

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2017-001671

Lisa E. Crowe,

Appellant,

v.

Fred's Stores of Tennessee, Inc. and NARA
Properties, LLC,

Defendants,

Of which Fred's Stores of Tennessee, Inc.
is a Respondent,

RECORD ON APPEAL

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SC Court of Appeals

Wendell L. Hawkins, Esq., S.C. Bar No.13583
Aimee V. Leary, Esq., S.C. Bar No. 100657
Wendell L. Hawkins, PA
103-C Regency Commons Drive
Greer, South Carolina 29650
Telephone: (864) 848-9370
Attorneys for Appellant

Other Counsel of Record:
Matthew C. LaFave, Esq.
Crowe LaFave, LLC
Post Office Box 1149
Columbia, South Carolina 29202

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

LISA E. CROWE,

Plaintiff,

vs.

FRED'S STORES OF TENNESSEE, INC.
AND NARA PROPERTIES, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action Number: 2016-CP-42-504

**ORDER GRANTING DEFENDANT,
FRED'S STORES OF TENNESSEE,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER CAME BEFORE THE COURT on the Defendant, Fred's Stores of Tennessee, Inc.'s (hereinafter "Defendant") Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56. The hearing on Defendant's Motion was held on June 1, 2017, in the Spartanburg County Courthouse in the Court of Common Pleas before the Honorable R. Keith Kelly. The Defendant, Fred's Stores of Tennessee, Inc. was represented by Matthew C. LaFave, Esquire and the Plaintiff was represented by Aimee V. Leary, Esquire.

FACTS

On or about January 24, 2016 Plaintiff presented to Defendants' store located at 200 Spartanburg Highway in Lyman, South Carolina to shop for certain merchandise she was in need of following a recent winter storm having passed through the area. Plaintiff contends that she had completed her shopping and exited the store, but while crossing the parking lot to her vehicle she slipped and fell on ice that was present in the area. Specifically, Plaintiff has alleged "as she was exiting the front doors of the store, she slipped on ice and/or packed snow under the store's awning and fell backwards landing onto her back and wrist on concrete." See

Plaintiff's Second Amended Complaint, ¶ 7. Plaintiff maintains that Defendant knew the "store's entrance presented a hazard to its customers" and that they failed "to take safety precautions to warn of or eliminate risks." *See Plaintiff's Second Amended Complaint*, ¶¶ 12 & 14. As a result of the fall Plaintiff sustained a fractured wrist, which required surgical intervention.

Plaintiff alleges Defendant was negligent under a standard premises liability theory contending Defendants knew or should have known of the existence of a dangerous condition and they failed to exercise reasonable care to warn of or eliminate the condition.

Upon completion of written discovery and after completion of Plaintiff's deposition Defendant filed this Motion for Summary Judgment on January 11, 2017. Defendant contended that Plaintiffs lacked any evidence to establish that Defendant owned, operated or controlled the parking lot where the subject accident occurred. Moreover, Defendant argues that Plaintiff, through entering the store across the same condition she alleges to be dangerous, had knowledge of the condition and as such assumed the risks associated therewith. Plaintiff, however, contends that the lease agreement relied upon by Defendant was not controlling any longer as the property had been transferred since the most recent lease renewal without any corresponding assignment of the lease agreement.

LAW/ANALYSIS

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Glover v. County of Charleston*, 361 S.C. 634 (2004). Since it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chemical v. Allianz Underwriters*, 357 S.C. 631 (2004). Summary judgment

is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125 (Ct. App. 2004). In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280 (Ct. App. 2001). Importantly, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hutchinson v. Liberty Life Ins. Co.*, 393 S.C. 19, 24 (Ct. App. 2011).

Regarding slip and fall cases involving an alleged foreign substance, for a plaintiff to recover damages for injuries caused by an accident on a merchant's premises it must be show that the "substance was placed there by the defendant or its agent, or that the defendant had actual or constructive notice the substance was on the floor at the time of the slip and fall." *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729-30 (2001), (See also *Calvert v. House Beautiful Paint & Decorating Ctr., Inc.*, 313 S.C. 494, 443 S.E.2d 398 (1994); *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 165 S.E.2d 627 (1969); *Pennington v. Zayre Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969); *Orr v. Saylor*, 253 S.C. 155, 169 S.E.2d 396 (1969); *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957); *Gilliland v. Pierce*, 235 S.C. 268, 111 S.E.2d 521 (1959); *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 394 S.E.2d 24 (Ct.App.1990)). Furthermore, "[i]t has long been the law in South Carolina that a merchant is not an insurer of the safety of his customers but owes them only the duty of exercising ordinary care to keep the premises in a reasonably safe condition." *Milligan v. Winn Dixie Raleigh, Inc.*, 273 S.C. 118, 120-21, 254 S.E.2d 798, 799 (1979). The Courts of South Carolina have held fast to this analysis despite numerous

challenges and different theories having been proposed. Moreover, it has been held by the Court of Appeals that the mere "fact that one slips and falls on a floor [does not] indicate negligence." *Howard v. K-Mart Discount Stores*, 293 S.C. 134 137, 359 S.E.2d 81, 82 (Ct.App. 1987) (See also *Case v. Cato's of North Carolina, Inc.*, 252 N.C. 224, 113 S.E.2d 320 (1960); *Grimes v. Home Credit Co. of Kinston*, 271 N.C. 608, 157 S.E.2d 213 (1967)).

The crux of Defendant's argument in support of this motion was that Plaintiff has, through all discovery, failed to present any evidence to establish Defendant was the owner, operator, or in control of the parking lot where the subject incident occurred. In the prevailing case law in South Carolina a shopkeeper owes its invitees a duty to maintain its premises in a reasonably safe condition. The key aspect of the current law is that the duty owed by a shopkeeper extends to property it owns, operates, or is otherwise in control over. The undisputed evidence in this case reflects the subject incident having occurred in the parking lot in front of Defendant's store as a result of accumulated ice and/or compacted snow following a winter storm. The record presented during this hearing through exhibits indicates Defendant is a lessee of its premises under a lease agreement originally entered into with Shops at Friendship, LLC in 2002 and renewed in 2013. Following the renewal of the lease agreement the title to property was transferred to Yellow Mama Music before later being transferred to the present owner, Nara Properties, LLC in 2015. Defendant continued up to and including the month in which the subject accident occurred continued to tender payments in accordance to the lease agreement to the current owner. It is further undisputed that the lease agreement clearly sets for certain particulars applicable to the facts of this case as it is noted that the lessor is responsible for the maintenance of certain areas on the exterior of the "demised premises," which includes the sidewalk, curbs, ramps, and parking lot. Furthermore,

Rider 2 pertains to maintenance of common areas, which specifically obligates the lessor to take responsibility for removal of snow.

The chief argument by Plaintiff in opposition of this motion was that the transfer of the property after the renewal of the lease in 2013 effectively resulted in the renewed lease being rendered unenforceable. Counsel for Plaintiff contended that without any documentation reflecting an assignment of the lease from the initial lessor Defendant became a resident of the premises on a month-to-month basis without any controlling lease agreement. However, Defendant argued that evidence clearly reflected a seamless transfer of the title to the property across the owners to the ultimate owner Nara Properties, LLC. Furthermore, Defendant noted that Plaintiff presented no evidence to establish a revocation of the lease agreement by Defendant, Nara Properties, LLC such that they should be subjected to the terms and conditions of the lease agreement as was renewed in 2013.

Defendant further contended that Plaintiff was aware of the presence of the foreign substance as the surveillance video clearly showed her passing over the same patch of ice where she later fell. It is well settled that a shopkeepers' liability is largely a result of its superior knowledge of the conditions then and there prevailing on its premises. *Sides v. Greenville Hosp. System*, 362 S.C. 250, 607 S.E.2d 362 (2004). However, this case is one where the Plaintiff's knowledge of the condition is equal, if not superior, to the knowledge of the shopkeeper. As a result of her knowledge of the condition Plaintiff assumed the risk associated with walking over the substance. Furthermore, given the fact that Plaintiff's knowledge of the presence of the ice/snow was commensurate with the knowledge of Defendant there was no duty to warn her of the substance's presence. *Hackworth v. U.S.*, 366 F.Supp. 326 (U.S.D.C. 4th Cir. 2005).

CONCLUSION

Upon conclusion and consideration of the oral argument of the parties, a review of the pertinent portions of the file, and the applicable case law, the undersigned finds that Plaintiff stepped over the same patch of ice when she entered the building thereby relieving Defendant of a duty to warn her of the condition as she was already aware of its presence. Furthermore, the undersigned finds Defendant owed Plaintiff no duty to maintain the parking lot, which was where the subject incident occurred .

Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED: that the Defendant's Motion for Summary Judgment is hereby granted relative to all causes of action presented in the Plaintiff's Complaint.

AND IT IS SO ORDERED.

The Honorable R. Keith Kelly
Judge of the Court of Common Pleas

This ____ day of June 2017
Columbia, South Carolina



Spartanburg Common Pleas

Case Caption: Lisa E Crowe VS Freds Stores of Tennessee Inc , defendant, et al

Case Number: 2016CP4200504

Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
Lisa E. Crowe,)	C.A. No. 2016-CP-42-0504
)	
Plaintiff,)	
)	
v.)	SECOND
)	AMENDED SUMMONS
)	
Fred's Stores of Tennessee, Inc. and Nara)	
Properties, LLC,)	
)	
Defendants.)	
_____)	

TO THE DEFENDANTS ABOVE NAMED:

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 Complaint, upon the subscriber at 103-C Regency Commons Drive, Greer, SC 29650 within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within that time, the Plaintiff will apply to the court for the relief demanded in the Complaint and a judgment by Default will be rendered against you for the relief demanded in the Complaint.

TO INFANT(S) OVER FOURTEEN YEARS OF AGE (AN IMPRISONED PERSON):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

TO INFANT(S) UNDER FOURTEEN YEARS OF AGE (INCOMPETENT OR INSANE AND TO GENERAL OR TESTAMENTARY GUARDIAN):

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent such infant(s) under fourteen years of age (said incompetent or insane) person within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.

Respectfully submitted,

/s/ Aimee V. Leary

Aimee V. Leary (S.C. Bar # 100657)
Wendell L. Hawkins (S.C. Bar #: 13583)
Wendell L. Hawkins, PA
103-C Regency Commons Drive Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
avl@wlhawkinslawfirm.com
wlh@wlhawkinslawfirm.com
Attorneys for Plaintiff

November 14, 2016
Greer, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
Lisa E. Crowe,)	C.A. No. 2016-CP-42-0504
)	
Plaintiff,)	
)	
v.)	SECOND AMENDED COMPLAINT
)	(Jury Trial Demanded)
)	
Fred's Stores of Tennessee, Inc. and Nara)	
Properties, LLC,)	
)	
Defendants.)	
)	

Plaintiff, Lisa E. Crowe (hereinafter "Crowe"), complaining of the Defendants, Fred's Stores of Tennessee, Inc. (hereinafter "Fred's") and Nara Properties, LLC (collectively "Defendants"), would respectfully allege and show until this Court the following:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.
2. Upon information and belief, Fred's is a foreign corporation doing business in Spartanburg County, South Carolina.
3. Upon information and belief, Nara Properties, LLC is a South Carolina limited liability company and the owner of the real property in Spartanburg County, South Carolina which is the subject of this lawsuit.
4. The incident at issue in this action occurred on or about January 24, 2016 in Spartanburg County, South Carolina.
5. Jurisdiction and Venue are proper in this Court due to the above allegations.

6. On or about January 24, 2016, Plaintiff shopped at the premises known as Fred's, Store # 2208, located at 200 Spartanburg Hwy Lyman, South Carolina 29365 with the express and/or implied permission of Fred's, as a customer for the purpose of patronizing said store.

7. That as Plaintiff was exiting the front doors of the store, she slipped on ice and/or packed snow under the store's awning and fell backwards landing onto her back and wrist on the concrete.

8. Plaintiff reported her injuries to the store's manager and employee identified as Debbie.

9. Debbie and a male employee assisted Plaintiff to Doctor's Care for immediate medical treatment.

10. That as a result of the incident, Plaintiff sustained injuries, including but not limited to, a bruised back and broken bones in her wrist.

**FOR A FIRST CAUSE OF ACTION
(Premises Liability/Negligence)**

11. Plaintiff herein restates and re-alleges the prior allegations of this Complaint as if contained herein verbatim.

12. Defendants, their agents and/or employees knew, or in the exercise of reasonable diligence should have known, that the condition of the store's entrance and the shopping center parking lot presented a hazard to its customers.

13. That Defendants had a duty to Plaintiff to use reasonable care to prevent said invitee from suffering injury.

14. That Defendants breached that duty of care owed to Plaintiff by failing to take safety precautions to warn of or eliminate risks which the Defendants knew or should have known existed.

15. That Fred's, as a business, through its employees in the course and scope of their employment, and Nara Properties, LLC, as the property owner, were negligent, grossly negligent, reckless and/or careless in one or more of the following particulars to wit:

- A. In failing to warn customers, patrons, invitees, and the Plaintiff specifically, of the dangers then and there existing;
- B. In failing to properly monitor and maintain the premises;
- C. In failing to remedy a dangerous condition on the premises even though Defendants had notice of and/or should have had notice of said dangerous condition;
- D. In failing to post proper signs alerting its customers, patrons, invitees, and the Plaintiff specifically, to the unsafe condition of the premises;
- E. In having actual knowledge that there was a hazard on the premises;
- F. In other particulars the evidence at trial may disclose; and
- G. In failing to use the degree of care that a reasonable and prudent person and/or entity would have used under the circumstances then and there prevailing, all of which was the direct and proximate cause of the damages and injuries suffered by the Plaintiff herein, said acts being in violation of the statutory and/or common laws of the State of South Carolina.

16. That as a direct and proximate result of the aforementioned acts of negligence, gross negligence, recklessness and/or carelessness on the part of the Defendants, the Plaintiff has sustained and suffered serious injury to her body, which injuries have caused Plaintiff to incur substantial medical expenses, lost wages, trauma, pain and suffering, permanent and/or

temporary impairment of health and body, anxiety, emotional distress, loss of enjoyment of life and other damages.

17. As a result, Plaintiff is informed and believes that she is entitled to judgment against Defendants for actual damages and punitive damages.

