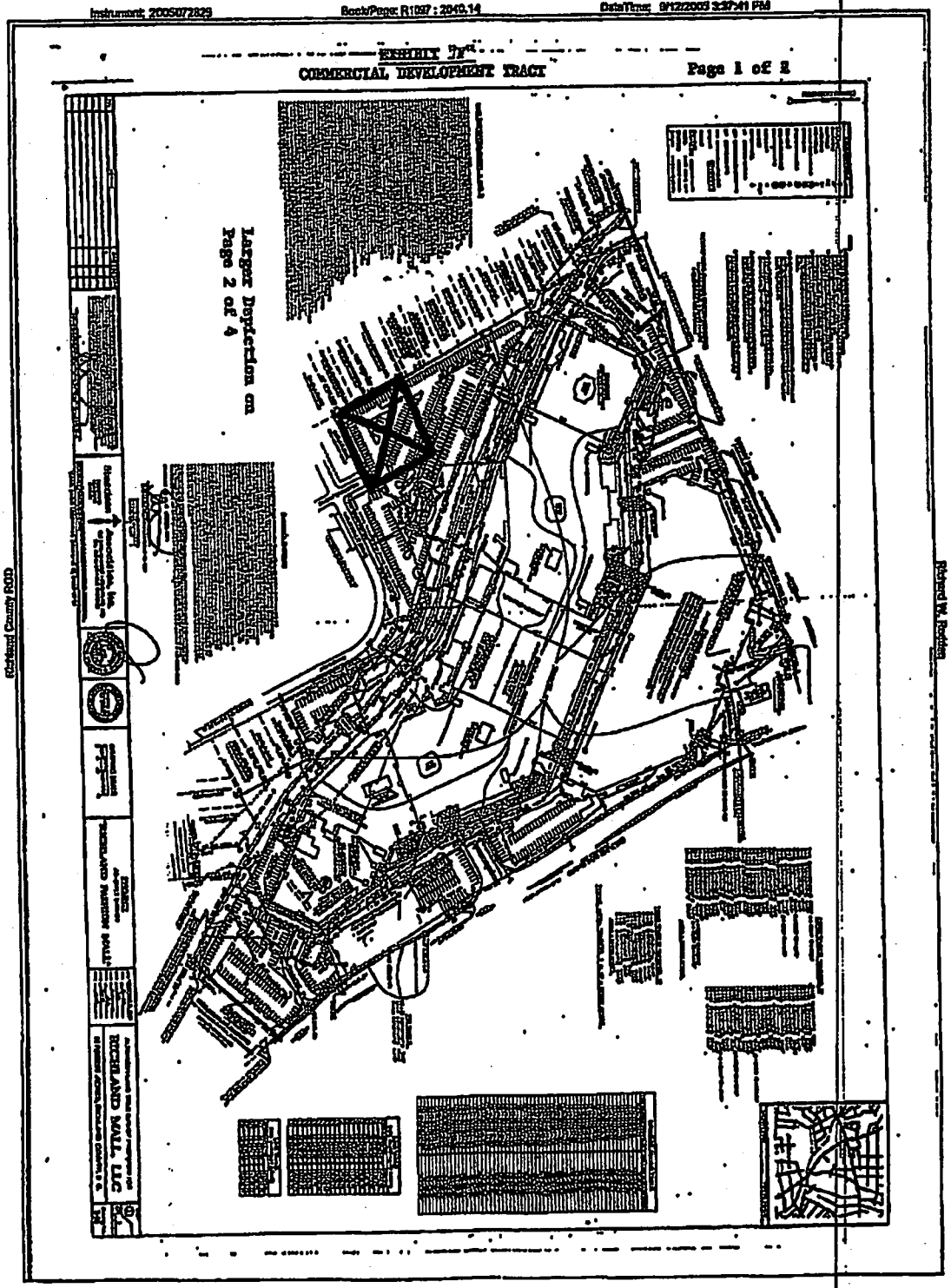

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EXHIBIT "F"

Page 2 of 2

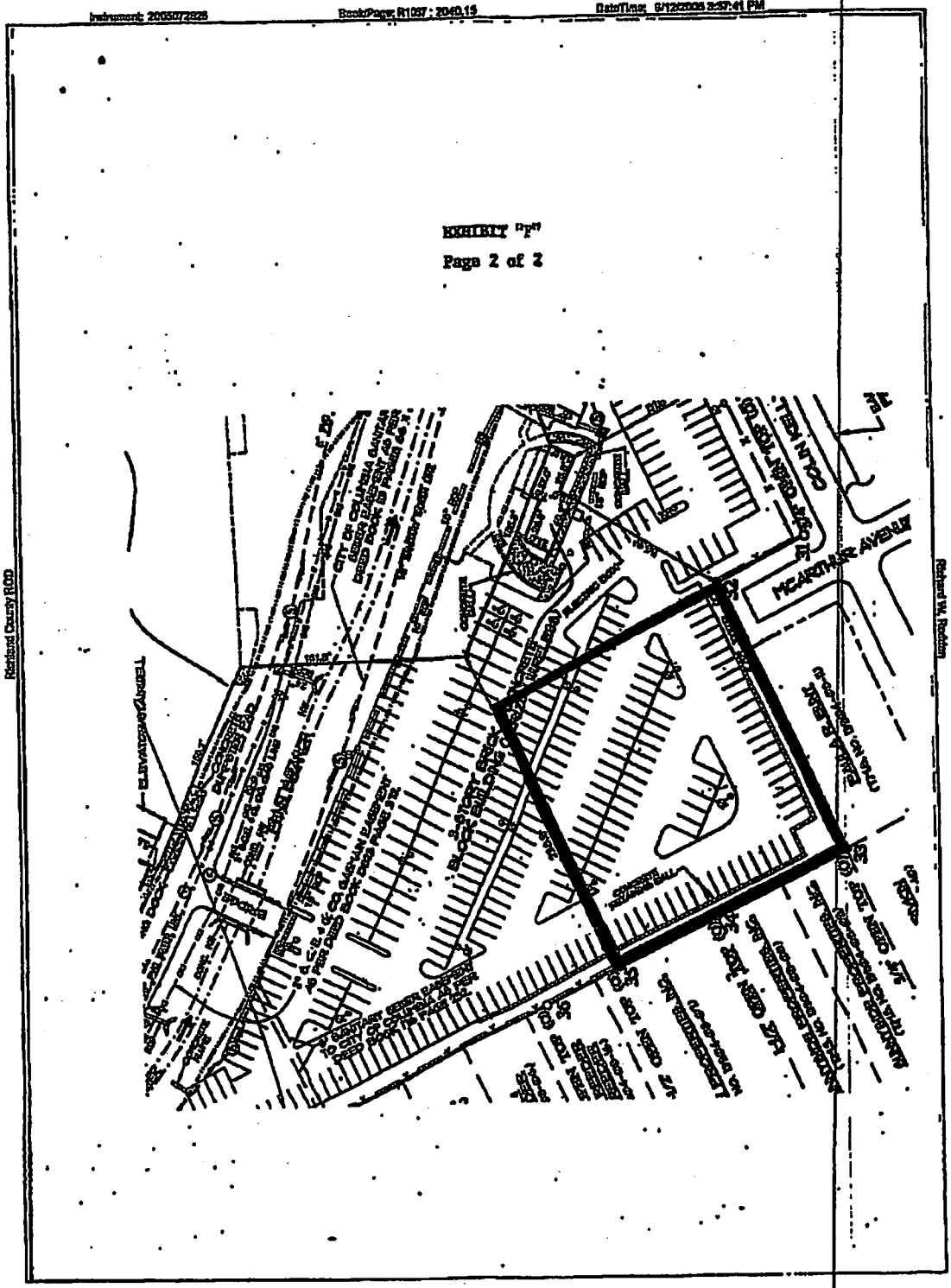
Richland County ROD
Richard W. Rabon
McARTHUR AVENUE
ELEVATOR AVENUE
CITY OF COLUMBIA
CITY OF COLUMBIA
CITY OF COLUMBIA

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EXHIBIT "G" - RESIDENTIAL DEVELOPMENT TRACT Page 1 of 3

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Richard W. Rodden

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EXHIBIT "G"– RESIDENTIAL DEVELOPMENT TRACT Page 2 of 3

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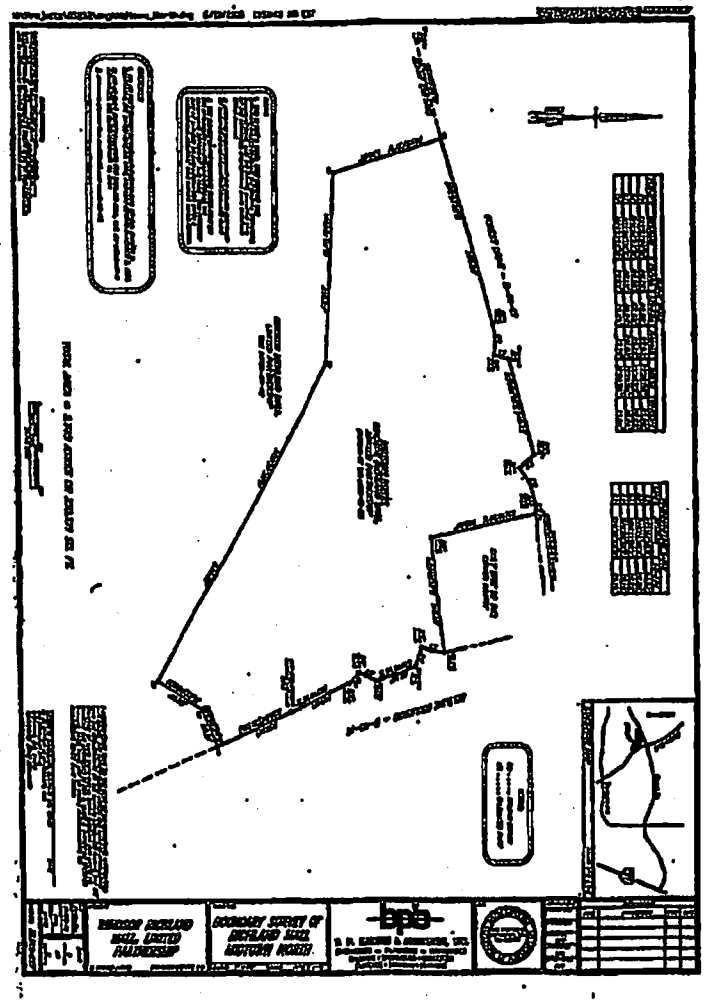
EXHIBIT "C"
RESIDENTIAL DEVELOPMENT TRACT
PAGE 3 of 3



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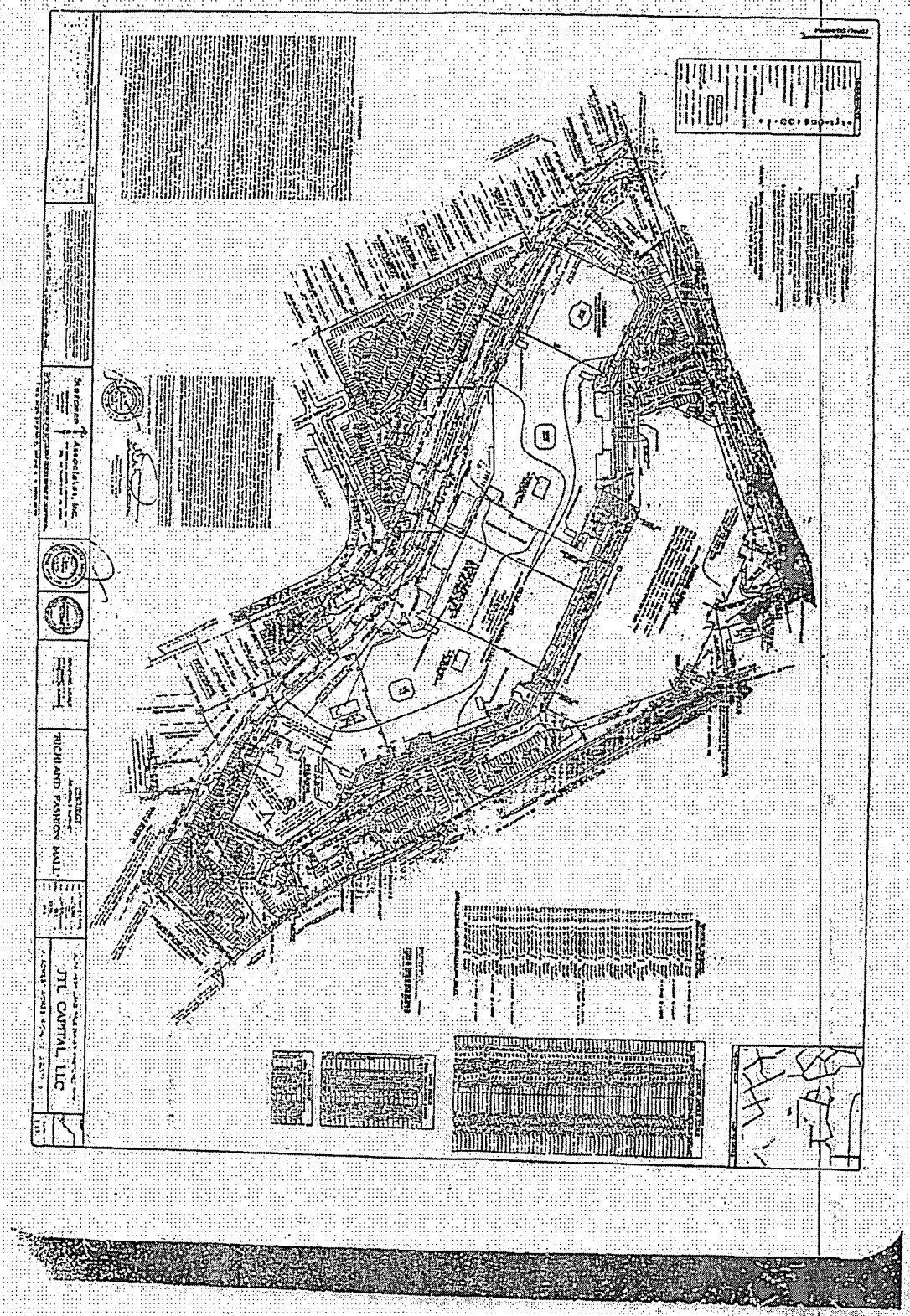
RICHLAND FASHION HALL
JTL CAPITAL, LLC

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William D. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **PLAINTIFF SPIRIT SPE COLUMBIA, LLC'S THIRD AMENDED COMPLAINT**

FILED
RICHLAND COUNTY
2010 SEP 19 AM 11:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, above named, complaining of Defendants, above named, alleges and says as follows:

JURISDICTION AND VENUE

1. Plaintiff Spirit SPE Columbia, LLC ("Spirit") is a Delaware limited liability company that owns a tract or parcel of land (the "Spirit Parcel") situated in The City of Forest Acres, County of Richland, South Carolina, within what is commonly known as Richland Fashion Mall. The parcel is more particularly described on Exhibit "B" to the Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration attached as hereto as Exhibit 1.

2. Upon information and belief, Defendant Century Capital Group, LLC ("Century") is a South Carolina limited liability company that owns a tract or parcel of land (the "Shopping Mall Parcel") situated in The City of Forest Acres, County of Richland, South Carolina, within what is commonly known as Richland Fashion Mall. The parcel is more particularly described on Exhibit "A" to the Reciprocal Easement,

Covenant, Operation and Restriction Agreement and Declaration attached hereto as Exhibit 1.

3. Upon information and belief, Defendant Walkup Management, Inc. ("Walkup Management"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

4. Upon information and belief, Defendant Don E. Taylor Realty Company ("Taylor Realty"), is a sole proprietorship with its principal place of business in Richland County, South Carolina.

5. Upon information and belief, Defendant Donald E. Taylor, is a citizen and resident of Richland County, South Carolina.

6. Upon information and belief, Defendant William D. Walkup, is a citizen and resident of Richland County, South Carolina.

7. Venue is appropriate in Richland County, South Carolina because the Defendants reside in Richland County, and most of the acts giving rise to the causes of action contained herein occurred in Richland County, South Carolina.

GENERAL ALLEGATIONS

8. A Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration ("REA") filed at Richland County Deed book 1097 page 2024 on September 12, 2005, which is attached hereto as Exhibit "2" and made a part hereof, runs with the land and sets forth certain agreements, easements, covenants, restrictions rights and obligations of the owners of the Shopping Mall Parcel and the Spirit Parcel. The REA specifies, among other things, the owner of the Shopping Mall Parcel is responsible

for performing and paying for all maintenance and repairs to the Common Areas and the maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel prior to November 30, 2010.

9. Since taking possession and operating as manager of the Shopping Mall Property, Defendants have failed to maintain and repair the Spirit Parcel in accordance with the REA, over billed and/or billed for expenses not allowed under the REA, performed what little maintenance work that was undertaken in an unworkmanlike and deficient manner, failed and refused to correct deficient maintenance and refused to cure defective performance or honor express and implied warranties under the REA. As a result of the Defendants' failure to perform as required by the REA, Plaintiff has incurred, and will incur in the future, costs to repair and maintain the HVAC system, roof and other structural systems in the Spirit Parcel and other areas considered common areas under the REA. In addition, Plaintiff has suffered water and mold damage to the interior spaces of the Spirit Parcel as a result of Defendants' failure to properly maintain the Spirit property.

10. All of these costs were incurred as a direct result of Defendants' past and ongoing failure to maintain the Spirit Property as required by the REA.

11. In addition, Plaintiff has been billed for items, including but not limited to "management fees" that were not within the REA and were created as a scheme by which Defendants attempted to enrich themselves without adding any benefit to Plaintiff's ownership and operation of the Spirit Parcel.

12. Notwithstanding that the Defendants' actions were fraudulent, that Defendants have attempted to bill Plaintiff in excess of the amounts allowed under the

REA, and that Defendants knowingly failed and refused to abide by the terms of the REA, specifically as to maintenance of the roof, HVAC and other common areas, Defendants filed liens and a Lis Pendens against the Spirit Property. Defendants never had a legal right to file the liens and Lis Pendens, and their doing so was wrongful, slandered the title of the Plaintiff's property, and constituted a frivolous lien under South Carolina law.

FOR A FIRST CAUSE OF ACTION
(Breach of the REA)

13. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

14. Century failed to properly maintain the common areas and the HVAC systems, roofing system and structural components of the Spirit Parcel prior to November 30, 2010.

15. Spirit demanded that Century maintain and/or repair the common areas, HVAC systems and roofing system on the Spirit Parcel prior to November 30, 2010.

16. Century knew that the repair work demanded by Spirit needed to be done prior to November 30, 2010.

17. Century failed to and refused to maintain and/or repair the common areas, HVAC systems and roofing system if the Spirit Parcel, and is therefore in breach of the REA.

18. Since November 30, 2010, Century continues to refuse to maintain and repair some common areas of the Mall Property, and maintains other common areas of the Mall Property in a substandard manner in violation of the REA.

19. Spirit has incurred and will in the future incur expense to perform the repairs and maintenance that should have been performed by Century prior to November 30, 2010 and to maintain common areas that Century has continued to neglect since November 30, 2010.

20. In addition, the Defendants have failed to repair their roof and common areas, which is causing water to enter Plaintiff's property, damage the interior spaces and disrupt the business activities of Spirit's tenants.

21. The managing members of Century, Defendants Donald Taylor and William Walkup through what are essentially sham business entities, have violated the terms of the REA by hiring each other as "property managers" responsible for maintenance of the common areas.

22. Century is charging Plaintiff for expenses that do not constitute legitimate CAM expenses pursuant to the terms of the REA. In addition, Century is attempting to charge Spirit a "cooling water" charge that is not permitted pursuant to the terms of the REA.

23. All of the aforesaid are breaches of the REA and the direct and proximate causes of damages to the Plaintiff in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

24. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

25. The REA defines the common areas and what expenses constitute legitimate CAM expenses for which Century can seek reimbursement. One of the

expenses allowed is a market rate management fee paid to a third party to manage the common areas.

26. Century is charging Spirit and other parcel owners for expenses that do not constitute legitimate CAM expenses as defined in the REA.

