

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2010-CP-39-405

RECEIVED

APR 02 2014

SC Court of Appeals

John Walton

Respondent

v.

Mitchell L. Bagwell

Appellant,

RECORD ON APPEAL

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Greenville, SC 29601
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WALTON V. BAGWELL
INDEX TO RECORD ON APPEAL

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I.

ORDERS

PAGE

Order of Hon. Edward W. Miller, dated March 18, 2013.....4

II.

PLEADINGS

Summons and Complaint, filed March 4, 2010.....11

Answer, filed April 5, 2010.....17

First Amended Answer, dated September 16, 2011.....23

Reply to Amended Answer, dated September 30, 2011.....34

Defendant's Motion for Summary Judgment, filed Feb.18, 2011.....37

III.

TRANSCRIPT

Transcript of Trial held February 20, 2013.....39

TESTIMONY OF DR. JOHN WALTON.....45

Direct Examination by Mr. Brandt.....45

Cross Examination by Mr. Pringle.....61

Redirect Examination by Mr. Brandt.....97

TESTIMONY OF NELSON GARRISON.....104

Direct Examination by Mr. Pringle.....104

Cross Examination by Mr. Brandt.....132

TESTIMONY OF MITCHELL LEE BAGWELL.....139

Direct Examination by Mr. Pringle.....139

Cross Examination by Mr. Brandt.....154

Redirect Examination by Mr. Pringle.....	162
Recross Examination by Mr. Brandt.....	164
TESTIMONY OF HARRIET WIGGINS BAUKNIGHT.....	165
Direct Examination by Mr. Pringle.....	165
Cross Examination by Mr. Brandt.....	174

IV. **EXHIBITS**

PLAINTIFF'S EXHIBITS.....	189
Exhibit No. 1: Executed Lease.....	189
Exhibit No. 2: Copy of Check.....	195
Exhibit No. 3-A: Letter from Patterson to Walton.....	196
Exhibit No. 3-B: Email between Patterson and Nalley.....	197
Exhibit No. 4: Flying Anchovy Lease.....	198
Exhibit No. 5: Letter from Brandt to Patterson.....	207
Exhibit No. 6: Letter from Patterson to Brandt.....	208
Exhibit No. 7: Reciprocal Easement Agreement.....	209
Exhibit No. 8: Ground Lease.....	223
Exhibit No. 9: Affidavit of Attorney's Fees and Costs.....	237
Exhibit No. 10: Summary of Damages.....	241
Exhibit No. 11: Email from Mason to Garrison.....	242
DEFENDANT'S EXHIBITS.....	243
Exhibit No. 1: Letter from Bauknight to Garrison.....	243
Exhibit No. 2: Commercial Lease Application.....	244
Exhibit No. 3: Email from Garrison to Bauknight.....	246

Exhibit No. 4: Email from Garrison to Nalley.....	247
Exhibit No. 5: Email between Garrison and Mason.....	248
Exhibit No. 6: Letter from Bauknight to Garrison.....	249
Exhibit No. 7: Invoice from Prudential.....	250
Exhibit No. 8: Email between Garrison and Greer.....	251
Exhibit No. 9: Attorney Fee Affidavit.....	252
Exhibit No. 10: Patterson Billing Summary.....	254
V. <u>CERTIFICATE OF COUNSEL</u>.....	264

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
COURT OF COMMON PLEAS
2013 MAR 25 P 2:59

John Walton,)

Plaintiff,)

vs.)

Mitchell L. Bagwell,)

Defendant.)
_____)

ORDER

Case #2010-CP-39-405

This case came before the Court on Wednesday, February 20, 2013, at a regularly scheduled Non-Jury Term of the Court Common Pleas for Pickens County, South Carolina, with the Honorable Edward W. Miller presiding.

The parties were present and represented by their attorneys of record, Mr. Larry C. Brandt, Attorney of Walhalla, South Carolina, for Plaintiff, and Mr. Kraig Pringle, Attorney of Greenville, South Carolina, for Defendant.

Upon call of the case, the parties advised the Court that certain documentary exhibits had been agreed upon by counsel to be admitted into evidence prior to any witnesses being called; therefore, the documentary exhibits, Plaintiff's Exhibits Numbers 1-10 and Defendant's Exhibits Numbers 1-10, were entered upon motion of the respective attorneys without objection.

The Plaintiff was then called to testify under oath to the facts supporting his claim, after which the Plaintiff rested his case. Thereafter, Defendant called Nelson Garrison, a Real Estate Agent who represented the Plaintiff in the lease transaction between the parties to testify, as well as Harriett (Dee) Bauknight, the Real Estate Agent who

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represented the Defendant throughout the lease negotiations, after which Defendant testified under oath to the facts which he claimed justified his termination of the Lease. The deposition of Mr. Wes Nalley was then entered as a Court Exhibit, by agreement of the parties, with Plaintiff inviting the Court's attention to Pages 8, 9, 12, 13, 17, 18, 19, 20, 22, 23 and 26, and Defendant inviting the Court's attention to Pages 8, 14, 15 and 19.

After careful consideration of all evidence presented, the Court finds as follows:

FINDINGS OF FACT

1. On May 22, 2009, the parties entered into a Lease Agreement for a commercial building owned by Plaintiff, existing on property owned by Forest Acres Real Estate pursuant to a Ground Lease that was subject to restrictions set forth in a Reciprocal Easement Agreement between Forest Acres Real Estate and Lowe's Home Centers, Inc. which restricted the use of the property rented by Defendant. The Lease was signed by the Tenant, Mitchell Bagwell, on May 21, 2009 and by the Landlord, John Walton, on May 22, 2009, and was for a period of nineteen (19) months, beginning June 1, 2009 and ending at midnight on December 31, 2010, for the specific use as a restaurant.

2. On May 21, 2009, at the time the Defendant, Mitchell Bagwell, executed the Lease Agreement, he tendered a check to C. Dan Joyner Commercial Real Estate Company, the company with whom Plaintiff's Agent, Nelson Garrison, and his own Agent, Harriett (Dee) Bauknight, were employed, in the amount of SIX THOUSAND FIVE HUNDRED (\$6,500.00) DOLLARS to be applied to his obligations under the Lease.

3. Although the Lease term began on June 1, 2009, Defendant was granted access to the property several weeks prior for the purpose of making renovations, repairs

2


and up fitting the building to accommodate the business that he intended to operate therein.

4. Thereafter, on June 1, 2009, the Defendant stopped payment on the check and Defendant's attorney at that time, Jacqueline Patterson, notified the Plaintiff that Mr. Bagwell would not honor the Lease as he ***"had decided to pursue an alternate location."***

5. Immediately upon being informed by Plaintiff's counsel that Defendant was not going to honor the Lease Agreement (Plaintiff's Exhibit #1) on June 1, 2009, Plaintiff immediately re-listed his property with Plaintiff's Agent, Nelson Garrison, in an endeavor to find another tenant for the property; however, he was unable to do so until April 1, 2010, at which time Plaintiff procured a Lease with a Mr. Clay Taylor, d/b/a Flying Anchovy, LLC. By that time the market had changed substantially and Plaintiff was unable to negotiate a Lease upon the same terms and conditions as his Lease with Defendant.

6. Pursuant to Plaintiff's Lease with Defendant, Defendant would have paid over the term of the Lease the sum of EIGHTY ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 (\$81,750.00) DOLLARS to Plaintiff; however, a real estate commission to Mr. Garrison of approximately FOUR THOUSAND AND NO/100 (\$4,000.00) DOLLARS would have been paid. Pursuant to the Lease with Mr. Taylor, the total benefit passing to Plaintiff was the sum of TWENTY SIX THOUSAND NINETY AND NO/100 (\$26,090.00) DOLLARS, after real estate commissions of ONE THOUSAND EIGHTY AND NO/100 (\$1,080.00) DOLLARS were paid to C. Dan Joyner, leaving a benefit differential between the two (2) Leases of FIFTY ONE THOUSAND SIX HUNDRED SIXTY AND NO/100 (\$51,660.00) DOLLARS.

7. On October 14, 2009, after Defendant had not occupied the premises nor paid any rent called for by the Lease, Plaintiff's attorney wrote a letter to Defendant's attorney demanding that Mr. Bagwell honor the Lease or the matter be referred to arbitration pursuant to an arbitration clause set forth in Item #23 of the General Provisions and entitled "**Dispute Resolution**;" however, Defendant's attorney advised that if Plaintiff intended to proceed with attempting to enforce the Lease he needed to serve a Complaint which she would thereafter address appropriately.

8. Thereafter, on March 14, 2010, Plaintiff filed a Complaint claiming damages for breach of the Lease Contract and on, April 4, 2010, Defendant filed an Answer to the Complaint setting forth numerous defenses to Plaintiff's claim. Although Defendant, in his Answer, challenged the jurisdiction of the Court to hear the matter based upon the Dispute Resolution Clause, #23 of the General Provisions, neither Plaintiff nor Defendant thereafter moved the Court to compel arbitration.

9. Both parties in their pleadings, as well as at trial, sought attorney fees and costs incurred in the prosecution and/or defense of the action, pursuant to Item #23 which provided only for attorney fees in the event of arbitration and a subsequent action by the Court to enforce the arbitration award. The Lease, however, did not provide for attorney fees and costs to be recovered by either party in the event the parties proceeded to prosecute the dispute through a court action rather than arbitration.

10. The Plaintiff presented testimony and a computation of what he claimed his damages were, same being entered as Plaintiff's Exhibit #10. The computation, however, did not take into account the commission to C. Dan Joyner Company of approximately

FOUR THOUSAND AND NO/100 (\$4,000.00) DOLLARS which Plaintiff would have had to pay had the Lease been honored by Defendant.

11. The evidence clearly showed that Defendant was an educated person having graduated from college with a degree in Business Administration, and Defendant readily admitted under oath, that he voluntarily signed the Agreement, that he understood it, was well aware of the REA Agreement and that he knew he had to adhere to the REA Agreement in the use of the property.

12. Defendant further testified that he did not follow through with his obligations under the Lease Agreement because Forest Acres Real Estate, through its CEO, Wes Nalley, sent an email to his attorney, Jacqueline Patterson, stating that Forest Acres Real Estate would not accept the property being used as a ***"wine bar"*** as that would be in violation of the REA Agreement. Mr. Nalley's email of Friday, May 29, 2009, specifically stated ***"....if it is the intent of Mr. Bagwell to operate in violation of the REA, we will be forced to terminate the Lease Agreement and any other remedies available to us under the law."*** Mr. Nalley then stated in the email ***"....let me know if you have any questions or comment."***

13. Defendant also testified that no effort was made to contact Wes Nalley to discuss what he meant by the email and that he always intended to use the property in compliance with the REA Agreement, that is, that he always intended to operate a restaurant, as well as sell wine.

14. Wes Nalley's deposition testimony stated that a wine bar, incidental to a restaurant, would be in compliance with the REA but that just a wine store would not be.

15. The language of the REA Agreement concerning the use was clear and unambiguous and wine sales, incidental to a restaurant, was, indeed, permitted by the very terms of the REA. The Lease was also clear and unambiguous that the use was restricted to a *"restaurant."*

16. Defendant did not claim nor offer any proof that Plaintiff breached the Agreement but rather claimed that the person causing the breach was Forest Acres Real Estate, an entity which was not a party to the Agreement.

Based upon these findings of fact, the Court finds as a matter of law:

FINDINGS OF LAW

1. The Lease Agreement between the Defendant, Mitchell Bagwell, as Tenant, and Plaintiff, John Walton, as Landlord, entered into evidence as Plaintiff's Exhibit #1, was a binding agreement upon the parties and obligated them to adhere to the terms thereof.

2. Defendant breached the Lease Agreement, as entered into as Plaintiff's Exhibit #1, without just cause and Plaintiff has been damaged as a result.

3. The language of the REA Agreement restricting wine sales, incidental to a restaurant, is clear and unambiguous and clearly allowed the proposed use of the property as a wine bar, incidental to a restaurant.

4. The theoretical defenses and/or excuses pled and offered through testimony to the Court by Defendant for failing to carry out his obligations under the Lease are not supported by the evidence and do not afford Defendant a legal excuse for terminating the Lease.

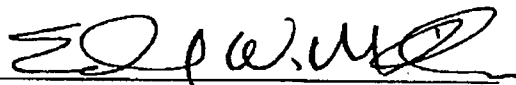
5. Pursuant to South Carolina law, attorney fees and costs may only be recovered in a lawsuit if recovery of those fees and costs are provided by a statute or contractual provision authorizing the taxing of attorney fees and costs to the prevailing party. In this case, the parties claimed the contractual obligation was contained in Paragraph 23 of the General Provisions entitled Dispute Resolution, but those provisions apply to arbitration only and not to the prosecution or defense of the matter in a court of law; therefore, the prevailing party in this lawsuit is not entitled to recover attorney fees and costs.

6. Plaintiff's damages are as shown on Plaintiff's Exhibit #10, entitled "Walton Damages," less attorney fees and costs as hereinabove stated, and FOUR THOUSAND AND NO/100 (\$4,000.00) DOLLARS which would have been required to be paid in real estate commissions had the Lease been honored by Defendant; therefore, Plaintiff is entitled to judgment against the Defendant, Mitchell Bagwell, in the amount of FIFTY ONE THOUSAND SIX HUNDRED SIXTY AND NO/100 (\$51,660.00) DOLLARS.

IT IS, THEREFORE, ORDERED that Plaintiff is hereby granted judgment against the Defendant, Mitchell Bagwell, in the sum of FIFTY ONE THOUSAND SIX HUNDRED SIXTY AND NO/100 (\$51,660.00) DOLLARS.

AND IT IS SO ORDERED!

3/18, 2013
Pickens, South Carolina


Edward W. Miller, Presiding Judge
Pickens County Non-Jury Court
of Common Pleas

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

COPY

10-026
IN THE COURT OF COMMON PLEAS

John Walton, M.D.,

Plaintiff(s)

CIVIL ACTION COVERSHEET

2010-CP - 39- 405

vs.

Mitchell L. Bagwell

Defendant(s)

COPY

(Please Print)

Submitted By: Larry C. Brandt

Address: Post Office Box 738

3691 Blue Ridge Boulevard

Walhalla, South Carolina 29691

SC Bar #: 856

Telephone #: 864-638-5406

Fax #: 864-638-7873

Other:

E-mail: lcb.brandtlawfirm@att.net

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature: _____

Date: March 3, 2010

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

FOR MANDATED ADR COUNTIES ONLY

Copy
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

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

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

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

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

COPY

STATE OF SOUTH CAROLINA,

COUNTY OF PICKENS

Dr. John Walton

Plaintiff,

vs.

Mitchell L. Bagwell

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

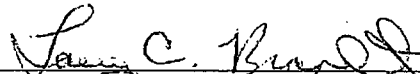
FILE NO. 2010-CP-39- 405

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Walhalla, South Carolina

Dated: March 3, 2010


Plaintiff/Attorney for Plaintiff

Address: Larry C. Brandt, P.A.
Post Office Box 738
Walhalla, South Carolina 29691
(864) 638-5406
(864) 638-7873 Facsimile

2010 MAR -4 A 10:35

RECEIVED
CLERK OF COURT
SOUTH CAROLINA

SCCA 401 (5/02)

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

John Walton, M.D.,)

Plaintiff,)

v.)

Mitchell L. Bagwell,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Case No.:2010-CP-39

405

Complaint

The Plaintiff would respectfully show unto the Court:

1. The Plaintiff is a citizen and resident of Greenville County, South Carolina.
2. Upon information and belief, the Defendant is a citizen and resident of Pickens County, South Carolina.

3. The property which is the subject of this action is located within Pickens County, South Carolina and is approximately 4,000 square feet of space located within the Lowes Center known as Walton Commons in Easley, South Carolina.

4. On or about May 22, 2009, the Plaintiff and the Defendant entered into a binding real estate lease contract wherein the Defendant agreed to lease from the Plaintiff the property described in Paragraph three (3) above for the period of Eighteen (18) months beginning June 1, 2009 and ending at midnight on December 31, 2010 for the sum of Three Thousand (\$3,000.00) and no/100 dollars per month through December 31, 2009 and Four Thousand (\$4,000.00) and no/100 dollars per month through December 31, 2010, with rent being due on the first day of each month. The Defendant also agreed to pay an additional Seven Hundred Fifty (\$750.00) and no/100 dollars per month for Taxes,

Insurance and Exterior Maintenance. A true and accurate copy of the executed lease agreement

COPY

contract and all exhibits thereto is attached hereto and labeled as "Exhibit 1"; the terms and exhibits of said contract are incorporated herein by reference.

5. The Plaintiff did at all times perform all stipulations, conditions, and agreements between the parties hereto and as stated in the lease agreement contract which were to be performed on his part, and was ready, willing, and able to convey the property to the Defendant as agreed on or before the date specified above.

7. Despite the lease agreement contract with the Plaintiff, the Defendant has failed and refused, and still fails and refuses after reasonable demand, to perform his obligations pursuant to the binding contract between the parties, and as stated in the contract attached hereto, by failing and refusing to use the premises for the purpose stated therein, and by failing and refusing to pay the full amount due as rent.

8. The agreement to lease and operate real estate entered into between the parties hereto constitutes a binding, written contract.

9. The Defendant has breached, or unjustifiably failed to perform his obligations under the contract, by failing and refusing to pay the full amount due as rent for the above-described property on or before the dates specified above and by failing and refusing to use the premises for the purpose stated therein.

10. The failure by the Defendant to perform his obligations constitutes a material breach of the terms of the contract.

11. As a result of the Defendant's failure to perform his contractual obligations, the Plaintiff has suffered damages and costs as a result of said failure, damages and costs as a result of filing and prosecuting this action, and damages and costs as a result of attorney fees.

12. The Plaintiff is informed and believes that he is entitled to judgment against the Defendant for actual damages, costs, and attorney fees.

COPY

WHEREFORE, the Plaintiff prays for an Order of this Court granting judgment against the Defendant for actual damages incurred by the Plaintiff, including attorney fees and the costs of this action, for such special damages incurred by the Plaintiff as set forth herein, and for such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED

Larry C. Brandt, P.A.
Post Office Box 738
Walhalla, South Carolina 29691
(864) 638-5406
(864) 6387873 Facsimile

BY: Larry C. Brandt
Larry C. Brandt
Attorney for the Plaintiff

BY: Thad B. Ball
Thad B. Ball,
Attorney for the Plaintiff

March 3, 2010
Walhalla, South Carolina

2010 MAR -4 A 10:35

CLERK OF COURT
SOUTH CAROLINA

CLERK OF COURT
STATE OF SOUTH CAROLINA PICKENS COUNTY IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS SOUTH CAROLINA

2010 APR - 5 P 3: 02

Case No.: 2010-CP-39-405

John Walton,

Plaintiff,

v.

Mitchell L. Bagwell,

Defendant.

ANSWER

Defendant, Mitchell L. Bagwell ("Defendant"), does hereby answer the Complaint of the Plaintiff and would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified or explained.
2. Upon information and belief, Defendant admits the allegations of Paragraph 1.
3. Defendant admits the allegations of Paragraph 2.
4. Defendant admits the allegations of Paragraph 3.
5. Answering Paragraph 4, Defendant denies the allegations and demands strict proof thereof.
6. Defendant denies the allegations of Paragraph 5.
7. Defendant would show that there is no Paragraph 6 to Plaintiff's Complaint.
8. Defendant denies the allegations of Paragraph 7.

9. Answering paragraph 8, the allegations state a legal conclusion and no response is required from Defendant. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

10. Defendant denies the allegations of Paragraph 9.

11. Answering paragraph 10, the allegations state a legal conclusion and no response is required from Defendant. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

12. Defendant denies the allegations of Paragraph 11.

13. Defendant denies the allegations of Paragraph 12.

FOR A SECOND DEFENSE

(Failure to State a Claim upon which relief can be granted)

14. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

15. The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to SCRCP 12(b)(6).

FOR A THIRD DEFENSE

(Lack of Subject Matter Jurisdiction)

16. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

17. Assuming the lease agreement alleged by Plaintiff is valid, this Court lacks subject matter jurisdiction over the claims asserted herein, which must be submitted to binding arbitration pursuant to the terms of such lease agreement.

FOR A FOURTH DEFENSE

(Failure of Condition Precedent to Dispute Resolution Process)

18. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

19. Assuming the lease agreement alleged by Plaintiff is valid, Plaintiff has failed to comply with conditions precedent to the dispute resolution process as set forth in the lease agreement and, therefore, the claims asserted by Plaintiff are barred.

FOR A FIFTH DEFENSE

(Laches)

20. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

21. Defendant alleges that Plaintiff's action is barred under the equitable doctrine of laches.

FOR A SIXTH DEFENSE

(Unclean Hands)

22. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

23. Defendant alleges that Plaintiff's claims are barred under the equitable doctrine of unclean hands.

FOR A SEVENTH DEFENSE

(Failure of condition precedent to Defendant's performance)

24. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

25. Assuming the lease agreement alleged by Plaintiff is valid, Defendant would show that, to the extent Plaintiff alleges that Defendant has not performed any duty or obligation under the lease agreement, not all conditions precedent to said obligations or duties have occurred.

FOR AN EIGHTH DEFENSE
(Impracticability/Impossibility of Performance)

26. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

27. Upon information and belief, the subject property is owned by George Weston Nalley ("Owner").

28. Upon information and belief, Owner is leasing the subject property to Plaintiff. Upon further information and belief, a lease agreement has been executed by and between Owner and Plaintiff.

29. Upon information and belief, Plaintiff is seeking to sublease the subject property and has employed Nelson Garrison ("Garrison"), a licensed real estate agent, to act as his agent in sub-leasing the subject property.

30. Defendant desires to lease and/or purchase property in order to establish a wine bar in Easley, South Carolina.

31. Defendant, by and through his agent, Harriette Bauknight, located the subject property and inquired as to its availability and use as a wine bar.

32. The subject property is subject to use restrictions which were filed in the Office of the Register of Deeds for Pickens County (the "Use Restrictions") on February 1, 1995 at Book 268, Page 154. A copy of the Use Restrictions are attached hereto as Exhibit A and incorporated herein by reference.

33. The Use Restrictions state in pertinent part as follows:

(7) Use Restrictions on the Combined Property.

(a) During the term of this Agreement, no portion of the Combined Properties may be used for any of the following purposes without the written consent of both Seller and Lowe's (which consent shall not be unreasonably withheld):

(i) A tavern, bar, nightclub, discotheque, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein incidental to the serving of food; **provided that such restaurant is primarily a restaurant with a complete line of food sales and not a bar with only incidental food sales.** (emphasis added)

34. Plaintiff and Garrison were aware that Defendant intended to use the subject property as a wine bar. Such knowledge is evidenced by email correspondence from Garrison, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

35. Garrison assured Defendant on many occasions that Defendant would be able to use the subject property as a wine bar and informed Defendant that Lowe's had approved the use of the subject property as a wine bar.

36. Based upon Garrison's assurances, on or about May 21, 2009, Defendant signed the alleged lease agreement which states in pertinent part:

"Any use must specifically adhere to the Use Restriction of the REA between Forest Acres Real Estate and Lowes Home Centers, Inc. dated January 31, 1995. Any violation of the REA will result in Lease termination."