WHEREFORE, the Plaintiff prays as follows:

1. For a finding of negligence and/or gross negligence, recklessness, and/or carelessness against the Defendants;
2. For an award of actual damages, consequential, and punitive damages against the Defendants along with attorney's fees and costs in this action.
3. For a trial by Jury; and
4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Aimee V. Leary
 Aimee V. Leary (S.C. Bar # 100657)
 Wendell L. Hawkins (S.C. Bar #: 13583)
 Wendell L. Hawkins, PA
 103-C Regency Commons Drive Greer, SC 29650
 (864) 848-9370 (Ph) (864) 848-9759 (Fax)
 avl@wlhawkinslawfirm.com
 wlh@wlhawkinslawfirm.com
 Attorneys for Plaintiff

November 14, 2016
Greer, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Lisa E. Crowe,

Plaintiff,

vs.

Fred's Stores of Tennessee, Inc. and Nara
Properties, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-504

ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT

Defendant, Fred's Stores of Tennessee, Inc. [hereinafter referred to as "Defendant"], by and through their undersigned counsel, hereby responds to the Complaint as follows:

FOR A FIRST DEFENSE

1. This Defendant admits the allegations contained in Paragraph One (1) of Plaintiff's Second Amended Complaint upon information and belief.
2. This Defendant admits the allegations contained in Paragraph Two (2) of Plaintiff's Second Amended Complaint.
3. This Defendant admits the allegations contained in Paragraph Three (3) of Plaintiff's Second Amended Complaint upon information and belief.
4. This Defendant admits the allegations contained in Paragraph Four (4) of Plaintiff's Second Amended Complaint.
5. This Defendant admits that jurisdiction and venue are proper with this Court.
6. This Defendant admit, of the allegations contained in Paragraph Five (5) of Plaintiff's Second Amended Complaint, that Plaintiff was present at store # 2208 located at 200

Spartanburg Highway in Lyman, South Carolina on the date referenced; however, this Defendant denies the remaining allegations and strict proof is demanded thereof.

7. This Defendant denies the allegations contained in Paragraph Six (6) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
8. This Defendant admits, of the allegations contained in Paragraph Seven (7) of Plaintiff's Second Amended Complaint, only that Plaintiff fell; however, the remaining allegations are denied and strict proof is demanded thereof.
9. This Defendant denies the allegations contained in paragraph Eight (8) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
10. This Defendant admits the allegations contained in Paragraph Nine (9) of Plaintiff's Second Amended Complaint.
11. This Defendant denies the allegations contained in Paragraph Ten (10) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
12. Paragraph Eleven (11) of Plaintiff's Second Amended Complaint merely restates and re-alleges prior allegations and to that end Defendant repeats and reasserts all previous admissions or denials accordingly.
13. This Defendant denies the allegations contained in Paragraph Twelve (12) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
14. Paragraph Thirteen (13) of Plaintiff's Second Amended Complaint merely states a legal conclusion and as such no response is required; however, to the extent this paragraph can be interpreted as allegations of wrongdoing on the part of this Defendant they are denied and strict proof is demanded thereof.

15. This Defendant denies the allegations contained in Paragraph Fourteen (14) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
16. This Defendant denies the allegations contained in Paragraph Fifteen (15) of Plaintiff's Second Amended Complaint, including subsections A – G, and strict proof is demanded thereof.
17. This Defendant denies the allegations contained in Paragraph Sixteen (16) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
18. This Defendant denies the allegations contained in Paragraph Seventeen (17) of Plaintiff's Second Amended Complaint and strict proof is demanded thereof.
19. As to the final unnumbered paragraph of Plaintiff's Second Amended Complaint containing Plaintiff's prayer for relief this Defendant denies that Plaintiff is entitled to any damages against this Defendant in connection with this action.

FOR A SECOND DEFENSE

20. Paragraphs One through Nineteen (19) are hereby incorporated herein as if repeated verbatim.
21. Each and every allegation of the Plaintiff's Second Amended Complaint not specifically admitted is denied.

**FOR A THIRD DEFENSE
(Comparative Negligence)**

22. Paragraphs One through Twenty-one (21) are hereby incorporated herein as if repeated verbatim.
23. This Defendant alleges, and would show, that if the Plaintiff sustained any injuries or damages as set forth in the Plaintiff's Amended Complaint, the same were due to the willful,

wanton, reckless, careless and negligent act and conduct of the Plaintiff, which combined with, concurred with, and exceeded any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant, which is specifically denied, to bring about the injuries and damages, if any, as the proximate cause thereof, and without which the same would not have occurred and bars any recovery by the Plaintiff.

24. That if this Defendant was equally as negligent as the Plaintiff, or more negligent than the Plaintiff, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of Plaintiff's negligence.

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

25. Paragraphs One through Twenty-four (24) are hereby incorporated herein as if repeated verbatim.

26. This Defendant alleges, and would show, that the Plaintiff failed to take reasonable actions to adequately mitigate her damages, if any, by not undertaking proper preventative or curative measures in a timely and reasonable manner.

**FOR A FIFTH DEFENSE
(Negligence of Others)**

27. Paragraphs One through Twenty-six (26) are hereby incorporated herein as if repeated verbatim.

28. This Defendant alleges, and would show, that if there was any negligence surrounding the events of January 24, 2016 same was attributable to the sole and exclusive negligence of other parties, either named or unnamed, for which this Defendant had no opportunity to exercise control over thereby barring any recovery against this Defendant.

**FOR A SIXTH DEFENSE
(Open and Obvious)**

- 29. Paragraphs One through Twenty-eight (28) are hereby incorporated herein as if repeated verbatim.
- 30. This Defendant alleges, and would show, that purported substance Plaintiff alleges to have been the cause of her slip and fall was open and obvious thereby barring Plaintiff from any recovery against the Defendant.
- 31. Moreover, this Defendant contends that Plaintiff was actually aware of the presence of the purported substance she alleges to have caused her fall prior to the occurrence and that her knowledge was equal to or superior to the knowledge of the Defendant thereby barring Plaintiff from any recovery against this Defendant.

**FOR A SEVENTH DEFENSE
(Punitive Damages)**

- 32. Paragraphs One through Thirty-one (31) are hereby incorporated herein as if repeated verbatim.
- 33. This Defendant, alleges and would show, the claim by Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.
- 34. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate this Defendant's due process rights guaranteed by the United States Constitution and

the South Carolina Constitution, and would violate the common law of the State of South Carolina.

35. This Defendant alleges the claim by Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage award of the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of this Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of this Defendant upon which an award of punitive damages may be based; and
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining the appropriateness and reasonableness;

would violate this Defendant's equal protection and due process rights as guaranteed by the Constitution of the United States and the South Carolina constitution and would also violate the laws of the State of South Carolina.

**FOR AN EIGHTH DEFENSE
(Amendments)**

36. Paragraphs One through Thirty-five (35) are hereby incorporated herein as if repeated verbatim.

37. This Defendant hereby reserves its right to amend this Answer to assert additional defenses pursuant to South Carolina Rules of Civil Procedure, Rule 15 as they become known throughout the discovery process

WHEREFORE, having fully answered the Second Amended Complaint, this Defendant demands that:

- a) the Plaintiff's Second Amended Complaint be dismissed as to this Defendant;
- b) for costs associated with this action;
- c) for any further relief as this honorable Court deems just and proper.

RESPECTFULLY SUBMITTED,

s/ Matthew C. LaFave

Matthew C. LaFave, SC BAR #75365

Mary D. LaFave, SC BAR #75366

CROWE LAFAYE, LLC

P.O. Box 1149

Columbia, South Carolina 29202

803.724.5729 (office)

**ATTORNEYS FOR DEFENDANT FRED'S STORES OF
TENNESSEE, INC.**

This 15th day of November 2016
Columbia, South Carolina

1 foremost to show that either there's a dangerous condition
2 that we knew or should have known, uh, obviously I'm not
3 standin' here before the Court to try and argue that Fred's
4 was not aware of the existence of ice, we've got surveillance
5 video that clearly shows, there's a sign that says, you know,
6 that one a their traditional fold-out wet floor signs,
7 Ms. Crowe however is seen entering the premises across this
8 same patch of ice so one a the seminal issues in a premises
9 liability case, Your Honor, is liability rests with the
10 shopkeeper because a the fact that they tend to have superior
11 knowledge, in this particular instance their knowledge of this
12 condition is equal to Ms. Crowe's, therefore there's nothing
13 for them to have warned her about but this issue and the
14 reason we feel summary judgment is appropriate here is because
15 it goes even a step further, Fred's, and it's our position we
16 owed her no duty relative to the area in which she fell. This
17 is a property that again is controlled by a lease agreement
18 and we have included a copy of it which lays out all of the
19 pertinent factors, uh, identifying specifically what the
20 demised premises is which it refers to Exhibit E and it says
21 the cross hatch section which shows the 16,915 square feet of
22 usable floor space as the demised premises being leased to
23 Fred's, it references non-exclusive usage rights to the
24 parking lot which means that Fred's does not own them, Fred's
25 does not control them. There is Section 5 which we have

1 condition, again, while that's true in those particular cases,
2 we believe that those two are distinguishable from this case
3 and that the party that was being sued was the party that
4 owned and was responsible for the maintenance of the property
5 in which the incident occurred. Again, this case occurred
6 outside of the property that my client controlled and is
7 legally responsible for maintaining a reasonably safe
8 condition, furthermore, a and we passed up this morning the
9 case of *Hackler v. United States* where a customer was coming
10 in from the parking lot, she testified to having to jump over
11 multiple puddles, it had been rainin' hard that day and
12 actually said that she was looking very cautiously at the
13 floor as she was entering and the courts even ins -- in that
14 particular instance said the store has no duty to warn her of
15 something that she is or should reasonably be aware of, she
16 has a duty of her own to discover those risks and avoid those
17 dangers. In this particular instance there can be no dispute
18 that Ms. Crowe was aware of this condition because the
19 surveillance video shows her crossing over the same patch of
20 ice coming into the store as she was crossing over after she
21 exited the store and fell in the parking lot and, again, so
22 there's no duty for us to warn, she has a duty to take
23 reasonable actions to ensure her own safety but moreover we
24 believe summary judgment should be granted, Your Honor,
25 because Fred's did no control, maintain or possess the parking

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

LISA E. CROWE,

Plaintiff,

vs.

FRED'S STORES OF TENNESSEE, INC.
AND NARA PROPERTIES, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-42-504

**DEFENDANT FRED'S STORES OF
TENNESSEE, INC.'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Defendant Fred's Stores of Tennessee, Inc., by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas, Seventh Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting this Defendant's Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action because there are no genuine issues of material facts and because this Defendant is entitled to judgment as a matter of law as Plaintiff has failed to present any tangible evidence to establish any of the requisite elements for the claim of premises liability/negligence brought as to this Defendant.

Specifically, Plaintiff has not and cannot establish any support for her allegations in the Complaint as to this Defendant through admissible evidence. The evidence in this case clearly indicates that Plaintiff had exited Defendant's store and was making her way across the parking lot towards her vehicle at the time of the fall, despite her allegation that the fall was occurring "as Plaintiff was exiting the front doors of the store." Based upon the proximity of the incident the clear and indisputable evidence establishes that the fall occurred in an area that is not controlled or otherwise maintained by this Defendant and as such they owe Plaintiff no duty

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relative to the location of the fall. Furthermore, Plaintiff has alleged Defendant breached its duty to her by failing to take safety precautions or warn of or eliminate risks, which it knew or should have known existed. However, the irrefutable evidence in the case clearly shows individuals present attempting to clear a path through the snow/ice with a warning sign clearly present and visible at the entrance of Defendant's store. Moreover, the surveillance video clearly depicts Plaintiff traversing the same course in entering Defendant's store as she did upon her exit such that she was acutely aware of the existence of the snow/ice prior to the fall such that Defendant had no duty to warn. Plaintiff's knowledge of the condition was equal to the knowledge possessed by the store thus there is no warning required nor is there any liability given Plaintiff's appreciation and acceptance of the risk she undertook.

This motion is based upon the pleadings, the discovery responses of the parties, the deposition(s) taken in this case, and any affidavits and/or memorandum of law to be filed by the Defendant.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave
Matthew C. LaFave (SC BAR #75365)
CROWE LAFAVE, LLC
P.O. Box 1149
Columbia, South Carolina 29202
803.724.5727
matt@crowelafave.com
ATTORNEY FOR DEFENDANT

This 11th day of January 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

LISA E. CROWE,

Civil Action Number: 2016-CP-42-504

Plaintiff,

vs.

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

FRED'S STORES OF TENNESSEE, INC.
AND NARA PROPERTIES, LLC,

Defendants.

Pursuant to Rule 56(A) of the Federal Rules of Civil Procedure, Defendants, Fred's Stores of Tennessee, Inc. (hereinafter "Defendant") by and through its undersigned attorney, hereby moves this honorable Court for an Order granting Summary Judgment in their favor as it pertains to the above captioned proceedings.

FACTS

On or about January 24, 2016 Plaintiff presented to Defendants' store located at 200 Spartanburg Highway in Lyman, South Carolina to shop for certain merchandise she was in need of following a recent winter storm having passed through the area. Plaintiff contends that she had completed her shopping and exited the store, but while crossing the parking lot to her vehicle she slipped and fell on ice that was present in the area. Specifically, Plaintiff has alleged "as she was exiting the front doors of the store, she slipped on ice and/or packed snow under the store's awning and fell backwards landing onto her back and wrist on concrete." *See Plaintiff's Second Amended Complaint*, ¶ 7. Plaintiff maintains that Defendant knew the "store's entrance presented a hazard to its customers" and that they failed "to take safety precautions to warn of or eliminate

risks.” See *Plaintiff’s Second Amended Complaint*, ¶¶ 12 & 14. As a result of the fall Plaintiff sustained a fractured wrist, which required surgical intervention.

Plaintiff alleges Defendant was negligent under a standard premises liability theory contending Defendants knew or should have known of the existence of a dangerous condition and they failed to exercise reasonable care to warn of or eliminate the condition.

PROCEDURAL POSTURE

This action was initiated when Plaintiff filed a Summons and Complaint against Defendant on February 10, 2016 wherein she presented a negligence claim under a standard premises liability theory relative to the purported existence of a dangerous condition on the premises. Specifically Plaintiff alleges, Defendant knew or should have known that the entrance to the store presented a hazard to its customers and they failed to exercise reasonable care to warn of or eliminate the risk. Plaintiff, shortly thereafter, filed an Amended Complaint to correctly identify Defendant. Defendant filed a timely Answer on February 26 2016 denying any and all liability as to each alleged cause of action. On November 14, 2016 Plaintiff filed her Second Amended Summons and Complaint for the primary purpose of adding Nara Properties, LLC as a defendant. Defendant maintained their denial of liability and Defendant Nara Properties has failed to answer or otherwise plead and as a result was thereafter found to be in default.