27. Spirit has disputed the legitimacy of amounts charged by Century as CAM expenses.

28. However, in order to have Spirit satisfy the liens filed against its ownership interest in the property, dismiss the counterclaim for foreclosure and remove the Lis Pendens, Spirit paid Century all amounts Century claims it is owed for reimbursement of CAM expenses without waiving its rights to seek a declaration from this Court as to what amounts are properly owed as CAM.

29. Plaintiff seeks a declaration by this Court as to what, if any, additional amounts are owed to Century as reimbursement for legitimate CAM expenses as provided under the terms of the REA. In addition, Spirit seeks a declaration by this Court as to what amounts Century must repay Spirit for illegitimate CAM charges levied by Century.

30. The Defendants refuse to repair their own roof, repair common areas and maintain areas that are defined as common areas by the REA. Their failure to do so is causing damage to Spirit's property and disruption to the business activities of Plaintiff's tenants.

31. Century is also charging Spirit for providing cooling water used in the operation of a cooling water tower situated on Spirit's property. These charges are not permitted under the REA.

32. Defendants have hired entities that they control to act as "management" companies that are not "third parties" as contemplated by the REA, that have an inherent conflict of interest because they are owned by the members of Century, and that have failed to properly maintain the Mall property as required by the REA.

33. Therefore, Plaintiff seeks a declaratory judgment as to (1) what charges constitute legitimate CAM charges under the REA and the proper amounts that can be charged; (2) what areas of the Mall Property that Defendants are required to maintain as common areas under the REA; (3) whether Spirit is required to pay a cooling water charge under the REA; and (4) whether Defendants can appoint themselves or their self-owned business entities as property managers under terms of the REA. The Plaintiff also seeks an Order from this Court requiring the Defendants to repair their roof and common areas so that water does not infiltrate Plaintiff's property and cause damages.

FOR A THIRD CAUSE OF ACTION
(Negligence)

34. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

35. Defendants owed a duty to Plaintiffs under the REA to maintain the Spirit Parcel and other parts of the Mall Property in compliance with applicable building codes, industry standards and the terms of the REA.

36. Defendants breached those duties by failing to maintain the Spirit Property in one or more of the following particulars:

(a) In failing to properly maintain and repair the HVAC, roof system and structural components;

(b) In failing to perform repair work recommended by experts engaged to determine what work needed to be done to stop the roof from leaking on the Spirit parcel;

(c) In failing to use adequate and proper building materials and techniques for maintenance that was undertaken;

(d) In failing to protect interior spaces of the Spirit Parcel and common areas from water damage, mold damage and corrosion;

(e) In failing to use due care in the maintenance of the Spirit Property;

(f) In failing to properly maintain the common areas of the Mall Property as required by the REA; and

(g) In failing to use that degree of care and caution which a reasonable and prudent property manager would have exercised in the maintenance of like structures.

37. Furthermore, Defendants owe a duty to repair and maintain their own roof and property to prevent water from entering Spirit's property and causing water damage and business interruption to Spirit's tenants.

38. Despite repeated demands to repair and maintain their property, the Defendants have failed to take corrective action, which is causing continuing and repeated damage to Spirit's property, resulting in damages that are continuing and repetitive in nature.

39. As a direct and proximate result of Defendants' negligent, reckless, willful and wanton conduct, Plaintiff sustained actual damages, including property damage to the Spirit Parcel and their personal property, and the Spirit Parcel and its occupants were and continue to be subjected to continuous and repeated exposure to harmful conditions, as a result of the acts and/or omissions of all Defendants that combined and concurred to cause and have continued to cause Plaintiff harm, causing damages, necessitating repairs and causing Plaintiff to lose the beneficial use of portions of their property and devaluing

said property; accordingly, Plaintiff is entitled to actual and punitive damages in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices)

40. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

41. The actions of all of the Defendants in appointing themselves property managers of the Mall Property created an inherent conflict of interest, which, in turn, allowed Defendants to create a scheme by which they fraudulently charged Plaintiff and other tenants excessive fees and costs, which were not allowed under the REA. In addition, the Defendants intentionally failed and refused to perform maintenance and repair work on the Spirit Parcel and other common areas of the Mall Property before and since November 30, 2010.

42. In addition, Defendants filed liens against Spirit's ownership interest and intentionally refused to satisfy those liens once the liens were paid for the purpose of injuring Spirit.

43. Such actions constitute unfair and deceptive acts or practices in the conduct of trade or commerce and violate the South Carolina Unfair Trade Practices Act § 39-5-20 of the Code of Laws of South Carolina.

44. These acts are capable of repetition and affect the public interest.

45. As a result of Defendants' violation of the Unfair Trade Practices Act, Plaintiff sustained actual damages including paying for fees and costs outside of the REA, and were forced to defend against a Lis Pendens that was wrongfully filed and

includes numerous, inflated charges that resulted from Defendants' appointing themselves as managers of the Mall Property.

46. Defendants' actions were willful and Plaintiff is thereby entitled to treble damages and reasonable attorneys' fees as provided in the statute.

FOR A FIFTH CAUSE OF ACTION
(Fraud)

47. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

48. Prior to the REA, Defendants represented to Plaintiff that they would provide maintenance and repairs to the Mall Property and, in particular, the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel.

49. Subsequent to the REA, Plaintiff made repeated requests for repairs and routine maintenance services on the Spirit Parcel. Defendants continued to represent to Plaintiff that they would provide maintenance and repairs to the Mall Property and the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel.

50. Subsequent to the REA, Defendants represented to Plaintiff that Plaintiff was liable to Defendants for HVAC cooling water charges under the terms of the REA. Defendants also informed Plaintiff on numerous occasions that any failure to pay for HVAC cooling water charges constituted a breach of the REA. Defendants have threatened to terminate cooling water service to the Spirit Parcel, claiming that Plaintiff is obligated to pay such charges pursuant to the REA.

51. Those representations were false in the following respects:

a) Defendants have not provided accurate and truthful responses to Plaintiff's repeated requests for maintenance and repairs to the Mall Property and the Spirit Parcel, including maintenance and repairs of the HVAC, roof system and structural components of the Spirit Parcel;

b) Defendants accepted Plaintiff's payment of their CAM charges, while simultaneously refusing and failing to make repairs to the HVAC, roof system and structural components of the Spirit Parcel;

c) Defendants knew they were legally obligated to make repairs to the HVAC, roof system and structural components of the Spirit Parcel under the terms of the REA, but purposely ignored and/or refused to make said repairs;

d) Defendants knew their failure to make repairs to the HVAC, roof system and structural components of the Spirit Parcel under the terms of the REA would cause significant damage to the Spirit Parcel;

e) Defendants knew that they were not allowed to charge Plaintiff for cooling water services under the REA. Despite this knowledge, Defendants continued to charge Plaintiff for cooling water service under the guise of CAM charges and have threatened to terminate cooling water service to the Spirit Parcel when they know they have no grounds, contractually or otherwise, for doing so.

52. These representations were material, in that they were the basis of Plaintiff agreeing to enter into the REA with Defendants, Plaintiff's payment of CAM fees to Defendants for the very purpose of providing maintenance and repair services to the Spirit Parcel, and, moreover, entrusting Defendants with the maintenance and repair of the common areas of the Spirit Parcel and Mall Property in general.

53. Upon information and belief, when Defendants made these representations, they either had knowledge of their falsity, or recklessly disregarded for the falsity of the representations.

54. Defendants manifested their intent that Plaintiff act upon these representations through their actions and conduct. Specifically, Defendants intended to enter into the REA with Plaintiff to induce Plaintiff to pay CAM fees to the Defendants, and to entrust Defendants with management of the maintenance and repair of the common areas of the Spirit Parcel and Mall Property.

55. Plaintiff was ignorant of the falsity of Defendants' representations.

56. Plaintiff relied on these representations, as demonstrated by Plaintiff's actions of entering into the REA with Defendants, continuous payment of Defendants' CAM charges, and entrusting Defendants with the maintenance and repair of the common areas of the Spirit Parcel and Mall Property.

57. Plaintiff had a right to rely on these representations as Plaintiff was unable to uncover the falsity with any further due diligence, Defendants were in sole possession of information regarding the truthfulness of these representations, and Defendants were bound by fiduciary duties to Plaintiff when making these representations.

58. Plaintiff has suffered significant economic losses as the direct and proximate result of Defendants' false representations.

FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud)

59. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

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60. In the alternative that Defendants did not have a dishonest purpose or intent to deceive Plaintiff when making the aforesaid representations, Plaintiff asserts that Defendants nevertheless made false, material statements as described in paragraphs 44 to 55.

61. Defendants intended for Plaintiff to rely upon these statements, and Plaintiff did so rightly rely without on them knowledge of their falsity, which could not be uncovered by any further due diligence by Plaintiff. Plaintiff has suffered significant economic losses as the direct and proximate result of Defendant's false representations.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract accompanied by a Fraudulent Act)

62. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

63. Defendants aforesaid breaches of contract were accompanied by fraudulent actions and statements to Plaintiff.

64. Defendants held a fraudulent intent when making the fraudulent acts and statements to Plaintiff while breaching the aforesaid contract.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Misrepresentation)

65. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

66. Defendants falsely represented to Plaintiff that they would make best efforts in their fulfilling their obligation to maintain and repair the HVAC, roof system and structural components of the Spirit Parcel.

RECORD ON APPEAL 339

67. Defendants had a pecuniary interest in making these representations as they were positioned to make financial gain as a result of the continued operation of the Spirit Parcel and Plaintiff's payment of CAM charges.

68. Defendants owed a duty of care to the Plaintiff because:

a) Of the special and fiduciary relationships between Defendants and Plaintiff;

b) Defendants undertook to act towards Plaintiff on these matters; and

c) Defendants held a pecuniary interest in and peculiar knowledge of the subject of the representations.

69. Defendants failed to exercise due care in making these representations to Plaintiff.

70. Plaintiff's reliance on the false representations was justifiable in light of the circumstances discussed in the preceding paragraphs and the relationship between the parties.

71. As a proximate result of the Defendants' actions, the Spirit Parcel sustained significant damage and Plaintiff suffered significant financial loss.

FOR A TENTH CAUSE OF ACTION
(Restitution/Unjust Enrichment)

72. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

73. In the alternative that the Plaintiff has no available remedy at law, Plaintiff has conferred a non-gratuitous benefit on Defendants in the form of payment of CAM charges.

74. Defendants have realized some value from Plaintiff from the receipt or appropriation of these benefits.

75. In light of Defendants' actions discussed in the proceeding paragraphs, it would be inequitable for Defendants to retain this benefit, giving rise to unjust enrichment.

76. As a result of Defendants' actions and inactions, Plaintiff is entitled to a judgment and an award of damages for the injury it incurred under this claim for Defendants' unjust enrichment, including prejudgment interest and an order establishing a constructive trust over Defendants' assets for purposes of paying for the repairs to the HVAC, roof system and structural components of the Spirit Parcel that were damaged due to Defendants' failure to perform maintenance and repairs on the Spirit Parcel.

FOR A TWELTH CAUSE OF ACTION
(Piercing the Corporate Veil)

77. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

78. Upon information and belief, Defendants Taylor and Walkup have improperly utilized the assets of the Century for their own individual purposes and for the purposes of their respective companies, Don E. Taylor Realty Company and Walkup Management, Inc., which are essentially sham corporate entities put in place to disguise Taylor and Walkup's financial and business activities as it relates to the management of the Spirit Parcel and Mall Property.

79. Defendants Taylor and Walkup have used the corporate entities of Don E. Taylor Realty Company, Walkup Management, Inc. and Century Capital Group, LLC for

RECORD ON APPEAL 341

their own purposes and profit, such that grave injustices have resulted and will continue to all who do business with Defendants if this conduct is allowed to continue.

80. As a result of Defendants' actions, Plaintiffs respectfully requests and order from this Court finding that the Defendants Don E. Taylor Realty Company, Walkup Management, Inc. and Century Capital Group, LLC corporate veil is pierced of the corporate entities involved herein, and that the judgments Plaintiff obtains herein shall be effective as against all Defendants jointly and severally where appropriate.

FOR A THIRTEENTH CAUSE OF ACTION
(Civil Conspiracy)

81. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

82. Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company have conspired with each other to engage in management and maintenance services in violation of the REA.

83. The purpose of Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company's agreement was to injure Plaintiff and other tenants to cause them damage by violating the REA with respect to management and maintenance of the Spirit Parcel and other common areas of the Mall Property.

84. As a direct and proximate result, Plaintiff has been harmed, and Defendants Century, Walkup Management, Inc., and Don E. Taylor Realty Company have caused damages to Plaintiff. These special damages are in addition to the damages caused by Defendants' breach of the REA.

FOR A FOURTEENTH CAUSE OF ACTION
(Slander of Title)

85. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

86. Century filed liens against Plaintiff's property as described above, when they knew or should have known that they had no legal right to do so and that the liens included amounts charged by Century as illegitimate CAM charges.

87. Century failed to satisfy those liens when they were paid when they knew or should have known that they had no legal right to maintain those liens as a matter of record and that the liens included amounts charged by Century as illegitimate CAM charges.

88. The filing of the liens was intended to and did, in fact, place a cloud upon and disparage Plaintiff's title to the Spirit Property.

89. As a result of the filing of the liens, Plaintiff's property was impaired and their ability to use it, enjoy the full benefits of it or transfer it was impaired.

90. As a direct and proximate result, Century slandered the title of the Spirit Property, and they are liable for special damages resulting therefrom, including the costs and attorneys' fees associated with removal of the liens and the costs and attorneys' fees incurred in this action.

FOR A FIFTEENTH CAUSE OF ACTION
(Breach of Warranty)

91. The Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

92. Pursuant to the terms of the REA, Defendants contracted with Plaintiff to provide maintenance and repair services on the Spirit Parcel. These services included,

among other things, maintenance and repair of the HVAC, roof system and structural components on the Spirit Parcel.

93. Defendants and their subcontractors expressly and/or impliedly warranted that their respective services would be performed in a careful, diligent, and workmanlike manner, that their respective maintenance and repair services would be carried out in a manner consistent with standards of proper workmanship, that their respective services would be free of defects, and that the product of their services would be reasonably fitted for their intended purposes.

94. Defendants provided maintenance and repair services on the Spirit Parcel that were negligent, defective, unworkmanlike in manner, and not suitable or appropriate for their intended purpose and the HVAC, roof system, structural components, and interior of the Spirit Parcel sustained damage in excess of $3 million as a result of Defendants faulty and defective maintenance and repair services.

95. As a result of Defendants failure to properly repair and maintain the Spirit Parcel, Defendants breached their express and/or implied warranties, and Plaintiff is entitled to judgment against Defendants and their subcontractors for the costs of all remediation and repairs incurred by Plaintiff on the Spirit Parcel to date.

FOR A SIXTEENTH CAUSE OF ACTION
(Nuisance)

96. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

97. Pursuant to the terms of the REA, the owner of the Shopping Mall Parcel is responsible for performing and paying for all maintenance and repairs to the roof system and structural components of the Spirit Parcel prior to November 30, 2010.

98. Since taking possession and operating as manager of the Shopping Mall Property, Defendants have failed to maintain and repair the roof over the Spirit Parcel in accordance with the REA, performed what little maintenance work that was undertaken on the roof in an unworkmanlike and deficient manner, failed and refused to correct deficient maintenance on the roof and have steadfastly refused to cure defective performance or honor express and implied warranties on the roof as required by the REA. More specifically, Defendants have essentially neglected the roof above the Spirit Parcel.

99. As a result of Defendants neglect of the roof above the Spirit Parcel, Plaintiff has suffered water and mold damage to the interior spaces of the Spirit Parcel.

100. Spirit repaired has repaired its roof. However, Century has failed to properly maintain and repair its roof and other common areas, which has resulted in water passing through their roof and common areas and travelling into Spirit's property causing water damage and interruption to the business activities of Spirit's tenants.

101. To date Defendants have made no repairs to their roof and have done nothing to correct the damages that were sustained in the Spirit Parcel. Moreover, Defendants have made no offer to compensate Spirit or the tenant of the Spirit Parcel for the expenses incurred with their efforts to remedy the damages to the interior of the Spirit Parcel or the damages resulting from the interruption of the business operations of the tenant in the Spirit Parcel.

102. Defendants' neglect of their roof and Mall common areas that continues to cause unfettered water intrusion constitutes an ongoing, unreasonable interference with Spirit's use and enjoyment of the Spirit Parcel and is a permanent nuisance. Moreover,

the water intrusion caused by Defendant's lack of maintenance on the roof has caused continuous, severe interruptions in the business operations at the Spirit Parcel.

103. This permanent nuisance entitles Spirit to equitable relief in the form of an injunction ordering Defendants to immediately remedy the leaks in the roof above the Spirit Parcel. Additionally, Spirit alleges that such nuisance entitles it to recover both actual and punitive damages.

FOR A SEVENTEENTH CAUSE OF ACTION
(Trespass)

104. Plaintiff re-alleges and incorporates by reference the allegations of the preceding paragraphs.

105. Defendants have actual knowledge of the long history of water intrusion from the roof above the Spirit Parcel and have intentionally neglected their duty to remedy this situation. Defendants' knew that their intentional neglect of the roof issues would allow water to penetrate the roof, enter the Spirit Parcel and damage the surrounding areas. All of these actions were taken without Spirit's permission. In fact, Spirit and its representatives have, on countless occasions, brought this problem to Defendants' attention, but Defendants have adamantly refused to repair the roof.

106. Spirit was in lawful possession of the Spirit Parcel at the time of the damages have occurred.

107. Defendants' knew about the water intrusion issues at the Spirit Parcel and intentionally refused to remedy this situation in order to avoid costs associated with repairs to their roof and the common areas.

108. Defendants knew that rainstorms would lead to further water penetration from the roof into the Spirit Parcel.

109. Defendants' intentional refusal to remedy the roof problems has caused and will continue to cause damages to the interior of the Spirit Parcel. Defendants' intentional conduct constitutes a voluntary intrusion in to the Spirit Parcel. This intrusion occurred without Spirit's permission.

110. The intrusion of water from originating from Defendants' roof and mall common areas constitutes a continuing trespass that, based on the intentional refusal of Defendants to act in the face of an open and obvious defect, shows no signs of remedy in the future and will continue to cause damage to the Spirit Parcel.

111. Further, this trespass creates an unreasonably hazardous condition wherein the water intrusion, both seen and unseen, can lead to the development of mold and other issues in the interior of the Spirit parcel.

112. This continuing trespass entitles Spirit to equitable relief in the form of an injunction ordering Defendants to immediately remedy the leaks in the roof above the Spirit Parcel in order to prevent any further invasion of the Spirit Parcel by Defendants. Additionally, Spirit alleges that such trespass entitles it to recover both actual and punitive damages.

WHEREFORE, Plaintiff prays that the Court grant judgment against the Defendants and for the following relief:

a. For a declaration setting forth to the acceptable charges under REA, what areas of the Mall Property that Defendants have to maintain as common areas under the REA; whether Spirit is required to pay a cooling water charge under the REA; whether Defendants can appoint themselves as property managers under terms of the REA without an apparent and/or inherent conflict of interest; and an Order directing the

Defendants to repair their roof and the commons areas so as to stop the water intrusion into Spirit's property.

b. For actual damages against all Defendants in an amount to be determined by the Court;

c. For punitive damages against all Defendants in an amount to be determined by the Court;

d. For attorneys' fees and costs in favor of Plaintiff as the prevailing party under the REA;

e. For attorneys' fees and costs as consequential damages for slander of title;

f. For treble damages, reasonable attorneys' fees and costs pursuant to the Unfair Trade Practices Act;

g. For special damages;

h. For an order piercing the corporate veil as to Defendants Century Capital Group, LLC, Walkup Management, Inc., and Don E. Taylor Realty Company and that the judgments Plaintiff obtains herein be effective as against all Defendants jointly and severally;

i. For pre-judgment interest;

j. For a constructive trust over Defendants' assets for purposes of paying for repairs to the HVAC, roof system and structural components of the Spirit Parcel that were damaged due to Defendants' failure to perform maintenance and repairs; and

k. For an order requiring Defendants to repair the roof above the Spirit Parcel to remedy the constant, unfettered water intrusion that is currently experienced at the

Spirit Parcel and to further order Defendants to repair the damages sustained in the interior of the Spirit Parcel as a result of said water intrusion;

l. For such other and further relief as the Court shall deem just and proper.