37. On or about May 29, 2009, Owner informed Defendant that a wine bar violated the Use Restrictions and that he would terminate any lease Defendant may have had with Plaintiff if Defendant used the subject property as a wine bar. A copy of the correspondence from Owner is attached hereto as Exhibit C and incorporated herein by reference.

38. Defendant would allege and show that even if the lease agreement between Plaintiff and Defendant is valid, performance by the Defendant is excused as the intended use set forth in the lease agreement violates the Use Restrictions for the subject property. Because a wine bar was in violation of the Use Restrictions, Defendant's intended use of the subject property was rendered impossible and the lease terminated by its very terms.

WHEREFORE, having fully replied to the allegations of the complaint, Defendant prays for relief as follows:

1. That Plaintiff's Complaint be dismissed with costs;
2. For such other and further relief that the court deems just and proper.

PATTERSON & ASSOCIATES, P.A.

By: Nathaniel C. Farmer
Jacqueline H. Patterson, S.C. Bar No. 12090
Nathaniel C. Farmer, S.C. Bar No. 75976
1088 North Church Street
Greenville, South Carolina 29601
(864) 329-0548
Attorneys for Defendant

April 2, 2010
Greenville, SC

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

John Walton,

Plaintiff,

v.

Mitchell L. Bagwell,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-39-405

**FIRST AMENDED
ANSWER**

Defendant, Mitchell L. Bagwell ("Defendant"), does hereby answer the Complaint of the Plaintiff and would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified or explained.
2. Upon information and belief, Defendant admits the allegations of Paragraph 1.
3. Defendant admits the allegations of Paragraph 2.
4. Defendant admits the allegations of Paragraph 3.
5. Answering Paragraph 4, Defendant denies the allegations and demands strict proof thereof.
6. Defendant denies the allegations of Paragraph 5.
7. Defendant would show that there is no Paragraph 6 to Plaintiff's Complaint.
8. Defendant denies the allegations of Paragraph 7.

9. Answering paragraph 8, the allegations state a legal conclusion and no response is required from Defendant. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

10. Defendant denies the allegations of Paragraph 9.

11. Answering paragraph 10, the allegations state a legal conclusion and no response is required from Defendant. To the extent a response is required, the allegations are denied and strict proof demanded thereof.

12. Defendant denies the allegations of Paragraph 11.

13. Defendant denies the allegations of Paragraph 12.

FOR A SECOND DEFENSE

(Failure to State a Claim upon which relief can be granted)

14. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

15. The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to SCRCP 12(b)(6).

FOR A THIRD DEFENSE

(Lack of Subject Matter Jurisdiction)

16. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

17. Assuming the lease agreement alleged by Plaintiff is valid, this Court lacks subject matter jurisdiction over the claims asserted herein, which must be submitted to binding arbitration pursuant to the terms of such lease agreement.

FOR A FOURTH DEFENSE

(Failure of Condition Precedent to Dispute Resolution Process)

18. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

19. Assuming the lease agreement alleged by Plaintiff is valid, Plaintiff has failed to comply with conditions precedent to the dispute resolution process as set forth in the lease agreement and, therefore, the claims asserted by Plaintiff are barred.

FOR A FIFTH DEFENSE

(Laches)

20. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

21. Defendant alleges that Plaintiff's action is barred under the equitable doctrine of laches.

FOR A SIXTH DEFENSE

(Unclean Hands)

22. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

23. Defendant alleges that Plaintiff's claims are barred under the equitable doctrine of unclean hands.

FOR A SEVENTH DEFENSE

(Failure of condition precedent to Defendant's performance)

24. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

25. Assuming the lease agreement alleged by Plaintiff is valid, Defendant would show that, to the extent Plaintiff alleges that Defendant has not performed any duty or obligation

under the lease agreement, not all conditions precedent to said obligations or duties have occurred.

FACTUAL ALLEGATIONS RELATING TO REMAINING DEFENSES

26. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

27. The property which is the subject of this action is commonly identified as "approximately 4,000 square feet of space located within the Lowes Center know as Walton Commons in Easley, SC" (hereinafter, the "Property").

28. Upon information and belief, the Property is owned by Forest Acres Real Estate Company ("Owner") whose principal is George Weston Nalley ("Nalley").

29. Upon information and belief, Owner is leasing the Property to Plaintiff. Upon further information and belief, a lease agreement has been executed by and between Owner and Plaintiff.

30. Upon information and belief, Plaintiff sought to sublease the Property and employed Nelson Garrison ("Garrison"), a licensed real estate agent, to act as his agent in subleasing the Property.

31. Defendant desired to lease and/or purchase property in order to establish a wine bar / restaurant in Easley, South Carolina.

32. Defendant and his agent, Harriette Bauknight, located the Property and inquired as to its availability and use as a wine bar / restaurant.

33. The Property is subject to use restrictions which were filed in the Office of the Register of Deeds for Pickens County (the "Use Restrictions") on February 1, 1995 at Book 268,

Page 154. A copy of the Use Restrictions are attached hereto as Exhibit A and incorporated herein by reference.

34. The Use Restrictions state in pertinent part as follows:

(7) Use Restrictions on the Combined Property.

(a) During the term of this Agreement, no portion of the Combined Properties may be used for any of the following purposes without the written consent of both [Owner] and Lowe's (which consent shall not be unreasonably withheld):

(i) A tavern, bar, nightclub, discotheque, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein incidental to the serving of food; **provided that such restaurant is primarily a restaurant with a complete line of food sales and not a bar with only incidental food sales.** (emphasis added)

35. Defendant, at all relevant times, stated to Plaintiff, by and through Garrison, that his intended use of the Property was a wine bar / restaurant modeled after Northampton Wines in Greenville, South Carolina.

36. Plaintiff and Garrison were aware that Defendant intended to use the Property as a wine bar / restaurant. Such knowledge is evidenced by, among other things, email correspondence from Garrison, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

37. Garrison, acting in his capacity as agent for Plaintiff, assured Defendant on many occasions that Defendant would be able to use the Property as a wine bar / restaurant, and he informed Defendant that Lowe's had approved the use of the Property as a wine bar / restaurant.

38. Based upon Garrison's assurances, on or about May 21, 2009, Defendant signed the lease agreement ("Lease") which states in pertinent part:

"Any use must specifically adhere to the Use Restriction of the REA between Forest Acres Real Estate and Lowes Home Centers, Inc. dated January 31, 1995. Any violation of the REA will result in Lease termination."

39. The use provision of the Lease further states, in pertinent part, that "Tenant shall use the Premises only for the purpose of a restaurant business."

40. On or about May 27, 2009, Owner by and through its principal, Nalley, informed Defendant that a wine bar / restaurant violated the Use Restrictions and that Owner would terminate any lease Defendant may have had with Plaintiff if Defendant used the Property as a wine bar. Written correspondence dated May 29, 2009 evidencing Owner's position is attached hereto as Exhibit C and incorporated herein by reference.

FOR AN EIGHTH DEFENSE
(Bad Faith)

41. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

42. Defendant would allege and show that Plaintiff's bad faith bars its claims or that any damages must be reduced as a result of Plaintiff's comparative bad faith.

FOR A NINTH DEFENSE
(Impracticability/Impossibility of Performance)

43. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

44. Defendant would allege and show that performance by the Defendant under the Lease is excused as Defendant's intended use of the Property as set forth in the Lease violates the Use Restrictions. Because a wine bar / restaurant was in violation of the Use Restrictions pursuant to correspondence received from Owner, Defendant's intended use of the Property was rendered impossible and the Lease terminated by its very terms.

FOR A TENTH DEFENSE
(Frustration of Purpose)

45. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

46. Defendant would allege and show that performance by the Defendant under the Lease is excused as the purpose of the Lease has been frustrated as a result of Owner's refusal under the Use Restrictions to allow Defendant to use the Property as a wine bar / restaurant.

FOR AN ELEVENTH DEFENSE
(Unilateral Mistake)

47. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

48. Defendant would allege and show (i) that he at all times, represented that his intended use of the Property was a wine bar / restaurant modeled after Northampton Wines, (ii) that he believed that his wine bar / restaurant concept modeled after Northampton Wines was included in the term "restaurant" under the use provision of the Lease and (iii) that he believed

the Property could be used for such purposes based upon the representations and assurances of Garrison.

49. As evidenced by Exhibit C, Owner informed Defendant that a wine bar violated the Use Restrictions and that he would terminate any lease Defendant may have had with Plaintiff if Defendant used the Property as he had explained to Garrison.

50. Defendant would allege and show that, as a result of the misrepresentations and concealments of Plaintiff, by and through Garrison, Defendant was unilaterally mistaken as to whether his intended use of the Property violated the Use Restrictions and was a permissible use under the Lease.

51. Defendant would further allege and show that this unilateral mistake is accompanied by strong and extraordinary circumstances which would make it wrong to enforce the Lease as Defendant could not use the Property for the purpose which he had negotiated and intended.

52. As a result of this unilateral mistake, Defendant is entitled to a rescission of the Lease.

FOR A TWELFTH DEFENSE
(Mutual Mistake)

53. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

54. Defendant would allege and show that there was a mutual mistake between the parties as to whether Defendant's intended use of the Property violated the Use Restrictions and was a permissible use under the Lease.

55. Defendant would allege and show that the mistake as to the use of the Property is mutual and is in reference to the facts or supposed facts upon which the Lease is based as both parties believed that Defendant could use the Property as a wine bar / restaurant.

56. Defendant would further allege and show that the language found in the use provision of the Lease omits a material element of the parol agreement which preceded it as Defendant, at all times, represented that his intended use of the Property was a wine bar / restaurant modeled after Northampton Wines.

57. As a result of this mutual mistake, Defendant is entitled to a rescission of the Lease.

FOR A THIRTEENTH DEFENSE
(Ambiguity)

58. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

59. Defendant would allege and show that the use provision of the Lease is ambiguous and lacks definiteness, and is therefore unenforceable.

FOR A FOURTEENTH DEFENSE
(Misrepresentation)

60. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

61. Defendant would allege and show that the representations and acts of Garrison are imputable to Plaintiff based upon an agency relationship.

62. Defendant would allege and show that Plaintiff, by and through Garrison, made false representations as to whether Defendant's intended use of the Property violated the Use Restrictions.

63. Plaintiff and Garrison had pecuniary interests in making these statements.

64. Plaintiff and Garrison owed a duty of care to convey truthful information to Defendant, and they breached that duty by failing to exercise due care in conveying truthful information to Defendant.

65. Defendant justifiably relied on the representations of Garrison when he entered into the Lease.

66. As a result of these misrepresentations, Plaintiff's recovery is barred, and Defendant is entitled to a rescission of the Lease.

FOR A FIFTEENTH DEFENSE
(Equitable Estoppel)

67. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

68. Defendant would allege and show that the representations, knowledge and acts of Garrison are imputable to Plaintiff based upon an agency relationship.

69. Defendant would allege and show that Plaintiff, by and through Garrison, made false representations as to whether Defendant's intended use of the Property violated the Use Restrictions.

70. Plaintiff intended that these representations be acted upon.

71. Plaintiff had actual or constructive knowledge that no approval had been obtained for Defendant to use the Property for his intended purpose.

72. Defendant lacked knowledge and the means of knowledge to obtain the truth as to whether his intended use did or did not violate the Use Restrictions.

73. Defendant relied upon the representations of Plaintiff by and through Garrison when he executed the Lease.

74. As a result of these misrepresentations, Plaintiff is equitably estopped from recovering from Defendant.

FOR A SIXTEENTH DEFENSE
(Unconscionability)

75. Defendant incorporates by reference all prior and subsequent allegations consistent herewith.

76. Defendant would allege and show that it would be unconscionable to enforce the terms of the Lease, and Plaintiff's claims are therefore barred.

WHEREFORE, having fully replied to the allegations of the Complaint, Defendant prays for relief as follows:

1. That Plaintiff's Complaint be dismissed with costs;
2. That the Court determine that the Lease was terminated and/or rescinded and that the parties have no rights or obligations under the Lease; and
3. For such other and further relief that the Court deems just and proper.

PATTERSON & ASSOCIATES, P.A.

By: Nathaniel C. Farmer
Jacqueline H. Patterson, S.C. Bar No. 12090
Nathaniel C. Farmer, S.C. Bar No. 75976
1088 North Church Street
Greenville, South Carolina 29601
(864) 329-0548
Attorneys for Defendant

September 16, 2011
Greenville, SC

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

John Walton,)
Plaintiff,)
vs.)
Mitchell L. Bagwell,)
Defendant.)

**REPLY TO DEFENDANT'S
FIRST AMENDED ANSWER**

CASE #2010-CP-39-405

Plaintiff, John Walton, replying to the First Amended Answer of the Defendant, would respectfully show unto the Court as follows:

1. All allegations of the Amended Answer which are not addressed in the Complaint and/or specifically responded to herein are denied.
2. All allegations of the Complaint are again realleged and incorporated herein by reference as if set forth verbatim.
3. In addition to the allegations set forth in the Complaint, Plaintiff will show that on October 14, 2009 counsel for Plaintiff wrote to Ms. Jacqueline H. Patterson, Defendant's attorney, in an effort to open good faith discussions to resolve the dispute in compliance with the dispute resolutions provision of the Lease Agreement and even suggested a method of choosing the arbitrator in the event the dispute could not be amicably resolved. Thereafter, on October 19, 2009, Ms. Patterson wrote Plaintiff's counsel a letter merely refusing to discuss the matter and telling Plaintiff's counsel to "serve a Complaint which I will address appropriately." As a result, Plaintiff is informed and believes that Defendant, by and through his attorney, has waived arbitration in this matter,

as well as any other defenses predicated on the arbitration and/or dispute resolutions provision of the Lease, specifically including, but not limited to, the third defense (lack of subject matter jurisdiction), fourth defense, (failure of condition precedent to dispute resolution process), fifth defense, (laches), and sixth defense (unclean hands).

4. Plaintiff is further informed and believes that Defendant's refusal to discuss resolution and his attorney's demand that a Complaint be filed rather than submit the dispute to arbitration, is prima facie evidence of Defendant's bad faith throughout his dealings in this matter and that he is thereby barred from asserting any of the equitable defenses set forth in his Answer.

5. Further replying to Defendant's answer, Plaintiff will show:

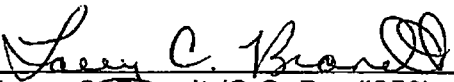
- a. That Defendant's actual intended use of the premises as described to Plaintiff and/or Nelson Garrison does not violate the use restrictions on the property;
- b. That Defendant's intended use has not been frustrated;
- c. That there has been no mistake as to the use, either unilaterally or mutually;
- d. That the Lease is not ambiguous nor does it lack definiteness;
- e. That neither Plaintiff nor anyone on his behalf ever misrepresented anything to Defendant;
- f. That all matters were fully disclosed to Defendant prior to the Lease being signed and Defendant was given a full and fair opportunity to research same and/or receive legal advice concerning the matter prior to the signing of the Lease and the tendering of the rent check; however, he failed to do so.
- g. That Defendant had no right to rely upon any representations given to him by Plaintiff and/or any agent of the Plaintiff, particularly Nelson Garrison, as all pertinent matters were known to him and he had full and fair opportunity to investigate the matter himself and make his own decision concerning the rental of the premises, which he did.

6. Inasmuch as Defendant was given full and fair opportunity to read all documents, to fully investigate the matter and seek his own legal advice to determine whether his proposed use of the property was prohibited and/or allowed but failed to do so, he is estopped him from asserting any defenses of unconscionability or equitable estoppel and/or any other defenses that he is alleging in his First Amended Answer.

WHEREFORE, Plaintiff, having fully complained and replied to the First Amended Answer of the Defendant, would pray that the First Amended Answer and all defenses contained therein be denied and that Plaintiff be granted the relief prayed for in his Complaint.

Respectfully submitted,

LARRY C. BRANDT, P.A.
3691 Blue Ridge Blvd.
Post Office Box 738
Walhalla, South Carolina 29691
Tel: (864) 638-5406
Fax: (864) 638-7873

BY: 
Larry C. Brandt (S.C. Bar #856)
Attorney for Plaintiff

September 30, 2011
Walhalla, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-39-405

John Walton,

Plaintiff,

v.

Mitchell L. Bagwell,

Defendant.

MOTION FOR
SUMMARY JUDGMENT

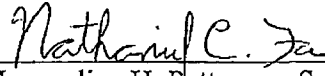
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 FEB 18 P 4:23

PLEASE TAKE NOTICE that Defendant, Mitchell L. Bagwell ("Defendant") through the undersigned attorneys, does hereby move for an order granting summary judgment, pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, on the grounds that there exists no genuine issue of material fact and that the Defendant is entitled to judgment as a matter of law. Defendant would also show unto this Court that it is entitled to attorney's fees and costs in this matter. This motion will be based upon the pleadings, discovery, affidavits, and/or a memorandum of authorities to be provided, as required by Court Rules.

Specifically, Defendant would show that the parties' obligations terminated in accordance with the express terms of the Lease Agreement as Defendant's intended use of the subject property would have been a violation of the Use Restrictions of the Reciprocal Easement Agreement between Forest Acres Real Estate and Lowes Home Centers, Inc. dated January 31, 1995.

[ATTORNEY SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,



Jacqueline H. Patterson, S.C. Bar No. 12090

Nathaniel C. Farmer, S.C. Bar No. 75976

PATTERSON & ASSOCIATES, P.A.

1088 North Church St.

Greenville, SC 29601

(864) 329-0548

Attorneys for Defendant

February 16, 2011

Greenville, South Carolina

IN THE COURT OF COMMON PLEAS

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<u>I N D E X</u>				
WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
John Walton Brandt Pringle	7	23	59	
Nelson Garrison Pringle Brandt	66	93		
Mitchell Bagwell Pringle Brandt	101	116	124	126
Harriet Wiggins Bauknight Pringle Brandt	127	136		
<<--->>				
				PAGE
Certificate of Reporter				150

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	E
P-1	Executed Lease Agreement between Walton and Bagwell	4	4
P-2	Check of Bagwell dated 5/21/09 - No. 3422	4	4
P-3A	Letter from Jacqueline Patterson to Walton	4	4
P-3B	Email dated May 29, 2009 at 1:48 PM from Wes Nalley to Jackie Patterson	4	4
P-4	Lease Agreement between John Walton and Clay Taylor dated	4	4
P-5	Letter from Brandt to Jacqueline Patterson dated October 14,	4	4
P-6	Letter from Jackie Patterson to Brandt dated October 19, 2009	4	4
P-7	Reciprocal Easement Agreement dated January 31, 1995 between Forest Acres Real Estate and Lowe's Home Center	4	4
P-8	Ground Lease dated January 31, 1995 between Forest Acres Real Estate Company and John E. Walton	4	4
P-9	Affidavit of Attorney Fees and Costs for Dr. Walton	4	4
P-10	Computation of damages claims by John Walton	4	4
P-11	Email from Frank Mason to Nelson Garrison dated April 13,	59	60

DEFENDANT'S EXHIBITS

D-1	Offer letter from Defendant	5	5
D-2	Commercial Lease Application	5	5
D-3	Email from Garrison to Bauknight dated 9/23/08	5	5
D-4	Email from Garrison to Nalley dated 3/23/09	5	5
D-5	Email from Garrison to Mason dated 4/3/09	5	5
D-6	Letter from Bauknight to Garrison dated 5/5/09	5	5
D-7	Invoice from Garrison to Walton dated 5/27/09	5	5
D-8	Email from Garrison to Greer dated 11/3/09	5	5
D-9	Attorney Fee Affidavit of Kraig Pringle	5	5
D-10	Summary of Attorneys' Fees for Jackie Patterson dated 3/22/12	5	5

COURT'S EXHIBITS

C-1	Original deposition of George Weston Nalley	6	

1 MR. BRANDT: I didn't do yours. You can move
2 yours in.

3 MR. PRINGLE: Our packet?

4 MR. BRANDT: Yeah.

5 MR. PRINGLE: Okay. Your Honor, at this time,
6 I'm moving for a defendant's exhibit packet. It's got
7 ten exhibits in it.

8 MR. BRANDT: Yes, sir. I don't have any
9 objection.

10 THE COURT: Okay.

11 (WHEREUPON, Defendant Exhibit Numbers 1 through 10
12 were admitted into evidence.)

13 MR. PRINGLE: And, Judge, at this time, we've
14 agreed to tender the original depositions. I'm in
15 possession of the deposition of Defense witness Harriet
16 Bauknight, as well as witness Nelson Garrison. I'd like
17 to hand those up.

18 MR. BRANDT: I intend to call Garrison. But I
19 don't have any objection to those going in.

20 THE COURT: Well, there's no reason putting it
21 in if he's going to testify.

22 MR. BRANDT: We have -- well, I have -- he may
23 have some provisions in there that he wants to call him.
24 And Mr. Garrison's present in the courtroom.

25 THE COURT: Okay.

1 MR. BRANDT: Ms. Bauknight, I don't know if
2 she's here.

3 MR. PRINGLE: She is.

4 MR. BRANDT: And the other one, we did have
5 one witness that we couldn't get under subpoena, George
6 Weston Nalley, and we have agreed that we would submit
7 that as Court Exhibit and basically use that in place of
8 his deposition because neither one of us could find him
9 to get him subpoenaed and get here.

10 THE COURT: All right.

11 MR. BRANDT: And that's that.

12 MADAM COURT REPORTER: This will be Court 1.

13 (WHEREUPON, Court Exhibit Number 1 were marked for
14 identification.)

15 MR. BRANDT: I will now call Dr. John Walton
16 to the stand.

17 THE COURT: Okay.

18 THE CLERK: Place your left hand on the bible
19 and raise your right hand, please.

20 Do you solemnly swear or affirm the testimony
21 you're about to give in this case be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: State your full name for the
25 record.

1 THE WITNESS: John Edmond Walton.

2 THE CLERK: Please be seated.

3 JOHN WALTON,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. BRANDT:

7 Q. Dr. Walton, state your full name?

8 A. John Edmond Walton.

9 Q. And how old are you, sir?

10 A. Seventy-five.

11 Q. And where do you presently reside?

12 A. Greer, South Carolina.

13 Q. What do you do for a living?

14 A. I'm a urologist in private practice.

15 Q. Where do you practice?

16 A. Greer, South Carolina.

17 Q. And do you own any property -- the property that is
18 subject to this action, or did?

19 A. I did own the property.

20 Q. And how did you own that property or what right did
21 you have in that property that we are arguing about here
22 today?

23 A. I think it's termed lease hold agreement.

24 Q. If you'd keep your ---

1 A. A lease hold agreement where I had the property
2 leased and there was a building on the property when I
3 initially leased it from the Nalleys. And it was there.
4 I had been a part owner of a larger area of property and
5 the Nalleys bought the entire area of property, bought
6 the lease hold agreement from that. And as part of the
7 negotiations, I retained this parcel of the property
8 with the building on it, which at that time, was a
9 restaurant, a steakhouse restaurant. And then that
10 restaurant burned. I rebuilt the building that we're
11 discussing.

12 Q. And this is a commercial building?

13 A. A commercial building.

14 Q. And Plaintiff's Exhibit 8 that's been entered into
15 evidence is the ground lease. Is that the ground lease
16 by which you have an interest in this property that was
17 leased to Mr. Bagwell?