The parties have completed sufficient discovery such that the Defendant’s Motion for Summary Judgment was properly filed on January 1 2017. This case is currently pending for a jury trial in the Spartanburg County Court of Common Pleas.

STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment shall be granted if the court finds "that there is no genuine issue of material fact."

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Manji v. Blackwell*, 323 S.C. 91, 92, 473 S.E.2d 837, 837 (Ct. App. 1996). In ruling on a motion for summary judgment, the evidence and inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. *Id.* When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (Ct. App. 2008).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on the mere allegations or denials contained in the pleadings, but rather must come forward with specific facts showing there is a genuine issue for trial. *Singleton v. Sherer*, 377 S.C. 185, 699 S.E.2d 196 (Ct.App. 2008). "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." *Shupe v. Settle*, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994).

ISSUES TO BE DETERMINED

- I. Whether Defendant owed Plaintiff any duty in the location where the subject accident occurred.

ARGUMENT

I. Plaintiff's fall occurred in the parking lot, the possession and control of which was retained by the landlord, Nara Properties, LLC.

Plaintiff, in her Complaint, has alleged that "as Plaintiff was exiting the front doors of the store, she slipped on ice and/or packed snow under the store's awing and fell backwards...." See *Plaintiff's Second Amended Complaint* ¶ 7. Defendant, through written discovery, produced a copy of the surveillance video that shows Plaintiff pass through the entrance/exit doors as she departed the store once her shopping was complete. Upon crossing over the threshold Plaintiff is seen taking approximately seventeen (17) cautious steps before she slips and falls backwards. The surveillance video is clear and irrefutable and definitively shows Plaintiff walking in the parking lot at the moment the fall occurs.

It is well settled law in the state of South Carolina that "[a] merchant is not an insurer of the safety of his customers but only owes the duty of exercising ordinary care to keep the premises in a reasonably safe condition. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001), (See also *Pennington v. Sayre Corp.*, 252 S.C. 173, 165 S.E.2d 695 (1969). Likewise, a merchant "is not required to maintain the premises in such a condition that no accident could happen to a patron using them." *Denton v. Winn-Dixie Greenville, Inc.*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993), (See also *Panoz v. Gulf & Bay Corporation*, 208 So.2d 297 (Fla.App.), *cert. denied*, 218 So.2d 166 (Fla.1968); *Gavin v. City of Chicago*, 97 Ill. 66 (1880); *Overton v. Wenatchee Beebe Orchard Co.*, 28 Wash.2d 377, 183 P.2d 473 (1947)). Specifically, in a matter involving a purported dangerous or defective condition a plaintiff, to recover damages for injuries as a result of said condition, "must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to

remedy it.” *Garvin v. Bi-Lo, Inc.*, 343 S.C. at 625, (See also *Anderson v. Racetrac Petroleum Inc.*, 296 S.C. 204, 371 S.E.2d 530 (1988); *Pennington v. Zayre **833 Corp.*, 252 S.C. 176, 165 S.E.2d 695 (1969); *Hunter v. Dixie Home Stores*, 232 S.C. 139, 101 S.E.2d 262 (1957); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 491 S.E.2d 690 (Ct.App.1998)).

This case is complicated by the fact that Defendant is a lessee of a store in a shopping center. The title to the premises at issue in this case was transferred to the current landlord and co-defendant, Nara Properties, LLC on March 23, 2015. See *Exhibit A*, Title to Real Estate attached hereto and incorporated herein. In place and controlling the terms and conditions of the landlord/tenant relationship between Defendant and co-defendant was a lease agreement originally entered into on November 6, 2002 and subsequently renewed for the term of February 1, 2013 to January 31, 2018. See *Exhibit B*, Lease Agreement attached hereto and incorporated herein. Of primary significance to the matter at issue before the Court is Section 5 of the lease agreement, which addresses maintenance of the premises. This section clearly states “the Lessor [co-defendant] will keep and repair the exterior of the Demised premises, including the parking lot, ... , entrances and exits, sidewalks” Furthermore, the Lease Agreement also contains Rider 2, which pertains to common area maintenance. The language of Rider 2 establishes Defendant’s responsibility for a common area maintenance charge to the Lessor [co-defendant]. Among a number of types of common area maintenance to be include Rider 2 specifically identifies the removal of snow as being covered by the common area maintenance cost.

This matter is comparable to the case of *Bruno v. Pendleton Realty Co.*, which centered on a trip and fall that occurred in the parking lot of a shopping center. 240 S.C. 46 124 S.E.2d 580 (1962). In the aforementioned matter a patron had fallen when he was stepping on the edge of a curb that was concealed by overgrown grass. *Id.* The Court noted simply that

One who operates a shopping center where stores are leased to merchants and the owner retains possession and control of the parking area and sidewalks, is not an insurer of the safety of those who use the parking lot and sidewalks as customers of the merchants leasing the stores, but the owner of the premises owes the customers the duty of exercising ordinary care to keep the passageways, sidewalks and such other parts of the premises as are ordinarily used by the customers in transacting business in a reasonably safe condition.

Id. at S.C. 51. The case at bar is clearly related in that the co-defendant, in accordance with the lease agreement, retained possession and control of the parking areas in the shopping center where Defendant leased a store. The responsibility for maintenance lies squarely with the “owner of the premises”, which in this instance is co-defendant and is one that cannot be delegated to the tenant. Pursuant to the Landlord Tenant Act “(a) a landlord shall ... (3) keep all common areas of the premises in a reasonably safe condition” S.C. Code Ann. § 27-40-440 (1991).

Defendant owed Plaintiff no duty under the standard premises liability negligence theory as her accident occurred on the premises owned and controlled by co-defendant and not Defendant.

CONCLUSION

South Carolina law dictates that the nonmoving party in a case subject to the preponderance of the evidence standard can show “one scintilla of evidence” to withstand Summary Judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary Judgment is appropriate in an action for a premises liability/negligence when a plaintiff fails to establish, as an initial matter, that “a specific act of the [defendant(s)] created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Id.* Plaintiff, in the case at bar, identified packed snow and/or ice as an allegedly dangerous condition and attempts to place fault at the feet of

Defendant for her sustaining an accident as a result of the condition. However, beyond identification of the condition Plaintiff must establish, by evidence, that Defendant owed her a duty based upon the facts and circumstances surrounding the event. It is uncontroverted that the accident at issue here occurred in the parking lot as evidenced by clear surveillance video. Moreover, the evidence in the case shows the location where the fall occurred is owned and controlled by co-defendant. Therefore, Defendant owed Plaintiff no duty to maintain the sidewalk or parking lot once she exited their store as the premises for which they have a duty to maintain are within the four walls of their leased space. The duty owed by co-defendant to maintain the parking lot and sidewalk is their own duty and one that cannot be delegated to Defendant. Therefore, based upon the absence of any evidence sufficient to establish a genuine issue of material fact as to Defendant owing a duty to Plaintiff given the location of the incident this Court must grant Defendants' Motion for Summary Judgment.

RESPECTFULLY SUBMITTED,

/s/Matthew C. LaFave
Matthew C. LaFave – SC Bar No. 75365
Crowe LaFave, LLC
Post Office Box 1149
Columbia, South Carolina 29202
(P) 803.724.5727
matt@crowelafave.com
ATTORNEY FOR THE DEFENDANT

This 30th day of May 2017
Columbia, South Carolina

EXHIBIT A

REC 108 N PG 191

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TO HAVE AND TO HOLD all and singular the said premises before-mentioned unto the said Grantee(s), and the Grantee's(s') heirs (or successors) and assigns forever. And the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor's(s') heirs (or successors), executors and administrators to warrant and forever defend all and singular the said premises unto the Grantees(s) and the Grantee's(s') heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the Grantor's(s') hand(s) and seal(s) this 23rd day of March, 2015.

SIGNED, Sealed and Delivered in the Presence of:

Yellow Mama Music LLC

[Signature] (SEAL)
By: Tusham Bhatnagar
Its: Member

[Signature] (SEAL)
By: ROSEMARY LANA WOODS
Its: Member

[Signature]
Witness
[Signature]
Witness

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ACKNOWLEDGEMENT

I, Debra S. Grogan, a Notary Public for the State of South Carolina, do hereby certify that Tusham Bhatnagar and Rosemary Lane Woods personally appeared before me and acknowledged the due execution of the foregoing Deed this 23rd day of March, 2015.

SWORN to before me this 23rd day of March, 2015.

[Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4-30-22

MEM 08 N PG 192

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 200 Spartanburg Hwy, Lyman SC
bearing Spartanburg County Tax Map Number 5-18-07-120.01
was transferred by Yellow Name Music
to Nora Popovic LLC
on March 23, 2015

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):
Transfer to Company owned by Gator

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Gator

5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Responsible Person Connected with the Transaction

Toshamon Pantipawan ROSEMARY LINA WOODS
Print or Type Name Here

SWORN to before me this 23rd day of March 2015

[Signature]
Notary Public for SC
My Commission Expires: 4-30-17

EXHIBIT B



4300 New Getwell Rd. • Memphis, TN 38118 • (901) 238-2528

January 2, 2013

Shoppes at Friendship, LLC
Attn: Terry Dooley
4550 Atwater Court
Buford, GA 30518

VIA Fed-Ex Overnight

RE: Fred's Store #2208 Lyman, SC

Dear Landlord,

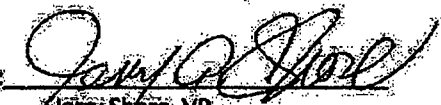
Pursuant to instructions given to me by the officers of Fred's Stores of Tennessee, Inc., I am informing you and notifying you **BY THIS LETTER** that Fred's Stores of Tennessee, Inc. is exercising the option provided in our Lease Agreement on the building at the above captioned location, at the same terms and conditions. With the Lessor's consent, which will be confirmed by the execution of this document, the following option will be renewed:

Renewal Term:	Rental Rate:	CAM Rate:
February 1, 2013 to January 31, 2018	\$6,667.00 per month	\$352.40 per month

All other terms and conditions of the Lease Agreement dated November 6, 2002, together with any and all amendments thereto, (collectively, the "Lease"), shall remain unchanged.

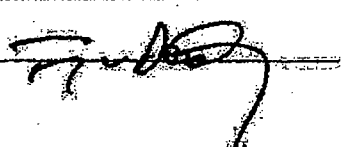
This letter is provided in duplicate, please sign and date both copies. Keep one copy for your records and return the other copy for our records.

Fred's Stores of Tennessee, Inc.

By: 
Jerry Shore, VP

Enclosures

ACKNOWLEDGED AND AGREED:

By: 

Dated: 1-4-13

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**Service of Process
Transmittal**

03/14/2011
CT Log Number 518178901



TO: Bradley D. McAdory, Asst. General Counsel
Fred's, Inc.
4300 New Getwell Rd., Legal Department
Memphis, TN 38118

RE: Process Served in South Carolina

FOR: Fred's Stores of Tennessee, Inc. (Domestic State: TN)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: NAFF National Bank, Pllc, vs. Shoppers at Friendship, et al. Including Fred's Stores of Tennessee, Inc., Dfts.

DOCUMENT(S) SERVED: Letter, Coversheet, Lis Pendens, Summons and Notices, Complaint, Motion and Order Information, Order

COURT/AGENCY: Spartanburg County Court of Common Pleas, SC
Case # 2011-CP-42-0931

NATURE OF ACTION: Foreclosure Litigation - Mortgage - Defendant may claim an interest

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Process Server on 03/14/2011 at 11:55

JURISDICTION SERVED: South Carolina

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Weyman C. Carter
McNair Law Firm, P.A.
P.O. Box 447
Greenville, SC 29602
864-271-4940

REMARKS: Please note that the process server highlighted/underlined the entity being served in the documents prior to receipt by CT

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 794529265292
Email Notification: Bradley D. McAdory bmcadory@fredsinc.com

SIGNED: CT Corporation System
PER: Amy McLaren
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29229
TELEPHONE: 800-592-9023

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Page 1 of 1 / RK

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

MCNAIR
ATTORNEYS

March 4, 2011

Via Certified Mail, Return Receipt Requested
Via Hand Delivery
Via U.S. Mail

Wayman O. Carter

wcarter@mcnair.net
T: (883) 271-4640
F: (883) 271-4016

Re: NAFH National Bank vs. Shoppes at Friendship, L.L.C. aka Shoppes at Friendship, LLC, Terry W. Dooley, William R. Dooley, Kenneth D. Smith, Enterprise Drive, LLC, Comprehensive Construction Services, Inc., Fred's Stores of Tennessee, Inc., Lyman Drug, Inc., William Gregory Noonan dba Colonial Pawn, First Citizens Bank and Trust Company, Inc., and Spartanburg Water System dba Ice House America.

Civil Action Case #2011-CP-42-0931

Mortgage was recorded on February 22, 2006 at 9:19 a.m. in the Office of the Register of Deeds for Spartanburg County in Mortgage Book 2613 at Page 27.

Assignment of Leases and Rents was recorded on February 22, 2006 at 9:20 a.m. in the Office of the Register of Deeds for Spartanburg County in Deed Book 85-C at Page 918.

Property Locations: 200A, 200B, 204 and 208 Spartanburg Highway, Lyman, SC 29365

McNair File No.: 043360.00018

To Whom it May Concern:

This Firm represents NAFH National Bank ("Lender"), which holds a Mortgage (the "Mortgage") and Assignment of Leases and Rents (the "Assignment of Rents") on the above-described property. Each tenant named on the following page occupies a portion of the property under a lease agreement with the Shoppes at Friendship, LLC.

The Lender has commenced an action in the Court of Common Pleas for Spartanburg County, South Carolina under Civil Action Number 2011-CP-42-0931, seeking foreclosure of the Mortgage and enforcement of the Assignment of Rents. Each tenant is named as a party to that action.

Please accept this letter as notice from the Lender that it has exercised its rights under the Mortgage and Assignment of Rents to enforce its assignment of rents pursuant to S.C. Code §29-3-100(c). The Lender hereby demands that all rent accruing after the date of this letter be paid directly to the Lender at

McNair Law Firm, P.A.
Poinsett Plaza, Suite 700
104 South Main Street
Greenville, SC 29601

Mailing Address:
Post Office Box 447
Greenville, SC 29602

mcnair.net

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GREENVILLE 287638v1

ANDERSON BLUFFTON CHARLESTON CHARLOTTE COLUMBIA GREENVILLE HOLTON HEAD MYRTLE BEACH FAWLEYS ISLAND

Shoppes at Friendship, LLC
March 4, 2011
Page 2

MENAIR
ATTORNEYS

the following address:

NAFH National Bank
Attn: Steve Meyer
215 N. Pine Street
Post Office Box 3508
Spartanburg, SC 29304

You will not receive a credit for rent paid directly to the lessor or any other party after the date of this notice or after the date of service of the Summons and Complaint in the foreclosure action.