GALLIVAN, WHITE & BOYD, P.A.

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Attorneys for the Plaintiff
Spirit SPE Columbia, LLC

Columbia, South Carolina
September 17, 2012

RECORD ON APPEAL 349

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Spirit SPE Columbia, LLC,

Plaintiff,

vs.

Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William D. Walkup, Individually.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2010-CP-40-8407

RICHLAND COUNTY
FILED
2012 SEP 19 AM 11:29
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 17, 2012, she served a copy of the Plaintiff Spirit SPE Columbia, LLC's Third Amended Complaint on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

D. Ryan McCabe
Brian Gambrell
McCabe, Trotter, Gambrell & Beverly, PC
140 Stonebridge Drive, Suite 650
Columbia, SC 29210

Heather Hagen

EXHIBIT 3

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Spirit SPE Columbia, LLC, Plaintiff, vs. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CIVIL ACTION NUMBER: 2010-CP-40-8407 **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

WHEREAS, Spirit SPE Columbia, LLC ("Spirit") purchased a parcel of property located at 3400 Forest Drive and known as the "Verizon Parcel" in the REA (defined below) in September 2005; and

WHEREAS, Century Capital Group, LLC ("CCG") purchased a parcel of property located at 3400 Forest Drive and known as the "Midtown Parcel" in the REA (defined below) in February 2010; and

WHEREAS, previous owners of the Midtown Parcel and Verizon Parcel entered into that certain Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration dated September 7, 2005, and recorded in Book 1097 at Page 2024 in the Office of the Register of Deeds for Richland County, South Carolina (the "REA"), that runs with the Midtown Parcel and Verizon Parcel and sets forth certain duties, responsibilities, obligations and easements between the owners of the Midtown Parcel, the Verizon Parcel, and the other properties that comprise the property commonly known as Richland Mall and located at 3400 Forest Drive; and

WHEREAS, Spirit and CCG are bound by the terms of the REA and the terms of the REA are incorporated herein by reference; and

WHEREAS, Spirit filed an action, entitled Spirit SPE Columbia, LLC, v. Century Capital Group, LLC, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, Individually, William B. Walkup, Individually, civil action number 2010-CP-40-8407 in the Richland County Court of Common Pleas (hereinafter the "action" or the "lawsuit"), alleging that CCG had breached the terms of the REA in various respects; and

WHEREAS, CCG denied liability to Spirit, raised affirmative defenses and alleged cross-claims against Spirit; and

WHEREAS, the parties to the action desire to resolve the disputes and terminate the pending litigation.

NOW THEREFORE, intending to be legally bound, the parties agree and covenant as follows:

(a) **Payment from CCG to Spirit:** In exchange for the release, covenants and promises contained herein, CCG will pay Spirit the total sum of One Million Four Hundred Fifty Thousand and NO/100 Dollars ($1,450,000.00) as follows:

1. Eight Hundred Thousand and NO/100 Dollars ($800,000.00) upon execution of this Settlement Agreement and Mutual Release ("Settlement Agreement").

2. Six-Hundred Fifty Thousand and NO/100 Dollars ($650,000.00) paid within six (6) months of the execution of this Settlement Agreement pursuant to the terms and conditions set forth herein.

3. CCG releases and waives any and all claims against Spirit to recover payment for providing condenser water or maintenance of the cooling tower prior to June 30, 2013. Spirit releases and waives any and all claims (including without limitation claims for negligence) against

CCG relating to the operation, maintenance or repair of the cooling tower and related piping prior to June 30, 2013.

4. As evidence of the requirement to make the $650,000.00 final payment within six (6) months of the Settlement Agreement, simultaneous with the execution of this Settlement Agreement, Defendant CCG shall execute and deliver to Spirit a Promissory Note in the initial principal amount of $650,000.00 (the "Note"). The Note shall be in the form of that note attached hereto as Exhibit "A". The Defendant CCG's obligations under the Note shall be secured by a first-priority lien on the Midtown Parcel to be evidenced by a mortgage executed by CCG and delivered to Plaintiff in the form of that mortgage attached hereto as Exhibit "B" (the "Spirit Mortgage"). CCG represents and warrants that the Midtown Parcel is currently unencumbered by any lien or mortgage and that the Spirit Mortgage shall be a first-priority lien superior to any other liens (other than possibly liens arising under the REA). Upon receipt of the executed Spirit Mortgage Spirit shall cause title to the Midtown Parcel to be updated in order to confirm that the Spirit Mortgage shall constitute a first-priority lien on the Midtown Parcel. Defendants shall cause any monetary lien shown to be senior to the Spirit Mortgage to be satisfied, released or subordinated to the lien of the Spirit Mortgage. If CCG sells its parcel before the expiration of (6) months, the Spirit Mortgage must be satisfied prior to or at the time of the sale.
5. Upon receipt of payment as required under the terms and conditions of the Note, Spirit will mark the Note and the Spirit Mortgage satisfied.

6. The parties agree that the $1,450,000 payment is provided for the release and extinguishment of any pre-June 30, 2013 liability related to the maintenance and repair of the Spirit parcel and the remaining consideration provided by CCG under this Settlement Agreement is provided for the pre-June 30, 2013 settlement of the CAM, accounting, and other claims asserted by Spirit.

(b) <u>Management of Common Areas</u>

Defendants William B. Walkup and Donald E. Taylor will cede management of the Common Areas (as defined in the REA) to a bona fide, independent third-party manager within ninety (90) days of the execution of this Settlement Agreement for so long as CCG owns the Midtown parcel. If Defendant CCG's employees or the third-party manager of the Common Area provide services to both the Common Area and the remainder of the

Midtown parcel, only an agreed upon portion of each such employee's salary or the third-party manager's fees will be allocated to Common Area Maintenance Charges (as defined in the REA) ("CAM"). The parties also agree that, to the extent administrative items relate to both CAM and the remainder of the Midtown parcel, only a portion of certain administrative items may be charged to CAM. Expenses will be determined by the third party manager in accordance with the REA.

(c) **Modification of REA:**

CCG and Spirit will enter into a modification of the REA (with respect to the owner of the Midtown Parcel and the owner of the Verizon Parcel) that reflects the following:

(1) The owner of the Verizon Parcel (currently the Plaintiff (Spirit)) agrees that it will pay Six Thousand Five Hundred and NO/100 Dollars ($6,500.00) per month, subject to annual Consumer Price Index ("CPI") increases, as payment for cooling water provided to the Verizon Parcel. The owner of the Midtown Parcel shall be responsible for the costs associated with maintaining and operating the cooling tower that provides condenser water to the Verizon Parcel. Maintenance shall mean all routine work to operate the cooling tower and to keep it running and shall specifically include chemicals, flushing of the cooling tower, and other routine maintenance of the cooling tower. The owner of the Verizon Parcel agrees to pay its pro-rata share, based on pro-rata design tonnage of the units serviced by the cooling tower, of the cost for repairs (to include replacement of components including motors, fans, cells exceeding $7,500) and replacement of the cooling tower. In the event of replacement of the cooling tower, the amount of the monthly cooling water payment to be delivered by the owner of the

Verizon Parcel may be re-negotiated to reflect its pro rata share of any cost savings achieved by installing a more efficient system.

(2) The owner of the Midtown Parcel shall operate, maintain and repair the cooling tower and also have the authority to continue to charge other users, parcel owners, Common Areas, and CCG tenants for the condenser water service it provides. Spirit shall have the right to continue to seek reimbursement from its tenants for the provision of condenser water to the Verizon Parcel. Under no circumstances shall either CCG or Spirit have the right to interfere with, terminate or disrupt each other's use of condenser water supplied by the cooling tower. In the event that the owner of the Midtown Parcel fails to repair or replace the condenser water system or disrupts the supply of condenser water to the Verizon Parcel, the owner of the Verizon Parcel shall have the right to undertake the necessary repair or replacement and deduct the expenses (less the Verizon Parcel owner's pro rata share, per the above, of such expenses) from future CAM payments.

(3) If the owner of the Verizon Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to pay for cooling water and the repair and replacement of the cooling tower upon one hundred eighty days' prior notice to the owner of the Midtown Parcel. If the owner of the Midtown Parcel determines that it will no longer need cooling water provided from the cooling tower, such owner may terminate its obligations to maintain, operate, repair and replace the cooling tower and provide cooling water for the Verizon Parcel upon one hundred eighty days' prior notice to the owner of the Verizon Parcel. Upon the effectiveness of the termination described in the immediately preceding sentence, the

foregoing paragraphs (1) and (2) shall terminate.

(4) Spirit and CCG agree that under the terms of the REA, with respect to expenses related to the maintenance of the Common Areas as defined in the REA, the REA does not require the owner of the Verizon Parcel to pay for any non-maintenance expense including, but not limited to the following: security, leasing, marketing, wired music, depreciation, travel and entertainment, business license and registration, subscriptions, membership/association fees and business meals. This paragraph (4) does not, however, affect the Verizon Parcel's owner's obligations under Article IV(B) of the REA regarding real property taxes, insurance premiums, deductibles or third-party management expenses.

(5) The parties agree that the Common Areas include the surface lot and landscaping on the Verizon Parcel, and the owner of the Midtown Parcel has an obligation to maintain that surface lot and landscaping subject to the reimbursement provisions of the REA.

(6) The parties agree that no lien placed on the property by one of the parcel owners for breach of the REA will have a priority that relates back to the date the REA was filed. Such a lien will have priority based upon its date of filing. Such a lien will not be subordinated to any other later-filed mortgage or lien unless by written consent of the party who filed the lien.

(7) Roof Leaks

(A) As to the current or any future roof leaks in the Verizon Parcel space that the owner of the Verizon Parcel believes is caused by a leak from the Midtown Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Verizon Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Midtown Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its expense. The Midtown Parcel owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner and must, in the case of the current roof leaks in the PWC space, be completed before CCG sells the Midtown Parcel.

(iii) If the Midtown Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Verizon Parcel owner shall have the right to make the repairs as determined by the independent expert. The Midtown Parcel owner shall be responsible for the costs incurred by the Verizon Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Verizon Parcel owner. In the event that said amounts are not paid to the owner of the Verizon Parcel within said period, such past due amounts shall

constitute a lien on the Midtown Parcel and the owner of the Verizon Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its own expense.

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Midtown Parcel. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable cause of the leak is found to be from the Verizon Parcel.

(B) As to any future roof leaks in the Midtown Parcel space that the owner of the Midtown Parcel believes is caused by a leak from the Verizon Parcel, the parties agree to the following:

(i) The Midtown Parcel owner will select a roofing expert and the Verizon Parcel owner will select a roofing expert. These two experts will then select a third, independent roofing expert to conduct a reasonable investigation to determine the most probable source of the active leaks in the Midtown Parcel space. The determination of the most probable specific source of the leak and the scope of repair is to be made by the independent roofing expert. If the independent expert is unable to determine the most probable specific source of the leak after a reasonable investigation, the Verizon Parcel owner shall not be obligated to repair the leak. In this context, to "repair" means to stop the leak at its source.

(ii) If the leak is determined to most probably arise on the Verizon Parcel, the Verizon Parcel owner shall have the leak repaired at its expense. The Verizon Parcel

owner shall commence repairs within sixty (60) days of receiving the independent expert's opinion and scope of work. The repairs must be completed in a timely manner.

(iii) If the Verizon Parcel owner does not commence or make the repairs as determined by the independent expert as required in section (ii), the Midtown Parcel owner shall have the right to make the repairs as determined by the independent expert. The Verizon Parcel owner shall be responsible for the costs incurred by the Midtown Parcel owner in performing the repairs as determined by the independent expert and shall remit payment for any expenses for said repair within ten (10) days after the receipt of an invoice therefor from the Midtown Parcel owner. In the event that said amounts are not paid to the owner of the Midtown Parcel within said period, such past due amounts shall constitute a lien on the Verizon Parcel and the owner of the Midtown Parcel shall be permitted to file such lien and notice thereof as it deems necessary. If the independent expert determines that the leak most probably arises from the Midtown Parcel, the Midtown Parcel owner shall have the leak repaired at its own expense. .

(iv) Each owner will pay for its own expert and will equally share the cost of the independent expert. The Midtown Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Verizon Parcel. The Verizon Parcel owner will have the right to have its expert monitor the repair if the most probable specific source of the leak is found to be from the Midtown Parcel.

(C) The parties will submit the following issue to be decided by Judge Howard: "Is the expense for a roof repair to address leaks over a common area to be borne by the owner of the roof above the common area or is it chargeable to CAM?" The

parties will be bound by the Judge's ruling, and there will be no appeal from his ruling. The result will be included in the REA amendment.

(d) **Mutual Release**

1. **Spirit's Release:**

Based upon the foregoing consideration, Spirit, for itself and all of its members, managers, officers, directors, employees, representatives, assigns and successors hereby releases and forever discharges from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of this Settlement Agreement CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor, William B. Walkup, and their respective employees, agents, officers, directors, shareholders, managers, members, heirs, executors, administrators, assigns, successors in interest under the REA, their predecessors in interest under the REA, and each predecessor in interest's employees, agents, heirs and assigns. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Midtown Parcel so as to avoid damage to the Verizon Parcel or a release of any claim for breach of this Settlement Agreement.

2. **CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup Release:**

Based upon the foregoing consideration, CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup (collectively "Defendants") for themselves and all of their members, officers, directors, employees, representatives, assigns and successors hereby release and forever discharge Spirit, its

affiliates and each of their successors, assigns, employees, agents and officers from all claims (known or unknown, contingent or otherwise) arising, or relating to any period, before the date of the Settlement Agreement. This Settlement Agreement and Release cannot be construed as a release of any future claim respecting any period after the date of this Settlement Agreement and arising out of a (i) breach of the REA (original or amended) or (ii) failure to properly maintain the Verizon Parcel so as to avoid damage to the Midtown Parcel or a release of any claim for breach of this Settlement Agreement. Furthermore, Spirit acknowledges that this release does not release Spirit for any amounts not yet billed to it for the monthly period that includes the date of this Settlement Agreement.

Defendants will hold harmless, indemnify and defend Spirit for any and all costs, expenses and attorney fees arising from any attempt by Defendants to recover any amount paid under this Settlement Agreement from any third party. If any portion of the Amended REA is invalidated, the terms of this Settlement Agreement and Release will remain in force.

(e) **No Liability Admitted**. This Settlement Agreement is a compromise and settlement of a disputed claim and is intended merely to terminate the controversy between the parties and to avoid further litigation between them; it is not and is not to be construed to be an admission of liability on the part of any of the parties hereby released.

(f) **Dismissal with Prejudice**. The parties will, at the time they execute the Settlement Agreement, enter into a Consent Order of dismissal, dismissing the above-referenced lawsuit with prejudice.

(g) **Confidentiality**: Terms of the Settlement Agreement shall be kept

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confidential except to the extent property recordings/agreements need recording, to the extent necessary to sell or lease property, and to the extent necessary for Defendants to prosecute Contribution claims.

(h) **Attorneys' Fees.** Each party hereto shall bear its own attorneys' fees and costs incurred in connection with the lawsuit and/or the Settlement Agreement.

(i) **Miscellaneous Provisions.**

1. Additional Instruments. The Plaintiff and Defendants will each execute and deliver such other and further instruments as may be necessary to implement fully the terms of the Settlement Agreement, and agree to cooperate fully and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Settlement Agreement.

2. Binding Effect. This Settlement Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns, and estates of the Parties.

3. Governing Law. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina.

4. Invalid Provisions. If, after the date hereof, any provision of this Settlement Agreement is held to be invalid or unenforceable under present or future laws, such provision shall be fully severable.

5. Severability. If a provision of this Settlement Agreement is held to be unenforceable, the other provisions will remain in effect. If possible, the offending provision will be modified to the slightest degree necessary to make it enforceable, remaining as close as possible to the parties' original intent for the provision.

6. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the parties pertaining to the subject matter contained herein.

7. Amendment. This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by all of the parties.

WITNESSES:

(1) D. Ryan McCabe (signature)

(1) D. Ryan McCabe (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

(1) Angela S. Hook (signature)

(1) Angela S. Hook (name, printed)

(2) D. Ryan McCabe (signature)

(2) D. Ryan McCabe (name, printed)

(1) D. Ryan McCabe (signature)

(1) D. Ryan McCabe (name, printed)

(2) Angela S. Hook (signature)

W B Walkup

As representative of Century Capital Group, LLC

By: ~~Richard N. Burnside~~ William B. Walkup

Its: Managing Member

Date: 11-20, 2013

As representative of Don E. Taylor Realty Company

By: Donald E. Taylor

Its: President

Date: 11/20/13, 2013

W B Walkup

As representative of Walkup Management, Inc.

By: William B. Walkup

Its: President

(2) Angela S. Hook (name, printed)

Date: 11/20/13, 2013

(1) Angela S. Hook (signature)

Don E. Taylor

(1) Angela S. Hook (name, printed)

(2) D. Ryan McLeod (signature)

(2) D. Ryan McLeod (name, printed)

Date: 11-20-2013, 2013

(1) D. Ryan McLeod (signature)

WB Walkup

William B. Walkup

(1) D. Ryan McLeod (name, printed)

(2) Angela S. Hook (signature)

(2) Angela S. Hook (name, printed)

Date: 11-20, 2013

(1) _____ (signature)

_____

As representative of Spirit SPE Columbia, LLC

(1) _____ (name, printed)

By: _____

(2) _____ (signature)

Its: _____

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
Don E. Taylor

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1)_____(signature)

_____
William B. Walkup

(1)_____(name, printed)

(2) _____(signature)

(2) _____(name, printed)

Date:_____, 2013

(1) _____(signature)

(1) Daniel Rosenberg (name, printed)

(2) _____(signature)

_____
As representative of Spirit SPE Columbia, LLC

By: Mark Manheimer

Its: SVP

(2) Catherine Tiffany (name, printed)

Date: 12/4, 2013

For the Plaintiff:

_____

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: _____, 2013

For the Defendants:

_____

D. Ryan. McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: _____, 2013

(2) _____(name, printed)

Date:_____, 2013

For the Plaintiff:

A. Johnston Cox
Gallivan, White & Boyd, P.A.
Attorney for Spirit SPE Columbia, LLC

Date: 12/6, 2013

For the Defendants:

D. Ryan. McCabe
McCabe, Trotter & Beverly, P.C.
Attorney for CCG, Walkup Management, Inc., Don E. Taylor Realty Company, Donald E. Taylor and William B. Walkup

Date: 11 - 20, 2013

EXHIBIT "A"

PROMISSORY NOTE

$650,000.00

Columbia, South Carolina
November 20, 2013

FOR VALUE RECEIVED, **Century Capital Group, LLC**, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of **Spirit SPE Columbia, LLC**, a Delaware limited liability company (the "Lender"), at _____, _____, or at such other place or to such other party or parties as Lender may from time to time designate, the principal sum of up to **Six Hundred Fifty Thousand and no/100 ($650,000.00) Dollars**, with interest thereon (to the extent applicable) computed from date of each advance at the fixed rate of 18% per annum. Interest shall be computed on the actual number of days elapsed divided by a 360-day year and shall only accrue in the event of default in payment of this Note.

The entire outstanding principal balance of this Note shall be paid in a single, lump-sum payment be due and payable in full on June 2 2014 (the "Maturity Date"). If the principal balance of this Note is paid on or before the Maturity Date, no interest shall be payable. Otherwise, accrued interest under this Note shall be payable on the Maturity Date.

All payments under this Note shall be applied first to late charges, if any, then to accrued interest (if applicable) and then to principal. All installments of principal and all interest are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Mortgage executed of even date between Century and Lender, then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any

endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender in such proceedings.