18 A. Yes, it is.

19 Q. And how long was your ground lease to run? I mean,
20 when would it run out?

21 A. It was to terminate December 31st, 2010.

22 Q. At what point in time did you enter into at least
23 negotiations yourself -- did you ever talk with Mitchell
24 Bagwell personally?

25 A. No, I never spoke to him.

1 Q. Did you have a realtor representing you in
2 attempting to rent your property?

3 A. Yes, I did.

4 Q. Who was that realtor?

5 A. Nelson Garrison.

6 Q. And through your realtor, did you ever enter into
7 negotiations with Mr. Bagwell to rent four thousand
8 square feet in that what's know as Lowe's Center and
9 Walton Commons in Easley?

10 A. Yes, we did.

11 Q. And did you ever enter into an agreement with
12 Mitchell Bagwell?

13 A. Yes, we did.

14 Q. This is Exhibit Number 1 which is in the evidence.
15 Is that the lease agreement by which you entered with
16 Mitchell Bagwell?

17 A. Yes, it is.

18 Q. What's the date on the lease?

19 A. The date on the lease -- well, the date I signed it
20 was 5/22/09. The date on the lease begins June 1st,
21 2009.

22 Q. Is that the period of time it would be leased, June
23 1?

24 A. June 1, 2009 through December 31, 2010.

25 Q. And December 31, 2010 and then your ground lease

1 ran out?

2 A. Yes.

3 Q. And is this lease -- it has a second page, a front
4 page on it. It talks about a -- can you tell me why
5 there's a second page that appears to duplicate the
6 front to a certain extent?

7 A. Well, Mitch Bagwell signed, Mitchell Bagwell signed
8 one page and I did not sign that page. That lease --
9 this portion of the lease was signed. It was a single
10 page. I did not sign that. It was presented to me. He
11 signed it on 5/21/09, presented it to me and I signed it
12 on 5/22/09. Also, there is one change in the -- there's
13 a typographical change, typographical error change in
14 the term of the lease where it was listed as eighteen
15 months when in actuality the term would have been
16 nineteen months.

17 Q. And the term is set forth in that agreement?

18 A. The term is set forth in the agreement, June 1st
19 through December 31st, 2010. And so that's nineteen
20 months rather than eighteen months.

21 Q. Do you know who made the change that's penned in?
22 Do you know who made that change?

23 A. No, sir, I do not.

24 Q. But it does fit the period of the lease?

25 A. It does fit the period of the lease.

1 Q. This lease agreement has a provision in there that
2 says, any use must specifically adhere to the use
3 restriction of the REA between Forest Acres Real Estate
4 and Lowe's Home Centers, Inc., dated January 31, 1995.
5 I would show you this other -- what was that REA
6 agreement about?

7 A. Well, how it operated?

8 Q. Reciprocal Easement Agreement.

9 A. Yes, sir.

10 Q. And that's Exhibit 7 that has been entered and is
11 that the agreement to which it was subject to?

12 A. Yes, sir.

13 Q. And was there ever any concern in your negotiations
14 through your realtor with Mitchell Bagwell as to whether
15 or not that agreement you hold in your hand would
16 prevent him from opening a restaurant?

17 A. Yes, there were negotiations concerning that. The
18 REA states -- says that you cannot operate a business on
19 that area that is primarily set up to sell alcohol.

20 Q. And is this provision number seven on page five of
21 that agreement? Is that what you refer to?

22 A. Yes, sir.

23 Q. When Mitchell Bagwell -- or you were approached by
24 Mitchell Bagwell renting the building, what did he say
25 that he wanted to do with the building or at least what

1 was your impression that he wanted to do with the
2 building?

3 A. He wanted to have a -- well, it was termed a wine
4 bar, but he was serving food and wine in the
5 establishment.

6 Q. And so this is the -- number seven is basically
7 where the dispute or disagreement arose?

8 A. Well, there was no disagreement. We all knew.
9 Matter of fact, when I first spoke with Nelson, I told
10 him, I said, you know, it's got to be a restaurant
11 serving drinks as a secondary part of the business. And
12 if it's not that, there's no need wasting my time or our
13 time, period.

14 Q. I show you Exhibit Number 2, which has been
15 entered. And can you tell the Court what that is?

16 A. This is a copy of a check written to C. Dan Joyner
17 Commercial Real Estate for six thousand five hundred
18 dollars. And the memo at the bottom of it says, first
19 slash last, Walton Commons, signed by Mitchell L.
20 Bagwell.

21 Q. Was that check ever delivered to you?

22 A. Yes, it was.

23 Q. And what happened to that check?

24 A. I deposited that check on Friday afternoon. And
25 Monday I received notification from the bank that

- 1 payment had been stopped on the check.
- 2 Q. What's the date on the check?
- 3 A. May 21st, 2009.
- 4 Q. And for what reason was that check written?
- 5 A. As a part of the agreement -- a part of the lease
- 6 agreement where he would pay the first and last month's
- 7 rent as a deposit.
- 8 Q. So that was payment on the lease?
- 9 A. That was payment on the lease, yes.
- 10 Q. And then I show you Exhibit 3-A.
- 11 A. This is a letter to me from Jacquelyn Patterson
- 12 stating that Mitch Bagwell was not going to -- that the
- 13 ground lessor had violated the REA and terminate the
- 14 lease.
- 15 Q. And ---
- 16 A. So, therefore, Mr. Bagwell has decided to pursue an
- 17 alternate location.
- 18 Q. Okay. And I show you Plaintiff's Exhibit 3-B. Is
- 19 that your understanding that the email at the very
- 20 bottom of that from Wes Nalley to Ms. Jacquelyn
- 21 Patterson brought about this letter to you, 3-A? Is
- 22 that your understanding of what occurred?
- 23 A. Yes, sir. That was what I had figured out had
- 24 occurred when I heard what had transpired with the
- 25 attorney. After the lease was signed and payment was

1 sent, the attorney contacted Wes Nalley and told him
2 that -- well, the fact everybody's lied up to that point
3 in time, we weren't really going to open a restaurant.
4 We were going to open a wine bar. And Wes Nalley said,
5 that's not acceptable.

6 Q. Now, Wes Nalley is who?

7 A. Wes Nalley is the managing CEO, I guess is what he
8 is, official capacity of Nalley Real Estate and Forest
9 Acres Real Estate.

10 Q. And so he was the person with Forest Acres or
11 Nalley Properties that you were dealing with to do this
12 lease?

13 A. Right. He was the one, you know, there was the REA
14 between Lowe's and Forest Acres Real Estate. And as
15 part of that REA, which you showed me earlier, that's
16 where it all came. That's the reason the -- it's up to
17 him to prevent anything from happening for a violation
18 of the REA.

19 Q. And did, in fact, Mitchell Bagwell not then rent
20 the building or not occupy the building?

21 A. Well, actually Mitch Bagwell or someone that was
22 representing him went into the building and actually
23 started doing some construction. And so, but then I
24 guess it was at this point in time that they just left
25 the building. I guess they returned the keys and left

1 the material in there that they had started construction
2 with.

3 Q. And did you ever make demand upon them to adhere to
4 the lease agreement?

5 A. Yes, sir, I did.

6 Q. Okay. And I will show you Exhibit Number 5. If
7 you would tell the Court what that is?

8 A. This is a letter to Jacquelyn H. Patterson,
9 attorney, actually Patterson and Associates from Larry
10 Brandt. And I've been retained by Dr. John Walton to
11 initiate arbitration against your client, Mitchell
12 Bagwell, for breach of lease, for the ---

13 Q. And does that indicate that we wanted to try to
14 resolve the matter?

15 A. It says, arbitration, which the lease would say --
16 which he originally signed said there would actually be
17 arbitration.

18 Q. And 6, have you seen that letter before?

19 A. No, sir, I have not. But it's from Jacquelyn
20 Patterson to you. We disagree with the position you set
21 forth in your letter. I believe testimony would support
22 my client's position that at all times the property was
23 to be used as a wine bar. My conversations with the
24 landlord, which it never -- I never spoke with the lady
25 -- indicated that the intended use was a violation of

1 the restrictions and that Mr. Walton was fully aware of
2 the restrictions. If your client intends to proceed
3 with this matter, then please serve a complaint, which I
4 will address appropriately.

5 Q. And after that, did you attempt to lease --
6 continue to try to find an alternate tenant for that
7 building?

8 A. Yes, we did.

9 Q. And did you continue to lease it -- or list it with
10 C. Dan Joyner and Mr. Garrison?

11 A. I did.

12 Q. And did they work, endeavor on your behalf over the
13 next months to attempt to find another lessor or lessee?

14 A. They did.

15 Q. And were they successful in finding one?

16 A. Yes, they were.

17 Q. And I show you Plaintiff's Exhibit 4. What is
18 that?

19 A. This is a lease agreement between John E. Walton,
20 myself, and a landlord named Clay Taylor and Flying
21 Anchovy, LLC, which is the tenant, which is a pizza
22 parlor. And this is the lease, which we signed.

23 Q. And what date is on it?

24 A. The date on it, the terms of the lease are from
25 April 1st, 2010 through December 31st, 2010.

1 Q. And that again took it for the remainder of your --

2 -

3 A. Took it through the remainder of what time I had
4 the property.

5 Q. And did you collect the monies as required under
6 that lease with ---

7 A. Clay Taylor.

8 Q. --- Clay Taylor?

9 A. Yes, we did.

10 Q. And the terms of the lease, I believe, for Clay
11 Taylor required how much rent to be paid?

12 A. I required two thousand dollars a month. Two
13 thousand dollars a month from April 1st through
14 September, through the month of September 2010. And for
15 the months of October, November and December 2010 the
16 rent was five thousand dollars a month.

17 Q. And was that -- those terms significantly different
18 from the terms of the lease with Bagwell on Plaintiff's
19 Exhibit Number 1?

20 A. Well, in length of time, yes, it was significantly
21 different. In the amounts, Bagwell was supposed to have
22 paid three thousand dollars per month through December
23 31st, 2009, which would have been for a period of seven
24 months. And then for the entire year of 2010, he would
25 have paid four thousand dollars a month.

1 Q. Was he to pay anything for taxes, insurance and
2 maintenance on top of that?

3 A. Yeah, the common area fees, he was going to pay
4 seven hundred and fifty dollars a month. But we agreed
5 for the first three months of the lease, that he would
6 only pay two hundred and fifty dollars a month for the
7 common area or -- common area, maintenance, taxes and
8 insurance.

9 Q. And then the rest of the time -- two fifty for
10 three months and then ---

11 A. Seven fifty for the remainder of the time.

12 Q. Right, the remainder?

13 A. Yeah.

14 Q. And then Clay Taylor, why didn't you rent it to Mr.
15 Taylor for the same amounts as you were renting it --
16 had the lease for Bagwell?

17 A. Well, we rented it to him the first period of time
18 for the first few months at two thousand a month. But
19 that was a period of time when he was going to do his
20 construction and up-fitting in order to get ready to
21 open. And then for the last three months of the lease
22 or the time he was actually operating, while I still
23 owned the building.

24 Q. Why were those amounts less per month than the
25 lease with Bagwell?

1 A. Well, actually the five thousand a month wasn't
2 less. There was -- but that was for just those three
3 months. But that was just the negotiations.

4 Q. How many tenants did you have inquire about that
5 building in the interim between the -- Mitchell Bagwell
6 not taking it, not paying you the rent, defaulting on
7 his agreement, and the time that that agreement was
8 signed with ---

9 A. I can't answer the number of tenants. There were
10 not very many. But we actually worked on this -- the
11 negotiations for this lease actually were in progress
12 whenever Bagwell, we were negotiating with Bagwell for
13 the lease. And so it was -- that's how long it took to
14 finalize this lease and to get it in. And if you will
15 recall correctly, 2010 was not a very good year for real
16 estate, rental or otherwise.

17 Q. And do you feel that you got basically about as
18 much as you could get out of a lease for that period of
19 time?

20 A. Particularly when I only had just that few months
21 left on the ground lease. Also, there was one other,
22 there was one other payment in the lease that we haven't
23 mentioned and that was the taxes, which he was
24 responsible for the taxes for the last three months of

1 the lease while he was operating it.

2 Q. And based upon that, have you done any computations
3 concerning what you believe was the difference between
4 what you -- benefit you received from the Clay Moore or
5 Clay ---

6 A. Taylor.

7 Q. Taylor?

8 A. Right.

9 Q. And what -- the monies that would have been due per
10 the Bagwell lease had he honored his commitment?

11 A. Yes, I did.

12 Q. Okay. And I hand you Plaintiff's Exhibit 10 and
13 does that show the computation that you made concerning
14 those monies?

15 A. Yes, it does.

16 Q. And in that is there anything else added to what
17 you're claiming is your lost income, other than just the
18 monies, the two leases and the monies that would have
19 been realized under the Bagwell and ---

20 A. It was my understanding that the attorney's fees
21 also could be covered or would be covered under the
22 terms of the lease in the event there was a problem.
23 And so I -- the attorney's fees would be added to this
24 amount. Well, actually, the attorney's fees are added

1 to this amount.

2 Q. Okay. And Plaintiff's Exhibit Number 9, have you
3 seen those bills?

4 A. Yes, I have.

5 Q. And is that what you agreed to pay per hour for my
6 representation?

7 A. Yes, it is.

8 Q. And you've reviewed those?

9 A. Yes, I have.

10 Q. Are you satisfied that those hours were spent for
11 your case and therefore ---

12 A. Yes, I am.

13 Q. --- prosecuting this action on your behalf?

14 A. Yes.

15 Q. And today are you asking the Court if it should
16 find in your favor that those would be the damages that
17 you've suffered?

18 A. Yes, sir.

19 Q. Pursuant to the lease?

20 A. Yes, sir.

21 Q. Okay. If you would just tell the Judge how much
22 you believe that Mr. Bagwell would owe you under the
23 lease agreement?

24 A. The lost revenues and the attorney's fees combined
25 is a total of seventy-six thousand two hundred and

1 eighteen dollars -- excuse me -- two hundred and eighty-
2 nine dollars and eighteen cents.

3 Q. Okay. In that lease agreement, which is Exhibit
4 Number 1, for what purpose did you rent him under the
5 agreement where it says, the building under use? What
6 was he to use the building for?

7 A. He was supposed to use the building as a restaurant
8 and serve wine.

9 Q. And is that specifically spelled out in that
10 agreement in the use provision where it says use?

11 A. Tenant shall use the premises only for the purpose
12 of a restaurant business and for no other purposes,
13 except by the expressed written consent of the landlord,
14 which consent will not be unreasonably held, conditioned
15 or delayed as any use must specifically adhere to the
16 use and restrictions of the REA agreement.

17 Q. Has Mr. Bagwell paid you any monies at all on that
18 lease?

19 A. No. The only thing that I have received on that
20 lease was the check, which was paid and then the payment
21 stopped.

22 MR. BRANDT: I don't have anything further at
23 this time.

24 THE COURT: Cross.

25 MR. PRINGLE: Thank you, Your Honor.

1

CROSS-EXAMINATION

2 **BY MR. PRINGLE:**

3 Q. All right. Mr. Walton, you've stated that you've
4 signed a copy of this purported lease agreement with my
5 client on May 22nd of 2009?

6 A. Yes.

7 Q. And are you aware of the lengthy negotiations that
8 took place leading up to the time that that signature
9 took place?

10 A. Yes, sir. I was, as a matter of fact, I was ---

11 Q. Now, you've mentioned that you've never met Mitch
12 Bagwell?

13 A. That's right. I never met Mitch Bagwell.

14 Q. During your testimony you seemed to indicate that
15 you had had some type of involvement in the
16 negotiations. Could you clarify that? What was your
17 role in the actual negotiations with Mitch Bagwell?

18 A. My role was to approve or disapprove or guide
19 Nelson in, as far as what were -- what we should do and
20 how we should be sure that everything was done properly.
21 We have numerous emails.

22 Q. Between yourself and who?

23 A. Nelson Garrison.

24 Q. All right. But you never had any contact with
25 Mitch Bagwell?

1 A. That's correct.

2 Q. And you're aware that there were a number of actual
3 meetings where Mitch Bagwell had discussions with Nelson
4 Garrison, Wes Nalley; Dee Bauknight was present in those
5 meetings. You were never at any of those meetings, were
6 you?

7 A. I was not.

8 Q. Okay. So you don't know what was said or not said
9 in those negotiations between those people?

10 A. I was not.

11 Q. You were kept advised of what was happening with
12 this deal, with this proposed deal, negotiation, from
13 Mr. Garrison?

14 A. That's correct.

15 Q. What about Mr. Nalley, what kind of communications
16 did you have with Nalley?

17 A. During this period of time, none.

18 Q. None. So it's fair to say that your only
19 information about anything going on with the
20 negotiations came from Garrison?

21 A. No. We had the lease, which Mr. Bagwell signed
22 before I signed it. And I read the lease.

23 Q. Leading up to the signing of the lease is what I'm
24 talking about?

25 A. That's correct.

1 Q. Okay.

2 A. I guess I did have copies of a few emails which
3 Nelson corresponded with the other realtor.

4 Q. So you may have had some knowledge of written
5 communications, but you'd never sat in on any of the
6 meetings?

7 A. That's correct.

8 Q. Your term, your land lease term was going to end on
9 December 31st of 2010?

10 A. That's correct.

11 Q. Is that the term that you -- the pizza place that
12 went in that you testified about after trying to find a
13 new lessee, did that lease terminate on that date?

14 A. His lease with me terminated on that date; that's
15 correct.

16 Q. To your knowledge, did he vacate the building at
17 that time?

18 A. He did not.

19 Q. But he had no ---

20 A. As part of those negotiations, they went ahead and
21 -- he negotiated with Forest Acres Real Estate about
22 extending the lease beyond the time when I would be the
23 landlord of the building.

24 Q. But your involvement with the pizza place ended on
25 the original date of the expiration of your land lease?

1 A. Yes.

2 Q. Now, there was a reason that you used Garrison in
3 these negotiations. What was that reason?

4 A. I knew him as a good real estate agent and he
5 represented -- and he worked for a good company. I have
6 known him, known Nelson, for a number of years.

7 Q. Had you employed Mr. Garrison on prior occasions in
8 similar deals?

9 A. Yes.

10 Q. You had some type of fee arrangement with Mr.
11 Garrison or with prudential?

12 A. Yes.

13 Q. What were the terms? I mean, with regard to this
14 contract, this alleged lease, what were the terms as far
15 as -- I guess, what was Garrison or his company's cut
16 with regard to negotiating and completing this deal?

17 A. Six percent of the lease.

18 Q. Six percent. And if I said that's a little over
19 four thousand dollars, does that sound right?

20 A. Yes, sir. I think if you calculate it out that
21 would be correct.

22 MR. PRINGLE: May I approach the witness?

23 THE COURT: Uh-huh (affirmative).

24 Q. I want to hand you this Defendant's Exhibit Number
25 7, please. Do you recognize that?

- 1 A. I've never seen it before today.
- 2 Q. What does it purport to be as you read the caption?
- 3 A. It purports to be an invoice to me from Prudential
- 4 C. Dan Joyner for their six percent of the lease.
- 5 Q. And does it indicate what commission would have
- 6 been due six percent of the alleged ---
- 7 A. Six percent, right.
- 8 Q. How much was that?
- 9 A. Four thousand three hundred and eighty dollars.
- 10 Q. Okay. You said you'd never saw this before today,
- 11 though?
- 12 A. Never saw it before today.
- 13 Q. So did you pay this invoice?
- 14 A. Did not.
- 15 Q. They didn't charge you, in essence?
- 16 A. No, they didn't.
- 17 Q. Okay. But that was what the commission was to be
- 18 on the deal; correct?
- 19 A. It's what the commission would have been had the
- 20 tenant lived up to his terms.
- 21 Q. Now, when you -- you had said that the building had
- 22 been vacant for a good bit of time prior to this deal or
- 23 this attempted ---
- 24 A. I said that?
- 25 Q. How long had it been vacant?

1 A. I don't recall.

2 Q. More than two years?

3 A. No, not more than two years, I don't believe.

4 Q. But you don't know? More than a year?

5 A. I really don't know. I'd have to go back and look
6 at the records.

7 Q. It wouldn't surprise you then to find out that it
8 had been vacant for between two and two and a half
9 years?

10 A. I didn't recall it as being that long. It may have
11 been.

12 Q. Were you losing money while that place was vacant?

13 A. Sure.

14 Q. Yeah. In your relationship with Garrison what kind
15 of -- I guess what position did you take with Garrison
16 and his role with this place being vacant for so long?
17 Did you put pressure on Garrison to try to get a deal
18 done?

19 A. Well, I asked him, you know, I don't think I put
20 pressure on him. At the time real estate rentals were
21 horrible. And, you know, I talked with him whenever he
22 had a tenant and when he would call me with someone, he
23 had it listed. He had it -- he was working it, you
24 know. As far as putting pressure on him, no, I won't
25 put, you know, no more pressure that he put upon himself

1 as far as getting a tenant to lease it so that he could
2 make money, also.

3 Q. Of course. So money was tough to make in the real
4 estate game at that time; right?

5 A. Yes, it was.

6 Q. So, obviously, there's pressure. I mean, all of us
7 that work for a living have some pressure?

8 A. Yeah, we do.

9 Q. All right. And with that place being vacant,
10 obviously you had on-going communications with him about
11 trying to find a tenant?

12 A. Well, I had it listed with him as far as trying to
13 find a tenant.

14 Q. Nobody's going to make anything until there's a
15 tenant in that place, whether it be you or Garrison;
16 correct?

17 A. That's correct.

18 Q. And would a place like that being vacant for that
19 extended period of time, is that typical or was it
20 typical of the time, at that time, 2009?

21 A. At that time, I think that's -- and probably still
22 is typical.

23 Q. The money was not coming in?

24 A. The money was not coming in.

25 Q. Do you recall when you first got your copy of the

1 purported lease and you said you signed it on May 22nd
2 of '09?

3 A. Right.

4 Q. Do you recall if you initialed each page of the
5 lease?

6 A. The lease I got -- the lease I received, I signed.
7 The attached portion of it, I was told what it was and I
8 recognized and understood what it was. I did not sign
9 the attached -- I did not sign the remainder of the
10 lease. I did not initial the remainder of the lease.
11 No.

12 Q. Are you saying that at the time you reviewed what
13 we're calling the lease, that you only signed the first
14 -- you only had the first page?

15 A. Well, the lease -- at the time I signed the first
16 page, yes. I only signed the first page. I did not
17 sign each page of the lease.

18 Q. What about the remaining pages of the lease? You
19 said that you were told what those terms were? You
20 didn't review those terms?

21 A. I reviewed those terms. I did not sign each one of
22 them. I did not sign each page. I had already read
23 that -- I had already read that portion of the lease.
24 I knew that portion of the lease was standard.

25 Q. Would you agree that the way that this lease has

1 been characterized, it's in two parts? A tenant
2 specific portion and then general provisions?

3 A. Yes.

4 Q. So what you're saying is you reviewed and signed
5 the tenant specific portion?

6 A. I signed the tenant -- I said, I signed the tenant
7 specific portion and I had read, I had already read the
8 other part. I did not sign each page of the other part.
9 I did not initial each page.