Sincerely,

McNAIR LAW FIRM, P.A.



Weyman C. Carter

WCC:kar

Enclosure: as stated

cc: Shoppes at Friendship, LLC
4550 Atwater Court, Suite 204
Buford, GA 30518

Fred's Stores of Tennessee, Inc.
Attn: Real Estate Department
4300 New Getwell Road
Memphis, TN 38118

Lyman Drug, Inc.
204 Greenville Highway
Lyman, SC 29385

William Gregory Noonan
Colonial Pawn
229 Charlotte Highway
Lyman, SC 29349

First Citizens Bank and Trust Company, Inc.
Attn: Corporate Services
Mail Code 994026
P.O. Box 29
Columbia, SC 29202

Spartanburg Water System
dba Ice House America
208 Spartanburg Hwy
Lyman, SC 29365

GREENVILLE 287648v1

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4300 New Getwell Rd. • Memphis, TN 38118 • Phone (901) 365-8880

ELECTRONICALLY FILED - 2017 May 30 10:53 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4200504

October 29, 2007

CERTIFIED MAIL

7005 1820 0002 9739 2312

Shoppers of Friendship, LLC

Lyman Development Associates, LLC

380 South Pine Street

924 Gainesville Hwy Ste 130

Spartanburg, SC 29302

Burford, GA 30518

Re: Fred's #2208
Lyman, South Carolina

Dear Sir or Madam:

Pursuant to instructions given to me by the officers of Fred's Stores of Tennessee, Inc., I am informing you and notifying you by this letter that Fred's Stores of Tennessee, Inc. is exercising the option provided in our Lease Agreement dated November 6, 2002 on the building at the above-captioned location, at the same terms and conditions and at the monthly rental rate of \$6,334.00.

This option term shall begin February 1, 2008 and end on January 31, 2013.

This letter is provided in duplicate, please sign and date both copies. Keep one copy for your records and return the other copy in the envelope provided for our records.

Fred's Stores of Tennessee, Inc.

BY *Shirley Thompson*

Enclosures

ACKNOWLEDGED AND AGREED:

By: *Tony Wood* *negot*

Dated: *11-16-07*

FRED'S STORES OF TENNESSEE, INC.
Attention: Real Estate Department
4300 New Getwell Road
Memphis, TN 38118

Re: Lease Agreement ("Lease") between the Landlord's Assignee Shoppes at Friendship, L.L.C., its successors and assigns ("Assignee") and Fred's Stores of Tennessee, Inc., ("Tenant"), with respect to facility located at 200 Spartanburg Highway in Lyman, SC 29385, ("Property")

To whom it may concern:

In connection with the above-referenced Lease, enclosed please find a copy of the Assignment of Leases dated February 21, 2006, whereby the undersigned Landlord conveyed all of its obligations, rights, title and interest under the Lease to Shoppes at Friendship, L.L.C. ("Assignee"). Effective immediately, please make all future rent payments to Assignee as follows:

Shoppes at Friendship, L.L.C.
924 Gainesville Highway, Suite 120
Buford, GA 30518

Please feel free to call us if you have any further questions.

678-318-1055

Very truly yours,

Shoppes at Friendship, L.L.C. by
Enterprise Drive, LLC, its Sole Member and Manager

By: [Signature] (SEAL)
Name: Terry W. Dooley
Title: Member and Manager

Landlord:

LYMAN DEVELOPMENT ASSOCIATES, LLC

By: [Signature] (SEAL)
Name: DAVID SPENCER
Title: MEMBER

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ASSIGNMENT OF LEASES

THIS ASSIGNMENT OF LEASES (this "Assignment") is made and entered into this 21st day of February, 2006, by and between LYMAN DEVELOPMENT ASSOCIATES, LLC, a South Carolina limited liability company, and SPENCER/HINES PROPERTY MANAGEMENT, LLC, (hereinafter called "Assignor") and SHOPPES AT FRIENDSHIP, LLC, a Georgia limited liability company, (hereinafter called "Assignee").

WHEREAS, Assignor has heretofore leased to various lessees/tenants certain units, spaces, premises and/or out parcels at the property generally known as 200A, 200B, 204 and 208 Spartanburg Highway (sometimes known as Greenville Highway, sometimes known as Highway 29), Lyman (Spartanburg County), SC 29365 and being more fully described on Exhibit A attached hereto and incorporated herein by reference as the ("Property");

WHEREAS, all the leases at the Property are set forth on Exhibit B (the "Leases"); and

WHEREAS, Assignor now desires to transfer and assign the Leases to Assignee.

NOW, THEREFORE, FOR VALUE RECEIVED, the legal sufficiency of which is hereby acknowledged by the parties, Assignor hereby transfers and assigns to Assignee all of Assignor's rights, title interest and collected obligations under the Leases together with all related security deposits, common area maintenance expenses and any other accounts related to the Leases.

Assignor warrants that each of the assigned Leases is a valid and subsisting lease and that there are no defaults on the part of any of the parties therein; and

Assignee hereby accepts such transfer and assignment and assumes all obligations under the Leases.

This Assignment shall be binding upon and inure to the benefit of the personal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, this Assignment has been executed as of the day and year first above written.

WITNESSETH

ASSIGNOR

Barbara R. Davis
Donald R. Wilton

LYMAN DEVELOPMENT ASSOCIATES, LLC

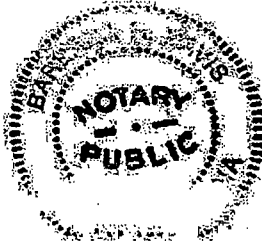
By: *[Signature]* (seal)
Name: B. LYNN SPENCER
Its: MEMBER

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 21st day of February, 2006, by B. LYNN SPENCER, MEMBER of Lyman Development Associates, LLC, a South Carolina limited liability company, on behalf of the company.

Barbara R. Davis (SEAL)
Notary Public for South Carolina
My Commission Expires: 09-23-2006



WITNESSETH:

Barbara R. Davis
Donald B. White

ASSIGNOR:

SPENCER HINES PROPERTY MANAGEMENT, LLC

By: [Signature] (seal)
Name: Barbara R. Davis
Is: SPENCER HINES

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 21st day of February, 2006, by B. LIND SPENCER MEMBER of Spencer/Hines Property Management, LLC, a South Carolina limited liability company, on behalf of the company.

Barbara R. Davis (seal)
Notary Public for South Carolina
My Commission Expires: 05-23-2006



WITNESSES:

Donald B. Wall
Witness #1
Barbara R. Davis
Witness #2

ASSIGNER:

SHOPPES AT FRIENDSHIP, LLC by
Enterprise Drive, LLC, its Sole Member and Manager

By: Terry W. Dooley
Name: Terry W. Dooley
Title: Manager and Member

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 21st day of February, 2006, by Terry W. Dooley, Manager and Member of Enterprise Drive, LLC, the Sole Member and Manager of SHOPPES AT FRIENDSHIP, LLC, a Georgia limited liability company, on behalf of the company.

Barbara R. Davis (SEAL)
Notary Public for South Carolina
My Commission Expires: 03-23-2006

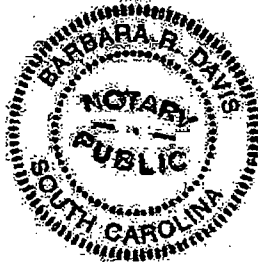


EXHIBIT "A"
LEGAL DESCRIPTION

ALL that piece, parcel or lot of land with all improvements thereon or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, designated as Tract A (containing 3.35 acres) more or less and Tract B-2 (containing 2.47 acres) more or less as shown on a plat entitled "Survey for William L. Jeffords, Lyman Shopping Center" by Neil R. Phillips, Surveyor, dated August 12, 1980, revised April 30, 1985 and recorded in Plat Book 94, page 159. Further reference is made to a more recent plat entitled "Survey for HRH Developers, LLC" prepared by Chapman Surveying Co., Inc., dated January 4, 1999 and recorded in Plat Book 143, page 486, Register of Deeds for Spartanburg County. This being the identical property as shown on a more recent plat of survey made for Shoppes at Friendship, LLC by John Robert Jennings, P.L.S., Surveyor, dated February 8, 2006.

Also, a non-exclusive sanitary sewer easement across parcel B-1 as established in document recorded in Deed Book 51-F, page 871, aforesaid records.

These being the identical properties heretofore conveyed unto Shoppes at Friendship, LLC, a Georgia limited liability company by deed of Lyman Development Associates, LLC, a South Carolina limited liability company dated February 21, 2006 and recorded herewith in the Office of the Register of Deeds for Spartanburg County, S. C.

TAX MAP NUMBERS: 5-15-07-120.01 and also
5-15-07-120.03

PROPERTY ADDRESSES: 200A, 200B, 204 and 208 Spartanburg Highway
Lyman, SC 29365-0000

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(SNDA)**

THIS AGREEMENT, made this 21st day of February, 2006, by and between and among Fred's Stores of Tennessee, Inc., whose address is Attention: Real Estate Department, 4300 New Getwell Road, Memphis, Tennessee 38118, ("Tenant"), SHOPPES AT FRIENDSHIP, LLC, whose address is 200 Spartanburg Highway, Lyman, SC 29365, ("Landlord") and FIRST NATIONAL BANK OF THE SOUTH, whose address is 215 North Pine Street, Spartanburg, South Carolina 29306, Attn: David Zabriskie, Executive Vice President, ("Mortgagee");

WITNESSETH

WHEREAS, Landlord is the owner and holder of fee simple title in and to certain real property (the "Premises") situated in Spartanburg County, South Carolina, and described in Exhibit A attached hereto and by this reference made a part thereof; and

WHEREAS, Landlord and Tenant have entered into an Agreement of Lease dated November 6, 2002, (the "Lease") demising a part of the Premises (the "Leased Premises"); and

WHEREAS, Landlord has made, executed and delivered to Mortgagee its Note (the "Note") dated February 21, 2006 in the principal amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars secured by a Mortgage and Security Agreement (the "Mortgage") of the Premises of even date which Mortgage is being filed for record in the Office of the Register of Deeds for Spartanburg County, South Carolina, ("Office"); and

WHEREAS, the Note is additionally secured by an Assignment of Rents and Leases (the "Assignment"), filed for record in the aforesaid Office, wherein the Lease was assigned by Landlord to Mortgagee; and

WHEREAS, Mortgagee is at the date hereof the owner and holder of the Note secured by the Mortgage and Assignment;

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Tenant, Landlord, and Mortgagee, intending to be legally bound hereby, covenant and agree as follows:

1. Non-Disturbance. Provided Tenant is not in default in the payment of rent, taxes, utility charges or other sums payable by Tenant under the terms of the Lease or under any other provision of the Lease, and Tenant is then in possession of the Leased Premises the right of possession of Tenant to the Leased Premises shall not be affected or disturbed by Mortgagee in the exercise or any of its rights and remedies under the Note, the Mortgage, or the Assignment.

2. **Attornment.** In the event Mortgagee obtains title to the Leased Premises through foreclosure or deed in lieu of foreclosure under the Mortgage, Tenant agrees to continue occupancy of the Leased Premises under the same terms and conditions of the Lease and will attorn to the Mortgagee, its successors and assigns, to the same extent and with the same force as if Mortgagee were the Landlord under the Lease.
3. **Lease Obligations.** (a) Mortgagee shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges, option and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Mortgagee were named therein as Lessor.
- (b) Except for matters which Mortgagee is provided notice of and has undertaken to cure in accordance with Section 6 herein, Mortgagee shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Mortgagee shall have obtained title to the Leased Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Mortgagee has obtained title to the Leased Premises.
4. **Prepayment of Rent.** Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment, and Mortgagee shall not be bound by and shall be entitled to recover from Tenant, as rent under the Lease any payment of rent or additional rent made by Tenant to Landlord for more than one month in advance or by any amendment or modification of the Lease, made without the written consent of Mortgagee.
5. **Assignment of Rents.** After notice is given to Tenant by Mortgagee, pursuant to the Assignment, that the rentals under the Lease should be paid to Mortgagee, Tenant shall pay and hereby agrees to pay to Mortgagee, or in accordance with the directions of Mortgagee, all rentals and other monies due and to become due to the Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments.
6. **Cure Rights.** Mortgagee is hereby given the right to cure Landlord's defaults within thirty (30) days after receipt of written notice from the Tenant of Landlord's failure so to do; provided, however, that said thirty (30) day period shall be extended (i) so long as within said thirty (30) day period Mortgagee has commenced to cure and is proceeding with due diligence to cure said defaults, or (ii) so long as Mortgagee is proceeding with a foreclosure action against Landlord and will commence to cure and will proceed with due diligence to cure said defaults upon the resolution of said foreclosure action.
7. **Subordination.** The Lease and Tenant's leasehold estate created thereby, including all rights and options to purchase the Leased Premises, if any, shall be and are completely and unconditionally subject and subordinate to the lien of the Mortgage and to all the

terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Mortgagee, and their respective heirs, personal representatives, successors and assigns. Specifically as to the Mortgagee, the provisions hereof relating to the Mortgagee shall inure to the benefit of the Mortgagee, its successors, its assigns and any purchaser of the Property at any foreclosure brought by Mortgagee or any grantee of a deed in lieu given by Landlord at the request of Mortgagee.

9. Partial Invalidity. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed according to the laws of the State of South Carolina. In the event any action is brought to enforce the provisions hereof, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred as against the party not prevailing.

11. Estoppel. The Tenant and Landlord certify as of the date hereof that the Lease is in full force and effect and there are no known defaults thereunder.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

WITNESSES:

TENANT:
FRED'S STORES OF TENNESSEE, INC.

✓

WITNESS #1

✓ By: _____
Name: _____
Title: _____
(SEAL)

✓

NOTARY

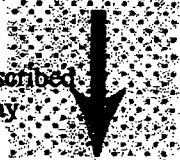
STATE OF _____)
COUNTY OF _____)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deplored and said that he saw FRED'S STORES OF TENNESSEE, INC. by _____ its _____ sign, seal and deliver the foregoing agreement and that he, together with the other subscribing witness noted above witnessed the execution thereof.