In the event the interest provisions hereof or any exactions provided for herein or in the lien documents or any other instruments securing this Note shall result, because of the monthly deduction of principal or any other reason related or unrelated to the interest provisions, at any time during the life of the loan, in an effective rate of interest which, for any period of time, transcends the limit of the usury or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to principal immediately upon receipt of such monies by Lender with the same force and effect as though the payor had specifically designated such and agreed to accept such extra payment(s) as a premium free payment. Notwithstanding the foregoing, however, Lender may at any time and from time to time elect, by notice in writing to the owners of the property affected by the lien document securing this Note, to reduce or limit the collection of any interest to such sums, which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirement of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this loan transcend the limits imposed or provided by the law applicable to this transaction or Borrower in the jurisdiction in which the land is located for the use or detention of money or for forbearance in seeking its collection.

This Note is secured by a certain first-priority Mortgage of Real Estate and Security Agreement of even date herewith (the "Mortgage"), to which reference is made from the terms thereof, and the same are made a part of this Note.

Lender may collect a late charge of five (5%) percent of any installment of principal or interest which is not paid within five (5) days of the due date thereof to cover the extra time and expense involved in handling delinquent payments. Such late charge shall apply to late payments prior to maturity or acceleration. Upon maturity or acceleration, no further late charges shall be assessed, but Borrower shall pay the Default Rate of interest on all amounts due from the date of maturity or acceleration until the Note is paid in full. The collection of the late charge shall not be deemed a waiver by Lender of interest accruing after the due date of any installment or of any of Lender's other rights under this Note.

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Borrower agrees that the late charge provided above is fair and reasonable compensation to Lender for the additional administrative time and effort incurred in collecting and processing delinquent payments. Borrower further agrees that the Default Rate is a fair and reasonable rate of interest to be charged after maturity or acceleration of this Note in light of the increased risks to Lender inherent in a past due loan and the administrative time and effort incurred in collecting a past due loan.

Borrower waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified or the security described in the lien document securing the Note released in whole or in part, or increased, changed or exchanged by agreement between Lender and any owner of premises affected by said lien document securing this Note without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder are to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue therein. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in

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personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE MORTGAGE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

IN WITNESS WHEREOF, Borrower has executed this Note under seal, as of the date first above written.

Century Capital Group, LLC,
a South Carolina limited liability company

By: W B Walker
Its: Managing Member
Address: _____
_____

EXHIBIT "B"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MORTGAGE OF REAL ESTATE
AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is made this 20th day of November 2013, by **Century Capital Group, LLC**, a South Carolina limited liability company whose address is _____, (the "Borrower"), and given **Spirit SPE Columbia, LLC**, a Delaware limited liability company, whose address is _____ (the "Lender").

WITNESSETH:

THAT WHEREAS, Borrower is indebted to Lender in the maximum principal sum of $650,000.00, which indebtedness is evidenced by the Note made by Borrower dated of even date, said principal (plus interest thereon) being payable as provided for in said Note; the terms of said Note and any agreement modifying it are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the said Borrower, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976): (i) all future advances and re-advances that may subsequently be made to Borrower by Lender evidenced by the aforesaid Note, or by other promissory notes, and all modifications, renewals and extensions thereof; and (ii) all other indebtedness of Borrower to Lender, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed $650,000.00, plus interest, charges, expenses and attorneys fees as permitted by the terms of the Promissory Note executed by Borrower on 11/20, 2013, has granted, bargained, sold, released and by these presents does grant, bargain, sell and release unto the Lender, its successors and assigns, the following described property (collectively hereinafter referred to as the "Property" or "Land"):

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

TOGETHER WITH:

(a) all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

(b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures and articles of personal property now or hereafter owned by the Borrower and attached to or contained in and used in connection with the aforesaid Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personalty");

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (a) and (b) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (a) and (b) hereof or any part hereof, or to any rights appurtenant thereto (together the "Easements and Other Interests");

(d) as additional collateral and further security for the indebtedness, the Borrower hereby conditionally assigns to the Lender all the security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due and all returned or repossessed goods now or hereafter pertaining to or resulting from the Property or any part hereof or constituting or derived from or acquired by any proceeds of the Property or any part thereof (the "Rents and Profits") reserving only the right to the Borrower to collect the same as long as there shall exist no Default (as hereinafter defined).

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Together with all proceeds, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of the Rents and Profits or any part hereof, and all replacements, modifications, renewals and substitutions thereof or therefore;

(e) as additional collateral and further security for the indebtedness, the Borrower does hereby assign to the Lender and grants to the Lender a security interest in all of the right, title and the interest of the Borrower in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architect's contracts, technical services agreements, licenses and permits now or hereafter affecting the Property (the "Intangible Personalty") or any part hereof, and the Borrower agrees to execute and deliver to the Lender such additional instruments, in form and substance satisfactory to the Lender, as may hereafter be requested by the Lender to evidence and confirm said assignment; provided, however, the acceptance of any such assignment shall not be construed as a consent by the Lender to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Lender any obligation with respect hereto;

(f) any proceeds of any sales or other dispositions of the property described in paragraphs (a), (b), and (c), hereof or any part hereof, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing ("Proceeds"); and

(g) all the Tangible Personalty which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the Tangible Personalty and the Intangible Personalty, this Mortgage shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Borrower. In that regard, the Borrower grants to the Lender a security interest in the Tangible Personalty, the Intangible Personalty and the Rents and Profits, and grants to Lender all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

TO HAVE AND TO HOLD all and singular the Property unto Lender and the successors or assigns of Lender forever.

BORROWER covenants that Borrower is lawfully seized of the Property in fee simple absolute, that Borrower has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly disclosed to Lender. This Mortgage shall constitute a first-priority lien on the subject Property. Borrower further covenants to warrant and forever defend all and singular the Property unto Lender and the successors or assigns of Lender from and against Borrower and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Borrower and Lender, that if Borrower pays or causes to be paid to Lender the debt secured

hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect

IT IS AGREED that Borrower shall be entitled to hold and enjoy the Property until a Default has occurred.

BORROWER further covenants and agrees with Lender as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Borrower absolutely and unconditionally assigns to Lender all Rents and Profits arising from the Property; provided however, that so long as no Default has occurred and is continuing, Borrower shall be entitled, as trustee for the use and benefit of the Lender, to collect and retain all such Rents and Profits as they become due and payable (but in no event for more than two (2) months in advance); provided, however, that if the Rents and Profits exceed the payments due under the Note, Borrower may use such excess, first, for the operation and benefit of the Property and, second, for the general benefit of Borrower. Upon the occurrence of a Default, Lender may, at its option, remove the Borrower as trustee for the collection of the Rents and Profits and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such Rents and Profits in payment of the obligations secured by this Mortgage, in such order as Lender shall elect in its sole and absolute discretion, whether or not Lender takes possession of the Property. Upon a Default, Borrower hereby directs each of the respective tenants under all leases of any part of the Property now and hereafter existing (the "Leases"), and any rental agent, to pay to Lender all such Rents and Profits, as may now be due or shall hereafter become due, upon demand for payment thereof by Lender without any obligation on the part of any such tenant or rental agent to determine whether or not a Default has in fact occurred. Upon a Default, the permission hereby given to Borrower to collect, receive and accept such Rents and Profits as trustee shall terminate and such permission shall not be reinstated upon a cure of the Default without Lender's specific written consent. Further, upon a Default, Borrower shall immediately turn over to Lender all Rents and Profits in the actual or constructive possession of Borrower, its affiliates, contractors, or its agents, together with an accounting thereof. Exercise of Lender's rights under this Section, and the application of any such Rents and Profits to the obligations secured by this Mortgage, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Lender.

2. intenance. Borrower will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Borrower will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Borrower will not remove or demolish any improvement or fixture which is now or hereafter part of the Property, other than in the ordinary course of business, without the express written consent of Lender which consent shall not be unreasonably withheld, conditioned or delayed. Lender shall be entitled to specific performance of the provisions of this paragraph.

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3. Insurance. Borrower will keep, or shall cause to be kept, all improvements and fixtures which are now or hereafter part of the Property insured by such company or companies as Lender may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the New York standard form of Lender clause or such other form of Lender clause as may be required by the Lender and will not be cancelable by either the insurer or the insured without at least ten (10) days prior written notice to Lender. Borrower hereby assigns to Lender the right to collect and receive any indemnity payment otherwise owed to Borrower upon any policy of insurance insuring any portion of the Property, regardless of whether Lender is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Lender from any such policy of insurance may, at the option of Lender, (i) be applied by Lender to payment of any sum secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement, repair or restoration to the portion to the Property damaged or destroyed, or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair or restoration to any portion of the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage. Borrower will keep the Property continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Borrower will pay each premium coming due on any such policy of insurance and will deliver to Lender proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Borrower will furnish to Lender at least ten (10) days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements hereof. If Borrower fails to insure the Property as herein required. Lender may, after giving (10) days written notice to Borrower, so insure the Property in the name of Borrower or in the name of Lender or both, and the premiums for any such insurance obtained by Lender shall be the obligation of Borrower. Upon foreclosure to this Mortgage, all right, title and interest of Borrower in and to any policy of insurance upon the Property which is in the custody of Lender, including the right to unearned premiums, shall vest in the purchaser of the Property at foreclosure, and Borrower hereby appoints Lender as the attorney in fact of Borrower to assign all right, title and interest of Borrower in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. Taxes and Assessments. Borrower will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and, if requested by Lender, will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Borrower shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collector of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Borrower deposits with the authority to which such tax, assessment or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. Appraisal. Borrower shall pay when due the reasonable cost of providing to Lender, at its request from time to time, a then-current appraisal of the market value of the Property prepared by an appraiser or by another appraiser acceptable to Lender in its discretion; provided, however, that Lender shall make such request no more frequently than once every third year, unless Lender is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such appraisal more frequently than every third year. If Borrower fails to pay such cost when due, Lender may pay such cost on Borrower's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Borrower's failure to pay such amount (with all accrued interest) in full within thirty (30) days of the date of such demand shall constitute an event of Default entitling the Lender to accelerate the maturity of the Note.

6. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter owned by Borrower and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property or any part thereof.

7. Condemnation. Lender shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power or eminent domain of any portion of the Property. Borrower hereby assigns to Lender the right to collect and receive any payment or award to which Borrower would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Any such payment or award received by Lender may, at the option of Lender, (i) be applied by Lender to payment to any sums secured by this Mortgage in such order as Lender may determine, or, (ii) be applied in a manner determined by Lender to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property or, (iii) be released to Borrower upon such conditions as Lender may determine, or, (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration to any portion to the Property or which is released to Borrower shall be deemed a payment against any sums secured by this Mortgage.

8. Transfer. At the option of the Lender, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent to the Lender, the Borrower shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever other than by death to the Borrower. It is understood and agreed that in consideration for the consent to the Lender to any transfer of title to the mortgaged premises, the Lender at its option may charge a loan transfer fee and/or require changes in the rate of interest, term of loan, monthly payments to principal and interest and other terms and conditions of this Mortgage and/or the Note secured hereby.

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9. Default. A "Default" shall be the occurrence or existence of any of the events listed in the Note or the Loan Agreement, including any grace and\or cure periods provided for therein.

10. Remedies. In addition to the remedies set forth in the Note or the Loan Agreement, upon the occurrence of a Default, Lender may, without notice to Borrower, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. If default shall be made in the payment of any amount due under the Note, the Mortgage or any other instrument securing the Note, then, upon Lender's demand Borrower will pay to Lender the whole amount due and payable under the Note and all other sums secured hereby; and if Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Lender's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Lender shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage and the right of Lender to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof. At the foreclosure Lender shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Lender shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Lender independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised. Without in any way limiting the generality of the foregoing, Lender shall also have the following specific rights and remedies:

(a) To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control.

(b) To cure such defaults, with the result that all costs and expenses incurred or paid by Lender in effecting such cure shall be additional charges on the Note which bear interest at the interest rate of the Note and are payable upon demand.

(c) If the Note is secured by a lien on any real property, to foreclose on such real property and to pursue any and all remedies available to Lender at law or in equity, and in any order Lender may desire, in Lender's sole discretion.

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11. No Waiver of One Default to Affect Another. No waiver of Default hereunder shall extend to or affect any subsequent or any other Default then existing, or impair any rights, powers or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Property from the lien of this Mortgage or any other instrument securing the Note, or (e) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, the Mortgage or otherwise of Borrower, or any subsequent purchaser of the Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any event of Default then existing or of any subsequent event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby.

12. Appointment of Receiver. Upon the occurrence of a Default, Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums in insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Mortgage. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower, or anyone having an interest in the Property by reason of anything done or left undone by Borrower under this paragraph. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents, Lender, at its sole option, may advance moneys to meet the costs. Any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Mortgage. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. The entering upon and taking and maintaining of control of the Property by

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Lender or the receiver and the application of rents as provided herein shall not cure or waive any Default hereunder or invalidate any other right or remedy of Lender hereunder.

13. Waiver by Lender. Lender may, in the sole discretion of Lender, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

14. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid by U.S. Mail, certified mail, return receipt requested to the party to whom directed to the address stated above or to the latest address of such party known to the party sending the same. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

15. Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the indebtedness and the cancellation of this Mortgage of record, Borrower obtains a fee estate in such portion of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of Borrower, be and become subject to the security lien of this Mortgage.

16. Imposition of Tax. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the Borrower will promptly pay any such tax on or before the due date thereof; and if the Borrower fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Lender, unless Borrower agrees in writing to indemnify Lender against any loss or damage associated with such payment or penalty.

17. Changes, etc. Neither the Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Borrower and Lender relating to the Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

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18. Partial Foreclosure. In the event the Property is comprised of more than one parcel of real property, Borrower hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

19. Security Agreement; Financing Statement. This Mortgage constitutes a security agreement within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of South Carolina and as amended from time to time. The addresses for the Borrower as debtor and the Lender as secured party are set forth in the introductory paragraph to this Mortgage. Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the County in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as secured party, or the Borrower, as debtor, at the address first shown above.

20. Miscellaneous.

(a) It is understood and agreed that all indebtedness of Borrower to Lender at any time hereafter existing resulting from advances and re-advances heretofore, now or hereafter made by Lender to Borrower, regardless of whether such advances and re-advances are made at the option of the Lender, or otherwise, will be secured by this instrument up to the maximum principal amount hereinabove set forth, plus interest thereon, court costs and attorney's fees until all of said indebtedness has been satisfied in full.

(b) The agreements herein shall inure to the benefit of Lender, its successors and assigns, and any successor or assign of Lender may make advances hereunder, and all advances and all other indebtedness of Borrower to such successor or assign shall be secured hereby.

(c) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.

(d) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

(e) If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve

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transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if such clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage, in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

(f) This Mortgage shall be construed and enforced in accordance with the laws of South Carolina.

(g) Waiver by Borrower. Borrower understands that upon default hereunder, among other remedies set out herein and in the Note, the Lender may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to Section 29-3-660, South Carolina Code of Laws (1976). The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE BORROWER HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, Borrower has executed this Mortgage under seal the day and year first above written.

Witnesses:

D Ryan Mehrle

Angela A. Hoore

BORROWER:

Century Capital Group, LLC

By: W B Walkup

Name: W B WALKUP

Title: MANAGING MEMBER

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ACKNOWLEDGEMENT

I, Angela S. Hook, do hereby certify that William B. Walkup, as the managing member of Century Capital Group, LLC, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 20th day of November, 2013.

Angela S. Hook
Notary Public for South Carolina
My Commission expires: 1/27/2021

EXHIBIT "A"

LEGAL DESCRIPTION
SHOPPING MALL PARCEL

That certain tract of land, with improvements thereon, situate, in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on ALTA/ACSM Land Title Survey prepared for JTL Capital, LLC by Steadman & Associates, Inc. dated October 3, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S06°00'05"W - 38.52 feet to a rebar; S76°30'04"E – 29.01 feet to an "X" in concrete; S24°20'15"E – 66.01 feet to a PK nail; S20°58'56"W – 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S49°48'51"E – 22.06 feet to a PK nail; S27°51'15"E – 103.05 feet to a rebar; S28°34'06"E – 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S48°47'02"E – 34.53 feet to a rebar; S28°43'30"E – 131.12 feet to a rebar; S21°53'30"E – 101.50 feet to a rebar; S31°13'04"E – 149.11 feet to a rebar; S31°45'00"E – 19.48 feet to a rebar; S40°50'56"E – 84.66 feet to a PK nail; S40°56'04"E – 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S42°18'17"W – 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N59°24'55"W – 186.52 feet to a rebar; N64°17'05"W – 51.76 feet to an open top; S03°25'35"E – 104.94 feet to an open top; thence turning and running along Brookwood Court S85°00'43"W – 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N04°44'57"W – 120.00 feet to an open top; N53°20'55"W – 66.63 feet to an open top; S63°51'41"W – 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N26°02'32"W – 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N26°28'42"W – 65.03 feet to a rebar; N26°29'46"W – 64.72 feet to a calculated point in concrete; S63°33'42"W – 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N25°26'03"W – 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N52°37'33"W – 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S87°56'06"W – 76.67 feet to a rebar; S63°34'32"W – 250.47 feet to an open top; thence turning and running along McArthur Avenue N26°18'28"W – 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S63°46'47"W – 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N26°38'48"W – 102.35 feet to an open top; N26°31'13"W – 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder and Nancy P. Reeder N25°58'44"W – 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder and Nancy P. Reeder and long properties of C. H. Reeder and Nancy P. Reeder, Robert G. Cook and Robin D. Anderon,

George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz and Martha Diaz N26°15'04"W – 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N63°38'18"E – 52.16 feet to an open top; N76°42'51"W – 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N25°58'03"W – 103.51 feet to a rebar; thence turning and continuing along property of Lorraine M. Tablas S63°34'24"W – 53.87 feet to a rebar; thence turning and running along property of Bruckner Associates A Partnership as follows: N26°38'33"W – 87.35 feet to a rebar; S68°31'11"W – 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A.S.C. Partnership N26°31'33"W – 79.43 feet to an open top; thence turning and running along Forest Drive N68°21'02"E – 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S09°42'05"E – 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S35°10'53"E – 82.09 feet to a PK nail; S58°09'49"E – 36.04 feet to a rebar; N44°44'46"E – 164.97 feet to a magnetic nail; N36°34'36"W – 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N68°16'41"E – 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N81°57'26"E – 44.52 feet to a rebar; N09°27'43"E – 23.49 feet to an "X" cut in concrete; N69°11'44"E – 140.34 feet to a rebar; S46°09'12"E – 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N60°56'39"E – 54.54 feet to a rebar; N78°48'08"E – 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S16°47'13"E – 165.96 feet to a rebar; N77°22'02"E – 169.17 feet to the Point of Beginning.

EXHIBIT 4

McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW
www.mccabetrotter.com

RECEIVED
BY:

January 20, 2015

VIA EMAIL & U.S. MAIL
Edward James Coyne, III
Williams Mullen
300 North Third Street, Suite 420
Wilmington, NC 28401

VIA EMAIL & U.S. MAIL
D. Cravens Ravenel
Jon Asbill
Baker, Ravenel & Bender
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Columbia, SC 29202

VIA EMAIL & U.S. MAIL
R. Trippett Boineau, III
MGC Insurance Defense
1320 Main Street, 10th Flr.
Columbia, SC 29201

Re: Century Capital Group, LLC vs. Midtown Development Group, LLC, Richland Joint Venture Group, LLC, Windsor Richland Mall, L.P. and BRC Richland, LLC
C/A Number: 2014-CP-40-07037
Our File Number: 696.72

Dear Sirs:

As you are aware, my client, Century Capital Group, LLC ("Century") has recently been involved in litigation with Spirit, SPE Columbia, LLC concerning the alleged negligent maintenance and repairs provided pursuant to the Reciprocal Easement, Covenant Operation and Restriction Agreement Declaration ("REA") for Richland Mall. The REA is enclosed herewith as Exhibit 1. As you are aware, the REA establishes the rights and obligations of the owners of the Mall Parcels. Particularly as it relates to this litigation, the REA requires the owner of the Midtown Parcel to perform and pay for all maintenance and repairs to the Common Areas and to perform all maintenance and repairs to the HVAC system, roof system, and structural components of the Verizon Parcel until November 30, 2010. My client took title to the Midtown Parcel in February 2010, just nine months prior to the end of the maintenance obligations owed and coincidentally nine months prior to institution of the underlying litigation. The claims made against my client were settled with Spirit for One Million Four Hundred Fifty Thousand Dollars ($1,450,000.00). The settlement agreement with Spirit extinguishes Century's tort liability as well as its predecessors to Spirit. Settlement was reasonable, prudent and advisable under the circumstances.