10 Q. Well, you said you were told about those terms, not
11 that you read them. Which one is it?

12 A. I read those terms and the terms -- my
13 understanding, also, of the terms is that is a standard
14 general terms of a lease.

15 Q. Okay. So your testimony is that you read it at
16 that time? Earlier you said that you ---

17 A. I do not recall whether I read it at that time. I
18 read it. I read every page of the lease. I read --
19 personally read every page of the lease before I signed
20 it.

21 Q. So you're familiar with the terms of the general
22 provisions then?

23 A. Yes, sir.

24 Q. And your attorney pointed out that there are -- on
25 the exhibit, I believe it's Plaintiff's Exhibit 1, there

1 are two front pages or two versions of the so-called
2 tenant specific portion?

3 A. That's correct.

4 Q. And one of those is just the signed copy and then
5 there's one that appears to be identical but for the
6 number eighteen is scratched out and nineteen is
7 handwritten in for the number of months; is that
8 correct?

9 A. That's correct.

10 Q. Did you make that change?

11 A. To my knowledge, no. It does not look like my
12 handwriting and I do not recall making the change.

13 Q. Is there any reason why you would have just on your
14 own made that change?

15 A. Only that it was a typographical error, which is
16 pretty obvious whenever you read the lease ---

17 Q. You think if -- so you may have made that change?

18 A. I said I may have. I could have made that change,
19 yes. I do not recall making it, does not look like my
20 writing.

21 Q. Did you consult with Mr. Bagwell or anyone in his
22 camp regarding making any kind of changes to the lease?

23 A. Well, actually I believe, sir, that there is a copy
24 of that lease where both signatures are on that and that
25 number nineteen has not been changed -- that eighteen

1 has not been changed.

2 Q. And I would agree. There are two copies. And I
3 guess we're trying to figure out why and who changed
4 them. Who changed the terms?

5 A. It wasn't me, as far as I recall.

6 Q. Would you agree that if any terms were changed that
7 both sides would have had to agree to those changes or
8 could just one side ---

9 A. Both sides had already agreed to the changes. It
10 was a typographical error, sir. It was a typographical
11 error.

12 Q. What if I told you Mitch Bagwell didn't agree to
13 any changes that were made in handwriting on that lease
14 after he signed it? Would you?

15 A. Correcting a typographical error. I would not
16 believe that a typographical error would alter the terms
17 of the lease for me, not at all. No, sir.

18 Q. Do you think there's a substantial difference
19 between eighteen and nineteen?

20 A. There's one month difference between -- well,
21 there's one ---

22 Q. That's a lot of money; isn't it?

23 A. It would be three thousand dollars.

24 Q. Is there a difference between eighteen million and
25 nineteen million? Is that a typographical error?

1 A. It could still be a typographical error. But if it
2 states clearly, if it says nineteen million and then
3 you've got nineteen million written out beside it,
4 that's pretty obvious which it is. And there are
5 multiple places in the lease -- the tenant specific
6 portion of the lease where it says the term of the lease
7 was June the 1st through December 30th -- June 1st, 2009
8 through December 31st, 2010. That is written out that
9 way. There is no typographical errors in that.

10 Q. I'd agree with what's written out, but you would
11 also agree there's a number of terms of the lease that
12 are in dispute in this case; right? I mean, we're
13 talking about a dispute pertaining to this lease?

14 A. Yeah, we're talking about a dispute pertaining to
15 the lease.

16 Q. So you don't you think it's important to find out
17 who was scratching on this thing and making changes
18 after my client allegedly signed it?

19 A. Well, as far as that goes, your client may have
20 signed his -- may have initialed the lease later on --
21 the specific portions of the lease that you have here
22 later on, too. That could have happened, too. But I --
23 -

24 Q. Well, you already testified that he signed it
25 before you did ---

1 MR. BRANDT: Whoa. Let him finish his answer.

2 MR. PRINGLE: I'm sorry. Withdrawn.

3 Q. Please.

4 A. What?

5 THE COURT: You may finish your answer. Are
6 you finished?

7 THE WITNESS: Yeah, I'm good.

8 THE COURT: Okay. All right. Go ahead.

9 MR. PRINGLE: Thank you.

10 Q. You had testified that you signed it after Mr.
11 Bagwell?

12 A. I did sign it after Mr. Bagwell and I dated it
13 after Mr. Bagwell.

14 Q. All right. But you don't know whether or not you
15 made the alterations; fair enough?

16 A. No, I don't know that I made the alterations. But
17 I said there is a lease -- there is a copy of the lease
18 which both of us signed that doesn't have that
19 alteration on it.

20 Q. Okay. Did you know that Mr. Bagwell has never, to
21 this day, received an actual signed copy from both
22 parties with this lease after you signed it. Did you
23 know that?

24 A. I didn't know that.

25 Q. All right. You said that you had become familiar

1 with the general provisions?

2 A. I said I read the general provisions, yes.

3 Q. At some time. Don't know if it was at the time you
4 executed this lease?

5 A. I don't know if it was the day that I executed or
6 not, but I read the general provisions, yes, sir.

7 Q. Okay. Would you agree that there are a number of
8 terms within the lease that were not performed by either
9 party?

10 A. (No verbal response).

11 Q. If I was to refer you, for example, number twenty-
12 three in the lease deals with an arbitration clause.

13 Are you familiar with that?

14 A. Yes, sir, I am.

15 Q. Isn't it true that the lease required the parties
16 to submit to arbitration in the event of a dispute?

17 A. Yes, sir, that's right.

18 Q. Did you engage in arbitration with Mr. Bagwell?

19 A. No, sir. My attorney entered a letter, which he
20 sent to Mr. Bagwell's attorney asking for arbitration
21 and she turned it down. His then attorney turned it
22 down.

23 MR. PRINGLE: May I approach?

24 THE COURT: Yeah.

25 MR. BRANDT: The exhibits are up on the

1 corner.

2 THE WITNESS: Right here.

3 MR. PRINGLE: All right. Thank you.

4 Q. In the letter that Mr. Bagwell's prior attorney
5 responded with would be Plaintiff's Exhibit 3-A. You've
6 already seen this?

7 A. Yes, sir.

8 Q. If you read the text, it's a fairly short response.
9 Can you please read the text since it's so brief?

10 A. As you are aware Mr. Bagwell's intended use of the
11 property within Walton Commons is a wine bar. Ground
12 lessor has placed this office on notice that a wine bar
13 violates the REA and that it will terminate any lease
14 which does so. Therefore, Mr. Bagwell has decided to
15 pursue an alternate location.

16 Q. Plaintiff's Exhibit 6, Mr. Brandt went over that
17 with you, as well?

18 A. Yes.

19 Q. Okay. And with regard to Plaintiff's 6 if you
20 could -- again, that's very brief. Could you just read
21 through that text?

22 A. Dear Mr. Brandt, I am in receipt of your letter
23 dated 10/14/09. We disagree with the position you set
24 forth in your letter and believe that testimony will
25 support my client's position that at all times the

1 property was to be used as a wine bar. My conversations
2 with the landlord indicated that the intended use was a
3 violation of the restrictions and that Mr. Walton was
4 fully aware of the restrictions. If your client intends
5 to proceed with this matter, then please serve a
6 complaint, which I will address appropriately.

7 Q. All right. And that's the response that you
8 referred to from Mr. Brandt's letter, talking about the
9 possibility of arbitration?

10 A. Yes.

11 Q. All right. Didn't that letter from Mr. Brandt also
12 make a demand for payment? In fact, wasn't it fifteen
13 thousand dollars?

14 A. I'd have to see the letter again.

15 Q. Would you agree that ---

16 A. I think the letter's right there if you wanted to
17 get it. I do not recall ---

18 Q. Isn't it true that the letter that he sent not only
19 referenced arbitration, but also made a demand?

20 A. Mr. Bagwell's change of plans to use it as a wine
21 bar is of no consequence or excuse for his breach. I,
22 therefore, demand that Mr. Bagwell honor the lease and
23 immediately pay all rent that is presently in arrears in
24 the amount of fifteen thousand dollars ---

25 Q. Thank you ---

1 A. --- and that he continue to pay the monthly rent
2 called for in the lease in a timely manner.

3 Q. That's what I wanted. So you would agree that your
4 attorney made a demand for fifteen thousand dollars at
5 that time?

6 A. He made a demand for rent, which was due and had
7 not been paid.

8 Q. That's a legal conclusion. I'm asking you, did he
9 ask for fifteen thousand in that letter?

10 A. Yes, he asked for ---

11 Q. All right. Yes, sir.

12 A. Well, but ---

13 THE COURT: He can explain his answer. Go
14 ahead.

15 A. May I explain?

16 Q. Sure.

17 THE COURT: Yes.

18 A. It clearly says that the fifteen thousand dollars,
19 which he chose, was for rent that had been due and he
20 had not paid, and Bagwell had not paid.

21 Q. So you sent ---

22 A. That's what it says.

23 Q. And you agree that that's in dispute. That's why
24 we're here today; right?

25 A. What's that?

1 Q. Withdrawn. I guess all I'm asking is, isn't it
2 true that your attorney made a demand for payment
3 regardless of whether it was justified or not? He made
4 a demand for fifteen thousand dollars in that letter?

5 A. Yes, he did.

6 Q. Okay. Now, this was the response again from Ms.
7 Patterson. Tell me in there where it says that Mr.
8 Bagwell had no interest in arbitration or refused to go
9 to -- is the word arbitration even in that response?

10 A. It's not even in here.

11 Q. Okay.

12 A. But she says ---

13 Q. I'm sorry. Go ahead.

14 A. She said that if we -- please serve a complaint,
15 which I will address appropriately.

16 Q. Did that have anything to -- I mean, is there any,
17 any plain English language? I know you're not an
18 attorney. But is there anything in that language that
19 says no arbitration. We refuse to go to arbitration.
20 We don't want arbitration?

21 A. No, it doesn't say that. It says that she
22 disagrees with what he is presenting, that there was,
23 that she -- that Mr. Bagwell owed rent and that, you
24 know, if we wanted to do anything, then we would have to
25 proceed with a complaint. And my lay term for a

1 complaint means that we have to go ahead and initiate
2 litigation. Now, maybe that's not what a complaint is,
3 but that's what I interpreted it as being.

4 Q. But there's no reason why that would preclude
5 anybody from going to arbitration; correct?

6 A. I would have been happy to go to arbitration
7 anytime.

8 Q. That's not what I asked.

9 A. I would have been happy, I would have been -- as an
10 explanation.

11 Q. He would have been happy too.

12 MR. BRANDT: Objection.

13 A. Well, he sure didn't act like it.

14 MR. BRANDT: That's a statement not a
15 question.

16 MR. PRINGLE: All right.

17 Q. The arbitration clause, can we agree that
18 arbitration did not happen? For whatever reason, it
19 didn't happen?

20 A. Yes. We can agree with that.

21 Q. So that was a term of the lease that did not
22 happen; correct?

23 A. That was in both parts of the lease, both the
24 tenant specific portion of the lease and the other, and
25 the other portion of the lease. But it did not ---

1 Q. And it didn't happen in either case; right?

2 A. It didn't happen.

3 Q. No arbitration. And that was required under this
4 lease. Wasn't it also a requirement that the parties or
5 Mr. Bagwell, I guess, in this case, as the proposed
6 tenant, receive written consent from the owner, being
7 Wes Nalley, and Lowe's for his desired use of that
8 property? Is it your understanding that written consent
9 was necessary from Nalley and Lowe's based on their
10 reciprocal easement agreement and the other documents
11 that your attorney took you through?

12 Q. Well, I wasn't aware that -- it was not my
13 understanding, it was not my understanding that written
14 consent, because we already had -- the terms of the REA
15 were well laid out. And the opinion was that the -- as
16 we have an opinion from ---

17 Q. Whose opinion?

18 A. Frank Morris.

19 Q. I guess I would have to ask you to stick to your
20 opinion. I mean, isn't it true you don't know what my
21 opinion or anybody else's opinion is?

22 A. Well, it was a written letter from -- there's a
23 letter in the files from, I believe the man's name is
24 Frank Morris, who works for Lowe's and that's his job to
25 make those decisions. And he said that he gave us the -

1 - he cited the portion of the REA which applied to this
2 and said that it did not -- that use of a restaurant
3 that served alcohol was not in violation of the REA.

4 MR. PRINGLE: May I approach?

5 THE COURT: Yeah.

6 Q. All right. I think you're referring to Frank Mason
7 from Lowe's?

8 A. Mason. Okay.

9 Q. And I'm going to hand you Defendant's Exhibit
10 Number 5.

11 A. Uh-huh (affirmative).

12 Q. And that is an email. Actually, it's the text from
13 two emails, Number 5, dated April 3, 2009, from Garrison
14 to Mason and then Mason's reply to Garrison. Do you see
15 that?

16 A. Yes.

17 Q. Okay. And Garrison's -- rather Mason's email, can
18 you read that brief passage there, starting with I see?

19 A. Starting with I see? Well, that's Mason to
20 Garrison, not Garrison to Mason.

21 Q. Right. And you can see immediately below that ---

22 A. Yeah, okay. Yeah.

23 Q. The typical email form. That's the original
24 communication and that's the response.

25 A. That's right.

1 Q. You referred to Mr. Mason as the guy, if you will,
2 at Lowe's; correct?

3 A. Right. Yes, I did.

4 Q. And we talked about ---

5 A. And he said, I see no reason why the original
6 consent letter would prevent the new restaurateur from
7 taking possession of the premises. We consented to the
8 use. The only reason I can think of we need another
9 letter would be that there would be substantial changes
10 to sign package, i.e., ---

11 Q. All right. Would you agree ---

12 A. --- square footage.

13 Q. --- that he's basically saying that at that time,
14 under their understanding of the agreement, there was no
15 problem. They had already consented to the use?

16 A. Right.

17 Q. But obviously that was not in writing. And you
18 said earlier you had no knowledge of any approval in
19 writing ---

20 A. Well, what do you call this REA? The REA
21 specifically says that if -- now, he refers to the REA
22 also. And this says that, you know, as long as there's
23 a restaurant that serves alcohol, that's permissible.

24 Q. Right.

25 A. Now, that's written, isn't it? Isn't that written?

1 Q. The question I had originally asked you was, was
2 written consent from Nalley and Lowe's provided as we
3 would purport is required under the agreements that have
4 been placed before you by your attorney? And you said,
5 you didn't know; right? Do you have any knowledge ---

6 A. I said that I did not -- that I was unaware that it
7 had to be written. But in fact, at least it was
8 discussed repeatedly. According to what was told to me,
9 it was discussed repeatedly and if he ever asked for
10 written consent, we could have given him written consent
11 because it was written in the REA.

12 Q. Was it his obligation to ask for it?

13 A. Well, if he wants it, yeah, it's an obligation to
14 ask for it, you know, if there was any question about
15 it.

16 Q. So, again, you'd have to agree there were a number
17 of things in this purported lease that did not happen
18 that were supposed to happen?

19 A. Well, there were things in this lease which, if
20 someone had requested them and they were not provided,
21 then the lease would have been -- then they could have
22 said, well, ---

23 Q. Not what could've, should've, I'm talking about
24 what was supposed to happen.

25 MR. BRANDT: Objection. He was walking on

1 him. He was in the middle of an answer.

2 MR. PRINGLE: Oh, I'm sorry.

3 THE COURT: Go ahead.

4 A. Well, you know, if he had asked for anything -- as
5 a matter of fact, we specifically gave him everything
6 that he asked for, went through the meetings with Wes
7 Nalley and through what we gave to him, what was in the
8 REA.

9 Q. How could you know that? You've already testified
10 you didn't sit in on any of those meetings?

11 A. I didn't say I didn't ---

12 Q. So you're supposing?

13 A. I'm supposing.

14 Q. All right. You mentioned the term wine bar and
15 that term keeps popping up obviously through this case.
16 What does that mean to you? What does a wine bar
17 restaurant mean to you?

18 A. Wine bar restaurant? It means a restaurant that
19 serves wine and food.

20 Q. Okay. And that would be permissible; right?

21 A. That's permissible, yes.

22 Q. Okay. So is there any difference between wine bar
23 slash restaurant or restaurant slash wine bar? Is there
24 any difference?

25 A. To me?

1 Q. Right?

2 A. No.

3 Q. Okay. So your knowledge of Mr. Bagwell's concept
4 was fine. You didn't think there was any problem with
5 his concept; did you?

6 A. I did not think there was any problem with his
7 concept. But whenever I -- the first term that was ever
8 used to me was wine bar. Just wine bar. That's what
9 Nelson told me he had planned. I said, Nelson -- and
10 this is direct communication between Mr. Garrison and I.
11 I said, a wine bar will not fly. That is not allowed by
12 the REA. I knew that already. I've been down that road
13 before. There's no need, I said if it's going to be a
14 wine bar then it's no good. I said if it's going to be
15 a restaurant that serves wine, that's permissible.

16 Under the REA, because we already had a restaurant there
17 that served alcohol. So wine would create a problem.

18 Q. You're referring to Ruby Tuesday's on the other
19 side as a restaurant that has a full bar; is that what
20 you're referring to?

21 A. No, I'm referring to the tenant that was there
22 before Mr. Bagwell.

23 Q. All right. All right. So when I asked you what
24 does wine bar restaurant mean to you, you said, it's a
25 restaurant that serves wine. That's what you said

1 earlier.

2 A. What's that?

3 Q. When I asked you what's your meaning of the wine
4 bar restaurant. And you said, well, it's a restaurant
5 that serves wine.

6 A. That's right.

7 Q. So those terms are interchangeable?

8 A. If you say wine bar slash restaurant, yes, that is
9 the same as, in my opinion, that would be the same thing
10 as restaurant slash wine bar. But the first term that I
11 was ever quoted was wine bar, just wine bar.

12 Q. And if we left it at that that ---

13 A. Wine Bar.

14 Q. And if we left it at that ---

15 A. He said wine bar to me. And when he said wine bar
16 to me, I said, if it's just a wine bar, that will not
17 fly. That's what I told him initially. I said they
18 have to serve food in order to be able to be there.

19 Q. And your testimony, and you're in agreement that it
20 was never just going to be a wine bar. You knew what
21 the concept was; right? You had no reason to think
22 there would be a ---

23 A. Sir, the first term I was given, the first term
24 that was told to me, okay, that I heard was simple wine
25 bar. No wine bar restaurant. It was just wine. Okay?

1 Wine bar.

2 Q. Right.

3 A. Those two words, nothing else. No mention
4 whatsoever to food.

5 Q. And that came later? Is that what you're saying?
6 Your initial ---

7 A. I ---

8 Q. I mean, you're confusing me actually because ---

9 A. No, I think ---

10 Q. You're ---

11 THE COURT: Wait a minute. Just one at a
12 time.

13 Q. You knew what his concept was. You already
14 testified to that, that it was a restaurant that served
15 wine and there was nothing wrong with that?

16 A. No, sir, I did not testify to that. The first time
17 that -- well, that Nelson ever mentioned Mr. Bagwell,
18 Mr. Bagwell's idea, the term he used, the term Nelson
19 used was wine bar.

20 Q. Is that the only term Nelson Garrison used?

21 A. That is when he first said it, that was the term he
22 used.

23 Q. Okay. All right.

24 A. But then after that, he informed me that, no, it
25 wasn't going to be just a wine tasting bar, they were

1 going to serve food. I said, okay. If they're going to
2 serve food, then that should be okay. But the first
3 term, the first term that I was ever told about, about
4 his concept, was wine bar.

5 Q. Right.

6 A. And I said if all they do is serve alcohol, that
7 won't fly. And Nelson said, no, he has an idea where he
8 will also sell food. I said, okay. If he's going to
9 sell food, then that will fly. That would be okay.
10 That would meet the requirements of the REA.

11 Q. Okay. All right. So initially you were told wine
12 bar. Later on ---

13 A. Well, later in the same conversation.

14 Q. Okay. And you had conversations with Nalley about
15 it, as well?

16 A. No. I told you earlier, I did not talk to Mr.
17 Nalley during this period of time.

18 Q. Okay.

19 A. I did not talk to him at all during this period of
20 time. I haven't spoken to Wes Nalley since that time,
21 either.

22 Q. As we sit here today and as you came to learn what
23 the wine bar restaurant concept was, you had no problem
24 with the concept; correct?

25 A. No problem whatsoever with the concept. As I said

1 earlier, we had a place in there before that served food
2 and alcohol prior to it burning down. And so that was -
3 - I knew that was okay. I knew there was no problem
4 with that.

5 Q. There would have been no problem with it?

6 A. There was no problem with it. It operated there
7 under the same REA.

8 Q. And it would have been okay with Nalley and Lowe's
9 and ---

10 A. Well, at that time, Nalley wasn't in the picture.
11 That was before Mr. Nalley was in the picture. This was
12 the first time after Mr. -- as a matter of fact, this
13 was the first time after Mr. Nalley got in the picture
14 that the question of alcohol being served there came up.
15 No, that's not true. That's not true. No, no. It came
16 up as a new thing. The restaurant that served alcohol
17 was there when he -- when Nalley got in the picture.
18 And then this was -- it burned and there was no other
19 alcohol until this came up.

20 Q. Isn't it true that in this case and in similar
21 dealings you've had with Garrison there's this tenant
22 information form that's provided to you by Garrison?

23 A. Yeah.

24 Q. It has basic information about the proposed tenant
25 for your review? Do you remember the description of the

1 proposed use of the property at that time? Isn't it
2 true it was wine bar restaurant, from the beginning?

3 A. From the beginning.

4 Q. Okay.

5 A. It was a wine bar restaurant. That's what I was
6 told.

7 Q. And are you familiar with the commercial lease
8 application that is required by Prudential, Mr.
9 Garrison's employer, before a tenant is approved for a
10 commercial lease?

11 A. Yes.

12 Q. Okay. Did you have a chance to look over that
13 information regarding Mr. Bagwell?

14 A. I haven't looked over it recently, no, sir.

15 MR. PRINGLE: May I approach?

16 THE COURT: Yes.

17 MR. BRANDT: What number?

18 MR. PRINGLE: 2.

19 MR. BRANDT: What number is that?

20 MR. PRINGLE: 2.

21 MR. BRANDT: 2?

22 MR. PRINGLE: 2, yes, sir.

23 Q. All right. That's a copy of the commercial lease
24 application for this case. You'll see it says business
25 name, seller. You see my client's name, Mitchell

1 Bagwell?

2 A. Uh-huh (affirmative). Yes.

3 Q. If you could skip down to proposed use of premises,
4 what does it say? It's on the first page, just below
5 his signature there?

6 A. Wine bar restaurant.

7 Q. Okay. And if you go to page two, and you see Mitch
8 Bagwell's signature consenting to a credit check, what's
9 the date of his signature?

10 A. 2/23, 2/23/09.

11 Q. Okay. February of '09, so a few months before this
12 alleged lease took place?

13 A. Yeah.

14 Q. Okay. Early on in the equation, and you said you
15 had access to all this information and you would agree
16 that it says wine bar restaurant; correct?

17 A. Yes.

18 Q. And we've already established, at least from your
19 opinion, there's no difference between wine bar
20 restaurant or restaurant wine bar?