NOTARIZE

SWORN TO and subscribed
before me this _____ day
of _____, 2006.



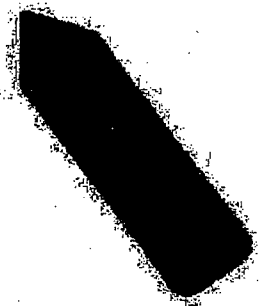
✓

Notary Public for _____ (SEAL)
My commission expires on _____

✓

Witness #1

Notary,
Sign
Above.
And
Affix
Seal
Here:



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

WITNESSES:

Donald Butler
Barbara R. Davis

LANDLORD:
SHOPPES AT FRIENDSHIP, LLC by
Enterprise Drive, LLC, its Sole Member and
Manager

By: Terry W. Dooley
Terry W. Dooley, Member and Manager
(SEAL)

STATE OF Sc
COUNTY OF SPARTANBURG

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deposed and said that he saw Shoppes at Friendship, LLC by Enterprise Drive, LLC, its Sole Member and Manager; by Terry W. Dooley, Member and Manager, sign, seal and deliver the foregoing Agreement and that he, together with the other subscribing witness noted above witnessed the execution thereof.

SWORN TO and subscribed
before me this 2nd day
of FEBRUARY, 2006.

Barbara R. Davis (SEAL)
Notary Public for S.C.

Donald Butler
Witness

My commission expires on
05-23-2006

Notary,
Sign
Above
And
Affix
Seal
Here:



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

WITNESSES:

Donald Blwill
Barbara R. Davis

FIRST NATIONAL BANK OF SPARTANBURG,
A DIVISION OF FIRST NATIONAL BANK OF
THE SOUTH

By: David Zabriskie
David Zabriskie,
Executive Vice President
(SEAL)
MORTGAGEE

STATE OF SC
COUNTY OF SPARTANBURG

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being sworn, deposed and said that he saw First National Bank of Spartanburg, a Division of First National Bank of the South, by David Zabriskie, its Executive Vice President, sign, seal and deliver the foregoing Agreement and that he, together with the other subscribing witness noted above witnessed the execution thereof.

SWORN TO and subscribed
before me this 2nd day
of FEBRUARY, 2006.

Barbara R. Davis
(SEAL)

Donald Blwill
Witness

Notary Public for SC
My commission expires on
03-23-2006

Notary,
Sign
Above
And
Affix
Seal
Here:



EXHIBIT "A"
LEGAL DESCRIPTION

ALL that piece, parcel or lot of land with all improvements thereon or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, designated as Tract A (containing 3.35 acres) more or less and Tract B-2 (containing 2.47 acres) more or less as shown on a plat entitled "Survey for William L. Jeffords, Lyman Shopping Center" by Neil R. Phillips, Surveyor, dated August 12, 1980, revised April 30, 1985 and recorded in Plat Book 94, page 159. Further reference is made to a more recent plat entitled "Survey for HRE Developers, LLC" prepared by Chapman Surveying Co., Inc., dated January 4, 1999 and recorded in Plat Book 143, page 486, Register of Deeds for Spartanburg County. This being the identical property as shown on a more recent plat of survey made for Shoppes at Friendship, LLC by John Robert Jennings, P.L.S., Surveyor, dated February 8, 2006.

Also, a non-exclusive sanitary sewer easement across parcel B-1 as established in document recorded in Deed Book 51-F, page 871, aforesaid records.

These being the identical properties heretofore conveyed unto Shoppes at Friendship, LLC, a Georgia limited liability company by deed of Lyman Development Associates, LLC, a South Carolina limited liability company dated February 21, 2006 and recorded herewith in the Office of the Register of Deeds for Spartanburg County, S. C.

TAX MAP NUMBERS: 5-15-07-120.01 and also
5-15-07-120.03

PROPERTY ADDRESSES: 200A, 200B, 204 and 208 Spartanburg Highway
Lyman, SC 29365-0000

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LEASE AGREEMENT
LYMAN, SOUTH CAROLINA

LESSOR

LYMAN DEVELOPMENT ASSOCIATES, LLC

LESSEE

FRED'S STORES OF TENNESSEE, INC.

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1 **LEASE AGREEMENT**

2
3 THIS LEASE AGREEMENT (the "Lease"), made and entered into this the 06 day of
4 November, 2002 by and between LYMAN DEVELOPMENT ASSOCIATES, LLC, whose mailing
5 address is 380 South Pine Street, Spartanburg, South Carolina 29302, hereinafter referred to as
6 "Lessor", and FRED'S STORES OF TENNESSEE, INC., a Tennessee Corporation qualified to do
7 business in the State of South Carolina hereinafter referred to as "Lessee".

8 **WITNESSETH:**

9 The parties hereto agree that this Lease sets forth all agreements, covenants and conditions, express
10 or implied, between the parties, and supersedes any prior oral or written agreements between the
11 parties with respect to the premises hereinafter described. The following Exhibits and Riders are
12 attached to this Lease and made a part hereof.

- 13 Exhibit "A" - Legal Description
- 14 Exhibit "B" - Plot Plan
- 15 Exhibit "C" - Renovation and Repair
- 16 Exhibit "D" - Floor Plan
- 17 Rider 1 - Extension or Renewals
- 18 Rider 2 - Common Area Maintenance
- 19 Rider 3 - Insurance
- 20 Rider 4 - Taxes

21
22 1. **DEMISED PREMISES:** (A.) Lessor, for and in consideration of the rents to
23 be paid as hereinafter set out and the performance of the mutual covenants and agreements
24 hereinafter set forth, does hereby demise and lease unto the Lessee that certain property situated in
25 the City of Lyman, County of Spartanburg, State of South Carolina, containing, approximately,
26 16,915 square feet of usable floor space, hereinafter referred to as the "Demised Premises" located
27 within the property described in Exhibit "A" and shown as crosshatched on Exhibit "B" hereto and
28 shall not be modified or changed without the prior written consent of Lessee.

29 (B.) It is understood and agreed that throughout the primary term (the "Primary Term") and
30 any renewal term(s) hereinafter exercised, Lessee and its agents, employees, customers, contractors,
31 subtenants, licensees and concessionaires shall have a non-exclusive right to use the common areas
32 (the "Common Areas") together with all improvements and appurtenances now and hereafter located
33 therein, including, but not limited to, the parking areas in the shopping center (the "Shopping
34 Center") and the rights of entrance and exit over all streets, alleyways, parking lots upon and
35 appurtenant to the Shopping Center, in common with the agents, employees and customers of other
36 stores in the Shopping Center, for the purpose of ingress and egress, on foot and by motor vehicles.

LYMAN, SC (ESCLSE)

1 for parking motor vehicles and for loading and unloading merchandise. The Common Areas are
 2 defined as and include, without limitation, all areas shown on the attached Exhibit "B" other than the
 3 aforementioned Demised Premises and shall not be modified and/or changed without the prior written
 4 consent of Lessee.

5 2. **TERM:** To have and to hold the same, together with all improvements and
 6 appurtenances thereto belonging, unto the Lessee, for a Primary Term of Five (5) years,
 7 commencing on the 1st day of February, 2003 ("the Commencement Date"), and ending on the 31st
 8 day of January, 2008, subject, however, to the provisions of Paragraph 16 and Rider 1 concerning
 9 extensions or renewals hereof.

10 3. **RENTAL:** Lessee shall pay to Lessor as monthly rent during the Primary
 11 Term the sum of Six Thousand and 00/100 (\$6,000.00) Dollars to be made payable on the first day
 12 of each month in advance commencing on the 1st day of March, 2003, the first thirty (30) days of the
 13 Lease being rent free.

14 4. **USE OF PREMISES:** Lessor agrees that the Demised Premises may
 15 be used for any lawful purpose except that Lessee shall not use the Demised Premises for any
 16 purpose which is in violation of any exclusive lease provisions of any other tenant of the Shopping
 17 Center of which Lessee has previously been notified by receiving written notice from the Lessor;
 18 however, Lessor acknowledges that in no event will the foregoing be construed in such a way as to
 19 preclude or inhibit the operation of a Fred's store which may or may not include a pharmacy
 20 department selling prescription drugs and over-the-counter merchandise within the Demised
 21 Premises. Subject to local codes and ordinances and provided that Lessee does not block the ingress
 22 and egress of vehicles or pedestrians, Lessee shall have the right from time to time at its discretion to
 23 sell and display plants and gardening materials in the common area adjacent to and in front of its
 24 store.

25 Lessor, during the Primary Term and any renewal term hereinafter exercised, shall
 26 not lease, use, or permit any other person, firm, corporation, partnership or other type of entity, other
 27 than Lessee, its assigns or sublessee, to use any portion of the Demised Premises or, if applicable,
 28 the Shopping Center; (hereinafter collectively "the Shopping Center"); as shown on Exhibit "B"
 29 attached hereto, or any extension or enlargement thereof, or any other property owned or controlled
 30 by Lessor and located within five (5) miles from any point on the outside perimeter boundary of the

LYMAN, SC (ESLSB)

1 Shopping Center for the conduct or operation thereon of a (individual and/or chain) variety discount
2 store, drug store, prescription pharmacy or prescription pharmacy department within a store.

3 Lessor agrees that the Demised Premises may be used for any lawful purpose. It is
4 expressly agreed that nothing contained in this Lease Agreement shall be construed to contain a
5 covenant, either express or implied, to either commence the operation of a business or thereafter
6 continuously operate a business in the Demised Premises. Lessor recognizes and agrees that Lessee
7 may, at Lessee's sole discretion and at any time during the term of this Lease, cease the operation of
8 its business in the Demised Premises.

9 5. MAINTENANCE OF PREMISES: During the Primary Term of this Lease
10 and any renewal term hereinafter exercised, the Lessor will keep and repair the exterior of the
11 Demised Premises, including the parking lot, parking lot lights, entrances and exits, sidewalks,
12 ramps, curbs, roof, including gutters and downspouts, awnings and canopies, walls, foundation,
13 foundation floors and/or sub-floors, exterior freight doors, exterior plumbing (underground pipes)
14 and including sprinkler systems, pipes, existing electrical distribution panels, wiring, and conduits
15 and interior plumbing pipes within the floors, walls and above the ceiling and all structural portions
16 of the Demised Premises; and the Lessor covenants and agrees that in the event of his failure to
17 comply with this provision and/or any other provision and/or covenant of this Lease, the Lessee may
18 perform such obligations and/or responsibilities of the Lessor for the account of the Lessor and may
19 charge, deduct, withhold and/or offset all expenses incurred therefor against any and all rent (past,
20 current, and/or future) and/or any other payments to Lessor by Lessee pursuant to the terms,
21 provisions, and/or conditions of this Lease Agreement. The Lessee agrees, except in the case of
22 emergencies, to give Lessor fifteen (15) days after receipt of written notice from the Lessee to
23 commence its obligations and/or responsibilities prior to Lessee performing such obligations and/or
24 responsibilities for the account of Lessor. If there is a sprinkler system, it is the Lessor's
25 responsibility to cause and pay for an annual certification by a licensed certifying agency and
26 provide Lessee with a copy of said certification. The Lessee will keep and repair the interior of the
27 Demised Premises excepting the responsibilities of the Lessor. Following the expiration of the first
28 ninety (90) days of the Primary Term hereof, Lessee will repair all heating and air conditioning units
29 ("HVAC") located on or used on the Demised Premises after first accepting same in good working
30 order. However, the Lessor will warrant the operation of the HVAC system for the first ninety (90)
31 days of the first summer season and the first ninety (90) days of the first winter season following the

LYMAN, SC (ESCL35)

1 Commencement Date hereof. The replacement of any heating and air conditioning equipment shall
 2 be the responsibility of the Lessor. The Lessee shall maintain all plate glass windows and aluminum
 3 doors. The Lessee shall also maintain the bathroom fixtures, all fluorescent light fixtures including
 4 fluorescent light tubes and ballast within the Demised Premises after first accepting all in good
 5 working order. Lessee or any of its assignees or subtenants shall have the right to make any non-
 6 structural alterations and/or improvements to the Demised Premises for the purpose of its business or
 7 the business of its assignees or subtenants; provided, that such alterations and/or improvements shall
 8 be made in accordance with the requirements of local ordinances and public authorities having
 9 jurisdiction thereover, and further provided that the value of the property shall not be diminished
 10 thereby. In making such alterations and/or improvements Lessee may salvage any material or
 11 equipment, which shall be removed or replaced. Lessor agrees to sign promptly applications,
 12 permits or consents that may be required by public authorities in connection with such alterations,
 13 improvements or stockroom additions to the Demised Premises and requested by Lessee, its
 14 assignees or subtenants. At the expiration of this Lease or any renewal thereof, Lessor agrees to
 15 accept the Demised Premises with all such alterations and/or improvements made by Lessee in
 16 accordance with the terms hereof. Excepting the foregoing Lessee agrees to surrender the Demised
 17 Premises to Lessor in the same conditions as when received, ordinary wear and tear and destruction
 18 by fire or other casualties accepted.

19 Notwithstanding anything above stated in the event of an emergency and the Lessee
 20 is unable to notify Lessor, the Lessee may take whatever action it deems reasonable to protect
 21 persons, the Demised Premises, furniture, fixtures, equipment and/or merchandise. Lessor shall
 22 reimburse the Lessee the cost of said emergency repairs within thirty (30) days of receipt of copies
 23 of the bills and/or invoices involved or the Lessee may withhold and/or offset said amount against
 24 any rent.

25 6. CARE OF PREMISES: Lessee agrees to keep Demised Premises in a neat
 26 and clean condition, and shall refrain from permitting any nuisance or fire hazard thereon, and shall
 27 permit no unlawful or immoral practice to be carried on within the Demised Premises with Lessee's
 28 knowledge or consent. Lessee will at all times comply in its occupancy and use of said premises
 29 with all ordinances of the City of Lyman, County of Spartanburg, State of South Carolina, and with
 30 all state and federal laws and regulations relating thereto.