Evidence during litigation established that the HVAC, roof, and structural components were negligently maintained and repaired during the time periods that your clients were

140 Stoneridge Drive, Suite 650
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PO Box 212069 Columbia, South Carolina 29221
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Mt. Pleasant, South Carolina
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON D.R. HORTON, INC. f/k/a C. RICHARD DOBSON BUILDERS, INC., Plaintiff, v. BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; and BUILDERS FIRSTSOURCE, INC., and JOSEPH NACCARI, Individually and d/b/a MASTER FRAMERS, Defendants. JOSEPH NACCARI, Individually, and d/b/a MASTER FRAMERS, Third-Party Plaintiff, v. JAIME ARREGUIN d/b/a MAYA CONSTRUCTION, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NO. 2010-CP-10-10355 **ORDER GRANTING DEFENDANTS BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, AND BUILDERS FIRSTSOURCE, INC. SUMMARY JUDGMENT**

FILED
2014 SEP -5 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before the Court on Defendants Builders FirstSource-Southeast Group, LLC, and Builders FirstSource, Inc.'s (hereinafter collectively "BFS") Second Motion for Summary Judgment. A hearing on this motion was held on August 13, 2014. Plaintiff D.R. Horton, Inc., f/k/a C. Richard Dobson Builders, Inc., ("DRH"), and Defendant BFS appeared at the hearing through their respective counsel. After considering the entire record in this matter, including all motions, memoranda of law, deposition testimony submitted by the parties, exhibits submitted by the parties, and the arguments of counsel, the Court finds that BFS should be, and

hereby is, GRANTED SUMMARY JUDGMENT.

I. FINDINGS OF FACT AND PROCEDURAL BACKGROUND

1. DRH was the general contractor for the construction of a single family residential home at 403 Milner Court, Charleston, South Carolina (the "Residence"). The Residence was constructed in 2001. BFS, as a subcontractor for DRH, provided and installed framing materials and windows at the Residence.

2. Prior to construction of the Residence, DRH and BFS entered into an Independent Contractor Agreement (the "Contract") that contains an indemnity agreement. The Contract was drafted by DRH.

3. In addition to acting as the general contractor, DRH also owned the Residence. DRH sold the Residence to Patricia Clark.

4. In 2008, Patricia Clark filed *Patricia Clark v. D.R. Horton, Inc.*, Case No. 2008-CP-08-1633, in the Circuit Court of Berkeley County, South Carolina (the "Homeowner's Suit"). The Homeowner's Suit alleged causes of action against DRH for negligence, breach of contract, breach of warranty, and violations of the South Carolina Unfair Trade Practices Act ("UTPA"). The complaint in the Homeowner's Suit alleged that the Residence was defective because of, among other things, improper installation of siding, improper installation of the exterior wall system, improper flashing, improper installation of a moisture barrier, improper water management system, improper installation of framing, improper installation of the concrete slab and driveway, improper installation of the roof and shingles, and improper installation of a gas hot water heater.

5. It is undisputed that some of the allegations in the complaint filed in the

Homeowner's Suit related to materials supplied and installed by BFS and other allegations in the complaint filed in the Homeowner's Suit were related to the work of others. BFS did not install the driveway, concrete slab, siding, roofing or hot water heater at the Residence.

6. While the parties disagree on whether DRH gave BFS oral notice of the Homeowner's Suit, it is undisputed that DRH did not provide BFS with any written notice or tender of defense for the Homeowner's Suit.

7. DRH filed a Motion to Compel Arbitration and to Stay the Homeowner's Suit and on April 1, 2009, the Berkeley County Circuit Court entered a consent Order Referring Claims to Arbitration whereby the Homeowner's Suit was referred to binding arbitration.

8. The Homeowner's Suit was arbitrated during a two day period on December 10th and 11th 2009. There is no transcript or other formal record of the evidence presented at the arbitration.

9. The parties to the Homeowner's Suit agreed to request an unreasoned arbitration award that would not contain findings of fact or conclusions of law. The arbitrator awarded Patricia Clark $150,000. Said award states that "Counsel for the parties have requested an Order containing a monetary award only." It does not indicate what amounts, if any, were awarded for specific defects. Nor does the award specify which of the causes of action asserted in the Homeowner's Suit were successful.

10. The record in this case indicates that DRH was represented by counsel at all times during the Homeowner's Suit and was advised by counsel that requesting an unreasoned arbitration award would make any future indemnity claim against BFS uncertain.

11. On February 26, 2010, the arbitration award was filed, confirmed and made a

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final judgment of the Berkeley County Circuit Court. (the "Judgment"). No party objected to the confirmation of the arbitration award.

12. On March 24, 2010, a Satisfaction of Judgment was entered in the Berkeley County Circuit Court indicating that DRH had satisfied the Judgment.

13. On December 17, 2010, DRH filed the instant action against BFS seeking contribution pursuant to S.C. Code Ann. § 15-38-10, et seq., and contractual indemnity. DRH alleges that BFS is responsible, in whole or in part, for the Judgment and for $155,717.05, in attorney's fees and costs associated with the defense of the Homeowner's Suit.

II. CONCLUSIONS OF LAW

A. BFS IS ENTITLED TO SUMMARY JUDGMENT ON DRH'S CLAIMS FOR CONTRIBUTION PURSUANT TO THE UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT, § 15-38-10, et seq.

14. The statutory right of contribution among joint tortfeasors is in derogation of the common law and thus the South Carolina Contribution Among Tortfeasors Act must be strictly construed. *G & P Trucking v. Parks Auto Sales Service & Salvage, Inc.*, 357 S.C. 82, 87 (Ct.App. 2003). "Moreover, in a suit in which contribution is sought from a joint tortfeasor, the claimant obviously must prove facts sufficient under the statutes and the common law . . . to establish a right of contribution between wrongdoers." *Id.*

15. Here, there is no basis in the record to find that DRH has sustained tort liability. The plaintiff in the Homeowner's Suit alleged causes of action for breach of contract, breach of warranty, negligence and violations of the UTPA. The parties to the Homeowner's Suit requested an award from the arbitrator that does not specify the legal basis for his award of damages.

16. In order for a party who has litigated a case to judgment to maintain an action as a joint tortfeasor that party must have first been adjudicated to have committed a tort. *See* S.C. Code Ann. § 15-38-40(B)("*Once the issue of liability has been resolved* . . . a defendant has the right to seek contribution . . ."); *See also Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403, 406 (2005)(No right of contribution against negligent employer because workers compensation laws prevent employer from being subject to tort liability). The record before the Court does not contain any finding of tort liability from the Homeowner's Suit and therefore DRH is not entitled to contribution. *See Jenkins v. Few*, 391 S.C. 209, 221 (Ct.App. 2010)("Because the verdict was a general verdict, it is impossible to determine how the jury allocated damages between civil conspiracy, conversion, and trespass to personal property. We will not speculate as to how the jury allocated damages.").

17. In addition to the absence of a finding of tort liability, there is no record evidence that the Judgment is attributable to defects in the materials supplied and installed by BFS. Because the arbitration award contains no findings of fact or conclusions of law, it is impossible for the Court to determine what defects the arbitrator found at the Residence.

18. Even if, somehow, DRH were able to establish its own tort liability, and that BFS's work was determined to be defective in the Homeowner's Suit, there is no way to determine what portion of the Judgment is related to said liability. BFS is not liable; jointly, severally, or otherwise, for defects in the work of other subcontractors employed by DRH at the Residence. Moreover, portions of the Judgment attributable to the work of others, and any portion of the Judgment attributable to BFS, are for different injuries to property, not "the same injury to . . . property." *See* S.C. Code Ann. § 15-38-20(A).

19. Any attempt to determine what portion of the Judgment is attributable to the joint negligence of BFS and DRH would be an exercise in impermissible guesswork. *See Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 70-71 (Ct.App. 1999)(refusing to allow contribution when "The settlement agreement does not place a specific value on any potential claim . . ." and the court "cannot, therefore, determine whether [the party seeking contribution] paid more than its pro rata share of liability . . ."). *See Also Jenkins v. Few*, 391 S.C. 209, 221 (Ct.App. 2010)(refusing to speculate as to how jury allocated damages among various causes of action when defendant "contributed to drafting and agreed to use a general verdict form that did not include a separate damages award for each cause of action.").

20. As stated by the *Vermeer* Court, "[i]n this case the lack of apportionment may work a hardship . . . but it is one which he could have avoided by a properly drawn" award. *Vermeer* 336 S.C. at 70. The record indicates that DRH, with the advice of counsel, made a strategic decision to agree to an unreasoned arbitration award. Having failed to obtain a finding of tort liability or findings regarding what portions of the Residence were ultimately determined to be defective, DRH cannot now maintain this action for contribution.

B. BFS IS ENTITLED TO SUMMARY JUDGMENT ON DRH'S CLAIM FOR CONTRACTUAL INDEMNITY.

i. There is no evidence that any portion of the Judgment is attributable to materials supplied and installed by BFS.

21. Because the arbitration award contains no findings of fact or conclusions of law, there is no evidence that the Judgment is attributable to property damage caused by defects in the materials supplied and installed by BFS. Based on the record before the Court, DRH, as the Plaintiff, cannot meet its burden of proving that a Judgment was entered against it because of

property damage caused by defects in the materials supplied and installed by BFS.

ii. There is no evidence in the record indicating what portions of the Judgment are attributable to the work of others.

22. Even if DRH could prove that the arbitrator concluded that defects in the materials supplied and installed by BFS caused property damage at the Residence, it is impossible to determine what portion of the Judgment is attributable to said property damage. Because the parties to the arbitration did not request an award with findings of fact or conclusions of law, there is no record before the Court to indicate what portion of the Judgment is attributable to the various distinct defects alleged in the Homeowner's Suit.

23. The Contract does not require BFS to indemnify DRH for judgments based on defects in the work of others. *See* Contract ¶ 11 (requiring indemnification for "(I) A BREACH OF THE WARRANTIES . . . PROVIDED HEREIN BY CONTRACTOR; (II) THE WORK PERFORMED . . . BY CONTRACTOR).

24. Applicable law does not permit BFS to indemnify DRH for judgments based on defects in the work of others. *See* S.C. Code Ann. § 32-2-10 (prohibiting agreements whereby subcontractor agrees to indemnify general contractor for general contractor's sole negligence or the negligence of its "independent contractors.").

iii. The Contract provides that BFS has the right to defend any suit implicating its contractual indemnity obligations.

25. The plain language of the indemnity agreement provides that BFS "AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD OWNER . . . FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS, OR OTHER LITIGATION. . . ." The parties plainly agreed that BFS, not DRH, would

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defend any lawsuit alleging property damage caused by BFS's work. The Contract not only obligates BFS to defend any suits alleging property damage associated with defects in its work, it also gives BFS the right to defend any such claims. The Contract does not provide that DRH can defend itself, control the defense, select the attorneys of its choice, provide no notice to BFS, and nonetheless require BFS to indemnify it.

26. It is undisputed that DRH did not give BFS written notice of the Homeowner's Suit and did not tender the defense of the Homeowner's Suit to BFS. Because DRH undertook the defense of the Homeowner's Suit without providing BFS an opportunity to defend said suit, DRH cannot pursue indemnity under the Contract.

iv. The Contract provides that BFS will receive written notice of any suit implicating its contractual indemnity obligations.

27. "As a rule of construction, the Court must consider the entire contract between the parties to determine the meaning of its provisions. That construction will be adopted which will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592 (1976). "A contract includes not only what is expressly stated but also what is necessarily to be implied from the language used . . ." *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 367 (1966).

28. Paragraph 19 of the Contract provides: "*Notices. All notices required pursuant to this Agreement or otherwise shall be in writing and shall be delivered to the respective business address of the Parties.*".

29. The indemnity provision in the Contract, upon which DRH relies in this case, provides that BFS will "protect" DRH against, and "defend" DRH from, allegations of property

damage caused by BFS's work. BFS cannot protect and defend DRH from lawsuits implicating BFS's work without being provided notice that a suit has been filed. Therefore, it is implied in the Contract that DRH will provide BFS with notice of any suit implicating its indemnity obligations. *See Commercial Credit Corp*, 247 S.C. at 367 ("In the absence of an express provision therefor, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made.").

30. Other portions of the Contract also demonstrate that the parties intended that BFS should get notice of homeowner lawsuits implicating BFS's indemnity obligations. Indeed, with reference to the factual scenario presented in this case, the Contract provides that BFS "agrees to participate in, and be bound by, any arbitration proceeding between [DRH] and any third party relating to the Work . . ." Contract ¶ 22. Clearly, BFS must be given notice of the third-party suit in order to "participate in" the arbitration.

v. The implied covenant of good faith and fair dealing requires DRH to provide BFS with notice of any suit implicating its indemnity obligations.

31. "There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G. J. Creel and Sons, Inc.*, 320 S.C. 274, 277 (1995). Here, good faith and fair dealing require DRH to notify BFS of any lawsuit which DRH contends implicates BFS's indemnity obligations. DRH's actions in litigating the Homeowner's Suit without notifying BFS, in failing to make any transcript of the arbitration hearing, and in failing to request an award with factual findings and legal conclusions, all violate the implied covenant of good faith and fair dealing and prohibit DRH from requiring BFS to indemnify it for any portion of the Judgment or defense costs.

vi. **DRH waived its right to contractual indemnification by failing to give BFS notice of the Homeowner's Suit and failing to request an award with factual findings and conclusions of law.**

32. "Waiver is an intentional relinquishment of a known right and may be implied from circumstances indicating an intent to waive. Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute a waiver." *Freeman v. McBee*, 280 S.C. 490, 493 (Ct.App. 1984).

33. Here, DRH's failure to give BFS notice of the Homeowner's Suit is inconsistent with its assertion of a right to indemnity. In fact, the record reveals that DRH was informed by counsel that it should provide BFS with notice of the Homeowner's Suit and that DRH declined to provide BFS notice.

34. Additionally, DRH intentionally relinquished its right to indemnity by failing to request an arbitration award containing findings of fact and conclusions of law. The record reveals that DRH made a strategic decision not to request findings of fact or conclusions of law with the express purpose of making it difficult to determine what was decided in the Homeowner's Suit. Additionally, the decision not to request a reasoned award was made after being advised by counsel that an unreasoned award would make any future case against BFS uncertain.

35. The record conclusively indicates that DRH knowingly waived its right to seek indemnity from BFS.

vii. **DRH is equitably estopped from seeking contractual indemnity.**

36. "Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to

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equity." *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 290 (Ct. App. 2012). "Silence, when it is intended, or when it has the effect of misleading a party, may operate as equitable estoppel." *Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority*, 311 S.C. 29, 33 (1993). "Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts." *Id.*

37. By DRH's own theory of this case, DRH had knowledge of a lawsuit alleging defects in BFS's work and implicating BFS's indemnity obligations. Rather than giving BFS written notice of the Homeowner's Suit, DRH remained silent. DRH's silence deprived BFS of the right to participate in discovery, to cross-examine witnesses at depositions, and to participate in the arbitration hearing. DRH is now equitably estopped from seeking indemnification from BFS.

viii. The indemnification clause in the Contract violates S.C. Code Ann. § 32-2-10.

38. In relevant part, the indemnity clause in the Contract provides that BFS will indemnify DRH for "ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, EVEN WHEN THE LOSS IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNITEE . . ."

39. The Contract purports to require BFS to indemnify DRH for DRH's own negligent acts or omissions "even when the loss is caused by the fault or negligence of" DRH. The clause violates S.C. Code Ann. § 32-2-10 and thus the "agreement" is "unenforceable." *See* S.C. Code Ann. § 32-2-10 ("a promise or agreement in connection with the . . . construction . . . of a building . . . purporting to indemnify the promisee, its independent contractors, agents,

equity." *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 290 (Ct. App. 2012). "Silence, when it is intended, or when it has the effect of misleading a party, may operate as equitable estoppel." *Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority*, 311 S.C. 29, 33 (1993). "Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts." *Id.*

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employees, or indemnitees against liability for damages arising out of . . . damage proximately caused by or resulting from the sole negligence of the promisee, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable.).

40. The only caveat to the above rule, that a promisor (BFS), may agree to indemnify the promisee (DRH), in connection with "liability for damages resulting from the negligence, in whole or in part, of the promisor," has no application to DRH's attempt to require BFS to indemnify it for "liability for damages resulting from the negligence" of DRH's other independent contractors. The indemnity agreement is unenforceable.

ix. Having failed to obtain findings of fact and conclusions of law in the Homeowner's Suit, DRH cannot litigate the issue of what was decided in the Homeowner's Suit in this action.1

41. DRH cannot litigate, in this action, the issue of what portion of a judgment entered in a previous action is attributable to property damage caused by materials supplied and installed by BFS. Principles of waiver, the requirement of proving damages to a reasonable certainty, and collateral estoppel prevent DRH from maintaining an independent action in order to apportion the Judgment.

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1 Significantly, even if DRH were able to present competent evidence that some particular portion of the Judgment is attributable to property damage caused by defects in work performed by BFS, BFS, as a non-party without notice, would not be bound to pay that amount. *See Robins v. First Federal Sav. Bank*, 294 S.C. 219, 223 (Ct. App. 1987)("absent party's interests can rarely be legally bound by principles of res judicata in proceedings to which he was not a party."). There is a well-established procedure whereby an indemnitee may bind a nonparty indemnitor to the findings made in a suit against the indemnitee by a third-party. *See Black v. Patel*, 353 S.C. 76, fn 2 (Ct. App. 2002)("Vouching in is a common law 'procedural device by which a defendant may give notice of suit to a third party who is liable over to the defendant on the subject-matter of the suit, so that the third party will be bound by the court's decision.' The device has been largely replaced by third-party practice."). *See also* S.C. Code Ann. § 36-2-607(5)(recognizing "the common law procedural device of 'vouching in' a seller who is answerable over to a buyer for a breach of warranty or other obligation on which the buyer is being sued." (Citing *Mauldin v. Milford*, 127 S.C. 508, (1923); *Newell Contracting Co. v. Blankenship*, 130 S.C. 131 (1924)). Because BFS was not "vouched in" to the Homeowner's Suit, even if DRH could prove what portion of the Judgment was awarded for defects in BFS's work, BFS could require DRH to prove, from scratch, the existence of defects in BFS's work and the amount of damage caused thereby. *See* 47 Am.Jur.3d Judgments § 606 ("The effect of the omission of such notice and opportunity is that the judgment is not binding on the person liable over, who has the right to litigate every essential fact necessary to support the judgment.").

42. "[A]n arbitration award is a final, binding award on the merits." *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 494 (Ct.App. 2003). "[A]n arbitration award is conclusive and binding . . . as to all matters submitted to the arbitrators." *Id.* at 494. As stated above, in this case the arbitration award was made a final judgment of the Berkeley County Circuit Court.

43. Having fully litigated the Homeowner's Suit, without requesting findings of fact, DRH has waived the right to make those findings of fact in this case. The failure to request findings of fact in the Homeowner's Suit constitutes a waiver of a judicial ruling on those omitted factual issues. *See Moore v. Moore*, 360 S.C. 241, 257 (Ct.App. 2004)("Without a special verdict form, we cannot speculate as to what portion of the award the jury attributed to lost profit as opposed to other tort damages."); *Armstrong v. Collins*, 366 S.C. 204, 227 (Ct.App. 2005)-("Because the verdict was a general verdict, we cannot now speculate as to how the jury allocated damages."). A litigant who has requested a ruling that does not include findings of fact cannot file a second independent action and ask a second trier of fact to determine what was decided by the first finder of fact.

44. "[I]n order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 570-571 (1971). Any attempt by a judge or jury in this action to determine what portion of the Judgment, if any, is attributable to property damage caused by products installed by BFS would be an exercise in rank guesswork and speculation.