21 A. Yes.

22 Q. Okay. Is it fair to say that you were surprised to
23 hear that he stopped payment on the check?

24 A. Yes.

25 Q. You were surprised?

1 A. Yes.

2 Q. You thought everything was a go?

3 A. Yes.

4 Q. And you've already said that there would have been
5 no problem with the wine bar restaurant?

6 A. Yes, I've said that.

7 Q. All right. Were you aware of Nalley's email that
8 your attorney showed you, which led to the letter from
9 Jackie Patterson indicating that they were going to
10 terminate the lease? Were you aware of Nalley's email?

11 A. As of today.

12 Q. Okay.

13 A. I had never seen that email before. I was unaware
14 that it existed.

15 Q. Is that 2, Larry?

16 MR. BRANDT: Excuse me?

17 MR. PRINGLE: Is that number 2?

18 MADAM COURT REPORTER: What are you looking
19 for?

20 MR. PRINGLE: Or 1?

21 MR. BRANDT: Which one ---

22 MR. PRINGLE: Okay. It's 1. Oh, no, it's 3-
23 B, I'm sorry.

24 MR. BRANDT: You got it?

25 MR. PRINGLE: Yes, sir. Thank you.

1 Q. And 3-B, you were shown this, from Wes Nalley to
2 the prior attorney for my client, Jackie Patterson.
3 Pursuant to our conversation, please be advised that we
4 will not, in bold, accept a quote unquote, wine bar, due
5 to the covenants. If it is the intent of Bagwell to
6 operate in violation, we will be forced to terminate the
7 lease agreement. That was an email from Nalley sent the
8 day that Mr. Bagwell stopped payment on the check under
9 advice of counsel. Today's the first time you've heard
10 about that email?

11 A. I was aware that something had -- I was aware he
12 had corresponded. You asked if I'd seen the email, or
13 at least that's what I understood, and I had not seen
14 the email until today.

15 Q. Okay.

16 A. I did not know how the correspondence took place.
17 I knew that there was correspondence, but I did not know
18 it at the time that I learned that the payment had been
19 stopped on the check.

20 Q. Does it trouble you that -- okay. You two guys
21 here are the parties. You're the deal; right?

22 A. That's right.

23 Q. You're the lessor, he's the lessee, and we've got
24 all these people in the middle.

25 A. Right.

1 Q. Are you alarmed that you didn't know about
2 something like that? Should you have known about those
3 type communications?

4 A. Well, I knew about the correspondence. But, sir, I
5 would like to point out to you the distinction I made
6 earlier is a distinction that is upheld by this letter.
7 It says that he will not accept a wine bar.

8 Q. Right.

9 A. And I told you earlier, very clearly, that wine bar
10 by itself was not acceptable.

11 Q. Agreed.

12 A. A wine bar restaurant is acceptable.

13 Q. That's right.

14 A. Wine bar is not acceptable.

15 Q. Wine bar ---

16 A. So then somebody changed the concept given to Mr.
17 Nalley ---

18 Q. Right.

19 A. --- from what the term -- from what I was told the
20 terms that came out of the meeting and what I assumed
21 was the -- what it was going to be. So whoever changed
22 it from wine bar restaurant is the person ---

23 Q. Right. And obviously under -- in Nalley's own
24 words, he uses the term wine bar.

25 A. No, sir, he not only used it, he puts them in

1 quotes.

2 Q. Right. And we've already discussed this and
3 established that Mr. Bagwell has maintained from the
4 beginning, from the time he put in these initial
5 documents to try to get the lease done, that it's never
6 changed, the concept's been the same. And you,
7 yourself, said that you thought the concept was fine
8 under the restrictions?

9 A. That's right.

10 Q. All right. So when Wes Nalley sends a letter that
11 you don't know about to his attorney saying wine bar
12 won't work, we're going to shut you down if you do it,
13 would you agree that there might -- and Mr. Nalley won't
14 be here today to explore this. But isn't it possible
15 that either he was mistaken about the concept or
16 careless in his use of the language, by using wine bar,
17 when no one else was using the term simply wine bar?
18 Would you agree?

19 A. Well, I would agree that the term wine bar was, in
20 my opinion, not an acceptable term. And in my
21 understanding of the REA, it was not an acceptable term.

22

23 Q. And we're all in agreement on that. But would you
24 agree that's not Mr. Bagwell's term? That email is sent
25 from Nalley.

1 A. That email was sent from Nalley after he had talked
2 to Mitch Bagwell's attorney.

3 Q. Right.

4 A. So I don't know who changed the terminology.

5 Q. All right. At any rate you had no idea that that
6 email was sent until we got here today?

7 A. That's right. Well, no, I said I knew there had
8 been correspondence. I did not know what type of
9 correspondence it was. There's a lot of different types
10 of correspondence.

11 Q. All right. Just one more. And I appreciate your
12 patience. Does it trouble you that there were all these
13 communications going on and negotiations going on about
14 your property, or your leasehold and my client that you
15 had no knowledge of. Does that trouble you?

16 A. Well, sir, whenever you have people who are working
17 for you, you have to trust what they do. And
18 particularly whenever they're reporting to you as
19 frequently as Nelson reported to me about these
20 communications -- about what was going on as far as
21 trying to get the lease signed.

22 Q. And if there was careless ---

23 A. And as far as Mr. Nalley's concerned, Mr. Nalley
24 had his responsibility. Now, why he apparently changed
25 his position, I do not know. Why he used that term, I

1 do not know. But, you know, and I cannot -- I found out
2 one thing long time ago. I cannot control what anyone
3 else does. I can only try to control what I do.

4 Q. Agreed. If it turned out that just careless use of
5 the language ended up sabotaging this deal, wouldn't you
6 be upset? You wanted to rent that place. You were
7 desperate to?

8 A. Yes, sir, I would be upset.

9 Q. So if you found out that your agent or Nalley or
10 any of these people in the middle screwed up your deal,
11 you'd be upset?

12 A. Yes, sir.

13 Q. Does Garrison still represent you in commercial
14 transactions?

15 A. Right now I don't have anything listed. But he was
16 representing me up through last year. If I had
17 commercial things listed, I list it with him.

18 Q. Thank you.

19 MR. PRINGLE: Nothing further.

20 (WHEREUPON, Plaintiff Exhibit Number 11 was marked
21 for identification.)

22 **REDIRECT EXAMINATION**

23 **BY MR. BRANDT:**

24 Q. Dr. Walton, in response to one of the questions you
25 mentioned an email from a Frank Mason concerning a

1 consent letter. I would show you now what I have marked
2 as Plaintiff's Exhibit Number 11 for identification.

3 Have you seen that before, that email?

4 A. Yes, I have.

5 Q. Okay. And is that the email to which you referred?

6 A. Yes, this is what I referred to.

7 Q. In your prior testimony?

8 MR. BRANDT: I'd offer this into evidence as
9 Exhibit Number 11.

10 THE COURT: Any objection?

11 MR. PRINGLE: None. Thank you.

12 THE COURT: All right.

13 (WHEREUPON, Plaintiff Exhibit Number 11 was entered
14 into evidence.)

15 Q. And what does that last line say down here?

16 A. The last line says a consent letter is not required
17 unless a variance from section seven of the REA is
18 required for the restaurant user.

19 Q. Now, the exhibit, Defendant's Exhibit Number 2, is
20 the Prudential C. Dan Joyner Commercial Lease
21 Application. And on the second page over there, is
22 there a signature that appears thereon of Mitchell
23 Bagwell?

24 A. Yes, there is.

25 Q. And what's the date on that?

1 A. 2/23/09.

2 Q. And over here when he says the purpose for use of
3 the premises, what's listed?

4 A. Wine bar slash restaurant.

5 Q. And would wine bar slash restaurant suffice under
6 the REA Agreement?

7 A. Yes, it would.

8 Q. The lease itself certainly speaks for itself. But
9 was there anything in the lease that Mitchell Bagwell
10 signed that said wine bar? Let me find this exhibit for
11 you.

12 A. Is that it way down there on the bottom?

13 Q. Here we go. No, right here. Now, again, the use
14 says what? Tenant's use of premises for what?

15 A. Tenants are to use the premises only for the
16 purpose of a restaurant business and for no other
17 purpose, except by the expressed written consent of the
18 landlord, which consent will not be unreasonably
19 withheld, conditioned or delayed.

20 Q. Did anyone ever ask you, as the landlord under this
21 lease, to grant Mitchell Bagwell or to even seek
22 permission from Nalley, to run a mere wine bar as
23 opposed to a wine bar slash restaurant?

24 A. No.

25 Q. And this lease agreement specifically references

1 the REA agreement; does it not?

2 A. Yes, it does.

3 Q. And all of that was filled in when presented to the
4 parties for signatures; was it not?

5 A. Yes, it was.

6 Q. You mentioned, and just to kind of clarify a time
7 line, that Mr. Nalley got into it about when your
8 building burned, that prior building that was there that
9 was a restaurant?

10 A. Right.

11 Q. And it had alcohol sales along with food?

12 A. Correct. Yes.

13 Q. And was there any objection at any time from Lowe's
14 or now Forest Acres concerning that operation?

15 A. No.

16 Q. And when did that building burn? Do you recall?

17 A. I think it was '95. I'm not positive, but I think
18 it was 1995.

19 Q. At one time did you own that whole shopping center
20 where Lowe's is?

21 A. It was a leasehold, yes. We owned -- at one time,
22 I owned the whole thing. And it was leasehold. And
23 then Nalley bought the leasehold and ---

24 Q. Leased back a portion to you?

25 A. Leased back a portion to me, yes.

1 MR. BRANDT: I don't have anything further.

2 THE COURT: All right. Thank you.

3 MR. BRANDT: Oh, excuse me. If I may.

4 Q. Do you take any exception to any of those
5 additional terms he said -- that you said you read but
6 didn't initial? Are you agreeing that those are part
7 and parcel of this lease agreement?

8 A. Yes, sir, I am.

9 Q. You have no exceptions or no reservations?

10 A. No exceptions. No exceptions to what was done.

11 And I ---

12 THE COURT: Okay. All right. Thank you,
13 sir. You can step down. We'll just take about a ten or
14 fifteen minute break. What's your next witness?

15 MR. BRANDT: I'm going to rest.

16 THE COURT: Okay. All right. Well, let's
17 just take a few minutes. We'll get right back to you.

18 (WHEREUPON, the court stood at recess for a short
19 break.)

20 THE COURT: Tell me what your plan is?
21 Motions heard and denied.

22 MR. PRINGLE: Judge, we intend to call Mr.
23 Garrison, Mr. Bagwell.

24 THE COURT: Okay.

25 MR. PRINGLE: Although I don't anticipate --

1 Mr. Bagwell and Mr. Bauknight, his agent, those
2 examinations will be much more brief than what we saw
3 with Mr. Walton. I think the examination of Garrison
4 might be somewhat similar. It won't be that -- well, as
5 far as duration.

6 THE COURT: Okay. Well, it's one o'clock.

7 MR. PRINGLE: I need to call him first, is my
8 intention.

9 THE COURT: Yeah. Well, do y'all want to eat
10 lunch? I hate to keep y'all. I'd like to get it done,
11 but why don't we just break -- is forty-five minutes
12 long enough for lunch? Or how long do you -- I mean, if
13 his testimony is going to take an hour we need to --
14 everybody needs to ---

15 MR. PRINGLE: It very well could, yeah. I
16 mean, I've got quite a bit of information I need to
17 explore.

18 MR. BRANDT: He's got him on direct. I would
19 think we covered it pretty well. I wouldn't take nearly
20 as long as he does, I'm sure.

21 THE COURT: All right. Well, do you want to
22 take just a forty-five minute break for lunch or an
23 hour? How long do you need?

24 MR. BRANDT: That would be fine, sir.

25 THE COURT: Okay. Well, we'll just see y'all

1 back at quarter of two then.

2 MR. PRINGLE: Okay. Thank you.

3 THE COURT: All right. And I guess I ought to
4 disclose, I've known Mr. Garrison for a long time.

5 MR. PRINGLE: I was going to ask. I think,
6 aren't you, Your Honor, I think you're active in Rotary?

7 THE COURT: No, I'm not. Uh-uh, they wouldn't
8 have me.

9 MR. PRINGLE: Oh, okay. I think he is.

10 THE COURT: No, I've known -- I've coached his
11 sons at the YMCA. That's how -- and, God, they're
12 thirty years old now. Or, no, they're not that old, are
13 they?

14 MR. GARRISON: Twenty-eight.

15 THE COURT: Twenty-eight.

16 MR. PRINGLE: Were they coachable kids or were
17 they a problem?

18 THE COURT: Well, one of them was pretty good.
19 And the other one, you know, was red-headed. So, you
20 know. But, you know, if anybody objects, I mean, we --
21 I've known him for a long time. So y'all think about it
22 over lunch, okay?

23 (WHEREUPON, the court stood at recess for a lunch
24 break.)

25 THE COURT: All right. Thank y'all for your

1 patience. Mr. Pringle.

2 MR. PRINGLE: Thank you, Your Honor.

3 MR. BRANDT: May I approach, Your Honor.

4 THE COURT: Yeah.

5 (WHEREUPON, Mr. Pringle and Mr. Brandt approached
6 the bar.)

7 THE COURT: All right.

8 MR. PRINGLE: Thank you, Your Honor, may it
9 please the Court. I would call Nelson Garrison, please.

10 THE CLERK: Please place your left hand on the
11 bible and raise your right.

12 Do you solemnly swear or affirm that the testimony
13 you're about to give in this case will be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Thank you. State your full name
17 for the record.

18 THE WITNESS: Charles Nelson Garrison.

19 THE CLERK: Please be seated.

20 **NELSON GARRISON,**

21 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. PRINGLE:**

24 Q. All right. Mr. Garrison, what's your function?

25 What's your occupation?

1 A. I'm a commercial real estate agent with Prudential
2 C. Dan Joyner Company.

3 Q. And have you, in fact, represented the Plaintiff,
4 John Walton, in that capacity?

5 A. I have.

6 Q. And were you his real estate agent with regard to
7 the lease in question in this case?

8 A. I was.

9 Q. Can you briefly describe what your role is as an
10 agent for someone like Mr. Walton?

11 A. In representing Dr. Walton's property, we do
12 marketing and put out efforts to lease property. If he
13 has property for sale, then we market that, as well.

14 Q. You in particular at the C. Dan Joyner Company, is
15 that what you do, you do leases or do you do real
16 estate, like sales or is it ---

17 A. I do sales and leasing in the commercial arena.

18 Q. Commercial not residential?

19 A. I don't sell houses.

20 Q. Okay. And you've had an on-going, I guess, client
21 relationship with Mr. Walton?

22 A. That's correct.

23 Q. And do you remember when the negotiations first
24 began with regard to this case?

25 A. Do I know a date?

1 Q. No, no. Do you remember -- what's your first
2 memory of any discussion between Bagwell or his agent
3 and y'all?

4 A. His agent contacted us, contacted me, regarding
5 having someone who would like to look at leasing the
6 building and using it, next to Lowe's.

7 Q. Did you know his agent?

8 A. Before that, no. We have -- I think we've got
9 close to three hundred residential agents.

10 Q. Sure.

11 A. And I might have said hello to her in a meeting or
12 something, but we didn't really know each other.

13 Q. The agent was Dee Bauknight?

14 A. That's correct.

15 Q. And is Dee Bauknight ---

16 A. She's here.

17 Q. Well, Harriet is her real name, did you know that?

18 A. I don't think I did.

19 Q. I don't know if she wanted me to tell you that or
20 not.

21 A. I'll call her Harriet from now on.

22 Q. At any rate, that's who made contact with you?

23 A. Right.

24 Q. It wasn't Mr. Bagwell?

25 A. No.

1 Q. Okay. And you heard -- you were here during Mr.
2 Walton's testimony?

3 A. I was.

4 Q. Is it true that Mr. Walton, to your knowledge,
5 never had any contact with Mr. Bagwell personally?

6 A. As far as I know, Dr. Walton never had any real
7 conversation ---

8 Q. I'm sorry. Dr. Walton. And Dr. Walton had no
9 contact with Dee Bauknight either?

10 A. No.

11 Q. Directly?

12 A. No.

13 Q. Walton was never present during any of the -- what
14 we've called the meetings, in these negotiations?

15 A. That's correct. He was never present.

16 Q. So you were his point man. You were the guy that
17 represented him?

18 A. That was my job.

19 Q. And to what extent did you have the discretion or
20 the ability to make the deal yourself?

21 A. At the end of the day, I have no ability to make
22 the deal. I might negotiate the terms of the deal, but
23 then to have somebody off on it, it's got to be the
24 owner.

25 Q. And, of course, your interest in making the deal is

1 the commission that was outlined in Dr. Walton's
2 testimony?

3 A. That's what we earn or living with, yes, sir.

4 Q. All right. In this case you stood to make a decent
5 chunk out of the deal if it went through?

6 A. On an hourly basis, that's the minimum wage.

7 Q. Okay. You would agree that the commission was
8 somewhere over four thousand and you were due for about
9 seventy percent of that?

10 A. Yeah. I think I had already produced an invoice,
11 which would have been submitted, but when we had the
12 occasion, I never submitted it.

13 Q. Do you remember how y'all got to the figures that
14 are in the purported lease as far as the amounts of
15 money per month and things of that nature?

16 A. The lease rate?

17 Q. Yeah?

18 A. Well, I think that was either what we were asking
19 or very close to what we were asking, which is a -- in
20 our job we analyzed other properties that are on the
21 market, we looked at what comps are, things that have
22 gone before. And that's how we get that rate.

23 Q. Now, there's some -- I guess you're like a go-
24 between; is that fair to say?

25 A. A liaison.

1 Q. A liaison. Okay. Trying to facilitate the deal,
2 if possible, do what you can to make it happen?

3 A. That's correct.

4 Q. And, of course, we've established, you don't get
5 paid if the deal doesn't go through. In fact, when this
6 deal when was broken, you did not actually get your
7 commission?

8 A. That's typically the way it works. It is a
9 commission job.

10 Q. All right. What is your first recollection of the
11 description of Mr. Bagwell's concept for the use of the
12 property?

13 A. Well, I heard that going back and forth and being
14 beaten around a good bit. My first recollection, we met
15 at the site and my recollection and my memory -- I'm
16 sixty-seven so my memory's not what it used to be. But
17 my memory is that he was focused on a wine bar or wine.
18 And that we, in subsequent meetings, had to work through
19 that because you couldn't do just alcohol.

20 Q. Would you agree that at some point in the
21 discussions y'all came to the idea of a wine bar slash
22 restaurant or restaurant slash wine bar?

23 A. A facility that served food and also wine. Yes,
24 sir.

25 Q. And is it true, sir, that throughout some of your

1 communications, whether it be in meetings or in emails
2 or otherwise, that you personally referred to the
3 concept in a number of different ways, besides wine bar?

4 A. I don't have any memory of that. I wouldn't doubt
5 it.

6 Q. Okay. You're familiar with that commercial lease
7 application?

8 A. I am.

9 Q. And there's also another thing known as, I believe
10 it's a client information form or lessee information
11 form that's tendered to the lessor for his review; is
12 that correct?

13 A. Well, we've got the tenant application form, which
14 is a two-page, fill-in-the-blank document. I'm not
15 familiar with what you're -- the other one is.

16 Q. Okay. You are familiar, though, with the -- or you
17 were present when we talked about the commercial lease
18 application. I want to make sure I'm using the right
19 term. For what we call the seller or his potential
20 business?

21 A. The one where the last part of it is a consent to a
22 credit check?

23 Q. Yes, sir.

24 A. Yes.

25 Q. Back in -- on or about February of 2009 that was

1 submitted. Does that sound right?

2 A. I believe that was the date y'all said was on the
3 document.

4 Q. And did you have any part in handling that
5 application?

6 A. I would have sent that document to his
7 representative, Ms. Bauknight, for him to fill out. I
8 would not have been involved in that.

9 Q. Okay. After it was filled out and turned back in
10 to your company ---

11 A. I would have sent it to Dr. Walton for his review.

12 Q. All right. So you would have, in the typical --
13 when you say would have, that implies that you don't
14 know for sure. Did you, in fact?

15 A. I have no direct memory of that.

16 Q. So you can't say for sure if you had your hands on
17 this thing or if you looked at it after it was turned
18 in?

19 A. I know I would have had my hands on it because it
20 would have come back to me from Ms. Bauknight. And I
21 don't know ---

22 Q. Using your terms, would have, is it fair to say you
23 would have examined this at least briefly before passing
24 it on to your client?

25 A. Uh-huh (affirmative).

1 MR. PRINGLE: May I approach?

2 THE COURT: Yeah.

3 Q. This is really just so that we're clear, so you're
4 clear on what I'm talking about.

5 A. Uh-huh (affirmative).

6 Q. Does that look like the commercial lease
7 application for this case?

8 A. Uh-huh (affirmative).

9 Q. All right. And it was signed in February of 2009?

10 A. February 23rd.

11 Q. We're talking about maybe four months before this
12 alleged lease deal was going down?

13 A. Uh-huh (affirmative).

14 Q. And isn't it true that between this period -- well,
15 actually even before this period and leading all the way
16 up into May of 2009, there were on-going discussions
17 between the parties about this place?

18 A. I was trying to give you a number of meetings, but
19 I really don't ---

20 Q. There were ---

21 A. We met, we met in Easley at a restaurant one time.
22 I believe they might have come to my office one time.

23 Q. Okay. And was there a meeting that you recall that
24 y'all were at at Wes Nalley's office?

25 A. A very important meeting because that was the --

1 for me, that was the clincher. That was where --
2 because Mr. Nalley was really going to be the driving
3 force because we were -- Dr. Walton only controlled that
4 property for a short period of time.

5 Q. Right.

6 A. A year and a half or so. And for Mr. Bagwell to
7 make an investment on the interior, to spend his money,
8 he needed a longer term than a year and a half.

9 Q. Right. He was looking for an option; right?

10 A. Well, I advised them that it would be better to
11 have something stronger than an option, to go ahead and
12 have a lease negotiated for a longer term.

13 Q. To your knowledge, did that extension or that
14 additional term ever -- was that ever negotiated?

15 A. I can't remember. If I had to say, I would say,
16 yeah, I'm sure it did. Otherwise maybe he wouldn't have
17 signed the lease with us, without a guarantee for ---

18 Q. All right. Would it surprise you if I told you
19 that it was completed and apparently it didn't make it
20 into that page one or, as we call it, that infamous page
21 one?

22 A. That would have been a stand-alone agreement with
23 Forest Acres or Nalley Properties. That would have been
24 a separate document. We would not have written one ---

25 Q. And you would have had no role in that?

1 A. Uh-uh (negative).

2 Q. Okay. Again, back to this commercial lease
3 application, what I really wanted to get to is if you
4 look below Mr. Bagwell's signature on that, it calls for
5 a description?

6 A. Wine bar slash restaurant.

7 Q. And there's been a lot of talk in this case about
8 wine bar restaurant ---

9 A. Wine bar restaurant.

10 Q. --- versus restaurant wine bar. You would agree
11 that at some point after the initial discussion, it was
12 clear to yourself, anyway -- I'm not asking you to speak
13 for others, but to you, you had a feeling that what he
14 was proposing was no problem?

15 A. Correct.

16 Q. That's true? Okay. Now, with regard to Mitch
17 Bagwell's concept. This idea of North Hampton Wines,
18 seemingly kept popping up during these discussions; do
19 you recall that?