LYMAN, SC (OSCLSE)

1 7. **SIGNS:** Lessee shall have the right to erect, install, maintain and operate of
 2 the Demised Premises such equipment, fixtures and signs, as Lessee may deem advisable, subject to
 3 local ordinances. Lessee may install its freestanding pylon sign or utilize Lessor's existing pylon
 4 sign. Lessor agrees to include Lessee's pylon sign as part of any submissions or applications made
 5 on behalf of the Shopping Center and use its best efforts to have such signage included in any
 6 permits or consents obtained by applicable governmental authorities. All maintenance of Lessee's
 7 sign(s) is the responsibility of the Lessee. It is understood that any work of any kind made by
 8 Lessee and done under this paragraph shall be made and done at Lessee's sole cost, and Lessee
 9 agrees to indemnify and hold Lessor harmless from any and all mechanics' liens that may be filed by
 10 reason thereof. In the event of the ultimate removal of any personal property, equipment or fixtures,
 11 including signs, Lessee agrees to repair any damage resulting therefrom.

12 8. **DESTRUCTION OF PREMISES:** The Lessor and the Lessee covenant and
 13 agree, each with the other, that in the event by reason of the elements, fire or other casualty, the
 14 Demised Premises are destroyed or so damaged that they cannot reasonably be repaired within ONE
 15 HUNDRED EIGHTY (180) DAYS from the occurrence of such casualty, then either party shall
 16 have the right to terminate this Lease effective as of the date of the occurrence of such casualty by
 17 providing written notice to the other party within thirty (30) days of the date of such damage or
 18 destruction, and the rent reserved hereunder shall be prorated and paid or refunded, as the case may
 19 be, as of such date. If the Demised Premises can reasonably be reconstructed to its former condition
 20 within ONE HUNDRED EIGHTY (180) DAYS from the date of such occurrence, then the Lessor
 21 shall repair and restore the Demised Premises to its former or a better condition with all reasonable
 22 dispatch, and in all events, within the said ONE HUNDRED EIGHTY (180) DAY period. If during
 23 the period of such repair or reconstruction the Lessee is deprived of occupancy of all or part of the
 24 Demised Premises to the extent that the Lessee is unable to conduct its regular business therein, the
 25 Lessor and the Lessee covenant and agree that all rental payment shall be suspended and abated until
 26 such time as the Lessee can resume and conduct its regular business therein.

27 9. **FREE AND QUIET ENJOYMENT:** The Lessor covenants and warrants to
 28 the Lessee that the Lessor has a good and sufficient title to the Demised Premises, and that he will
 29 protect and defend the Lessee in the use and quiet enjoyment of said premises during the term of this
 30 Lease or any extension(s) thereof.

1 10. **INDEMNIFICATION:** The Lessee during the Primary Term and any
2 Renewal Term shall add the Lessor as an additional insured under its liability policy for any and all
3 claims and demands, whether for injury to persons or loss of life or damage to property occurring
4 within the Demised Premises arising out of the use and occupancy of the Demised Premises by the
5 Lessee. However, Lessee will not be liable for any injury to persons, loss of life to persons or
6 damages to property resulting from or arising out of any act or omission of acts on the part of Lessor
7 or Lessor's agents or employees, and the Lessor shall indemnify and save harmless the Lessee from
8 any and all claims and demands from said act(s) or omission of act(s).

9 11. **ACCESS BY LESSOR:** Lessor, and the authorized representative of the
10 Lessor, shall have the right to enter the Demised Premises at all reasonable times to examine the
11 condition thereof, but such rights shall be exercised in a manner so as not to interfere with the
12 business of Lessee. At any time within sixty (60) days prior to the expiration of the Primary Term or
13 any Renewal Term, Lessor may show the Demised Premises to prospective purchasers or tenant, and
14 within such period may attach to the building or erect on the Demised Premises a reasonable notice
15 advertising said property for sale or letting.

16 12. **UTILITIES AND WASTE DISPOSAL:** Lessor, at Lessor's cost, shall
17 furnish, install and maintain, or cause to be maintained, adequate utility lines and services to serve
18 the Demised Premises, including separate meters to measure same. Lessee agrees to pay for all
19 utilities used upon the Demised Premises by Lessee including, but not limited to, electricity, gas,
20 water, and sewer charges. Lessee shall provide for the removal of its trash, rubbish and garbage
21 from the Demised Premises.

22 13. **DEFAULT BY LESSEE:** This Lease is made upon the express condition that
23 if the Lessee shall neglect to make any payment of rent when due, or neglect to keep and fulfill any
24 of the covenants and agreements herein provided on its part to be kept and fulfilled, and shall remain
25 in default thereof for a period of fifteen (15) days after receipt of written notice from the Lessor of
26 any such default, the Lessor, its successors or assigns may thereupon enter upon the Demised
27 Premises and expel the Lessee therefrom, without prejudice to any other remedy which the Lessor,
28 its successors or assigns, may have on account of such default, provided however, if said Lessee
29 after receipt of written notification from the Lessor of the default or the alleged default has diligently
30 commenced proceedings to cure said alleged default and/or default and diligently continues said
31 proceedings to cure, then the Lessor shall not be entitled to enter upon the Demised Premises and

LYMAN, SC (SSCLSE)

1 expel Lessee therefrom, not exercise any other remedy which the Lessor might have on account of
2 any such default.

3 14. **DEFAULT BY LESSOR:** This Lease is made upon the express condition
4 that if the Lessor shall neglect to keep and fulfill any of the covenants and agreements herein
5 provided on its part to be kept and fulfilled, and shall remain in default thereof for a period of fifteen
6 (15) days after receipt of written notice from the Lessee of any such default, the Lessee, its
7 successors or assigns, may thereupon cancel the Lease on the Demised Premises, and/or exercise any
8 other remedy which the Lessee, its successors or assigns, may have on account of such default,
9 provided however, if said Lessor after receipt of written notification from the Lessee of the default
10 or the alleged default has diligently commenced proceedings to cure said alleged default and/or
11 default and diligently continues said proceedings to cure, then the Lessee shall not be entitled to
12 cancel the Lease on the Demised Premises or exercise any other remedy which the Lessee might
13 have on account of default.

14 15. **ASSIGNMENT AND SUBLETTING:** Lessee shall have the right and
15 privilege to assign this Lease or sublet the premises, in whole or in part, subject to Lessor's approval,
16 which shall not be unreasonably withheld.

17 16. **EXTENSION OR RENEWALS:** See Rider 1 -- Extension or Renewals.

18 17. **COMPLIANCE WITH LAWS:** Prior to the Commencement Date of the
19 Lease, Lessor shall make and shall pay for improvements and alterations to comply with all laws,
20 ordinances, rules or regulations of any governmental authority. Lessor shall be responsible for the
21 disposal and removal from the Demised Premises of any existing Hazardous Materials including but
22 not limited to asbestos, and for any and all residual asbestos and/or Hazardous Materials claims that
23 arise in the future, if any. Lessee shall not cause or permit any Hazardous Materials to be brought
24 upon, kept, or used in or about the Demised Premises by Lessee, its agents and employees, except
25 for such hazardous materials as is lawful and necessary to Lessee's business and shall be fully liable
26 for all costs and expenses related to the use, storage, and disposal thereof.

27 18. **LESSEE'S FIXTURES, EQUIPMENT AND GOODS:** Lessee shall have
28 the right to erect, install, maintain and operate on the Demised Premises such equipment, fixtures
29 and signs as Lessee may deem advisable, subject to local ordinances. Any and all fixtures,
30 equipment and goods installed by Lessee shall be and remain the property of Lessee, and Lessee
31 may, at any time, remove any and all fixtures, equipment and goods installed by it in, on or about the

LYMAN, SC (ESCL35)

cat

1 Demised Premises, provided, that Lessee shall promptly repair any damage or injury to the Demised
2 Premises caused by such removal. Any fixtures and equipment furnished by Lessor shall remain the
3 property of Lessor and shall not be removed by Lessee unless Lessee purchases said equipment and
4 fixtures from Lessor.

5 19. **SUBORDINATION AND NON-DISTURBANCE:** If any Mortgagee (as
6 hereinafter defined) so request, this Lease shall be subject and subordinate to a first mortgage or first
7 deed of trust covering the Demised Premises and to all renewals, modifications, consolidations,
8 replacements and extensions thereof, provided such mortgagee complies with the following
9 provisions:

10 (a) The Mortgagee or holder of such first deed of trust ("Mortgagee") shall be a
11 recognized financial institution such as a bank, savings and loan association, college or university,
12 pension, retirement or trust fund, or insurance company; and

13 (b) The Mortgagee acknowledges the Lease between Lessor and Lessee and consents and
14 agrees to the terms, provisions and conditions of said Lease;

15 (c) The Mortgagee shall agree to non-disturbance provisions in favor of Lessee
16 substantially as follows: "So long as Lessee continues to pay the rent reserved in the Lease
17 Agreement and otherwise complies with the terms and provisions thereof, Mortgagee shall not
18 disturb the rights of possession of Lessee in Demised Premises as set forth in the Lease,
19 notwithstanding any foreclosure or proceedings in lieu thereof affecting Demised Premises whether
20 or not Lessee is made a party thereto. Upon passing of title to Demised Premises to the Mortgagee
21 or to any other party in any foreclosure or proceedings in lieu thereof, the party acquiring such title
22 shall thereupon, by virtue of such acquisition of title and without the execution of any further
23 instruments or documents, be deemed to be the Lessor for all purposes of Lease and the Lease shall
24 continue in full force and effect."

25 20. **INSURANCE:** The Lessor covenants and agrees with the Lessee that Lessor
26 shall have and maintain a fire and extended casualty insurance policy insuring against all risks on the
27 Demised Premises with coverage in an amount of at least 80% of replacement value of said Demised
28 Premises and shall provide the Lessee with a Certificate of Insurance for each policy period
29 evidencing the above stated coverage and containing a provision that said policy will not be canceled
30 without thirty (30) days prior written notice to the Lessee. The Lessee covenants and agrees with the

1 Lessor that it is the Lessee's responsibility to provide insurance coverage on Lessee's merchandise,
2 fixtures and equipment.

3 **21. PUBLIC LIABILITY INSURANCE:** (A) Throughout the Primary Term
4 and any Renewal Term thereof, Lessee shall maintain insurance against public liability for injury to
5 person (including death) or damage to property occurring within the Demised Premises arising out of
6 the use and occupancy thereof by Lessee. Such insurance shall be with minimum single limit of
7 \$2,000,000.00 for personal injury, death or property damage and Lessor shall be named as additional
8 insured under the policy. Lessee shall deliver to Lessor a certificate of insurance naming Lessor as
9 an additional insured and an agreement by the insurer that said policy might not be canceled without
10 thirty (30) days prior written notice delivered to Lessor.

11 (B) Throughout the Primary Term and any Renewal Term thereof, Lessor shall maintain
12 insurance against public liability for injury to person (including death) or damage to property arising
13 out of the acts or omissions of Lessor or arising out of the use of common facilities and ingress and
14 egress as defined in this Lease by Lessee or its licensees, employees, invitees or customers. Such
15 insurance shall be with minimum single limit of \$2,000,000.00 for personal injury, death or property
16 damage and Lessee shall be named as additional insured under the policy. Lessor shall deliver to
17 Lessee a certificate of insurance naming Lessee as an additional insured and an agreement by the
18 insurer that said policy might not be canceled without thirty (30) days prior written notice delivered
19 to Lessee.

20 **22. MUTUAL WAIVER OF SUBROGATION:** Lessor and Lessee each hereby
21 agree to a mutual waiver of subrogation and do hereby release the other and its respective
22 employees, agents and every person claiming by, through or under either of them, and if all of the
23 other tenants in the Shopping Center of which the Demised Premises is a part have first agreed to
24 and signed a mutual waiver of subrogation which releases Lessee, its employees and agents, and
25 Lessee has been furnished a copy of same, Lessee hereby releases such other tenants and the
26 employees and agents of said tenants, from any and all liability or responsibility (to them or anyone
27 claiming by, through or under them by way of subrogation otherwise) for any loss or damage to any
28 property (real or personal) caused by fire or any other insured peril covered by any insurance
29 policies for the benefit of either party, even if such loss or damage shall have been caused by the
30 fault or negligence of the other party, its employees or agents, or such other tenant or any employee
31 or agent thereof. Lessor agrees that it will use its best efforts to obtain waivers from all such tenants

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1 releasing all claims which they may have against Lessee, its employees and agents, for damages of
2 any property (real or personal) owned by such tenants and covered by insurance, even if such loss or
3 damage shall have been caused by fault or negligence of Lessee, its employees or agents. Lessor
4 agrees to furnish evidence of such waivers of liability as it has obtained to Lessee.

5 23. EMINENT DOMAIN. If at any time any of the Demised Premises or more
6 than twenty percent (20%) of the Shopping Center shall be taken for any public or quasi-public use
7 under any statute or by right of eminent domain or private purchase in lieu thereof, the Lessee shall
8 be entitled to terminate this Lease effective as of the date of the taking, at its option, by giving
9 written notice to Lessor within sixty (60) days, and any unearned rent or other charges paid in
10 advance shall be refunded to Lessee. In the event that Lessee does not elect to terminate this Lease
11 as aforesaid, the Lessor shall immediately commence and diligently prosecute to completion the
12 repair and restoration of the improvements of the Shopping Center and/or the Demised Premises to a
13 condition comparable to their condition at the time of taking and the Lease shall continue, but Lessee
14 shall be entitled to such proceeds as it is entitled to recover from the condemning authority.

15 In the event that any portion of the common areas including parking area and access
16 thereto designated as such on Exhibit "B" be taken for any public or quasi-public use, under any
17 statute or by right of eminent domain or private purchase in lieu thereof so as to materially or
18 substantially interfere with the conduct of Lessee's business in the Demised Premises or so as to
19 reduce the required parking area by an amount of twenty percent (20%) or more or reduce the
20 number of cars which may be conveniently parked by an amount of twenty percent (20%) or more or
21 reduce the number of cars which may be conveniently parked in front of the Demised Premises by
22 an amount of twenty percent (20%) or more, the Lessee may at its option terminate this Lease by
23 giving sixty (60) days written notice to Lessor and shall be liable for rent only up to the time of such
24 taking.

25 The continuance or termination of this Lease as above provided shall not operate to
26 deprive Lessee of the right to make claim against the condemning authority for any damages
27 suffered by Lessee, but Lessee shall have no right to make any claim against Lessor because of such
28 termination. If this Lease is not terminated as above provided, Lessee and Lessor shall agree upon a
29 proration of rental proportionate to the reduction of usable floor space and/or common areas, parking
30 areas and access.

LYMAN, SC (ESCLSB)

1 24. **RECORDATION OF SHORT FORM LEASE:** Lessor agrees with Lessee
2 that Lessee may record this Lease in short form.

3 25. **RENOVATION:** The Leased Premises shall be renovated by Lessor and/or
4 Lessee in accordance with the provisions of Exhibit "C" annexed hereto and made a part hereof.