45. Additionally, collateral estoppel prevents DRH from re-litigating issues decided

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in the Homeowner's Suit. In order to maintain its case, DRH must take the position that the issue of defects in BFS's work, and the amount of damage caused thereby, was actually litigated and decided in the Homeowner's Suit. "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc.* v. SCDOT, 385 S.C. 550, 554 (Ct.App. 2009); *See also Crosby v. Prysmian Communications Cables and Systems USA, LLC*, 397 S.C. 101, 111 (Ct.App. 2011)(giving preclusive effect to findings of Workers Compensation Commission in subsequent retaliatory discharge litigation). "The doctrine of collateral estoppel prevents the relitigation of *issues*, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Id.* at 556.

46. "As far back as 1982, our supreme court held the doctrine of collateral estoppel barred the plaintiff from relitigating an issue even though the defendant was not a party, or in privity with a party, to the initial action." *Id.* at 555. "[T]he identity of the parties, and their relationship to one another, is simply not a concern when deciding whether to apply the doctrine of collateral estoppel." *Id.*

47. Here, DRH necessarily contends that it has already litigated the issue of whether BFS's work was defective, and the damages caused thereby, in the Homeowner's Suit. DRH is collaterally estopped from litigating those issues anew in this case.

III. CONCLUSION

48. Pursuant to the Contract, and applicable law, DRH was required to give BFS notice of the Homeowner's Suit in order to trigger BFS's indemnity obligations. Further, DRH's

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complete failure to make any record of what was determined in the Homeowner's Suit precludes it from maintaining an action based on the Judgment. There is no basis in the Contract, or in any other applicable law, whereby BFS can be held responsible for portions of the Judgment or attorney's fees attributable to the fault of others. Furthermore, there is no evidence available whereby the Court can conclude what portion of the Judgment, if any, is attributable to property damage associated with the products installed by BFS. For all of the above reasons, BFS is hereby GRANTED SUMMARY JUDGMENT AS TO ALL OF DRH'S CLAIMS.

AND IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge, Ninth Judicial Circuit

August 20, 2014

Charleston, South Carolina

EXHIBIT 6

PURCHASE AND SALE AGREEMENT

RICHLAND JOINT VENTURE GROUP, LLC ("SELLER")
AND
W. B. WALKUP ("BUYER")

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PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of the 22nd day of December 2009 by and between **RICHLAND JOINT VENTURE GROUP, LLC**, a Florida limited liability company ("Seller"), and **W. B. WALKUP** ("Buyer").

RECITALS:

A. Seller is the owner of certain real property located at 3400 Forest Drive in the City of Forest Acres, Richland County, South Carolina, more particularly described as follows (the "Land"):

ALL THAT PROPERTY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO.

B. The Land is improved with a two-level retail mall and parking garage known as "Midtown Mall at Forest Acres" (the "Mall") containing multiple retail store units (the "Units"), some of which have been rented to tenants by Seller.

C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Land and permanent improvements thereon (collectively the "Real Estate"), together with the following rights, interests, and personal property:

1. All easements, rights-of-way, licenses, interests, rights, and appurtenances of any kind owned by Seller appertaining to the Land.

2. All fixtures, furniture, furnishings, equipment, and other personal property (collectively the "Personalty") owned by Seller and located within the Mall (specifically excluding personal property owned by tenants of the Units).

3. Seller's interest in all leases and other tenancy agreements between Seller and tenants of the Units (individually a "Tenant Agreement" and collectively the "Tenant Agreements") in effect at the time of closing, including all security deposits, if any, held by Seller pursuant to the Tenant Agreements.

4. Seller's interest in all maintenance, repair, service, and pest control agreements (including janitorial and landscaping agreements) and all other agreements pursuant to which services (other than property management services) or goods are provided to the Real Estate, to the extent the same are assignable by Seller and acceptable to Buyer (individually an "Operational Agreement" and collectively the "Operational Agreements").

5. All licenses, permits, and authorizations, if any, issued or granted to Seller by any governmental agency with respect to the Real Estate, to the extent the same are transferable or assignable (the "Licenses").

D. The Real Estate and the rights, interests, and personal property described in Recital C are collectively referred to herein as the "Property."

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, Seller hereby agrees to sell, and Buyer hereby agrees to purchase, the Property upon the following terms and conditions:

ARTICLE 1
PURCHASE PRICE

1.1 **Amount of Purchase Price.** The total purchase price of the Property is $4,429,000 (the "Purchase Price").

1.2 **Payment of Purchase Price.** The Purchase Price shall be paid by Buyer in U.S. funds as follows:

A. $100,000 shall be paid as an earnest money deposit on the effective date of this Agreement to Rogers Townsend & Thomas, PC ("Escrow Agent"), 220 Executive Center Drive, Columbia, South Carolina 29210.

B. $300,000.00 shall be paid to Escrow Agent as an additional earnest money deposit on January 25, 2010.

C. $4,029,000, representing the balance of the Purchase Price, shall be paid to the trust account of Escrow Agent at the time and place of closing and subject to the prorations and adjustments provided in Article 6.

ARTICLE 2
EARNEST MONEY DEPOSIT

2.1 **Escrow.** The earnest money deposits to be paid pursuant to Article 1.2. A and B are referred to collectively herein as the "Deposit." The Deposit shall be held in escrow by Escrow Agent in accordance with the terms of this Agreement. Escrow Agent will hold the Deposit in a non-interest bearing trust account.

2.2 **Delivery.** Subject to the provisions of Article 2.6, Escrow Agent will deliver the Deposit to Seller or to Buyer, as the case may be, under the following conditions:

A. To Seller at the closing.

B. To Seller upon receipt of written demand therefor stating that Buyer has defaulted in the performance of this Agreement and the facts and circumstances underlying such default; provided, however, that Escrow Agent shall not honor such demand until 10 business days after Escrow Agent shall have delivered a copy of such demand to Buyer, nor thereafter if Escrow Agent shall have received written notice of objection from Buyer in accordance with the provisions of Article 2.3.

C. To Buyer upon receipt of written demand therefor stating that Seller has defaulted in the performance of this Agreement and the facts and circumstances underlying such default; provided, however, that Escrow Agent shall not honor such demand until 10 business days after Escrow Agent has delivered a copy of such demand to Seller, nor thereafter if Escrow Agent shall have received written notice of objection from Seller in accordance with the provisions of Article 2.3.

D. To Buyer upon receipt of written demand therefor stating that this Agreement has been terminated in accordance with the provisions hereof and the facts and circumstances underlying the same; provided, however, that such demand shall be subject to any provision of this Agreement requiring payment to Seller of a portion of the Deposit in such circumstances and provided further that if such demand is made following the expiration of the Inspection Period (as defined in Article 3.1), Escrow Agent shall not honor such demand until 10 business days after Escrow Agent has delivered a copy of such demand to Seller, nor thereafter if Escrow Agent shall have received written notice of objection from Seller in accordance with the provisions of Article 2.3.

2.3 **Objections.** Upon the filing of a written demand for the Deposit by Buyer or Seller, pursuant to Article 2.2.B, C, or D, Escrow Agent shall promptly deliver a copy thereof to the other party. Except in the event this Agreement is terminated pursuant to Article 3.1, the other party shall have the right to object to the delivery of the Deposit by filing written notice of such objection with Escrow Agent at any time within 10 business days after notice of such demand, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, Escrow Agent shall promptly deliver a copy thereof to the party who filed the written demand.

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2.4 **Disputes.** If Escrow Agent shall have received the notice of objection provided for in Article 2.3 and within the time therein prescribed, Escrow Agent shall: (a) continue to hold the Deposit until Escrow Agent receives written notice from both Seller and Buyer directing the disbursement of the Deposit, in which case Escrow Agent shall then disburse the Deposit in accordance with such direction; or (b) take such affirmative steps as Escrow Agent may, in Escrow Agent's opinion, elect in order to terminate Escrow Agent's duties, including placing the Deposit in a court with appropriate jurisdiction and commencing an action for interpleader, the costs thereof to be borne by whichever of Seller or Buyer is determined to not be entitled to the Deposit.

2.5 **Exculpation.** Escrow Agent may act in reliance upon any writing, instrument, or signature which it, in good faith, believes to be genuine; may assume the validity and accuracy of any statements or assertions contained in any such writing or instrument; and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instruction delivered to it, nor as to the identity, authority, or rights of any person executing the same. Escrow Agent shall not be liable in connection with the performance of any duties imposed upon Escrow Agent by the provisions of this Agreement, except for Escrow Agent's gross negligence or willful default. Escrow Agent shall have no duties or responsibilities except those set forth herein. Escrow Agent shall not be bound by any modification of this Agreement, unless the same is in writing and signed by Buyer and Seller, and, if Escrow Agent's duties hereunder are affected, unless Escrow Agent shall have given prior written consent thereto. In the event Escrow Agent shall be uncertain as to Escrow Agent's duties or rights hereunder or shall receive instructions from Buyer or Seller which, in Escrow Agent's opinion, are in conflict with any of the provisions hereof, Escrow Agent shall or may take the steps described in Article 2.4(b). Escrow Agent shall not charge a fee for its services as an escrow agent.

2.6 **Deposit Credit.** If, under the terms of this Agreement, the Deposit is returned to Buyer for any reason other than the default of Seller, the amount of $100 (the "Deposit Credit") shall be deducted from the Deposit and shall be paid by Escrow Agent to Seller as consideration for Seller's having entered into this Agreement.

2.7 **Representation.** Seller acknowledges that Escrow Agent is the law firm that has represented Buyer in this transaction. Seller consents to such continued representation, including representation of Buyer in any disputes that might arise in connection with this Agreement, the transaction contemplated hereby, the Property, or matters related to any of the foregoing.

ARTICLE 3
INSPECTION

3.1 **Inspection Period.** Buyer shall have from the effective date of this Agreement until January 4, 2010 (the "Inspection Period"), to undertake an examination and review, at Buyer's sole expense, of such matters relating to the Property as Buyer may deem appropriate. If Buyer determines, as a result of such examination and review, that the Property is not acceptable for any reason in Buyer's sole and absolute discretion, Buyer may elect to terminate this Agreement upon delivery of notice of such election to Seller prior to the expiration of the Inspection Period. In the event such notice is given, Escrow Agent shall return the Deposit to Buyer (less the Deposit Credit, which shall be paid by Escrow Agent to Seller pursuant to Article 2.6), and all further rights and obligations of the parties under this Agreement shall terminate, except for any other provision hereof that survives termination of this Agreement.

3.2 **Condition of Property.** Seller has disclosed to Buyer that the Mall and its HVAC systems (collectively the "Facilities") have defects and require ongoing maintenance. The Property is being sold subject to such defects and in its "as-is, where-is" condition. Nevertheless, so that Buyer may assess the extent of existing defects and maintenance requirements, Buyer shall have from the effective date of this Agreement until January 29, 2010 (the "Facilities Review Period") to undertake, at Buyer's sole expense, an examination and review of the condition of the structural, functional, and environmental condition of the Facilities. If Buyer's examination and review of the Facilities discloses that (a) any portion of the

Facilities is subject to "Imminent Failure" (as defined herein) unless repairs costing in excess of $250,000 are made, or (b) hazardous substances or hazardous waste as defined by applicable Federal or State laws and regulations have been generated, released, discharged, stored, or deposited in or about the Mall, the remediation of which will cost in excess of $250,000, Buyer shall so notify Seller prior to the expiration of the Facilities Review Period. Such notice shall include a written estimate of the cost of such repairs or remediation from a licensed contractor or professional qualified under the laws of South Carolina to perform such repairs or remediation. If the notice pertains to repairs to the Facilities, the notice will also include a written certification from the contractor or professional that the portion of the Facilities for which the repairs are to be made is subject to imminent failure without such repairs and that no less costly maintenance alternative is reasonably available. If the notice pertains to remediation of hazardous substances or hazardous waste, the notice will also include a written certification from the contractor or professional that no less costly remediation alternative is reasonably available. Buyer acknowledges that the Mall roof develops leaks from time to time and that the repair of such leaks will be required on an ongoing basis. In no event shall any cost to repair or replace the roof be included in determining whether the cost of repairs exceeds $250,000, except to the extent the roof is subject to Imminent Failure. As used in this Article 3.2, Imminent Failure" means that a structural portion of the Facilities will, within a reasonable certainty, cease to bear its existing load within the next 6 months or that a mechanical or electrical portion of the Facilities will, within a reasonable certainty, become inoperable within the next 90 days. If Buyer delivers notice to Seller pursuant to the foregoing provisions of this Article 3.2, then Seller shall have the option in its sole and absolute discretion either to: (i) credit to Buyer at closing the amount by which the repairs or remediation cost estimate exceeds $250,000, or (ii) notify Buyer at any time prior to closing that Seller is unwilling to grant such credit. If Seller notifies Buyer that Seller is unwilling to grant such credit, then Buyer shall have the option in Buyer's sole and absolute discretion either to: (i) elect to accept the Property subject to the conditions to which such repairs or remediation pertains, or (ii) elect to terminate this Agreement. If Buyer elects to terminate this Agreement, Escrow Agent shall return the Deposit to Buyer (less the Deposit Credit, which shall be paid by Escrow Agent to Seller pursuant to Article 2.6), and all further rights and obligations of the parties under this Agreement shall terminate, except for any other provision hereof that survives termination of this Agreement.

3.3 **Buyer's Access to Property**. During the Facilities Review Period, Buyer and Buyer's representatives shall have reasonable access to the Property for the purpose of conducting surveys; architectural, engineering, building, and environmental inspections and tests; and any other inspections, studies, or tests reasonably required by Buyer, all at Buyer's sole expense. If any inspection or test disturbs the Property, Buyer will (at its sole expense) restore the Property as soon as reasonably possible to the same condition as existed prior to any such inspection or test. Buyer shall indemnify Seller against all liability, loss, or expense which may result from Buyer's inspections, studies, or tests of the Property, excepting, however, any liability, loss, or expense caused by Seller's negligence or intentional conduct.

3.4 **Buyer's Access to Records**. During the Facilities Review Period, Seller shall allow Buyer and Buyer's representatives, on reasonable advance notice and during normal business hours, to have access to Seller's records relating to the Property for the purpose of inspecting and (at Buyer's expense) copying the same, including the Tenant Agreements; the Operational Agreements; the Licenses; tenant rent roll for the Property showing current occupancies, rentals, security deposits, advance rents, and Unit numbers (the "Rent Roll"); current income and expense statements for the Property; building plans and specifications; insurance policies; surveys and title policies; and records, if any, relating to the environmental condition of the Property.

3.5 **Rent Roll**.Seller shall furnish a current Rent Roll to Buyer on or before December 31, 2009. At closing, Seller shall furnish a revised Rent Roll to Buyer dated as of the Closing Date.

3.6 **Financial Statements**. Not later than December 20, 2009, Buyer shall furnish to Seller financial statements evidencing Buyer's current income, assets and liabilities and demonstrating a net worth of at least $15 million.

ARTICLE 4
OPERATIONS AND RISK OF LOSS

4.1 Property. Prior to closing, Seller shall neither take nor permit any action without the consent of Buyer (other than actions by Buyer or Seller authorized under this Agreement, actions required by governmental authorities, or actions otherwise beyond the control of Seller) that would in any material respect modify any exceptions to title or alter the condition or zoning of the Property. Prior to closing, Seller shall use, operate, maintain, and repair the Real Estate and the Personalty in a commercially reasonable manner.

4.2 Business Operations. During the pendency of this Agreement, Seller will perform its obligations under the Tenant Agreements, the Operational Agreements, and other agreements that may affect the Property or any part thereof and will keep the financial accounts and records of the Property in a commercially prudent manner in accordance with reasonable business practices.

4.3 Operational Agreements. During the pendency of this Agreement, Seller will not enter into any new Operational Agreement or modify any existing Operational Agreement that will be an obligation affecting the Property or any part thereof subsequent to the closing without Buyer's prior written consent; provided, however, that Buyer's consent to the foregoing shall not be required if such new or modified Operational Agreement is on commercially reasonable market terms and conditions and cancelable on not more than 30 days prior written notice without payment of penalty or premium.

4.4 Leasing Arrangements. During the pendency of this Agreement, Seller will not enter into any new Tenant Agreement or modify any existing Tenant Agreement that will be an obligation affecting the Property or any part thereof subsequent to the closing without Buyer's prior written consent.

4.5 Damage. Risk of loss prior to closing shall be borne by Seller. In the event of any material damage or destruction to the Property or any portion thereof prior to closing, Buyer may, at Buyer's option, either: (a) terminate this Agreement, whereupon Escrow Agent shall return the Deposit to Buyer (less the Deposit Credit, which shall be paid by Escrow Agent to Seller pursuant to Article 2.6), and all further rights and obligations of the parties under this Agreement shall terminate, except for any other provision hereof that survives termination of this Agreement; or (b) proceed to close under this Agreement, without any abatement of the Purchase Price.

4.6 Condemnation. In the event any proceedings in eminent domain to take all or any part of the Property are instituted by any body having the power of eminent domain prior to the closing, Buyer may, at Buyer's option, either: (a) terminate this Agreement, whereupon Escrow Agent shall return the Deposit to Buyer (less the Deposit Credit, which shall be paid by Escrow Agent to Seller pursuant to Article 2.6), and all further rights and obligations of the parties under this Agreement shall terminate, except for any other provision hereof that survives termination of this Agreement; or (b) proceed to close under this Agreement, without any abatement of the Purchase Price.

ARTICLE 5
CLOSING

5.1 Closing Date and Place. Closing shall be held on February 15, 2010, or on such earlier date as Buyer may elect, provided such date is a business day and Buyer gives Seller at least 10 days notice of such election (the "Closing Date"). Closing shall be held at the offices of Escrow Agent or at such offices in Columbia, South Carolina, as Seller may designate.

5.2 Seller's Deliveries at Closing. At the closing, Seller shall deliver the following:

A. Deed. A limited warranty deed executed and acknowledged by Seller, conveying to Buyer marketable fee simple title to the Real Estate, subject only to applicable real estate taxes and assessments for the year of closing and subsequent years; governmental regulations; and covenants, restrictions, reservations, and easements of record.

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B. Affidavit of Consideration. An affidavit executed by an authorized representative of Seller satisfying the requirements of Section 12-24-70, South Carolina Code of Laws.

C. Withholding Affidavit. A nonresident seller's withholding affidavit executed by an authorized representative of Seller satisfying the requirements of Section 12-8-580, South Carolina Code of Laws.

D. Assignment and Assumption of Tenant Agreements. An Assignment and Assumption of Tenant Agreements substantially in the form of Exhibit "B" attached hereto (the "Assignment"), executed by Seller, together with all originals of written Tenant Agreements in effect as of closing together with all exhibits thereto.

E. Bill of Sale. An absolute bill of sale executed and acknowledged by Seller, conveying to Buyer the Personalty.

F. Assignment of Intangibles. An assignment executed and acknowledged by Seller, assigning, without recourse and with no warranty of any kind, Seller's interest in the Operational Agreements and the Licenses, including any applicable warranties.

G. Rent Roll Certificate. A certificate executed by Seller certifying to the accuracy of the information contained in a revised Rent Roll which shall be attached thereto and dated as of the Closing Date.

H. Closing Statement. A closing statement executed by Seller accounting for the amounts charged and credited to Seller in connection with the transaction contemplated by this Agreement.

I. Transfer of Majority of Assets. An affidavit stating that the transfer of the Property is less than a majority of Seller's assets or in lieu thereof a Certificate of Tax Compliance from the South Carolina Department of Revenue reflecting that all taxes have been paid through the most recent reporting period.

J. Title Affidavit. An affidavit executed by an authorized representative of Seller satisfying the requirements of the Foreign Investment in Real Property Tax Act and establishing facts sufficient to permit the issuance of a title insurance policy to Buyer without exception for construction liens, adverse matters recorded between the effective date of the Title Commitment (as defined in Article 9) and the time of recording of the deed, and rights of persons in possession other than tenants under the Tenant Agreements,

K. Other Documents. Such other documents executed by Seller as may be reasonably required to consummate the transaction contemplated by this Agreement.

5.3 Buyer's Deliveries at Closing. At the closing, Buyer shall deliver the following:

A. Purchase Price. The Purchase Price (less the Deposit, which will be applied at closing to the Purchase Price), plus or minus applicable prorations and adjustments, payable by Buyer by cashier's check or wire transfer to the trust account of Escrow Agent.