20 A. Yeah. That came up in the meeting. My memory is
21 that it came up in the meeting with Mr. Nalley and that
22 Mr. Nalley said, oh, wow, because that's one of his
23 favorite restaurants in Greenville. So that concept was
24 very appealing to him.

25 Q. Right. And you, yourself, at least on one occasion

1 referred to it as a white tablecloth place. Do you
2 recall that?

3 A. That would be something I would say.

4 Q. Yeah. And I guess what you're saying is it fair to
5 say that Nalley was pleased or excited about that
6 prospect?

7 A. He was.

8 Q. Okay. I've alluded to what I call a number of
9 meetings that took place. There was one apparently at -
10 - I believe it was maybe a theme restaurant in Easley
11 that y'all met. Do you recall who was there?

12 A. Ms. Bauknight and Mr. Bagwell, I'm sure. I don't
13 recall anybody else.

14 Q. Just you and those two, you think?

15 A. I think so.

16 Q. How about the meeting at Nalley's?

17 A. That would have been them, Ms. Bauknight, Mr.
18 Bagwell, Mr. Nalley, me and my associate, Steve Greer.

19 Q. Okay. And Mr. Greer's name comes up throughout the
20 deposition, but Mr. Greer has no role in this case; does
21 he? I mean, he didn't -- he wasn't the agent?

22 A. No, no, he was not representing Dr. Walton, no,
23 sir.

24 Q. But he just happened to be there at least at that
25 meeting?

1 A. Well, he knew Mr. Nalley, and I think he and I
2 might have been going to lunch somewhere, so he came
3 along.

4 Q. Okay.

5 A. I don't recall exactly.

6 Q. Let's get back to this wine bar term. To you,
7 plain language, what does that mean, a wine bar?

8 A. I never really thought about it. The North Hampton
9 concept has a very nice restaurant. And they have a
10 room where they sell wine and it has a bar in there.

11 Q. Right.

12 A. And you can sit and have a glass of wine or food,
13 as well.

14 Q. But that restaurant component would have been the
15 primary thing that made it acceptable to Nalley, Lowe's,
16 this REA Agreement and so forth; correct, the restaurant
17 aspect?

18 A. It would seem like that.

19 Q. You mentioned in your deposition that virtually,
20 and I'm quoting, every document in this litigation uses
21 the term wine bar. You mention that. Do you remember
22 saying that in your deposition?

23 A. No.

24 Q. Is it your recollection that that term was used
25 frequently during the discussions? Maybe even

1 interchangeably with other terms?

2 A. I don't think so.

3 Q. Right. And you, yourself -- there's a number of
4 emails that we have that you, yourself, call this
5 concept a number of different things, correct? White
6 tablecloth restaurant, wine bar restaurant, restaurant,
7 wine bar restaurant, restaurant wine bar; agreed? Those
8 terms were used interchangeably throughout the process?

9 A. I would think so.

10 MR. PRINGLE: May I approach?

11 THE COURT: Yeah.

12 Q. There's one email I'd like you -- well, actually
13 there's a couple of them I going to show you in a
14 series. Okay. I have Defendant's Exhibits 3, 4, 5 and
15 8. And let's try to take them chronologically starting
16 with number 4. It purports to be from you to a, well,
17 to Wes Nalley, copied to Dawn Cataldo. Who's Dawn
18 Cataldo?

19 A. I have no idea.

20 Q. Would you have supposed that she worked with Nalley
21 if I show you that?

22 A. Yeah. I think that's his administrative assistant.

23 Q. All right. Could you read that, please? It's
24 brief.

25 A. Wes, thanks for getting back to me. I think I

1 understand your concern for not upsetting Lowe's, but
2 they would not have to be the ones that decided whether
3 this restaurant would or would not be in compliance with
4 the REA Agreement. I cannot believe that a restaurant
5 structured around the North Hampton model would not be a
6 welcome addition to this location.

7 Q. All right. So obviously coming from you, this is
8 in March of 2009, a couple of months before the
9 purported lease. This is your effort to try to convince
10 Mr. Nalley that this would be in compliance; correct?

11 MR. BRANDT: I didn't hear the question.
12 Could you repeat it?

13 MR. PRINGLE: Certainly.

14 Q. This email dated in March was about two months
15 before the purported lease. And it appears to be a
16 communication from Mr. Garrison intended for Wes Nalley
17 to take another look, that Mitch Bagwell's ---

18 A. If he was doing something like the North Hampton
19 model ---

20 Q. That everything was fine?

21 A. --- it seemed like it would be a fit.

22 Q. Right. And you used the term a restaurant
23 structured around North Hampton Wines, noting that we
24 didn't use the term wine bar or wine bar restaurant.

25 A. Uh-huh (affirmative).

1 Q. Can you explain why the variance in the terms?

2 A. Absolutely not.

3 Q. Okay. So it's use. Maybe just like I said earlier
4 or I asked you earlier, is it fair to say we were using
5 these terms interchangeably throughout the negotiations?

6 A. Yes, sir.

7 Q. But you knew, didn't you, exactly what his concept
8 was?

9 A. I did not know. I never saw a drawing. I know
10 that, again, as I've already stated in the very
11 beginning, it was my belief that he had a strong wine
12 bar, whatever that is.

13 Q. Yes.

14 A. But would have had ancillary food service. And
15 that needed to be revved up. That needed to be a --
16 there needed to be a stronger presence of food.

17 Q. It needed to be more food?

18 A. Yeah.

19 Q. Okay. And then Defendant's Exhibit 5. And this is
20 an email from you to a Frank Mason, who we've
21 established is a representative of Lowe's?

22 A. Lowe's.

23 Q. There is a -- I've highlighted part of your email,
24 but if you could read that email, please?

25 A. The highlighted part?

1 Q. The whole thing, if you don't mind?

2 A. So ---

3 Q. Yours. Just yours. There you go.

4 A. So this is regarding a submittal checklist for
5 Easley, what do you suggest? I have a half a dozen
6 pictures of this existing building for your review of
7 the file. I also have a restaurant user ready to move
8 forward. Actually, anxious, on a lease in opening a
9 tablecloth restaurant in this location.

10 Q. Okay. And you're referring to Mitch Bagwell;
11 right? Obviously?

12 A. What's the date?

13 Q. It's April 3rd of 2009.

14 A. I was referring to Mr. Bagwell.

15 Q. Yeah. And we refer to him as a restaurant user in
16 a tablecloth restaurant. So that's another variance
17 from the term wine bar or wine restaurant bar; would you
18 agree?

19 A. I would.

20 Q. And on this Defendant's Exhibit 3, and this one is
21 just your email to Ms. Bauknight, Mr. Bagwell's agent.
22 If you could read that. That's also very brief.

23 A. Dee, here's a copy of the ground lease language
24 regarding the serving of alcohol. It seems to leave a
25 good bit to actual interpretation of a specific use. If

1 your client is a wine bar but serves soups, salads,
2 sandwiches and desserts, it may pass. I am copying Mr.
3 Nalley on this for his response.

4 Q. What was his response?

5 A. I have no idea.

6 Q. Any reason to think that he had a problem with this
7 as you described it, based on your knowledge of the
8 case?

9 A. Well, based on my belief, I wouldn't think that he
10 would have a problem.

11 Q. All right. And you quote, it seems to leave a good
12 bit of actual interpretation of a specific use?

13 A. That would have been me playing you, interpreting a
14 legal document, which I should not probably have done.

15 Q. Right. And you've heard talk that this use
16 restrictions clause, as it's been presented, is somewhat
17 vague; isn't it?

18 A. I haven't really heard that.

19 Q. Well, you think it's difficult to define yourself;
20 right? And you're a real estate agent.

21 A. (No verbal response.)

22 Q. When you say it seems to leave a good bit to actual
23 interpretation, if your client is a wine bar but serves
24 soups, salads, sandwiches and desserts, it may pass.

25 Doesn't that sound like that maybe you're not even clear

1 on what those use restrictions really meant?

2 A. Which is the reason to reach out to the man that
3 has more chips in the game, Wes Nalley.

4 Q. Okay. And you've said that you have no
5 recollection or reason to believe that Wes Nalley would
6 have had a problem with that concept and it was ---

7 A. I think I would probably word it, I would hope not.

8 Q. Right. And it was discussed throughout this -- the
9 negotiations, this North Hampton Wines, this whole
10 concept of food with wine; wasn't it?

11 A. Yeah. I mean, that was, I think, the whole ball of
12 wax we were trying to get our hands around to make sure
13 that everybody was comfortable.

14 Q. Okay. Now, this one is dated November 3rd of '09,
15 which is obviously several months after the alleged
16 lease. And the highlighted portion is an email from you
17 to Steve Greer, who I think you mentioned is an
18 associate of yours?

19 A. Yeah.

20 Q. Could you read that, please?

21 A. That is correct. Bagwell never submitted a written
22 menu. He did say repeatedly that his model was North
23 Hampton Wines Restaurant. There's several meetings, as
24 you know. The most damning should be the Nalley
25 encounter.

1 Q. And, of course, that last bit is kind of your
2 communication about what might be the pending litigation
3 that we're here for?

4 A. Well, I had no idea that we were going to have any
5 pending litigation if that's what you're saying.

6 Q. Of course not.

7 A. I felt real good about our meeting with the man who
8 had all the chips. I felt like Mr. Bagwell did a good
9 job of explaining and presenting what he was planning to
10 do.

11 Q. You weren't in the dark about the concept. It was
12 pretty clear to everybody as far as you're concerned?

13 A. Not my client, I really was not -- you know, it was
14 just a matter of he was going to do a restaurant with
15 wine. I know he likes wine. I don't know that. I
16 think in our meetings he seemed to have knowledge that I
17 don't have of wine.

18 Q. He did say repeatedly that his model was North
19 Hampton Wines Restaurant. There was several meetings,
20 as you know. So that's after the fact, that's after
21 this purported lease. And you're looking back on it and
22 you're saying that the concept was repeatedly put out
23 there and there were several meetings about it. That's
24 your take on it four months later; correct?

25 A. Uh-huh (affirmative).

1 Q. Okay. Who prepared this lease?

2 A. The actual document -- do you have the lease?

3 Could I see it for a second before I say ---

4 MR. PRINGLE: Mr. Brandt, which number is the
5 lease?

6 MR. BRANDT: 1.

7 MR. PRINGLE: There it is. Plaintiff's 1.

8 A. I got this lease from Forest Acres, Wes Nalley.

9 This was his lease document. I thought it would be good
10 if we had a consistent document, thinking that they were
11 going to go a longer term with him after this ground
12 lease.

13 Q. Now, did you make any changes to Wes Nalley's
14 lease?

15 A. I would have filled in this first page with some
16 items like additional charges, minimum rent, the term.
17 Yeah. That would have been filling in the blanks on
18 pretty much every line. And then the tenant-specific
19 specifications, provisions.

20 Q. What we're calling page one? The tenant specific
21 provisions, that's the part that you would ---

22 A. Page one.

23 Q. Yeah. The rest of it is a boilerplate general
24 provisions; correct?

25 A. Exactly.

1 Q. Now, as you look at that exhibit, there are two
2 page ones, pages one?

3 A. I have no idea.

4 Q. One of them has gone -- what's in your left hand.
5 The other one, it looks to be about identical, except
6 the eighteen month term is crossed out and nineteen is
7 written in there.

8 A. And if you're going to ask me did I do that, I have
9 no idea.

10 Q. You don't know?

11 A. I have no idea. Sorry.

12 Q. Do you have any idea who might have done it?

13 A. No, sir.

14 Q. I mean, is it typical that we would have two leases
15 ---

16 A. I heard the discussion earlier to have changes and
17 not have it initialed and dated would be unusual.

18 Q. Yeah. And if you were the guy that -- well, strike
19 that. Knowing that Mr. Bagwell was the first one to
20 sign this thing ---

21 A. Uh-huh (affirmative).

22 Q. --- and knowing that he never received any copy
23 back with Mr. Walton's signature on it, certainly not
24 before the -- and would you agree that the lease began
25 in June, June 1 of 2009?

1 A. I believe it's in here. Yeah. Beginning June 1st,
2 2009.

3 Q. Thank you. We have a situation where Bagwell signs
4 it on May 21st, let's it fly. There's changes made to
5 it. He never gets a copy back that's signed by Dr.
6 Walton, and then gives notice before the lease even
7 kicked-off about the problem. You know about the Wes
8 Nalley email and then Jackie Patterson's response, you
9 know, the position Mr. Bagwell took. You know about
10 that; right?

11 A. After the fact, yes.

12 Q. But you have no knowledge of why there's two page
13 ones and why somebody made that change?

14 A. I probably should, but I don't really know.

15 Q. In your experience, I mean, is that common? At C.
16 Dan Joyner, do you typically have, like, multiple
17 versions of the same contract?

18 A. Oh, yeah. A lot of times we have because you've
19 got people in different locations or whatever. You
20 typically have -- in a purchase contract, you'll have a
21 clause in there that says the signatures can be on
22 different pages, but it all counts as one.

23 Q. Okay. Okay.

24 A. It's not totally unusual.

25 Q. Would you agree that one party making physical

1 changes to a supposed contract or binding agreement ---

2 A. Well, I mean, if you look at it ---

3 Q. Wouldn't that be something that both parties should
4 have a say in? I mean, just asking you. Forget about
5 your role as a real estate agent. I mean, doesn't that
6 strike you ---

7 A. That would technically be the way we would handle
8 it as real estate agents.

9 Q. Right. Do you have any knowledge of when the
10 doctor actually signed the purported lease?

11 A. Well, it says he signed it on May 22nd because
12 that's what he wrote when he signed it.

13 Q. But you don't know yourself? You don't know what -
14 - you didn't personally observe him or see him sign it?

15 A. I don't remember.

16 Q. Now, how long -- I guess from your recollection,
17 how long was this building unoccupied before this
18 purported lease?

19 A. I heard your comments earlier and I found that
20 surprising. It may be true. I could go back probably
21 and look at different documents in the file and figure
22 it out.

23 Q. If I told you in your deposition you said two to
24 two and a half years, would you have been at least as
25 accurate then as you would be now?

1 A. I would have. Yeah, I would ...

2 Q. All right. And, of course, you know, we heard
3 about how the market was down at that time, there's a
4 little bit of pressure, money wasn't rolling in. You
5 don't get paid until this deal is done; correct?

6 A. That's the way we real estate agents are, sir.

7 Q. Of course. And Dr. Walton, he indicated -- of
8 course, I mean, he's motivated to get it rented out. I
9 mean, he's losing money every day literally; wasn't he?

10 A. I don't know whether he was losing money or not.

11 He certainly ---

12 Q. Well, he wasn't making money?

13 A. He wasn't getting the revenue if it was not leased.
14 That's for sure.

15 Q. All right. So, you know, when we say earlier that
16 your function is a -- I said go-between and I think you
17 said facilitator; is that correct?

18 A. Yeah, either one of those.

19 Q. All right. I mean, obviously, you're motivated to
20 get this thing done?

21 A. I'm in sales, sir. That's right. I'm very
22 motivated.

23 Q. Yeah. Now, we talked about a few meetings; the one
24 at Nalley's, the one at the restaurant, maybe another
25 one between y'all. But there apparently was also one, I

1 guess, meeting where yourself and Mitch Bagwell and Dee
2 Bauknight were at the location itself; do you remember
3 that, like, doing a walk-through?

4 A. (No verbal response.)

5 Q. You don't remember that?

6 A. I mean, I believe you. I'm sure we were there, but
7 I don't have -- I think we probably were there numerous
8 times.

9 Q. Okay. And that would have been typical. When you
10 say, I would have done this or we would have done that,
11 it would be standard for you to visit the spot at some
12 point during the process?

13 A. Well, typically when I'm representing properties
14 that are for lease, you'll have an agent with their
15 client or sometimes the client, the user, the would-be
16 user, does not have a representative. And then you have
17 to -- and you're meeting them to let them walk the
18 property, to do some measuring, because they've got to
19 get their hands around whether they can do what they
20 need to do or want to do. Sometimes it can be
21 contractors.

22 Q. Sure. In this case ---

23 A. It's a process.

24 Q. In this case do you recall them kind of giving you
25 the walk-through that, you know, here's where this is

1 going to go. Here's where this is going to go. Do you
2 have -- you don't remember that?

3 A. No. It's been too long.

4 Q. But you're not saying it didn't happen?

5 A. Absolutely not.

6 Q. Okay. And at some point -- well, given you don't
7 remember being there, maybe this will help. Do you
8 remember having a conversation to them to the extent of
9 the wine being there is not going to be a problem, just
10 cover it up with sheets or curtains. Wait some time and
11 it will blow over and we'll have no problem?

12 A. No.

13 Q. I'm paraphrasing. You don't remember any
14 conversation like that at all?

15 A. No.

16 Q. Is it possible it happened, though? You've said
17 before your recollection is ---

18 A. It's just not the kind of thing I don't think I
19 would say. But I've never been in the restaurant
20 business, so it just wouldn't be a ---

21 Q. I'm sure you're aware that there are multiple
22 witnesses that are going to say that you stood there and
23 said exactly what I just asked you. Are aware of that?

24 A. Uh-uh (negative).

25 Q. Is it possible that your recollection is spotty?

1 A. I guess it's always possible, but I don't think so
2 in this case.

3 Q. Well, you would agree that at least a couple of
4 times here on the stand today, you've told me you didn't
5 recall something. And, of course ---

6 THE COURT: Now you're getting -- come on.
7 Let's move along. There's no jury here. I'm ...

8 MR. PRINGLE: Fair enough. I need to
9 approach. May I approach?

10 (WHEREUPON, Mr. Brandt and Mr. Pringle approached
11 the bar.)

12 Q. All right. Just a couple more things. During the
13 discovery process and in the deposition, it became clear
14 that there were a number of emails that initially
15 weren't turned over by you in the discovery process; do
16 you remember that?

17 A. No, sir.

18 Q. You don't?

19 A. No, sir.

20 Q. You don't remember saying there were computer
21 problems?

22 A. (No verbal response).

23 MR. PRINGLE: I have nothing further.

24 THE COURT: Okay. Cross.

25 CROSS-EXAMINATION

1 BY MR. BRANDT:

2 Q. Mr. Garrison, ---

3 A. Yes, sir.

4 Q. --- throughout this entire matter was Mitch Bagwell
5 represented by a realtor of his own choosing?

6 A. Yes, sir. Well, I assume so.

7 Q. He was represented by a realtor?

8 A. He was represented by a realtor.

9 Q. In most of your conversations and dealings with
10 this, did you keep that realtor informed with her as you
11 went along as to the progress of what was taking place?

12 A. It's my belief that I never ---

13 Q. Keep your voice up, sir.

14 A. It's my belief that we never had a meeting without
15 Mr. Bagwell's agent being present for the meeting.

16 Q. Did you have any direct conversations with Mitch
17 Bagwell during this negotiation leading up to the lease?

18 A. Well, again, only in a joint meeting with his
19 agent. I had conversations with him.

20 Q. Was there a meeting at Nalley's?

21 A. There was.

22 Q. With Mitch Bagwell?

23 A. There was.

24 Q. Who else was there?

25 A. Ms. Bauknight, Mr. Nalley, Wes Nalley, and Steve

1 Greer.

2 Q. And you?

3 A. And me.

4 Q. And what was the purpose of that meeting?

5 A. The whole purpose of the meeting was for Mr.
6 Bagwell to explain to Mr. Nalley exactly what he planned
7 to do and for us to -- I mean, I'm in sales, so we
8 wanted to get everybody comfortable with the process.
9 And the rationale was that Mr. Bagwell could explain
10 directly to Mr. Nalley what he was planning to do. And
11 I felt like we left the meeting with everybody being
12 comfortable, that we were going to move forward.

13 Q. After that meeting, was Wes Nalley still willing to
14 move forward with the lease to Mitch Bagwell?

15 A. That I would have to go back and look at records.
16 I don't think -- and again, I think I told the
17 gentleman, as well, my advice to Mr. Bagwell and his
18 realtor would have been in order to protect his
19 investment we needed to go ahead and have, if not the
20 actual deal done, at least the framework of a deal done
21 for a longer term with Wes Nalley.

22 Q. When you left that meeting, was it your
23 understanding -- do you remember what was actually said
24 by anyone at that meeting? Keep your voice up.

25 A. No. No, sir.

1 Q. And when you left that meeting, was there any doubt
2 in your mind that a restaurant component was not part of
3 the deal?

4 A. No, sir.

5 Q. Did you believe that Mitch Bagwell was going to put
6 in a restaurant component to what he kept calling the
7 wine bar?

8 A. Well, again, that was the only purpose of the
9 discussion, the meeting with Mr. Nalley. So, yes. Yes,
10 sir.

11 Q. And did that meeting occur prior to Mitch Bagwell
12 signing the lease?

13 A. I'm going to say, yes.

14 Q. And throughout this whole thing, did you ever tell
15 Mitch Bagwell that he could do a wine bar with just
16 cheese and a few hors d'oeuvres?

17 A. No, sir.

18 Q. The North Hampton wine or the North Hampton, which
19 is a -- you say, a restaurant in Greenville?

20 A. It's a restaurant wine bar in Greenville.

21 Q. And how long had that been open; do you know?

22 A. I do not. I would say at least eight years, maybe
23 ten years.

24 Q. And does it have a food component there?

25 A. They have a very nice, what I call, tablecloth

1 restaurant, yes.

2 Q. As best you recall, how long has North Hampton
3 Wines had that restaurant part or food part?

4 A. It all came out together. They opened everything
5 at the same time.

6 Q. Has anyone ever told you -- we've seen an email
7 here where -- that I believe -- well, Plaintiff's
8 Exhibit 3-A, first of all. It's a letter that's been
9 entered and it has a letter from Patterson to ---

10 A. This is a letter to Dr. Walton from Ms. Patterson;
11 right.

12 Q. And were you copied on the letter?

13 A. No, sir.

14 Q. Okay. And I have 3-B here. And it appears that
15 there has been -- does that appear to you there's been
16 some conversation between Ms. Patterson and Mr. Nalley?

17 A. It would seem so.

18 Q. And do you know what Ms. Patterson had said to Mr.
19 Nalley?

20 A. I have no idea.

21 Q. Do you know why Mr. Nalley felt it necessary to
22 write this last email at the bottom of page 3-B?

23 A. No, sir.

24 Q. Clearly, though, Mr. Nalley was saying they would
25 not accept a, quote, wine bar, end quote; correct?

1 A. It seems to be very clear.

2 Q. And he said, if it is the intent of Mr. Bagwell to
3 operate in violation of the REA, we would be forced to
4 terminate the lease agreement and any other remedies
5 available to us under the law. Is that correct, what it
6 says?

7 A. That's what it says.

8 Q. At all times was Mitch Bagwell -- at the time he
9 signed the agreement, was Mitch Bagwell aware of that
10 REA Agreement?

11 A. I would assume he was. There was a lot of
12 conversation about it.

13 Q. Certainly the clause was put in the lease itself,
14 was it not?

15 A. Stating back to the ---

16 Q. Yes, sir. Saying that it was subject to the REA?

17 A. That's correct.

18 Q. And ---

19 MR. BRANDT: You don't have the lease
20 agreement, do you?

21 MR. PRINGLE: It's Plaintiff's 1.

22 MR. BRANDT: I know it's 1, but I don't see it
23 up here. That's why I was wondering if it -- oh, here
24 we go.

25 Q. It's in the lease and the lease calls for a

1 restaurant; doesn't it?