5 Lessor shall repair any and all roof leaks including downspouts and replace or repair
6 gutters as needed prior to Lessee's occupancy.

7 Lessor shall repair any and all parking lot deficiencies including repair and re
8 installation of the parking lot lights and installation where needed of handicap parking spaces, signs
9 and ramps into building per A.D.A. requirements and including striping (or re-striping) parking
10 spaces and handicap parking spaces in front of Lessee's leased space.

11 All utilities servicing the Demised Premises are to be in good working condition and
12 acceptable to Lessee. Lessor shall provide a letter from a HVAC company, a sprinkler company, an
13 electrician and a plumber certifying all HVAC, all electrical services (including all lights, ballasts
14 and bulbs), plumbing and sprinkler systems are in good and workmanlike condition.

15 It is mutually agreed upon by both parties that with respect to LESSOR'S
16 RENOVATION AND REPAIRS as listed on Exhibit "C", Lessor shall use all reasonable efforts to
17 complete them by *March 1, 2009* (if not completed on or before that date then, at Lessee's option,
18 ~~the Lease may be canceled without any liability hereunder.~~ *OK * 6/1*)

19 26. **GENERAL PROVISIONS:**

20 (a) These enclosed Lease Documents are time sensitive, if these documents are not
21 completely executed and returned to Fred's within a fifteen (15) day period, then Fred's reserves the
22 right to withdraw this offer to lease the property described in the enclosed Lease Agreements.

23 (b) Lessor shall pay all fees and commissions for bringing about the execution and delivery
24 of this Lease and shall indemnify and hold Lessee harmless from any and all claims for such fees
25 and commissions by any broker or agent with whom Lessor has dealt.

26 (c) The captions of this Lease are inserted for convenience only and are not a part of this
27 Lease and do not in any way limit or amplify the terms and provisions of this Lease.

28 (d) If more than one person, corporation, or entity is named as Lessor in this Lease and
29 executes same as Lessor, then the word "Lessor" whenever used in this Lease shall refer to all such
30 persons, corporations, or entities, and the liability of such person, corporations or entities, for

* If not completed on or before that date then, at Lessee's option, the Lessee
may charge liquidated damages in the amount of Two Hundred and
no/100 Dollars (\$200.00) per day. *OK*
LYMAN, SC (USCL56)

1 compliance with or for the performance of all the terms, covenants and provisions of this Lease shall
2 be joint and several.

3 (e) All provisions of this Lease shall be construed as covenants and agreements as though the
4 words importing such covenants and agreements were used in separate sections hereof, and all the
5 provisions hereof shall bind and inure to the benefit of all the parties hereto, their respective heirs,
6 legal representatives, successors and assigns.

7 (f) No amendment or modification of this Lease shall be effective unless in writing and
8 executed by Lessor and Lessee.

9 (g) The sections of this Lease are intended to be severable. If any section or provision of this
10 Lease shall be held to be unenforceable by any court of competent jurisdiction, this Lease shall be
11 construed as though such section had not been included in it. If any section or provision of this
12 Lease shall be subject to two constructions, one of which would render such section or provision
13 invalid, the such section or provision shall be given that construction which would render it valid.

14 (h) This Lease shall be construed under and in accordance with the laws of the State of South
15 Carolina.

16 (i) Any rider attached to this Lease are made a part hereof as fully as if copied verbatim
17 herein.

18 (j) If Lessor or Lessee initiates and/or files any action against the other, which is in any way
19 connected with this Lease, the unsuccessful party shall reimburse the prevailing party all reasonable
20 attorney's fees, costs and expenses in connection therewith.

21 27. NOTICE: All notices given with respect to this Lease shall be given in
22 writing to be delivered in person, sent by express overnight delivery, or mailed by certified or
23 registered U.S. Mail, postage prepaid, with return receipt requested, to the parties at the following
24 addresses, or to such other addresses as they may hereafter specify by notice as provided herein to
25 the other party.

26 If to Lessor: Lyman Development Associates, LLC
27 380 South Pine Street
28 Spartanburg, South Carolina 29302

29 If to Lessee: Fred's Stores of Tennessee, Inc.
30 Attention: Real Estate Department
31 4300 New Getwell Road
32 Memphis, Tennessee 38118
33

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LYMAN, SC (BCLSE)

1 Notices shall be deemed to have been both given and received (i) when delivered in person, or (ii) if
2 sent by express overnight delivery, when received, or (iii) if mailed, when received.

3 THIS LEASE shall inure to the benefit of and be binding upon the parties hereto,
4 their heirs, executors, administrators, successors, and assigns.

5 IN TESTIMONY WHEREOF, the parties have set their hands this day and year first
6 written:

7 LESSOR: LYMAN DEVELOPMENT
8 ASSOCIATES, LLC

LESSOR: FRED'S STORES OF TENNESSEE, INC.

9
10 By: [Signature]

By: [Signature]

11 Its: MEMBER

Its: President

12
13 Attest: [Signature]

Attest: [Signature]
Secretary

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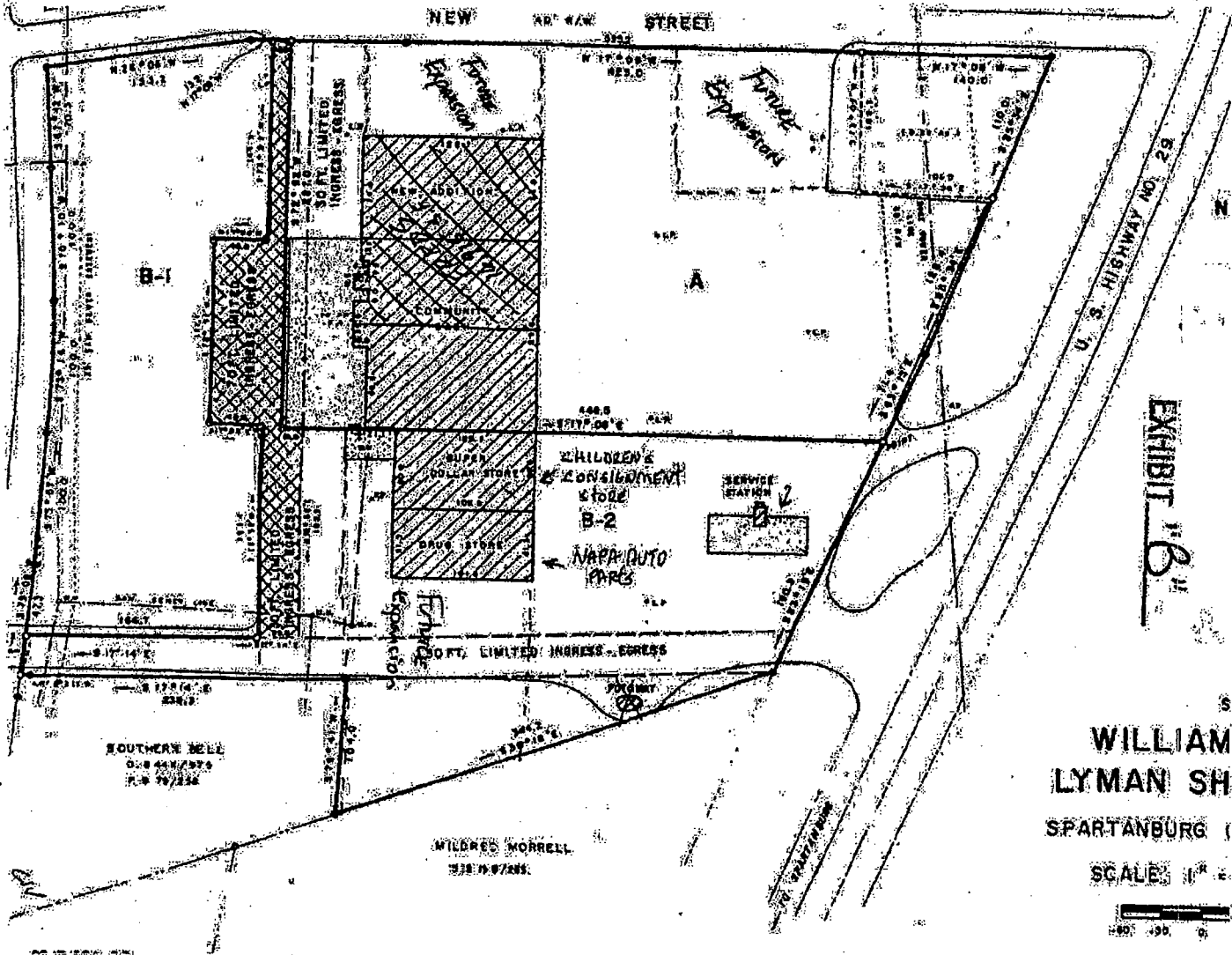


EXHIBIT "A"

LEGAL DESCRIPTION

All that piece, parcel or lot of land with all improvements thereon or hereafter constructed thereon situate, lying and being in the State of South Carolina, County of Spartanburg, designated as Tract A (containing 3.35 acres) and Tract B-2 (containing 2.47 acres) as shown on a plat entitled Survey for William L. Jeffords, Lyman Shopping Center by Neil R. Phillips, Surveyor, dated August 12, 1990, revised April 30, 1995 and recorded in Plat Book 94, page 159. Further reference is made to a more recent plat entitled Survey for HRH DEVELOPERS, LLC prepared by Chapman Surveying Co., Inc. dated January 4, 1999 and recorded in Plat Book 143, page 486, Register of Deeds for Spartanburg County.

Also, a non-exclusive sanitary sewer easement across parcel B-1 as described in Deed Book 51-F, page 871.

This conveyance is subject to the limited easements reserved by the aforesaid William L. Jeffords in the aforesaid deed recorded in Deed Book 51-F, at page 871, which are described on the plat recorded in Plat Book 94, page 159 and to such other easements, rights of way and/or encroachments as may be shown on the more recent survey of the subject property.

This being the same property conveyed to HRH Developers, LLC by deed of Lyman Center Associates, A South Carolina General Partnership consisting of Stan B. Marshall, James McCutchen, Jr., and Bary D. Wynn dated January 16, 1999, recorded June 7, 1999 in Deed Book 89-E, page 142, Register of Deeds for Spartanburg County.

EXHIBIT "C"

Lyman, SC

LESSOR'S RENOVATION & REPAIR

1. All work is to be done in a good and workmanlike manner and in accordance with all current building codes and ordinances (federal, state, county and city including Americans With Disabilities Act - A.D.A.). Remove all equipment and debris.
2. Install new ceiling tile on sales area. Paint and repair/replace any damaged or missing ceiling grid.
3. Ensure all emergency and exit lights are to code and in good working order.
4. Ensure all HVAC units are in good working order. Ensure there is at least one ton per 400 square ft. of floor space.
5. Build demising wall (2-hr. fire rated) and separate meter all utilities servicing the building.
6. Demo any partitions to provide the space in a configuration with all interior walls as per drawing (Fred's floor plan) attached as Exhibit "D". Demo any fur-downs on sales area. All interior walls on sales area smooth and painted as per Lessee's color specifications.
7. Build new stock room wall as shown on exhibit "D".
8. Build (2) new restrooms compliant with current A.D.A. codes as shown on Exhibit "D". Install mop sink and water fountain.
9. Install one set of metal impact doors leading to stockroom as per Exhibit "D".
10. Provide and install electrical circuits and power poles for cash registers, sensormatic, lamps, greeting cards, seasonal giftware, electronics, control center, drink machines and box baler.
11. Build control center, break room, security closet and dressing room as per Fred's specifications.
12. Provide electrical circuits for exterior building sign and pylon sign.
13. Install new (T-8) lighting on 8 ft. centers running left to right and one row 2-4 ft. off each perimeter wall of sales area. Ensure stock room has adequate lighting.
14. Paint columns to Fred's color specs.
15. Cap off and seal any electrical trenches or drains in sales floor. Smooth and seal stock room floor. New floor tile and carpet on sales area to be supplied and installed by Lessee.
16. Install new storefront (this includes adding 2 sets of 6ft. doors and 16ft. of glass) as shown on Exhibit "D".
17. Seal & stripe parking lot and ensure parking lot lights are in good working order.
18. Extend canopy and sidewalk across entire building front. Ensure canopy over the center of Lessee's space is strong enough to support Fred's building sign. Paint canopy over Lessee's space.

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RIDERS

LYMAN, SC (ESCLB)

RIDER 1

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2 **EXTENSION OR RENEWALS:** It is understood and agreed that the Lessee
3 shall have the right to extend the term of this Lease for an additional period of five (5) years,
4 beginning on the 1st day of February, 2008, provided the Lessee notifies, in writing, the Lessor of its
5 intention to extend same, said notice to be given at least thirty (30) days prior to the 31st day of
6 January, 2008, and provided further, that the amount of rent payable during each year of the
7 extension period is to be Six Thousand Three Hundred Thirty-four and 00/100 (\$6,334.00) Dollars
8 per month. The Lessee shall have the right to extend the term of this Lease for a second additional
9 period of five (5) years, beginning on the 1st day of February, 2013, provided the Lessee notifies, in
10 writing, the Lessor of its intention to extend same, said notice to be given at least thirty (30) days
11 prior to the 31st day of January, 2013 and provided further, that the amount of rent payable during
12 each year of this extension period is to be Six Thousand Six Hundred Sixty-seven and 00/100
13 (\$6,667.00) Dollars per month. The Lessee shall have the right to extend the term of this Lease for a
14 third additional period of five (5) years, beginning on the 1st day of February, 2018 provided the
15 Lessee notifies, in writing, the Lessor of its intention to extend same, said notice to be given at least
16 thirty (30) days prior to the 31st day of January, 2018 and provided further, that the amount of rent
17 payable during each year of this extension period is to be Seven Thousand and 00/100 (\$7,000.00)
18 Dollars per month.

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LYMAN, SC (ESCLSB)

RIDER 2

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 2 **COMMON AREA MAINTENANCE:** Common area maintenance cost (CAM)
 3 shall be the total cost of operating and maintaining the Common Areas of the Shopping Center
 4 including, but not limited to, the following: gardening and landscaping, lighting, cleaning, painting,
 5 striping, policing, removing garbage and other refuse and trash, removing snow, repairing and
 6 maintaining equipment of the Shopping Center, paving and maintaining the parking area and
 7 walkways, cutting and caring for the lawns and garden areas and cleaning ditches. It is understood
 8 that all of the costs and expenses of operating and maintaining the Common Areas and facilities of
 9 the Shopping Center shall be considered in determining Lessee's pro rata share of such total cost,
 10 regardless of whether Lessee is directly benefited by any such cost or expense. Management and
 11 administrative fees, roof repair and/or replacement and any costs of any capitalizable improvements
 12 or additions to the Common Areas shall not be considered a common area maintenance cost or
 13 expense.