B. Assignment and Assumption of Tenant Agreements. The Assignment, executed by Buyer.

C. Closing Statement. A closing statement executed by Buyer accounting for the amounts charged and credited to Buyer in connection with the transaction contemplated by this Agreement.

D. Other Documents. Such other documents executed by Buyer as may be reasonably required to consummate the transaction contemplated by this Agreement.

6.4 **Possession.** Seller shall deliver possession of the Property to Buyer at the closing, subject to the rights of tenants under the Tenant Agreements.

5.5 **1031 Exchange.** Seller is aware that Buyer may perform an IRC Section 1031 tax deferred exchange. Buyer requests Seller's cooperation in such an exchange, if necessary, and agrees to hold Seller harmless from any and all claims, costs, and liabilities resulting from such an exchange. Seller shall not be required to take title to any other property in connection with the exchange, and Seller shall not be required to assume any liability or incur any expense (other than Seller's liabilities and expenses under this Agreement) in connection with the exchange.

ARTICLE 6
PRORATIONS AND EXPENSES

6.1 **Taxes and Assessments.** General real and personal property taxes and assessments imposed by governmental authority, and any assessments by private covenant, constituting a lien or charge on the Property (the "Real Estate Taxes") shall be prorated as of the Closing Date. If the current year tax amount is not then available, the taxes shall be prorated based upon the previous year's tax bill, adjusted in accordance with known changes, in which event the taxes shall be reprorated and readjusted at the request of either party once the tax bill for the year of closing is received. Buyer shall pay at closing the 2009 Real Estate Taxes. Seller shall credit Buyer at closing the sum of $248.63 to be applied to the 2009 Real Estate Taxes. The provisions of this Article 6.1 shall survive the closing.

6.2 **Rent.** All rent and other income under the Tenant Agreements shall be prorated as of the Closing Date. All advance payments of rent under the Tenant Agreements for periods beyond the month of closing, if any, shall be transferred or credited to Buyer at closing. If any rent is more than 10 days delinquent as of the Closing Date, no proration with respect thereto shall be made at closing. Buyer shall have no obligation to take any action to collect such delinquent rent, but the first rent payments received by Buyer within 90 days after closing from each tenant whose rent was delinquent by not more than 30 days as of closing shall be applied to the delinquency and the prorated portion thereof belonging to Seller shall be remitted by Buyer to Seller within 15 days after receipt. All other rent payments received by Buyer after closing shall belong solely to Buyer. Seller shall have the right to seek collection of any rents delinquent for any period prior to the closing for which Seller does not receive payment from Buyer and the right to file suit for the same so long as it does not disturb any tenant's possession of a Unit. Seller shall have the right to inspect the records of the Property to verify that Seller has received all delinquent rent payments due Seller, upon 10 days request to Buyer and for a period not to exceed 120 days from closing. The provisions of this Article 6.2 shall survive the closing.

6.3 **Operating Costs.** Charges pertaining to the Operational Agreements, insurance, and utilities covering periods both before and after the closing shall be prorated as of the Closing Date. Buyer shall not be obligated, however, to assume any existing insurance policy pertaining to the Property. If any utility deposits are transferred to Buyer, Seller shall receive a credit at closing for the amount of such deposits. Otherwise, Buyer shall make arrangements for its own deposits and Seller shall make arrangements for the return of its deposits.

6.4 **Tenant Deposits.** All tenant security deposits, if any, under the Tenant Agreements shall be transferred or credited to Buyer at closing. At closing, Buyer shall assume Seller's obligations related to tenant security deposits, but only to the extent they are properly credited or transferred to Buyer. Seller shall indemnify Buyer against any claims, losses, damages, or liabilities that may be asserted against or incurred by Buyer as a result of any failure of Seller to transfer or credit any tenant security deposit to Buyer. Buyer shall indemnify Seller against any claims, losses, damages, or liabilities that may be asserted against or incurred by Seller as a result of any default by Buyer related to tenant security deposits which have been transferred or credited to Buyer. The provisions of this Article 6.4 shall survive the closing.

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6.5 Closing Expenses. Seller shall pay document taxes on the deed. Buyer shall bear the cost of recording the deed. Seller shall pay the cost of recording any other documents or instruments required in connection with the transfer of the Property from Seller to Buyer. Buyer shall pay any costs incurred at Buyer's request in connection with its purchase of the Property, including costs incurred in connection with any mortgage loan procured by Buyer. Each party shall be responsible for paying its own attorneys' fees.

6.6 Commissions. Each party represents to the other that it has dealt with no real estate agent or broker in connection with the transaction contemplated by this Agreement other than Marcus & Millichap Real Estate Investment Services ("Marcus"), R. Leon Jones Realty ("Jones"), and Don E. Taylor Realty Co. ("Taylor") and their respective salespersons. Marcus and Jones are the agents of Seller. Taylor is the agent of Buyer or a transaction broker. At closing, Buyer shall pay Marcus and Jones a commission in the total amount of $183,750, of which $118,125 shall be paid to Marcus and $65,625 shall be paid to Jones. In addition, Buyer shall be solely responsible for payment of any commission owing to Taylor. In no event shall Marcus, Jones, or Taylor receive a commission unless and until the transaction contemplated hereby is closed as provided herein. In the event any claim arises for real estate brokerage commissions, fees, or other compensation in connection with this transaction in favor of any broker, agent, salesperson, or finder other than Marcus, Jones, or Taylor, the party causing such claim, or through whom such claim is made, shall indemnify the other party against any loss, damage, or liability which the other party suffers as a result of such claim. The provisions of this Article 6.6 shall survive the closing.

6.7 Oberlin Anthony. The Real Estate is subject to a mortgage recorded in the Office of the Register of Deeds for Richland County, South Carolina (the "Mortgage"), given by Seller to Oberlin Anthony, LLC, a North Carolina limited liability company ("Oberlin Anthony), to secure a promissory note dated July 10, 2009, in the principal amount of $260,000 given by Seller to Oberlin Anthony. Seller has disputed payment of the promissory note based on offsetting amounts due from Oberlin Anthony to Seller for past sums paid by Seller on Oberlin Anthony's behalf, and Oberlin Anthony has filed suit to foreclose the Mortgage (Case No.2009CP4008187, Richland County Court of Common Pleas). At closing, Buyer shall pay Oberlin Anthony the sum of $260,000 to satisfy the Mortgage and dismiss the foreclosure suit. In the event any additional amount is required to satisfy the Mortgage and dismiss the foreclosure suit, Seller shall pay such additional amount at closing; provided, however, Buyer's obligation to pay Oberlin Anthony, and to close on the Property, shall be contingent upon the receipt of an executed stipulation of dismissal, with prejudice, of the foreclosure action at closing together with a letter from Oberlin Anthony's counsel setting forth the amount necessary to discharge the action and authorizing filing of the stipulation of dismissal with the Richland County Clerk of Court upon payment of such amount. Notwithstanding any provision of this Agreement to the contrary, the Property shall not be deemed to include any right or claim of Seller against Oberlin Anthony for past sums paid by Seller on Oberlin Anthony's behalf, all such rights and claims being expressly reserved to Seller.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties. As a material inducement to Buyer to execute this Agreement and consummate the purchase of the Property, Seller represents and warrants to Buyer that:

A. Organization and Authority. Seller has been duly organized and is validly existing as a limited liability company under the laws of the State of Florida. Seller has the full right and authority, and has obtained all required consents, to enter into this Agreement and to consummate the sale of the Property. This Agreement and all of the documents to be delivered by Seller at the closing have been and will be authorized and properly executed and delivered by Seller and are and will constitute the valid and binding obligations of Seller.

B. Conflicts and Pending Actions or Proceedings. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

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C. Obligations. As of the closing, no bills for labor, services, or materials furnished to the Property which Seller is required to pay shall remain unpaid.

D. Contingent Liabilities. Except for Seller's contractual obligations under the Tenant Agreements and the Operational Agreements, to Seller's knowledge there are no contingent liabilities of the Property for which Buyer would be liable following closing.

E. Environmental. Except as otherwise disclosed in the Phase II Environmental Site Assessment for the Property dated April 27, 2005, prepared by Land America Assessment Corporation (Project Number 05-26282.1), to Seller's knowledge, there has been no "release" of a Hazardous Substance on or from the Real Estate, or any part thereof, in violation of Environmental Laws, by Seller or other party acting at the direction or with the consent of Seller. Seller has not received written notification that it is a potentially responsible party under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as a result of acts or omissions on or in any manner affecting the Real Estate. Seller has not received written notification from any state or local government under any similar provisions of state or local law. For purposes of this Agreement, the term "Hazardous Substance" shall mean any substance identified in Section 101(14) of CERCLA, petroleum (including crude oil or any fraction thereof), polychlorinated biphenyls or asbestos, and the term "release" shall have the meaning given to such term in Section 101(22) of CERCLA. The term "Environmental Laws" shall include the Clean Air Act; the Clean Water Act and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act; the Marine Protection, Research, and Sanctuaries Act; the National Environmental Policy Act; the Noise Control Act; the Occupational Safety and Health Act; the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act; CERCLA, as amended by the Superfund Amendments and Reauthorization Act, and the Emergency Planning and Community Right-to-Know Act; the Toxic Substance Control Act; and the Atomic Energy Act, all as may have been amended as of the date of this Agreement, together with their implementing regulations and guidelines as of the date of this Agreement. The term "Environmental Laws" shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances that are equivalent or similar to the Federal laws recited above, or that purport to regulate Hazardous Substances.

F. Withholding Obligation. Seller's sale of the Property is not subject to any Federal, state, or local withholding obligation of Buyer under the tax laws applicable to Seller or the Property.

G. Bankruptcy. Seller is solvent and has not made a general assignment for the benefit of creditors or been adjudicated a bankrupt or insolvent. No receiver, liquidator, or trustee for any of Seller's properties has been appointed. No petition has been filed by or against Seller for bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Act or any similar Federal or state statute. No proceeding has been instituted for the dissolution or liquidation of Seller.

H. No Condemnation. Seller has not received any written notice of, nor to Seller's knowledge is there currently existing, any pending or contemplated condemnation, eminent domain or similar proceeding with respect to all or any portion of the Property.

I. Tenants. To Seller's knowledge, no person or other entity has any right to occupy any portion of the Real Estate except tenants under the Tenant Agreements.

J. Zoning. To Seller's knowledge, the Property currently meets all applicable zoning requirements in effect for its present use(s).

K. Utilities. To Seller's knowledge, the Property has available utilities sufficient for the operation of the Property, including water, sewer, electric and telephone.

L. Permits. Seller has all permits necessary for operation of the Property. Such permits are in full force and effect and, to Seller's knowledge, are assumable by Buyer.

7.2 Buyer's Representations and Warranties. As a material inducement to Seller to execute this Agreement and consummate this transaction, Buyer represents and warrants to Seller that:

A. Conflicts and Pending Action. There is no agreement to which Buyer is a party or, to Buyer's knowledge, binding on Buyer which is in conflict with this Agreement. There is no action or proceeding pending or, to Buyer's knowledge, threatened against Buyer which challenges or impairs Buyer's ability to execute or perform Buyer's obligations under this Agreement.

B. Bankruptcy. Buyer is solvent and has not made a general assignment for the benefit of creditors or been adjudicated a bankrupt or insolvent. No receiver, liquidator, or trustee for any of Buyer's properties has been appointed. No petition has been filed by or against Buyer for bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Act or any similar Federal or state statute.

7.3 Limitations. Except as and to the extent expressly provided to the contrary in this Agreement: (a) Seller makes and has made no representation or warranty, express or implied, concerning any portion of the Property, its condition, the use to which it may be put, its suitability for any purpose, any environmental matters, or any other thing or matter directly or indirectly related to the Property; (b) Buyer is responsible for determining that the condition of the Property is satisfactory to Buyer; (c) Buyer shall purchase and accept every portion of the Property in its "as is, where is" condition without requiring any action, expense, or other thing or matter on the part of Seller to be paid or performed and, upon acceptance of the deed at closing, Buyer shall be conclusively deemed to have accepted the Property in its "as is, where is" condition; (d) Seller makes and has made no representation or warranty, express or implied, as to the reliability or accuracy of any information or reports provided to Buyer which are or were produced by a third party, it being expressly understood that verification of the accuracy of such information or reports is the responsibility of Buyer; and (e) **SELLER DISCLAIMS ANY WARRANTIES WITH RESPECT TO THE PROPERTY, INCLUDING ANY COMMON LAW IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR HABITABILITY.**

7.4 Nonrecourse; Survival. The representations and warranties set forth in Article 7.1 and Article 7.2 shall survive closing for a period of one year, and any action brought after such one-year period relating to such representations and warranties shall be barred. Except for representations and warranties of Seller set forth in Article 7.1, and unless otherwise noted herein, none of Seller's representations, warranties, covenants, or agreements shall survive closing; all of the same shall merge into the deed to be given by Seller; and any action brought by Buyer after closing related thereto shall be barred. If, prior to closing, Buyer learns of any breach or nonperformance of any representation, warranty, covenant, or agreement expressly provided herein to survive closing, Buyer shall promptly notify Seller thereof, and such representation, warranty, covenant, or agreement shall not survive closing (whether or not Buyer notifies Seller thereof) but, rather, shall merge into the deed to be given by Seller, it being the intention of the parties that no breach or nonperformance of which Buyer has knowledge prior to closing shall survive closing should Buyer elect to close notwithstanding knowledge of such breach or nonperformance.

7.5 Interpretation. For purposes of this Article 7, the words "Seller's knowledge" shall mean only that information that is presently known by Robert J. Mason ("Mason"), president of Seller's manager, Mason Richland, Inc., a Florida corporation, without additional investigation or inquiry. For purposes of this Article 7, references to notices or notifications received by Seller shall mean only notices received by Mason, and shall not include notices received by any employees, agents, contractors, or licensees of Seller that are otherwise unknown to Mason.

7.6 Conditions to Closing. The obligation of Seller to close this transaction is conditioned upon Buyer's representations and warranties under Article 7.2 being true and correct in all material respects as of the date of closing. The obligation of Buyer to close this transaction is conditioned upon Seller's representations and warranties under Article 7.1 being true and correct in all material respects as of the date of closing.

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ARTICLE 8
DEFAULT

8.1 Default by Buyer. If Buyer should fail to close this transaction for any reason other than (a) Seller's default, (b) failure of a condition precedent to Buyer's obligation to close, or (c) the exercise by Buyer of an express right of termination granted herein, Seller shall be entitled, as its sole remedy hereunder, to terminate this Agreement and to receive and retain the Deposit as full liquidated damages for such default of Buyer, the parties hereto acknowledging that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Buyer's default and that the Deposit is a reasonable estimate of Seller's probable loss in the event of default by Buyer. Seller's retention of the Deposit is intended not as a penalty, but as full liquidated damages hereunder. The right to retain the Deposit as full liquidated damages is Seller's sole and exclusive remedy. Except to the extent otherwise expressly stated herein, Seller hereby waives any right to sue for specific performance of this Agreement or to sue for damages in any action at law on account of a breach of Buyer's obligations under this Agreement.

8.2 Default by Seller. If Seller defaults in its obligations hereunder and as a result thereof closing of the sale contemplated hereby does not occur, Buyer shall be entitled, on demand, to a return of the Deposit. Buyer shall also have the right to seek specific performance of this Agreement against Seller in the event that Seller fails or refuses to perform any covenant or agreement of Seller hereunder. Buyer waives any right to sue for damages in any action at law on account of a breach of Seller's obligations under this Agreement.

8.3 Limitations on Remedies. The limitations on the parties' remedies set forth in Articles 8.1 and 8.2, respectively, shall apply only if closing of the transaction contemplated by this Agreement does not occur. Subject to the provisions of Article 7.4, in the event of a breach by either party of a representation, warranty, covenant, or agreement surviving closing, the other party shall be entitled to pursue after closing any remedy allowed by South Carolina law for such breach.

ARTICLE 9
TITLE INSURANCE

Within 10 days after the effective date of this Agreement, Buyer shall obtain: (a) a commitment for owner's title insurance (the "Title Commitment") relating to the Real Estate for the full amount of the Purchase Price. If Buyer does not give notice to Seller of any objections to the conditions and exceptions set forth in the Title Commitment within 15 days after the effective date of this Agreement, then the Title Commitment shall be deemed acceptable to Buyer, and Buyer shall accept title to the Property subject to such covenants, restrictions, easements, and reservations as may be set forth in the Title Commitment. In the event Buyer gives notice of objections to the conditions and exceptions set forth in the Title Commitment within 15 days after the effective date of this Agreement, then Seller shall have the option in its sole and absolute discretion either to: (a) satisfy such objections on or before the closing date, or (b) notify Buyer at any time within 25 days after the effective date of this Agreement that Seller is unable or unwilling to satisfy such objections. If Seller gives such notice to Buyer, then Buyer shall have the option in Buyer's sole and absolute discretion either to: (i) elect to accept title to the Property subject to the matters to which Buyer has made objection, or (ii) elect to terminate this Agreement by delivery to Seller prior to the expiration of the Facilities Review Period of notice of such election. If Buyer elects to terminate this Agreement, Escrow Agent shall return the Deposit to Buyer (less the Deposit Credit, which shall be paid by Escrow Agent to Seller pursuant to Article 2.6), and all further rights and obligations of the parties under this Agreement shall terminate, except for any other provision hereof that survives termination of this Agreement.

ARTICLE 10
MISCELLANEOUS

10.1 Parties Bound. Buyer may not assign this Agreement without the prior written consent of Seller, and any such prohibited assignment shall be void; provided, however, that Buyer may, without the prior written consent of Seller, assign this Agreement at or before the closing to any entity in which Buyer

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holds an ownership interest. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

10.2 Headings. The Article headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

10.3 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. Except to the extent provided otherwise herein, the failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

10.4 Governing Law. This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of South Carolina.

10.5 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary.

10.6 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings relating to the Property. All prior agreements are merged into this Agreement, and all representations and warranties, whether oral or written, are hereby disclaimed and disavowed unless expressly set forth in this Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

10.7 Execution in Counterparts. This Agreement may contain more than one counterpart of the signature page, and this Agreement may be executed by the affixing of the parties' signatures to one or more of such counterpart signature pages; all such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signatories have signed a single signature page.

10.8 Time. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.

10.9 Attorneys' Fees. In any proceeding to construe or enforce this Agreement, the losing party shall pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees for trial and appellate proceedings, expended or incurred in connection therewith.

10.10 Indemnification. Any obligation contained herein to indemnify a party shall include indemnification against any attorneys' fees incurred by such party in connection with trial or appellate proceedings.

10.11 Construction. The parties acknowledge that the parties and their counsel have participated in the drafting of this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto. Whenever required by the context, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. When the word "including" (or some derivation thereof, such as "includes") is used in this Agreement to refer to something that, in that context, may be part of a larger group of similar items, the reference is without limitation, and it should be interpreted as if followed by "but not limited to," "without limitation," or appropriate equivalent language for the context.

10.12 Recording. This Agreement shall not be recorded in any public records.

10.13 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Seller:	Richland Joint Venture Group, LLC 211 Powerpoint Lane Lexington, South Carolina 29072 Attn: Robert J. Mason Telephone: (941) 224-1072 Email: RmasonIES@aol.com
with a copy to:	Williams, Parker, Harrison, Dietz & Getzen 200 South Orange Avenue Sarasota, Florida 34236 Attn: J. Michael Hartenstine, Esquire Telephone: (941) 329-6610 Fax: (941) 552-7122
If to Buyer:	W. B. Walkup 142 Atrium Way Columbia, South Carolina 29204 Telephone: (803) 462-9395 Fax: (803) 462-9396
If to Escrow Agent:	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia SC 29202 Attn: Stuart Lee, Esquire Telephone: (803) 744-1822 Fax: (803) 343-7017

Any such notices shall be deemed given (a) when hand delivered, receipt required; (b) when deposited with Federal Express, UPS, or other nationally recognized overnight courier service, with overnight delivery charge prepaid; or (c) when transmitted via facsimile or email, provided a copy is sent by the next day by method (a) or (b). The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

10.14 Facsimiles. The parties may evidence their acceptance of this Agreement by facsimile transmission of a copy of this Agreement bearing the respective party's signature, and such facsimile copy shall be binding for all purposes as fully as a copy bearing the original signature of such party.