2 A. Yes, sir.

3 Q. And that was a lease that was presented to Mr.

4 Bagwell; correct?

5 A. Yes, sir.

6 Q. Do you know if Mr. Bagwell received or was in
7 contact with any attorneys to discuss that lease prior
8 to signing it?

9 A. I do not.

10 Q. And Mr. Bagwell -- I believe you gave that lease to
11 Ms. Bauknight for her to take to him to get signed?

12 A. That's the normal procedure. I'm sure that's what
13 I would have done.

14 Q. And then she returned it to you?

15 A. Correct.

16 Q. In the signed form with Bagwell's signature on it?

17 A. Yes, sir.

18 Q. And then you gave it to Dr. Walton?

19 A. Correct.

20 MR. BRANDT: I don't have anything further.

21 MR. PRINGLE: Nothing further. Thank you.

22 THE COURT: All right. Thank you. You can
23 step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Do y'all need him or can we

1 release him from subpoena?

2 MR. PRINGLE: The Defendant won't need him any
3 further. Thank you.

4 MR. BRANDT: I don't need him.

5 THE COURT: Okay. Okay. Call your next
6 witness.

7 MR. PRINGLE: All right. Your Honor, I think
8 we have an agreement on portions of Mr. Nalley's
9 testimony. We were unsuccessful finding him for Court.
10 And I think we've got an agreement that we tender
11 portions of his deposition for you to read. I've got
12 three pages total.

13 MR. BRANDT: He had handed up -- here's --
14 well, that's Nelson's. That's it. And so I just move
15 the whole thing. It's not that long. And he has ---

16 THE COURT: What pages do you want me to look
17 at?

18 MR. BRANDT: Pages that I wish for you to look
19 at?

20 THE COURT: Well, you can tell me first.
21 Yeah, go ahead.

22 MR. PRINGLE: I actually have copied the
23 pages.

24 MR. BRANDT: Page 8, 9, 12, 13 through 16.

25 MR. PRINGLE: I've got 8, lines 13 to 17; page

1 14, line 25 through page 15, line 15.

2 MR. BRANDT: 17 through 20.

3 MR. PRINGLE: And page 19, 7 through 24, and
4 I've condensed it down to that copy.

5 THE COURT: Okay.

6 MR. BRANDT: 22 and 26.

7 THE COURT: All right. Call your next
8 witness.

9 MR. PRINGLE: Thank you, Your Honor. I call
10 Mitch Bagwell.

11 THE CLERK: Place your left hand on the bible
12 and raise your right hand, please.

13 Do you solemnly swear or affirm that the testimony
14 you're about to give in this case will be the truth, the
15 whole truth and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: State your full name for the
18 record.

19 THE WITNESS: Mitchell Lee Bagwell.

20 THE CLERK: Please be seated.

21 **MITCHELL LEE BAGWELL,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MR. PRINGLE:**

25 Q. All right, Mitch. Now, let's start from the

1 beginning and briefly give us the background on how you
2 came to first contact Dee Bauknight about this property?

3 A. I drove in the parking lot, saw the sign across the
4 top of the building, looked in the windows and it was
5 with Prudential, so I knew she was a prudential agent
6 and I called her.

7 Q. All right. What happened next?

8 A. She got the keys from Nelson Garrison and she and I
9 went through it.

10 Q. Do you remember about -- could you narrow down
11 maybe what month of the year we're talking, when it
12 first started?

13 A. Probably December -- let's see. December of '08 or
14 January '09.

15 Q. Maybe six months or so before the purported lease?

16 A. At least.

17 Q. And why don't you walk us through kind of the
18 negotiating process in those earlier months?

19 A. Well, we always intended -- had been looking for a
20 place. Always intended to have a restaurant, that never
21 waivered. And when we found that location it had some
22 attributes that would have made it perfect for what we
23 wanted to do. The kitchen had been gutted. We could
24 up-fit it and make it like what we wanted. So, you
25 know, the term wine bar, when I go to North Hampton

1 Wines and somebody calls me and says, where are you, I
2 don't say, I'm at North Hampton Wines and Cafe. I just
3 say, I'm at North Hampton Wines. And so he was clear on
4 what we were doing.

5 Q. When you say he?

6 A. Nelson.

7 Q. Okay.

8 A. So we called Nelson. We met at a restaurant in
9 Easley, explained the concept of using the North Hampton
10 model with food. And he thought it was a good idea. He
11 thought it would be fine. And I read the lease and
12 there were some things about the REA that I wasn't sure,
13 because it's vague and nebulous. I wasn't sure. So we
14 visited it again and he said ---

15 Q. Now, wait a minute. Let me ask you to clarify it.
16 You're talking about -- when you say nebulous, you're
17 talking about the use restrictions?

18 A. Right.

19 Q. Okay. The whole idea of restaurant selling alcohol
20 and ---

21 A. Right.

22 Q. --- this dichotomy that we've described?

23 A. Right.

24 Q. Okay.

25 A. So he assured me that it would be fine and ---

1 Q. Who was present?

2 A. Dee Bauknight.

3 Q. Okay.

4 A. And we moved forward slowly. I filled out a credit
5 application and I still had some trepidation about
6 moving forward. There was something about Nelson
7 Garrison that didn't seem to sit right with me. I
8 wasn't sure. And Ms. Bauknight said she thought it
9 would be fine and we -- you know, and I said, no, I
10 don't think I'm going to do it. And, you know, and he
11 would come back with another offer. Nelson, he kept
12 sweetening the pot. You know, he just, he really
13 courted me hard for several months. He would, you know,
14 he'd give me the whole building for this much if you
15 just try, you know. He just kept making the deal better
16 and better. We'll pay the taxes for this amount of time
17 and so forth and so on, until finally, we really got
18 into the minutia of the whole thing and decided that,
19 you know, we would move forward if we could all get on
20 the same page. And there was, you know, I can't tell
21 you how many times we met. But ultimately I knew that
22 the decision was going to be made by Nalley.

23 Q. Why is that?

24 A. Well, because of the REA he has the land and he
25 upkeeps the land and it's -- he has Lowe's next door.

- 1 So it was up to him to decide whether it fit in the
2 restrictions clause.
- 3 Q. Okay. He was the money man, as Mr. Garrison
4 referred to him?
- 5 A. Essentially.
- 6 Q. Right.
- 7 A. So toward the end we met with Wes.
- 8 Q. Is that Mr. Nalley?
- 9 A. Uh-huh (affirmative).
- 10 Q. Where did that take place?
- 11 A. In their office at Forest Acres Real Estate.
- 12 Q. And that's the meeting that we've referenced
13 through a couple of the witnesses today?
- 14 A. That's right because ---
- 15 Q. Was it an REA meeting, if you will?
- 16 A. Uh-huh (affirmative). But I wanted to meet with
17 him specifically because Mr. Garrison had already said,
18 oh, it's going to be fine. Just throw some sheets or
19 some towels over it or curtains ---
- 20 Q. Let's get back to that. All right. When you were
21 dealing with Mr. Garrison, did you consider that you
22 were dealing with Dr. Walton?
- 23 A. Yes.
- 24 Q. Okay. You knew that Mr. Garrison represented him
25 and was his agent?

1 A. Yeah. I didn't make a distinction between the two.

2 Q. Okay. And so when Mr. Garrison made any type of
3 statement to you, did you feel like that was well-
4 founded as far as coming from Dr. Walton?

5 A. Yeah. Like I said, I considered them one in the
6 same.

7 Q. All right. And you're referring to the meeting
8 that I asked Garrison about at the actual site of the
9 proposed restaurant?

10 A. He said it several times.

11 Q. Why don't you be very specific about who was there
12 and how that came about?

13 A. Ms. Bauknight was there every time. And I don't
14 know, he said it three or four times. And, you know,
15 and then when she and I were alone, I said, you know,
16 this is not -- that's not professional. That doesn't
17 give me any type of security. I feel funny about it.

18 Q. You felt funny. When you say it, what are you
19 talking about specifically?

20 A. That somebody would say, look, just cover the wine
21 for a couple of weeks and it will fly. Everything's
22 fine. Don't worry about it. Just move forward. You
23 know, you're going to have a nice restaurant. You know,
24 nobody's going to bother you.

25 Q. And that came from Garrison?

1 A. It did. Absolutely.

2 Q. And Dee Bauknight was there, as well?

3 A. Every single time.

4 Q. Okay. Go on.

5 A. So when we met with Wes, he had no problem with it.

6 And, you know, he said he'd have to check with -- I

7 can't remember. Is it Frank ---

8 Q. Mason?

9 A. --- Mason, who handles the REA with Lowe's. And

10 Nelson spoke up and said, I've already done that. He's

11 totally on board with it. And Wes said ---

12 Q. Nelson spoke up and said ---

13 A. Nelson spoke -- you know, I don't know what the

14 relation is between that guy and Nelson, but I don't

15 know if he took it upon himself. He had already spoken

16 to Frank Mason and he said that he was fine with it.

17 And Wes said, if he's okay with it, I love it. He

18 wished me luck. He said, I'll be one of your best

19 customers. He said, I don't think Easley's ready for an

20 upscale restaurant, but I wish you the best of luck, you

21 know, and that's the way we left it. And I thought,

22 well, we're all, we're all -- we're good. We're all on

23 the same page. So in the parking lot Ms. Bauknight,

24 Nelson and I and Steve Greer were standing by our cars

25 and I said, do you think that we need to explain that,

1 you know, about how the wine is sold in everything in
2 more detail or do you think he grasps it? And he, you
3 know, like as though our ---

4 Q. Don't say he.

5 A. Nelson Garrison, he -- Nelson Garrison, when I said
6 that to Nelson Garrison, he looked at me as though I
7 were foolish and said, I don't understand why you're
8 having a problem grasping this concept, why we have to
9 keep revisiting this; I don't understand. I told you
10 just to put something over it for a couple of weeks and
11 it's going to be fine. So ultimately -- I had some
12 other business with my attorney and I was still feeling
13 funny about the lease and it had not commenced yet. And
14 I took it to her and she looked at it. And she said,
15 you know, I wanted to call Wes. So she called Wes and
16 she explained -- the fact that he says wine bar is
17 meaningless to me. I don't think he makes a distinction
18 between the two. He knew, he knew specifically -- I
19 mean, we went into great detail, we spent a lot of time,
20 we described everything, how it would be. You know,
21 food as it relates to the consumption of alcohol or
22 however it's worded here. We had all of that covered.
23 We were working on a full-service kitchen and would
24 never have opened until we were ready for that. Well,
25 when she called Wes, I don't know, about the email. And

1 he said, I don't care how much food he has. He said, if
2 there's one bottle of wine in that place being served --

3 -

4 MR. BRANDT: I'm going to object to the
5 testifying of hearsay unless he was present to that
6 conversation.

7 THE WITNESS: It's what my attorney -- it's
8 between my attorney and me.

9 THE COURT: You can't testify to what somebody
10 said, but you can testify to what you did as a result of
11 a conversation you had with somebody, okay? All right.

12 A. As a result of that conversation that she had with
13 Wes Nalley, I was led to believe that no matter how much
14 food I served, if I had any alcohol, I would be evicted
15 on the first day. And he said, and I will keep tabs on
16 it. And I know because we maintain the grounds on that
17 building and I will check it out regularly. Why he
18 changed his mind, you know, I don't know. His father's
19 the boss. He's junior. I don't know if his father told
20 him, you know, that we're not doing this deal. I have
21 no idea. But when he did that, he terminated the lease.
22 I never did. And that's when my realtor and my attorney
23 said, stop payment on this check, and that's what I did.

24 Q. And this was before the lease was to commence?

25 A. Yes.

1 Q. Okay. Do you have any idea why Wes Nalley used the
2 term wine bar after -- right after y'all had had this
3 big pow wow and explained the concept?

4 A. I say that all the time when I'm going to North
5 Hampton.

6 Q. Okay.

7 A. So, you know, other than it's just vernacular to
8 him, I have no idea.

9 Q. So, again, why did you decide to stop payment on
10 the check specifically?

11 A. In my mind, the lease had been terminated.

12 Q. By who?

13 A. By Wes Nalley. If I couldn't use the building for
14 the intended purpose, then there was no contract. I
15 mean, I'd explained it, you know, since February or
16 January to June. If they haven't grasp it by then, you
17 know, everybody knew what I wanted to do. Everybody
18 knew what I wanted to do that was involved. I couldn't
19 have made it any clearer. And I never, ever suggested
20 that I would not have a full-service restaurant.

21 Q. You were consistent from the beginning to the end
22 about your concept?

23 A. Yes. That's what I -- food is what I do. I'm all
24 about food.

25 Q. Okay. And you have no knowledge of anything you

1 did to create this apparent one-eighty on behalf of
2 Nalley?

3 A. No. I mean, he and I have always been friendly.
4 I've got no idea. I mean, I was shocked.

5 MR. PRINGLE: May I approach?

6 THE COURT: Yeah.

7 Q. All right. I'm going to hand you numbers 9 and 10.
8 With respect to 9, what is that? What's the title?

9 A. Attorney Fee Affidavit of Kraig A. Pringle,
10 Esquire.

11 Q. All right. And as you look that over, do you feel
12 ---

13 MR. PRINGLE: I mean, I know you have no
14 objection to the fee aspect from Patterson; correct?

15 MR. BRANDT: Well, I'm not sure.

16 MR. PRINGLE: Do you want me to lay a
17 foundation for that? I think we've already agreed.

18 MR. BRANDT: Well, what's he looking at?

19 MR. PRINGLE: The fee, the fee statement from
20 Jackie and my affidavit.

21 MR. BRANDT: No. That's what she put in
22 there.

23 MR. PRINGLE: All right..

24 Q. I guess I'd ask you just to identify 9 and 10.
25 What are they?

1 A. This is your bill and this is the bill from Jackie
2 Patterson.

3 Q. And that would entail the services rendered by Ms.
4 Patterson throughout the whole litigation leading up to
5 ---

6 A. To this point.

7 Q. --- to me coming into the case?

8 A. Yes, sir.

9 Q. And then what I have submitted reflects my, I
10 guess, my services since that point?

11 A. Yes, sir.

12 Q. All right. Are you in agreement that those are
13 complete? I'm not asking you to comment on the amounts
14 or anything. But, I mean, are those ---

15 A. Yes. Yes.

16 Q. Those are the fee statements for both myself and
17 your prior counsel?

18 A. Yes.

19 Q. Thank you.

20 MR. BRANDT: And that's without objection.

21 MR. PRINGLE: Thank you.

22 Q. But for Nalley or anyone else telling you if you
23 sell a drop of wine, I'm closing you down, would you
24 have stopped payment?

25 A. No.

1 Q. Why not?

2 A. Because I've been trying to do this for years and
3 this was the first place in town that would accommodate
4 what I wanted to do. It had a layout that was perfect.
5 It had its own parking.

6 Q. You heard the testimony earlier about the so-called
7 arbitration clause. I believe it's number twenty-three
8 in the general provisions?

9 A. I did.

10 Q. Okay. At any time were you approached or made
11 aware of the opportunity to go to arbitration?

12 A. By no one.

13 Q. You had no idea until when?

14 A. Until someone walked all around my house and
15 knocked on my bedroom door and served me with a lawsuit.

16 Q. Okay. But obviously there has been no arbitration?

17 A. No.

18 Q. And there has been no consent, either written or
19 oral, from Wes Nalley or Lowe's forthcoming, pending
20 this purported lease?

21 A. That's correct.

22 Q. There was also an issue, and we'll wrap up with
23 this, Mitch, but isn't it true that prior to signing
24 anything that you had begun what we call upfit?

25 A. That's correct.

- 1 Q. Okay. And briefly, what does that mean?
- 2 A. We shored up a wall that was only a partial wall
- 3 and started putting a bar around the kitchen area.
- 4 Q. Did you submit plans or sketches or some type of
- 5 detailed outline for what you were going to do?
- 6 A. I did to Nelson Garrison, a rough sketch.
- 7 Q. Was there a response from Mr. Nalley?
- 8 A. Mr. Nalley?
- 9 Q. The owner?
- 10 A. No.
- 11 Q. Did you get a response from Garrison?
- 12 A. He seemed all for it. He liked it.
- 13 Q. But there was no -- he seemed. You're assuming
- 14 that he was okay with it?
- 15 A. He liked it.
- 16 Q. Okay.
- 17 A. He said he liked it.
- 18 Q. And Mitch, is it true that when you first examined
- 19 or looked over the property immediately prior to this,
- 20 to the signature, that there was a problem with leakage,
- 21 roof, walls issues?
- 22 A. That's right. Yes.
- 23 Q. What was that about?
- 24 A. I'm not sure. There were some leaks in the roof
- 25 where it was running through the dropped ceiling, where

1 it had stained the dropped ceiling, it had a lay-in
2 ceiling.

3 Q. And did Ms. Bauknight, did she make anybody aware
4 of that situation?

5 A. I'm not sure.

6 Q. At what point did someone come and fix that stuff,
7 to your knowledge?

8 A. It was the week before the lease was to commence.

9 Q. Okay. And the work that you were doing, the so-
10 called upfit, was that continuing?

11 A. Up and to the point I had spoken to my attorney.

12 Q. And can you tell us how much you had invested in
13 those improvements or upfitting in preparation for what
14 you hoped to open as a restaurant?

15 A. At that point, just the labor and materials, maybe
16 fifteen hundred dollars.

17 Q. All right.

18 A. There was a problem with his rooftop package unit,
19 the air conditioning was broken.

20 Q. All right. And who fixed that?

21 A. I did.

22 Q. What do you mean, you did?

23 A. I mean, I went up there and fixed it.

24 Q. You literally yourself fixed it?

25 A. I did, with a friend. He had a leak in his

1 evaporator coil and there was no Freon.

2 Q. So it's fair to say then that you were on the rails
3 and everything was rolling until you got the email from
4 Nalley?

5 A. Absolutely.

6 Q. And you've already said that shocked you, that was
7 a one-eighty?

8 A. Oh, yeah. I didn't understand it.

9 Q. I mean, you were working on getting this place set
10 up and everything, literally, physically fixing things,
11 putting money into it, bang, you get this email?

12 A. That's correct.

13 Q. And that's why you stopped payment?

14 A. That's correct.

15 Q. Because ---

16 A. He terminated the lease.

17 MR. PRINGLE: I have nothing further.

18 CROSS-EXAMINATION

19 BY MR. BRANDT:

20 Q. Mr. Bagwell, what's your education level?

21 A. I'm a college graduate.

22 Q. What did you major in?

23 A. Business and a finance minor.

24 Q. And you read -- you don't deny your signature on
25 the Plaintiff's Exhibit 1; do you?

- 1 A. No, sir.
- 2 Q. And you read this entire lease before you signed
3 it?
- 4 A. Yes, sir.
- 5 Q. And you saw there where it said it was restricted
6 to use as a restaurant?
- 7 A. Yes, sir.
- 8 Q. And you also saw that it was subject to the REA
9 Agreement; correct?
- 10 A. Yes, sir.
- 11 Q. Did you ever go pull the REA Agreement and read it
12 yourself?
- 13 A. No.
- 14 Q. Did you ever see any excerpts -- they're talking
15 about, I think, number seven, clause seven. Did you
16 ever go and at least review a copy of it as to what the
17 restriction was?
- 18 A. No. I went solely on what Nelson Garrison and Wes
19 Nalley told me.
- 20 Q. And basically they always told you you needed a
21 food component; didn't they?
- 22 A. And I always promised one.
- 23 Q. And so when you got to the food component and you
24 met with Wes Nalley, that was some time before the --
25 you signed the lease; wasn't it?

1 A. It may have been the same day. We may have signed
2 it when Steve Greer was there. I'm not sure about the
3 meeting. It's been since 2009.

4 Q. But that meeting -- I'm going to show you
5 Plaintiff's 11. It's not real clear and I can show it
6 to you better. But is that -- have you ever seen that?
7 Did you ever see that email prior to signing the lease
8 agreement?

9 A. I can't read that.

10 Q. Well, let me show you the whole Agreement here.
11 And this is Number 7, is where it's taken from. Do you
12 see that?

13 A. Oh, yes. I've read this before.

14 Q. Okay. And had you read it before you signed the
15 lease?

16 A. Well, I'm sure that I did. It says it's precluded
17 by restaurant.

18 Q. Excuse me?

19 A. It says the foregoing shall not prohibit the
20 operation of a restaurant and the sale of alcoholic
21 beverages therein incidental to the serving of food. So
22 that's excepted from all of ---

23 Q. Okay. And the -- whatever that says, though,
24 that's the best ---

25 A. That's what it says.

1 Q. That's what it says. All right. Now, when you let
2 that meeting with Wes Nalley, whatever you had told him
3 you were going to do, he was happy with it; wasn't it?

4 A. That's right. To my -- yes.

5 Q. Okay. And then something happened; there was some
6 conversation between him and your attorney that
7 precipitated him writing -- sending that email that
8 resulted in you -- here we go, 3-B. Now, you had that
9 REA Agreement. Did you ever have your attorney look at
10 it and give it any -- or get any legal advice from
11 anyone that was a licensed lawyer in the State of South
12 Carolina to interpret that agreement?

13 A. Just the two realtors.

14 Q. And that was your own realtor, Dee Bauknight, too?

15 A. Yes.

16 Q. The person you engaged to represent your interest;
17 correct?

18 A. Yes.

19 Q. And you weren't privy to any of the conversations
20 between Wes Nalley and Jackie Patterson; were you?

21 A. I was in the room once. I couldn't hear every word
22 that he said.

23 Q. Yeah. And how many conversations did Jackie
24 Patterson ---

25 A. She explained to him in great detail there was

1 going to be a restaurant with food.

2 Q. Where in that does it say if it is his intent?

3 Where does it say, I am canceling this lease or I'm
4 going to upset this lease?

5 A. It says, pursuant to our conversation, please be
6 advised that we will not accept a wine bar due to the
7 covenants stated in the REA with Lowe's. If the intent
8 of Mr. Bagwell is to operate in violation of the REA, we
9 will be forced to terminate the lease agreement and any
10 other remedies available to us under the law. Let me
11 know if you have any questions or comments, Wes.

12 Q. Is it possible that your attorney made some comment
13 to him to make him think you weren't going to put food
14 in?

15 A. Nope.

16 Q. Did you ever discuss -- when did you first get
17 legal advice concerning this deal?

18 A. I went over there to sign some papers for the LLC.
19 That was before the commencement of the lease. It would
20 have been on a Wednesday, Thursday, Friday before the
21 1st of June, something like that, I think.

22 Q. After this email was sent, Exhibit 3-B, you got
23 that, and your lawyer, you talked with your lawyer, how
24 many days was it thereafter that you canceled or your
25 lawyer told everybody you were canceling the lease?