14 Lessee shall pay Lessor a CAM charge which shall be Lessee's pro rata share of the
 15 total cost of operating and maintaining the common areas of the Shopping Center, subject to a
 16 maximum charge of Two thousand Five Hundred Thirty-seven and 25/100 (\$2,537.25) Dollars per
 17 year, or Two Hundred Eleven and 94/100 (\$211.44) Dollars per month. During the first extension
 18 period, if exercised, Lessee shall pay Lessor a CAM charge subject to a maximum charge of Three
 19 Thousand Three Hundred Eighty-three and 00/100 (\$3,383.00) Dollars per year, or Two Hundred
 20 Eighty-one and 92/100 (\$281.92) Dollars per month. During the second extension period, if
 21 exercised, Lessee shall pay Lessor a CAM charge subject to a maximum charge of Four Thousand
 22 Two Hundred Twenty-eight and 75/100 (\$4,228.75) Dollars per year, or Three Hundred Fifty-two
 23 and 40/100 (\$352.40) Dollars per month. During the third extension period, if exercised, Lessee
 24 shall pay Lessor a CAM charge subject to a maximum charge of Five Thousand Seventy-Four and
 25 50/100 (\$5,074.50) Dollars per year, or Four Hundred Twenty-two and 88/100 (\$422.88) Dollars per
 26 month. Lessee shall pay the CAM charge to Lessor in equal monthly installments, which shall be
 27 paid in advance on or before the first day of each month beginning with the primary Lease Term.
 28 Within thirty (30) days after the end of each calendar year of the Primary Term following the first
 29 full calendar year of the Primary Term or any extension(s) of this Lease, Lessor agrees to furnish to
 30 Lessee copies of invoices for all CAM expenses and a statement, itemized in detail reasonably
 31 satisfactory to Lessee, setting forth the total expenses for CAM charges for such calendar year. In

LYMAN, SC (ESCLSE)

1. the event the estimated CAM charges paid by Lessee during any Lease Year are greater than
2. Lessee's actual share (subject to the maximum amount referenced above), Lessor shall reimburse
3. Lessee for such overpayment at the time the statement is furnished to Lessee. Lessee's pro rata share
4. shall be the product obtained by multiplying said CAM charge for such calendar year by a fraction,
5. the numerator of which shall be the square foot area of the Demised Premises and the denominator
6. of which shall be the square foot area of the Shopping Center, as depicted on Exhibit "B" hereof.
7. CAM expenses exceeding the maximum amounts established above shall be the sole responsibility
8. of the Lessor.

9. Maximum CAM charges for periods less than calendar year (twelve months) shall be
10. the product of the number of months in that period times the maximum monthly charge as described
11. above.

12. If the term of the Lease shall begin at a time other than the beginning of a calendar
13. year, CAM charges for that year will be paid only for those months of that year, number of months,
14. that coincide with rent payments.

15. If the term of this Lease shall terminate at a time other than the ending of a calendar
16. year, Lessor shall furnish to Lessee a statement, itemized in detail reasonably satisfactory to Lessee,
17. setting forth the total expenses for any CAM charge for such year and a proper proration and
18. apportionment of said CAM charge for the period of occupancy by Lessee.

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RIDER 3

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4 **PERCENTAGE RENT:** Lessee shall pay to Lessor, during the Primary Term and any
5 extensions, percentage rent in the amount of one and one-half percent (1.5%) of the annual Gross
6 Sales in excess of the breakpoint as hereinafter defined, less the deductions itemized in the following
7 Paragraph A and subject to Gross Sales definition and exclusions identified in Paragraph B. The
8 "breakpoint" is defined as the numerical result derived by dividing the annual rental by one and one
9 half percent (1.5%).

10 A. Sixty (60) days after receipt of annual year end audit of sales report of each
11 calendar year, Lessee shall submit to Lessor a statement certified as correct by a Certified Public
12 Accountant or, at Lessee's election, Lessee's Chief Financial Officer, or Lessee's Controller, showing
13 the annual Gross Sales during the last preceding calendar year, and Lessee shall pay at such time the
14 entire amount of annual Percentage Rent then due hereunder, if any, less all additional rents and
15 expenses paid, such as insurance expense, real property taxes and common area maintenance
16 (CAM) charges.

17 B. **GROSS SALES:** In computing Gross Sales, Lessee shall take the total
18 amount of all sales of merchandise made by it in the ordinary course of business in the Demised
19 Premises and exclude or deduct therefrom the following:

- 20 (i) All credits and refunds made to customers for merchandise returned.
- 21 (ii) All receipts from vending machines, public telephone, and other coin operated
22 service facilities.
- 23 (iii) All sums and credits received in settlement of claims for loss or damage to
24 merchandise, fixtures, furniture, equipment and supplies.
- 25 (iv) All taxes, including, but not limited to sales taxes, excise taxes or similar taxes
26 imposed under any existing or future rules, regulations, laws or ordinances.
- 27 (v) All sales of store fixtures, equipment and supplies.
- 28 (vi) Certain Pharmacy exclusive merchandise items:

- 29 *Diabetic Supplies
- 30 *Insulin and Supplies
- 31 *Syringes
- 32 *Home Health Care products and services
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- (vi) All transfers of merchandise between the Demised Premises and other stores or warehouses operated by Lessee or its affiliates, not made to consummate a sale made at Demised Premises.
- (vii) Charitable donations.
- (ix) All sales of cigarettes, tobacco and/or tobacco products.
- (x) All sales to employees.

Lessee or its agents may (on 20 days prior written notice to Lessee) make an annual inspection of Lessee's records of gross sales made in the Demised Premises provided that such inspection is made within ninety (90) days after submission of the statement.

RIDER 4

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INSURANCE INCREASES. Lessee shall pay its pro rata share of all increases (caused by insurance company rate increases) in fire and extended casualty insurance premiums after the base year on the Shopping Center. The base year shall be 2003 calendar year. Upon Lessor submitting a copy of any subsequent calendar year's paid fire and extended casualty insurance premiums on the Shopping Center to Lessee along with computations evidencing Lessee's pro rata share of any increase over the base year, Lessee shall promptly reimburse Lessor its pro rata share of payment of such increases. In no event will Lessee be obligated to pay increases in insurance premiums caused by Lessor's decision to increase its coverage to more than 80% of replacement value of said Demised Premises. Lessee's pro rata share shall be the product obtained by multiplying said increase in fire and extended casualty insurance premiums by a fraction, the numerator of which shall be the square foot area of the Demised Premises and the denominator of which shall be the square foot area of the Shopping Center as depicted on Exhibit "B" hereof.

If the term of this Lease shall terminate at a time other than the beginning (or ending, as the case may be) of a calendar year, a proper apportionment of said fire and extended casualty insurance premiums for the year shall be made to cover the fraction of a year included within.

LYMAN, SC (BCL/SB)

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RIDER 5

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TAXES: Lessee shall pay its pro rata share of all increases in real property taxes which may be levied or assessed after the base year by any lawful authority against the land and improvements of the Shopping Center. The base year shall be 2003 calendar year. Lessee's pro rata share shall be the product obtained by multiplying said increases in taxes by a fraction, the numerator of which shall be the square foot area of the Demised Premises and the denominator of which shall be the square foot area of the Shopping Center as depicted on Exhibit "B" hereof.

Lessee shall promptly pay its pro rata share to Lessor upon Lessor submitting a copy of any subsequent tax year's paid tax invoice receipt to Lessee along with computations evidencing Lessee's pro rata share of any increases over the base year. Any requests received by Lessee from Lessor that are more than two hundred forty (240) days past payment date will not be considered Lessee's responsibility. If said taxes shall be disputed by Lessor, Lessor shall provide Lessee with documentation of said protest, and shall notify Lessee of the outcome of said dispute within sixty (60) days of resolution.

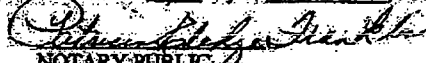
If the term of this Lease shall begin on and/or terminate at a time other than the beginning (or ending, as the case may be) of a tax year, a proper apportionment of said real estate taxes for the year shall be made to cover the fraction of a year included within.

LYMAN, SC (ESCLSE)

1 STATE OF South Carolina
2
3 COUNTY OF Agulterburg
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5 Personally appeared before me, the undersigned authority, in and for said State and County,
6 the within named Coverd & Co. LLC, Member of LYMAN DEVELOPMENT
7 ASSOCIATES, LLC, a Limited liability Company, who, acting for and on behalf of said limited
8 liability company and being thereunto duly and lawfully authorized to do, acknowledged that they
9 signed, sealed and delivered the foregoing instrument on the day and year and for the purposes
10 therein mentioned as said company's own voluntary act and deed.

11
12 Witness my hand and official seal this the 31 day of Oct, 2002.

13 
14
15 NOTARY PUBLIC

16
17 My commission expires:

18
19 June 29, 2007
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25

26 STATE OF TENNESSEE
27
28 COUNTY OF SHELBY
29

30 Personally appeared before me, the undersigned authority, in and for said State and County,
31 the within named John D. Reker and Charles S. Vail, President and Secretary, respectively, of
32 FRED'S STORES OF TENNESSEE, INC., a corporation, who, acting for and on behalf of said
33 corporation and being thereunto duly and lawfully authorized so to do, acknowledged that they
34 signed, sealed and delivered the foregoing instrument on the day and year and for the purposes
35 therein mentioned as said corporation's own voluntary act and deed.

36
37 Witness my hand and official seal this the 03 day of NOV, 2002.

38 
39
40 NOTARY PUBLIC

41
42 My commission expires:
43 My Commission Expires Jan. 20, 2004
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LYMAN, SC (ENCLSE)

1 STATE OF _____
2
3 COUNTY OF _____

4 **SHORT FORM LEASE**

5 THIS INDENTURE OF LEASE made this 1st day of November, 2002 between
6
7 LYMAN DEVELOPMENT ASSOCIATES, LLC, whose address is 308 South Pine Street,
8 Spartanburg, South Carolina 29302, hereinafter referred to as Lessor, and FRED'S STORES OF
9 TENNESSEE, INC., whose address is 4300 New Getwell Road, Memphis, Tennessee 38118,
10 hereinafter referred to as Lessee.

11 **WITNESSETH**

12 For and in consideration of One Dollar (\$1.00) and other good and valuable
13 considerations paid and to be paid by Lessee to the Lessor, the Lessor does demise and Lease unto
14 the Lessee and the Lessee does lease and take from the Lessor the property as described in "Exhibit
15 A" hereto attached, upon the terms and conditions more particularly set forth in a certain LEASE
16 AGREEMENT dated November 16, 2002

17 **TO HAVE AND TO HOLD** the above described premises unto the Lessee for a term
18 of Five (5) years commencing on the 1st day of February, 2003, and ending on the 31st day of
19 January, 2008 with three (3) additional options of five (5) years each.

20 **IN TESTIMONY WHEREOF**, the above named Lessor and the above named Lessee
21 have caused this instrument to be executed in duplicate on the day and year set forth above.

22 LESSOR LYMAN DEVELOPMENT ASSOCIATES, LLC
23 By: [Signature]
24 Its: MEMBER

25 Attest:
26 [Signature]

27 LESSEE: FRED'S STORES OF TENNESSEE, INC.
28 By: [Signature]
29 Its: President

30 Attest:
31 [Signature]
32 Secretary

33
34
35
LYMAN, SC (RSCLESE)

1
2
3 STATE OF South Carolina

4
5 COUNTY OF Spartanburg

6
7 Personally appeared before me, the undersigned authority, in and for said State and County,
8 the within named Carroll C. Christy, M.D. of LYMAN DEVELOPMENT
9 ASSOCIATES, LLC, a Limited liability Company, who, acting for and on behalf of said limited
10 liability company and being thereunto duly and lawfully authorized so to do, acknowledged that they
11 signed, sealed and delivered the foregoing instrument on the day and year and for the purposes
12 therein mentioned as said company's own voluntary act and deed.

13
14 Witness my hand and official seal this the 31 day of October, 2002.

15
16 L. Ann Jacobs
17 NOTARY PUBLIC

18
19 My commission expires:

20 June 29, 2009

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22
23
24
25
26 STATE OF TENNESSEE

27
28 COUNTY OF SHELBY

29
30 Personally appeared before me, the undersigned authority, in and for said State and County,
31 the within named John D. Reier and Charles S. Vail, President and Secretary, respectively, of
32 FRED'S STORES OF TENNESSEE, INC., a corporation, who, acting for and on behalf of said
33 corporation and being thereunto duly and lawfully authorized so to do, acknowledged that they
34 signed, sealed and delivered the foregoing instrument on the day and year and for the purposes
35 therein mentioned as said corporation's own voluntary act and deed.

36
37 Witness my hand and official seal this the 6th day of November, 2002.

38
39 L. Ann Jacobs
40 NOTARY PUBLIC

41
42 My commission expires:

43 My Commission Expires Jan. 20, 2004

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52 This document prepared by:

53
54 Fred's, Inc.
55 Leigh Ann Jacobs
56 4300 New Getwell Road
57 Memphis, Tennessee 38118

EXHIBIT A



ELECTRONICALLY FILED - 2017 May 30 10:32 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4200504

D000001

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

RECEIVED
MAR 29 2018
SC Court of Appeals

Appellate Case No.: 2017-001671

Lisa E. Crowe,

Appellant,

v.

Fred's Stores of Tennessee, Inc. and
NARA Properties, LLC,

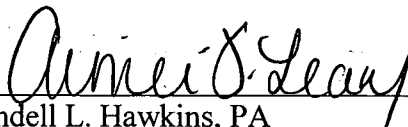
Defendants,

Of which Fred's Stores of Tennessee, Inc.
is a Respondent,

CERTIFICATE OF COUNSEL

I hereby certify that I have served the Record on Appeal and that it contains all material proposed to be included by any of the parties and not any other material. I also certify that the Record on Appeal contains no matter which is irrelevant to this appeal.

March 9, 2018


Wendell L. Hawkins, PA
Wendell L. Hawkins, Esq., SC Bar 13583
Aimee V. Leary, Esq., S.C. Bar 100657
103-C Regency Commons Dr. Greer, SC 29650
(864) 848-9370 Phone (864) 848-9759 Fax
wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for the Appellant