10.15 Confidentiality. The terms, covenants and conditions of this Agreement shall be kept confidential, and no press release or other publicity regarding the terms of this Agreement or Buyer's acquisition of the Property shall be authorized by either party without the other party's prior written consent, provided that the foregoing shall not prohibit (a) Buyer from disclosing the terms hereof to Buyer's professional advisors or any potential investor or lender; (b) Seller from disclosing the terms hereof to its professional advisors, shareholders, creditors, regulatory authorities or rating agencies; or (c) any disclosures required in connection with any proposed financing of the Purchase Price or otherwise required by applicable law.

10.16 Effective Date. This Agreement shall be effective as of the last date upon which each of the parties has executed this Agreement.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

WITNESSES:

RICHLAND JOINT VENTURE GROUP, LLC
By: Mason Richland, Inc., a Florida corporation
As General Partner

By: _____
Robert J. Mason
As its President

Date: December 22 2009

SELLER

W. B. WALKUP

Date: December 22, 2009

BUYER

ESCROW RECEIPT AND AGREEMENT

The undersigned Escrow Agent agrees to accept, hold, and disburse the Deposit pursuant to the terms and conditions of the foregoing Agreement.

ROGERS TOWNSEND & THOMAS, PC

By: _____
As its Authorized Representative
Stuart M. Lee, Shareholder

ACKNOWLEDGEMENT AND AGREEMENT OF BROKERS

The undersigned brokers join in the execution of the foregoing Agreement for the purpose of evidencing their consent to the provisions thereof, including the provisions of Article 6.8. The undersigned brokers hereby agree to indemnify both Seller and Buyer against all claims, damages, actions and causes of action, liabilities, and judgments (including costs and reasonable attorneys' fees for trial and appellate proceedings) which may be asserted or recovered against either Seller or Buyer, respectively, on account of any brokerage fee, commission, or other compensation which may be asserted or claimed by any other person or entity acting, or alleging to be acting, with, by or through the respective undersigned brokers in connection with this transaction.

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES

By: _____ B.I.C.
As Its Authorized Representative

R. LEON JONES REALTY

By: _____
As Its Authorized Representative

DON B. TAYLOR REALTY CO.

By: _____
As Its Authorized Representative

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EXHIBIT "A"

Legal Description of the Property

ALL THAT CERTAIN tract of land, with all improvements thereon, situate in the Town of Forest Acres, Richland County, South Carolina, containing 32.9393 acres as shown on a ALTA/ACSM Land Title Survey Prepared for JTL Capital, LLC by Steadham & Associates, Inc., dated October 2, 2002, revised December 13, 2002, recorded in the Office of the Register of Deeds for Richland County in Book 739 at Page 10, said plat being incorporated herein by reference, said property being more particularly described as follows:

BEGINNING at a point designated as "POB", said point being a PK nail along the western margin of the right-of-way of Beltline Boulevard (S.C. Highway No. 16) where the subject property corners with property of Colt Site 12 Inc. a distance of 165.15 feet from the intersection of Beltline Boulevard with the southern margin of the right-of-way of Forest Drive (S.C. Highway No. 12) and running along Beltline Boulevard as follows: in a curve to the right having a radius of 141.03 feet, an arc distance of 38.64 feet, the chord of which runs S 06-00-05 W, 38.52 feet to a rebar; S 76-30-04 E, 29.01 feet to an "X" in concrete S 24-20-15 E, 66.01 feet to a PK nail; S 20-58-56 W, 29.14 feet to a rebar; in a curve to the right have a radius of 33.77 feet, an arc distance of 22.47 feet, the chord of which runs S 49-48-51 E, 22.06 feet to a PK nail; S 27-51-15 E, 103.05 feet to a rebar; S 28-34-06 E, 516.43 feet to a rebar; in a curve to the right having a radius of 52.17 feet, an arc distance of 35.19 feet, the chord of which runs S 48-47-02 E, 34.53 feet to a rebar; S 28-43-30 E, 131.12 feet to a rebar; S 21-53-30 E, 101.50 feet to a rebar; S 31-13-04 E, 149.11 feet to a rebar; S 31-45-00 E, 19.48 feet to a rebar; S 40-50-56 E, 84.66 feet to a PK nail; S 40-56-04 E, 109.70 feet to a rebar; thence turning and running along property of Woodland Village Apartments S 42-18-17 W, 285.91 feet to a rebar; thence turning and running along property of Diane R. Spearman as follows: N 59-24-55 W, 186.52 feet to a rebar; N 64-17-05 W, 51.76 feet to an open top; S 03-25-35 E, 104.94 feet to an open top; thence turning and running along Brookwood Court S 85-00-43 W, 65.00 feet to a calculated point; thence turning and running along property of McQueen Smith as follows: N 04-44-57 W, 120.00 feet to an open top; N 53-20-55 W, 66.63 feet to an open top; S 63-51-41 W, 73.18 feet to a pinch top; thence turning and running along property of Scott L. Whelchel & Dana H. Whelchel N 26-02-32 W, 65.25 feet to an open top; thence turning and running along property of David B. Tate as follows: N 26-28-42 W, 65.03 feet to a rebar; N-26-29-46 W, 64.72 feet to a calculated point in concrete; S 63-33-42 W, 150.00 feet to a rebar; thence turning and running along Colin Kelly Drive as follows: N 25-26-03 W, 280.00 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.04 feet, the chord of which runs N 52-37-33 W, 76.66 feet to a rebar; in a curve to the left having a radius of 223.79 feet, an arc distance of 77.05 feet, the chord of which runs S 87-56-06 W, 76.67 feet to a rebar; S 63-34-32 W, 250.47 feet to an open top; thence turning and running along McArthur Avenue N 26-18-28 W, 70.15 feet to a rebar; thence turning and running along the terminus of McArthur Avenue and along property of Paula R. Bunt S 63-46-47 W, 199.92 feet to an open top; thence turning and running along property of Sunnyside Properties, Inc. as follows: N 26-38-48 W, 102.35 feet to an open top; N 26-31-13 W, 77.43 feet to an open top; thence turning and continuing along property of Sunnyside Properties, Inc. and along property of Claiborne E. Reeder & Nancy P. Reeder N 25-58-44 W, 60.13 feet to an open top; thence turning and continuing along property of Claiborne E. Reeder & Nancy P. Reeder and along properties of C.E. Reeder & Nancy P. Reeder, Robert G. Cook & Robin D. Anderon, George L. Bryant, Catherine H. Bradley, Martha Diaz, and Joseph M. Diaz & Martha Diaz N 26-15-04 W, 324.64 feet to an open top; thence turning and running along property of Sharon Kay Ford as follows: N 63-38-18 E, 52.16 feet to an open top; N 76-42-51 W, 78.96 feet to an open top; thence turning and running along properties of Martha Diaz and Lorraine M. Tablas N 25-58-03 W, 103.51

feet to a rebar, thence turning and continuing along property of Lorraine M. Tablas S 63-34-24 W, 53.87 feet to a rebar; thence turning and running along property of Buckner Associates A Partnership as follows: N 26-38-33 W, 87.35 feet to a rebar; S 68-31-11 W, 30.08 feet to a pinch top; thence turning and running along property of Carolina Associates, A S.C. Partnership N 26-31-33 W, 79.43 feet to an open top; thence turning and running along Forest Drive N 68-21-02 E, 95.19 feet to a rebar; thence turning and running along property of Olin W. Hollis, Jr. as follows: S 09-42-05 E, 31.88 feet to a PK nail; in a curve to the left having a radius of 100.00 feet, an arc distance of 84.59 feet, the chord of which runs S 35-10-53 E, 82.09 feet to a PK nail; S 58-09-49 E, 36.04 feet to a rebar; N 44-44-46 E, 164.97 feet to a magnetic nail; N 36-34-36 W, 59.14 feet to an "X" in concrete; thence turning and running along Forest Drive as follows: N 68-16-41 E, 594.92 feet to a rebar; in a curve to the right having a radius of 92.93 feet, an arc distance of 44.96 feet, the chord of which runs N 81-57-26 E, 44.52 feet to a rebar; N 09-27-43 E, 23.49 feet to an "X" cut in concrete; N 69-11-44 E, 140.34 feet to a rebar; S 46-09-12 E, 29.02 feet to a rebar; in a curve to the right having a radius of 89.22 feet, an arc distance of 55.43 feet, the chord of which runs N 60-56-39 E, 54.54 feet to a rebar; N 78-48-08 E, 17.00 feet to a calculated point in grate; thence turning and running along property of Colt Site 12 Inc. as follows: S 16-47-13 E, 165.96 feet to a rebar; N 77-22-02 E, 169.17 feet to the POINT OF BEGINNING.

LESS AND EXCEPT: "TGI Friday's Parcel"

ALL THAT CERTAIN piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 0.143 acres, according to a plat of survey entitled "Boundary Survey of Richland Mall TGI Friday's", prepared by B. P. Barber & Associates, Inc., dated March __, 2005, and recorded in the Office of the Register of Deeds for Richland County in Book 1044 at Page 323. Reference to said plat is hereby made for a metes and bounds description thereof.

LESS AND EXCEPT: "Verizon Wireless Parcel"

ALSO: ALL THAT CERTAIN piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 9.391 acres, according to a plat of survey entitled "Boundary Survey for Richland Mall Verizon Wireless", prepared by B. P. Barber & Associates, Inc., dated April 4, 2005, last revised June 7, 2005, and recorded in the Office of the Register of Deeds for Richland County in Book 1063 at Page 652. Reference to said plat is hereby made for a metes and bounds description thereof.

LESS AND EXCEPT: "Bank of America Parcel"

ALL THAT CERTAIN piece, parcel, or tract of land, with all improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, containing 0.77 acres, according to a plat of survey entitled "Plat Prepared For Windsor Richland Mall, L.P., a Texas limited partnership", prepared by Baxter Land Surveying Co., Inc., dated February 11, 2003, and recorded in the Office of the Register of Deeds for Richland County in Book 1027 at Page 2697. Reference to said plat is hereby made for a metes and bounds description thereof.

EXHIBIT "B"

ASSIGNMENT AND ASSUMPTION OF TENANT AGREEMENTS

RICHLAND JOINT VENTURE GROUP, LLC, a Florida limited liability company ("Assignor"), hereby transfers and assigns to **W. B. WALKUP** ("Assignee"), all of Assignor's right, title and interest in and to those certain leases and other tenancy agreements, together with all amendments thereto and modifications thereof, pertaining to property known as "Midtown Mall at Forest Acres" located at 3400 Forest Drive in the City of Forest Acres, Richland County, South Carolina, and being more particularly described on the rent roll attached hereto as Schedule 1 (the "Tenant Agreements").

Assignee hereby assumes and agrees to perform all of the landlord's obligations under the Tenant Agreements arising from and after the date hereof.

Assignor warrants to Assignee that Assignor is duly authorized to transfer all of its right, title, and interest under the Tenant Agreements to Assignee, that such interest is free and clear of all liens, charges, and encumbrances other than such liens, charges, and encumbrances as encumber the real property to which the Tenant Agreements pertain, and that Assignor will defend Assignee's title to the landlord's interest under the Tenant Agreements against the claims of all persons claiming by, through, or under Assignee.

The provisions of this Assignment and Assumption of Tenant Agreements shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Tenant Agreements this ____ day of _____ 2010.

WITNESSES:

_____

_____

RICHLAND JOINT VENTURE GROUP, LLC
By: Mason Richland, Inc., a Florida corporation
As General Partner

By: _____
Robert J. Mason
As its President

ASSIGNOR

_____

_____

W. B. WALKUP

ASSIGNEE

AMENDMENT TO
PURCHASE AND SALE AGREEMENT

THIS AMENDMENT is made as of the 11th day of January 2010 by and between **RICHLAND JOINT VENTURE GROUP, LLC**, a Florida limited liability company ("Seller"), and **W. B. WALKUP** ("Buyer").

RECITALS:

A. Buyer and Seller entered into a Purchase and Sale Agreement having an effective date of December 22, 2009 (the "Agreement"), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, certain real property located in Richland County, South Carolina, more particularly described therein.

B. Buyer and Seller desire to modify the Agreement to extend the date of the Inspection Period.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the parties agree to modify the Agreement as follows:

1. **Definitions.** All capitalized terms used but not defined in this Amendment shall have the same meaning as is ascribed to them by the terms of the Agreement.

2. **Inspection Period.** The Inspection Period is extended to, and shall expire at, 6:00 p.m. on January 12, 2010.

3. **Ratification.** Except as modified hereby, the provisions of the Agreement are ratified and declared to be in full force and effect.

4. **Execution in Counterparts.** This Amendment may contain more than one counterpart of the signature page, and this Amendment may be executed by the affixing of the parties' signatures to one or more of such counterpart signature pages; all such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signatories have signed a single signature page.

5. **Facsimiles.** The parties may evidence their acceptance of this Amendment by facsimile transmission of a copy of this Amendment bearing the respective party's signature, and such facsimile copy shall be binding for all purposes as fully as a copy bearing the original signature of such party.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

RICHLAND JOINT VENTURE GROUP, LLC
By: Mason Richland, Inc., a Florida corporation
As General Partner

By: _____
Robert J. Mason
As its President

SELLER

_____
W. B. WALKUP

BUYER

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WILLIAM B. WALKUP
142 ATRIUM WAY
COLUMBIA, SOUTH CAROLINA 29223

PHONE (803) 462-9395
FAX (803) 462-9396

DATE: January 4, 2010

TO: Richland Joint Venture Group

CC: J. Michael Hartenstine.

FAX NUMBER: 941-552-7122

FROM: WILLIAM B. WALKUP

NUMBER OF PAGES "_1_" INCLUDING COVER SHEET

Our title search has uncovered issues that need to be resolved in order for the buyer to move forward and cannot be resolved by today (January 4, 2010). We will need more time and changes to the contract language. This is a request to extend the due diligence period until January 11, 2010, in order to deal with Barnes & Noble, Belk, and Oberlin Anthony issues.

If acceptable, please acknowledge by return fax that you agree to extend the due diligence period under the Contract of Sale between Richland Joint Venture Group, LLC and William B. Walkup (the "Contract") for seven (7) days, to expire on January 11, 2010. In the event our proposal does not meet with your approval, or we do not receive a response by midnight, January 4, 2010, this letter serves as our formal notice to the seller of Buyer's exercise of its right to terminate the Contract and receive a full refund of all funds deposited therewith.

Extension Approved.

W.B. Walkup
Buyer

Managing Member
RJVG LLC
1/4/10
5:50 p.m.

SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT is made the 12th day of January 2010 by and between RICHLAND JOINT VENTURE GROUP, LLC, a Florida limited liability company ("Seller"), and W. H. WALKUP ("Buyer").

RECITALS:

A. Buyer and Seller entered into a Purchase and Sale Agreement having an effective date of December 22, 2009 (the "Agreement"), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, certain real property located in Richland County, South Carolina, more particularly described therein (the "Property").

B. The Property is subject to a Reciprocal Easement, Covenant, Operation and Restriction Agreement and Declaration recorded in the Office of the Register of Deeds for Richland County in Book 1087, at Page 2024 (the "Declaration").

C. The Verizon Parcel (as defined in the Declaration) is leased to Verizon Wireless pursuant to a Lease Agreement dated May 3, 1999, as amended (the "Lease"). The term of the Lease expires on November 30, 2010. The Lease requires Spirit SPE Columbia, LLC ("Spirit"), as owner of the Verizon Parcel, to repair the roof of the building on the Verizon Parcel.

D. Under the terms of the Declaration, the owner of the Property is also obligated to repair the roof of the building on the Verizon Parcel until November 30, 2010.

E. Verizon Wireless, the tenant of the Verizon Parcel, has claimed that Spirit and Seller have not fulfilled their roof repair obligations (the "Claim"). Spirit and Seller dispute the Claim and assert that they have fulfilled their roof repair obligations.

F. Although Buyer and Seller believe that Verizon Wireless has advanced the Claim solely to gain negotiating leverage against Spirit as the Lease nears its expiration date, Buyer and Seller acknowledge that Verizon Wireless may elect to file suit to enforce the Claim.

G. Buyer and Seller desire to modify the Agreement to provide an escrow sum for the benefit of Buyer to fund attorney's fees incurred by Buyer in defense of any suit brought by Verizon Wireless against Buyer to enforce the Claim.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the parties agree to modify the Agreement as follows:

1. Definitions. All capitalized terms used but not defined in this Amendment shall have the same meaning as is ascribed to them by the terms of the Agreement.

2. Escrow Funds. At closing, the sum of $20,000 (the "Escrow Funds") shall be deducted from the sales proceeds payable to Seller and shall be retained in escrow by Escrow Agent. Escrow Agent shall disburse the Escrow Funds in accordance with the following directions:

A. If Verizon Wireless does not file suit against Buyer to enforce the Claim prior to January 1, 2011, Escrow Agent shall, on or before January 10, 2011, disburse the Escrow Funds to Seller.

B. If Verizon Wireless does file suit against Buyer to enforce the Claim prior to January 1, 2011, Escrow Agent shall disburse the Escrow Funds to Buyer as, and to the extent, Buyer incurs reasonable attorney's fees for defense of the suit. Each request by Buyer to Escrow Agent for disbursement of any portion of the Escrow Funds shall be in writing and shall be accompanied by a

statement of the attorney's fees then incurred. The statement shall be issued by the law firm providing the defense and shall, at a minimum, show a description of each service provided, the date such service was rendered, the name of the individual attorney or paralegal performing the service, the time spent by such attorney or paralegal in performing the service, and the reasonable, customary hourly rate applicable to such attorney or paralegal. A copy of each written request for disbursement of the Escrow Funds, together with the accompanying statement of attorney's fees, shall be delivered by Buyer to Seller at the time the request is submitted to Escrow Agent. A copy of each check issued by Escrow Agent to Buyer in payment of any such request shall be delivered by Escrow Agent to Seller at the time the payment is made. As provided by Article 2.7 of the Agreement, Seller consents to Escrow Agent's representation of Buyer in defense of any suit brought by Verizon Wireless against Buyer to enforce the Claim.

C. Notwithstanding the provisions of Paragraph 2.B, if any portion of the Escrow Funds is still held in escrow by Escrow Agent on January 1, 2012, Escrow Agent shall, on or before January 10, 2012, disburse such portion to Seller, the intent of the parties being that the Escrow Funds shall be used to reimburse Buyer for attorney's fees incurred in defense of a suit to enforce the Claim only to the extent such fees are incurred and billed to Buyer prior to January 1, 2012.

3. Liability of Seller. The provisions of Paragraph 2 represent the extent of Seller's liability for the Claim. In no event shall Seller have liability to Buyer for any attorney's fees incurred by Buyer in excess of $20,000 for defense of a suit brought by Verizon Wireless to enforce the Claim or for any judgment rendered in favor of Verizon Wireless as a result of such suit.

4. Ratification. Except as modified hereby, the provisions of the Agreement are ratified and declared to be in full force and effect.

5. Execution in Counterparts. This Amendment may contain more than one counterpart of the signature page, and this Amendment may be executed by the affixing of the parties' signatures to one or more of such counterpart signature pages; all such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signatories have signed a single signature page.

6. Facsimiles. The parties may evidence their acceptance of this Amendment by facsimile transmission of a copy of this Amendment bearing the respective party's signature, and such facsimile copy shall be binding for all purposes as fully as a copy bearing the original signature of such party.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

RICHLAND JOINT VENTURE GROUP, LLC
By: Mason Richland, Inc., a Florida corporation
As General Partner

By: _____
Robert J. Mason
As its President

SELLER

W. B. Walkup

W. B. WALKUP

BUYER

AGREEMENT OF ESCROW AGENT

The undersigned Escrow Agent agrees to accept, hold, and disburse the Escrow Funds pursuant to the terms and conditions of the foregoing Second Amendment.

ROGERS TOWNSEND & THOMAS, PC

By: _____
As Its Authorized Representative

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