- 1 A. I'm sorry. I didn't get that.
- 2 Q. Well, this email is dated May 29, 2009, from Wes
3 Nalley?
- 4 A. Uh-huh (affirmative).
- 5 Q. The letter we received saying that you weren't
6 going forward with it, is dated June 1, 2009?
- 7 A. Uh-huh (affirmative).
- 8 Q. Which is several days thereafter. Did she tell you
9 -- when did you decide you were going to terminate the
10 lease?
- 11 A. When she told me -- I didn't terminate the lease.
12 Wes Nalley terminated the lease.
- 13 Q. Okay. Well, when you said you weren't going -- you
14 were going to stop payment on the check?
- 15 A. When she told me to.
- 16 Q. And when did she tell you to?
- 17 A. After she talked to Wes Nalley.
- 18 Q. So she told you to stop payment on the check after
19 May 29th?
- 20 A. No.
- 21 Q. Well, how long had you written the check before you
22 canceled it.
- 23 A. My realtor was there on that day before -- I can't
24 give you the exact day, but I told you it was somewhere
25 near the end of the month. My realtor and I were at

1 Jackie Patterson's office. Jackie spoke to Wes. She
2 told me to stop payment on the check. My realtor called
3 Nelson Garrison in my presence and told him the deal was
4 off because Wes Nalley had canceled the contract.

5 Q. No time did Dr. Walton ever cancel it; did he?

6 A. I don't make a distinction between Dr. Walton and
7 the agent. If Dr. Walton wanted to be more involved,
8 I'm sure he was able to be there.

9 Q. Now, once you received this information, did you go
10 back to Nalley and ask him what was wrong with my plan
11 and why you changed your mind?

12 A. No.

13 Q. Did you ever question of your realtor and ask her
14 to find out why he was changing his mind?

15 A. I don't remember.

16 Q. Did you ever ask Jackie Patterson to inquire as to
17 why he was changing his mind?

18 A. I don't know.

19 Q. Did you ever provide your attorney or your realtor
20 with a description, verbal description, of what you were
21 trying to do out there?

22 A. Yes.

23 Q. You wrote it down?

24 A. I did.

25 Q. And what did it say?

1 A. I don't remember exactly what it said. It
2 described the restaurant and how -- I didn't have a
3 menu. It described the kitchen. It described the bar,
4 described how the shelves were going to be placed along
5 the wall to house the wine. How the back room was going
6 to be used for private parties, where the tables were
7 going to be placed, how we wanted to decorate it, so
8 forth and so on. In the preliminary stages of something
9 like that, you can't give somebody an in-depth list
10 until you're deeper into the project.

11 Q. All right, now, I want to make sure, you at all
12 times, at least after we got started, at some point in
13 time, you knew you had to have a restaurant component in
14 it to make it acceptable to the REA; did you not?

15 A. That was never an issue because it was always
16 intended to be a restaurant.

17 Q. And when you met with Wes Nalley, that was -- at
18 that meeting, that was still your plan?

19 A. That was still my plan.

20 Q. And you have never asked Wes what was wrong with
21 your plan?

22 A. When someone is that stalwart and says, you know,
23 that I'm going to kick him out if he has one bottle of
24 wine in there no matter how much food he's serving, what
25 was the point? He had made up his mind.

1 Q. Where does that say, if you have one bottle of wine
2 in there?

3 A. It doesn't say that.

4 Q. Excuse me?

5 A. It doesn't say that.

6 Q. Did you ask -- or, again, did you seek legal advice
7 on interpretation of that use -- the REA Agreement
8 before you signed the lease?

9 A. No. I've told you that already.

10 Q. Okay. I just wanted to make sure I covered it.

11 MR. BRANDT: I don't have anything further.

12 THE COURT: Any redirect.

13 **REDIRECT EXAMINATION**

14 **BY MR. PRINGLE:**

15 Q. One question, Mitch. When you say -- it's come up
16 a couple of times. When you say you sell one bottle of
17 wine, I'm shutting you down, where did that come from?

18 MR. BRANDT: Objection. That's hearsay.

19 THE COURT: No, he hasn't said anything yet.

20 Go ahead.

21 A. I heard one side of the conversation between Jackie
22 and Wes. And she explained the concept as though it's
23 been explained dozens of times today. And it was a
24 short conversation. She didn't know what happened. I
25 can speculate about what happened.

1 Q. Please do.

2 A. Dr. Walton -- excuse me. Mr. Nalley, Bud Nalley,
3 Senior, expressed extreme dislike for Dr. Walton and had
4 no interest in renting that building or letting him rent
5 it until his term had expired. So what I believe
6 happened is the son went to the father and said the
7 building was rented and he said, whatever you did, undo
8 it, because I'm not helping him rent that building to
9 anybody. It can sit there and rot until we get it.

10 Q. Now, ---

11 A. And Wes told me about the extreme dislike.

12 Q. Right.

13 A. That's not hearsay.

14 Q. One more thing. Your interpretation of the Nalley
15 email of the 29th, if you would have gone forward at
16 that point, what did you think was going to happen?

17 A. He was going to boot me out after I had all this
18 money invested. He'd let me get open and get started
19 and boot me out and they'd have my money and I'd be out
20 in the cold and all of my stuff would be in there and I
21 couldn't take it, you know, you've built a commercial
22 kitchen and shelving and stocked it with wine.

23 Q. So you viewed it as you could either continue to
24 pump money into a situation where you're going to get
25 kicked out or do what?

1 A. Or suck up my losses and move on.

2 Q. All right. Thank you.

3 MR. PRINGLE: Nothing further.

4 THE COURT: All right.

5 MR. BRANDT: One other question.

6 **RECROSS EXAMINATION**

7 **BY MR. BRANDT:**

8 Q. Mr. Nalley's dislike for my client, or what you say
9 is dislike for my client, didn't prevent them from
10 renting it to the next tenant; did it?

11 A. I don't know what to tell you about that.

12 THE COURT: All right. You can step down.

13 Thank you. Okay. Next witness.

14 MR. PRINGLE: Dee Bauknight, Your Honor.

15 THE COURT: All right.

16 THE CLERK: Place your left hand on the bible
17 and raise your right hand, please.

18 Do you solemnly swear or affirm that the testimony
19 you're about to give in this case will be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: State your full name for the
23 record.

24 THE WITNESS: Harriet Wiggins Bauknight.

25 THE CLERK: Please be seated.

HARRIET WIGGINS BAUKNIGHT,

1

2

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3

DIRECT EXAMINATION

4

BY MR. PRINGLE:

5

Q. All right. You don't mind if I call you Dee;

6

right?

7

A. That's fine.

8

THE COURT: Mr. Pringle, let me tell you.

9

You've got to stand up in South Carolina when you are

10

questioning a witness, okay? Thank you.

11

MR. PRINGLE: Thank you, Your Honor.

12

Q. Dee, tell us how you first came to be involved in

13

this case?

14

A. Well, the history behind this whole event is that

15

Mitch has an avocation that he is deeply involved in,

16

and that is cooking. He is very skillful. He knows

17

what an emulsion is and he knows about temperature. And

18

friends and family die for invitations to dinner. So

19

all of his friends and some of his family have always

20

said, maybe you should have a restaurant or somehow be

21

involved in food. And I think he had had it in the back

22

of his head for years and then he saw this building.

23

And then what he told you is true. He called and said,

24

let's go look at this building. It had parking. He

25

could visualize a big commercial kitchen. And it had

- 1 plenty of space for tables and those massive kind of
2 chairs that he wanted that are too high for the table.
3 So that's how that started.
- 4 Q. And you were going to function then as his agent?
- 5 A. Uh-huh (affirmative).
- 6 Q. Try to work out and maybe explore a deal for the
7 space?
- 8 A. Uh-huh (affirmative).
- 9 Q. What did you do next?
- 10 A. Called my friend in Los Angeles who's a decorator
11 to just get floor help, just to see how we would
12 conceptualize the floor space.
- 13 Q. Okay. What happened next?
- 14 A. Well, I don't know.
- 15 Q. Okay. How about this, when did you first make
16 contact with Garrison about the property?
- 17 A. On the days about when you all have already spoken.
- 18 Q. Okay. Did you explain the concept, as we've called
19 it?
- 20 A. Not at first. I just told him I had a customer who
21 wanted to see the building.
- 22 Q. Okay.
- 23 A. And then when we were all three together, we did.
- 24 Mitch told him and I supplemented.
- 25 Q. All right. When you say -- we've talked about the

1 meetings that took place. Apparently there was at least
2 one at a restaurant, one at Nalley's, at least one time
3 out at the ---

4 A. There were others.

5 Q. Okay. And you were there every single time?

6 A. I was there.

7 Q. All right. What's your summary of Mitch's plan,
8 his vision for this place? How would you describe it?

9 A. Well, we talked about whether or not it was a
10 little early, ahead of its time. That was the big
11 worry. Other than that, everybody knew he could pull it
12 off.

13 Q. You know these terms we've that we've been throwing
14 around, restaurant, wine bar and all of that ---

15 A. Yeah.

16 Q. How would you have characterized it?

17 A. How would I characterize what?

18 Q. What Mitch was planning and what he presented to
19 Garrison?

20 A. I was involved in the naming of it, even to the
21 font style that we chose for the name. How would I
22 characterize it?

23 Q. Yeah, I mean ---

24 A. It was a sophisticated -- we've overdone North
25 Hampton like. But the North Hampton was -- the reason

1 that he used that as an analogy is because it's -- he
2 was going to do a smaller version of it, but basically a
3 restaurant. Then his thinking is, I can -- over on this
4 side of the building, if I can have that too, I'll put
5 some wines over there and maybe even cheeses and he was
6 going to have cold cuts, that sort of thing.

7 Q. All right. So you would characterize it as a
8 restaurant?

9 A. Absolutely. And I was thrilled because Easley
10 doesn't have anything like that. Since I've known Mitch
11 almost, I've said, we can't go anywhere in Easley and
12 get a good salad, I mean a real one. And we were going
13 to have it. And I know my friends would support it.

14 Q. All right. There were a number of emails going
15 back and forth and communications in this thing. Do you
16 remember the email from Garrison to you that described
17 the vague, nebulous aspect of the use restriction? Do
18 you remember that email?

19 A. Yeah.

20 Q. And as you went over that use restriction with
21 Mitch, did you feel that it was vague and ambiguous?

22 A. Yeah. And we talked about the dangers of not being
23 specific with the REA managers.

24 Q. Okay. Now, in sitting through the meetings, was
25 there every any change in your or Mitch Bagwell's

- 1 position about what was intended for the use?
- 2 A. Was there change in our -- no.
- 3 Q. All right. It stayed from beginning to the very
- 4 end, leading up to this ---
- 5 A. Completely.
- 6 Q. --- issue?
- 7 A. Yes.
- 8 Q. Did Mitch Bagwell ever waiver from this idea,
- 9 restaurant serving wine, you know?
- 10 A. Never.
- 11 Q. And you were there at the Nalley meeting, what
- 12 we're calling the REA meeting?
- 13 A. I was there.
- 14 Q. Was there any indication that there was a problem
- 15 with the concept?
- 16 A. No, it was like frat party. It was good ole jovial
- 17 boys, slap on the back. This is great. Wes Nalley
- 18 said, we need something like this. He did say, and I'm
- 19 sure now is the time. He said, I'll be your good
- 20 customer, maybe the best.
- 21 Q. Was there anything that you said that Mr. Nalley or
- 22 is there anything that you know about that would have
- 23 caused him to send this email on the 29th, that's what I
- 24 would term a one-eighty in the position?
- 25 A. No, it was a shock.

- 1 Q. You were shocked?
- 2 A. I was shocked.
- 3 Q. And Mitch was shocked?
- 4 A. And I know Wes Nalley, and I was shocked.
- 5 Q. And Mr. Garrison, as the agent that you directly
- 6 dealt with, you've heard the testimony about the things
- 7 that he either said or didn't say in this process. How
- 8 would you characterize Mr. Garrison's dealings with
- 9 y'all with respect to the use restriction?
- 10 A. Well, Mr. Garrison and I are the same age. And I
- 11 think he has some selective memory. My memory is
- 12 probably as bad or worse than his, but we tend to do
- 13 that. How would I characterize my interpretation or his
- 14 interpretation?
- 15 Q. Well, there was a reason that you've dealt with Mr.
- 16 Garrison at the beginning.
- 17 A. Because he had the lease. I mean, he had the
- 18 listing.
- 19 Q. Uh-huh (affirmative). Did you have any reason to
- 20 not want to deal with Garrison at that time?
- 21 A. No, I -- we are part of a company that has a very
- 22 decent reputation. But within our company, even within
- 23 my own office, there are people that I do not deal with.
- 24 Q. Of course. And would you have any reluctance to
- 25 deal with Mr. Garrison now or in future dealings?

- 1 A. No, I would not deal with him ever.
- 2 Q. Why? Because of this case?
- 3 A. Well, he hoodwinked Mitch.
- 4 Q. When you hood ---
- 5 A. And I got affected by that. I'm completely
- 6 affected by it.
- 7 Q. What do you mean by that?
- 8 A. Well, to be crass, I would have gotten money from
- 9 the deal, not a lot, but to be completely honest, I
- 10 wanted this for Mitch. I would have gotten a good
- 11 salad.
- 12 Q. When you say hoodwinked, I think I know what you
- 13 mean. But when you say the hoodwinked Mitch, who
- 14 hoodwinked Mitch and how?
- 15 A. Mitch was mislead.
- 16 Q. By?
- 17 A. You don't know this. Mitch has serious business
- 18 experience. He has the street smarts of four ninety-
- 19 year-olds. He is financially aware and he is risk
- 20 averse. And he's going to -- if anybody's going to
- 21 sniff out something that's not quite right, he is going
- 22 to. He can do that about your tires, your tree service
- 23 in the yard or, as I said, an emulsion.
- 24 Q. And as he raised concerns to Garrison, what were
- 25 the responses in your presence?

- 1 A. Acceleration from Garrison.
- 2 Q. Okay. Everything would be fine?
- 3 A. Yeah. Cover it with sheets.
- 4 Q. What was the cover with sheets thing, please?
- 5 A. Well, that's the day I gave up. Because I had been
- 6 overly optimistic because I thought it would work,
- 7 maybe. And then he said, just cover it with sheets for
- 8 a few weeks or months -- I've forgotten -- he said,
- 9 it'll all go away. It'll be fine. And Mitch already
- 10 has -- he's already done his financials and is looking
- 11 at how much money he's going to put into it. I said,
- 12 don't cover it with sheets.
- 13 Q. Uh-huh, uh-huh (affirmative). That was a red flag
- 14 to you?
- 15 A. Major.
- 16 Q. All right. Now, as far as leading up to his
- 17 signing of this purported lease, were you there when he
- 18 signed?
- 19 A. Yes.
- 20 Q. At that point, were you confident that he was
- 21 signing the deal that he intended to sign, that he
- 22 wanted to sign? Did you have any reservation about it?
- 23 A. Maybe eight percent.
- 24 Q. You felt pretty good about it?
- 25 A. I felt good about it. Excited.

- 1 Q. Were you also relying on what Garrison and Nalley
2 and these others were telling you about the deal?
- 3 A. Well, I had been in the Nalley meeting.
- 4 Q. Were you surprised by the email sent from Nalley on
5 the 29th?
- 6 A. Uh-huh (affirmative).
- 7 Q. Okay. And did you tell -- I guess in your
8 experience as a realtor -- how long you been doing this?
- 9 A. Thirteen years.
- 10 Q. When someone takes the action such as Nalley took
11 on the 29th, how do you interpret that?
- 12 A. Get out.
- 13 Q. Okay. And you knew that Mitch already had exposure
14 financially?
- 15 A. I did.
- 16 Q. He'd already invested, done some work? What did
17 you tell him ---
- 18 A. And he had put in already tons of sweat equity.
- 19 Q. And you knew the lease didn't kick in until June
20 the 1st; right?
- 21 A. Uh-huh (affirmative).
- 22 Q. Did you tell Mitch what you thought he should do at
23 that point?
- 24 A. Yes.
- 25 Q. What was it?

1 A. Close it. Get out.

2 Q. And was it your position that Nalley had breached
3 the agreement at that point?

4 A. Yes.

5 Q. Thank you.

6 MR. PRINGLE: Nothing further.

7 THE COURT: Whoa, whoa, whoa.

8 THE WITNESS: Oh. I'm sorry.

9 CROSS-EXAMINATION

10 BY MR. BRANDT:

11 Q. Mr. Nalley is not a party to this agreement; is he?

12 A. Mr. Nalley is not here.

13 Q. Well, he's not a party. This is Exhibit Number 1
14 and that's the agreement we're talking about?

15 A. May I get some glasses?

16 Q. Yes, ma'am. You may step down and get your
17 glasses.

18 A. Is this it?

19 Q. Yes, ma'am?

20 A. I'm looking for his signature?

21 Q. You haven't looked at that agreement before?

22 A. Yes, I have. What was the question?

23 Q. Well, is Wes Nalley a party to that contract?

24 MR. PRINGLE: Your Honor, we'd stipulate that
25 Nalley is not a party to that document.

1 A. Yeah.

2 Q. Did you believe that Bagwell's intended use
3 violated that REA Agreement?

4 A. No.

5 Q. So you think basically that that lease between Dr.
6 Walton, as a realtor, trained realtor, between Mitch
7 Bagwell and Dr. Walton, that everything that was agreed
8 to could be done under that REA; didn't you? Don't you?

9 A. That's what I was told.

10 Q. And that REA Agreement, if Mitch was -- Wes Nalley
11 was causing a problem, whose problem was that, Dr.
12 Walton's or Mitch Bagwell's?

13 A. Well, it was Dr. Walton's.

14 Q. Did Mitch Bagwell not have any duty, in your
15 opinion, as your client, to approach Wes Nalley to see
16 if they could work it out or what the problem really
17 was?

18 A. Well, through Nelson Garrison there had been
19 approach to Mr. Nalley. Mitch took great care to
20 observe the client/agent relationship.

21 Q. Now, Nelson Garrison didn't represent Mitch
22 Bagwell; did he?

23 A. No, he didn't.

24 Q. In any way? And when he said, as I took your
25 testimony when he said, cover it with sheets, you didn't

- 1 believe him that that would be all right either; did
2 you, when he said it?
- 3 A. (Negative nod).
- 4 Q. Mitch Bagwell didn't believe him either; did he?
- 5 A. (Negative nod).
- 6 Q. You have to say, yes or no.
- 7 A. Yes. No.
- 8 Q. You have to give a verbal ---
- 9 A. No. No, I didn't believe that.
- 10 Q. So that statement, even if he said it, didn't cause
11 any harm; did it?
- 12 A. It caused a lack of trust from that moment.
- 13 Q. Lack of trust?
- 14 A. There had already been, there had already been some
15 misgivings, but that, I think, put the lid on it.
- 16 Q. But that didn't motivate Mitch Bagwell then to
17 signing the lease; did it?
- 18 A. That didn't motivate him into signing it?
- 19 Q. No. That didn't cause him to sign that lease; did
20 it?
- 21 A. Well, I don't know which came first, the chicken or
22 the egg. No.
- 23 Q. I mean, if he didn't believe that that would be
24 okay, then that didn't induce him to sign the lease?
- 25 A. Correct.

1 Q. And to this very day, to your knowledge, y'all call
2 it a hundred and eighty degree turn by Wes Nalley,
3 there's been no action brought by Mitch Bagwell to take
4 any kind of recourse against Wes Nalley for interfering
5 with his contract with ---

6 A. Not to my knowledge.

7 Q. --- Dr. Walton; has it, to your knowledge?

8 A. Not to my knowledge.

9 Q. In your opinion, as a realtor, these parties to
10 this contract, what did Dr. Walton do wrong?

11 A. He hired Nelson Garrison.

12 Q. Okay.

13 MR. BRANDT: No further questions.

14 THE COURT: All right. You can step down now.

15 Thank you. Okay. Call your next witness.

16 MR. PRINGLE: The defense rests.

17 THE COURT: Have you got anything in reply?

18 MR. BRANDT: No, just Wes Nalley's deposition
19 into evidence.

20 THE COURT: Well, I've read it.

21 MR. BRANDT: Do you need these too, sir?

22 THE COURT: Yeah, please. Thank you very
23 much. All right. Anything y'all want to tell me?

24 MR. BRANDT: Sir?

25 THE COURT: Anything you want to tell me?

1 MR. BRANDT: Well, the only thing I want to
2 say briefly is, first of all, that Dr. Walton didn't do
3 anything. He complied. Obviously, the email that they
4 say triggered a breach or whatever caused him to change
5 his mind, doesn't say anything except caution the other
6 side about compliance with the REA. And it says, if
7 it's his intent not to comply or if he's to violate it,
8 that he will not tolerate a violation. It does not say,
9 I'm kicking him out because of what he's wanting to do
10 or not. So basically an if.

11 Furthermore, any representations I think they've
12 raised in their pleadings, but anything that may have
13 been said by Nelson Garrison or anyone else on this side
14 of the table, we would not be entitled to rely. He had
15 -- that agreement first says, also says that each of the
16 parties have had ample opportunity -- not using that
17 word, but opportunity to consult with counsel. There's
18 been some testimony that counsel was back in the
19 background for Mitchell Bagwell. He certainly had a
20 realtor of his own looking after his own benefit. And
21 anything that Garrison may have said -- we've heard a
22 lot of complaints about that -- doesn't affect the
23 relationship there with the lease because it didn't
24 motivate Mitch Bagwell into signing it. He had already
25 been to see Wes Nalley. Nalley had said, yeah, your

1 concept's fine. It's okay. He signed it, wrote the
2 check, took possession of the premises, started
3 upfitting the premises and then changed his mind for
4 whatever reason. And that's a breach and we would
5 submit that Dr. Walton is entitled to the damages
6 claimed. Thank you.

7 THE COURT: Anything you want to tell me?

8 MR. PRINGLE: Yes, Your Honor. Judge,
9 clearly, we've introduced quite a bit of parol evidence
10 in this case. And as you know the parol evidence rule
11 does not prohibit the introduction of extrinsic evidence
12 in determining the intent of the parties when either the
13 terms of the contract are ambiguous or if there is some
14 type of fraud or deceit to induce someone into the
15 contract. If the writing was procured by words and with
16 the fraudulent intent of the party claiming it, then
17 parol evidence is competent to prove the facts which
18 constitute the fraud. And mainly, Judge, we're
19 arguing that this testimony and this evidence, these
20 communications from Garrison who, it's very clear, was
21 the agent for Dr. Walton. And if we can't rely on the
22 agent for someone in a negotiation, then what can we
23 rely upon. There's a reason these people stepped into
24 the stead of their clients. And, you know, we've put on
25 a lot of evidence and testimony about how this all

1 played out up to the point of the signature. We've
2 pointed out a number of issues with regard to the four
3 corners of the document itself. It's clear that there
4 were a number of terms in the lease that were not
5 performed, that were, I would say, were obligatory by
6 the language. It seems like we picking and choosing,
7 trying to enforce a lease that we're not even sure, you
8 know, which front page was the right one, who marked it
9 up, who changed it, when it was signed. My client never
10 got a signed copy back. There are major issues with the
11 lease itself, even in the general provisions. I think
12 we've pointed out those things that did not happen that
13 were supposed to happen. The arbitration aspect,
14 mandatory, just being one of them.

15 But with regard to the other testimony that gets
16 away from the four corners of the document, I'm quoting
17 that parol evidence can be applied when the language of
18 the contract is ambiguous. Everybody involved in this
19 case that had a chance to describe or look at that use
20 restriction, whether it be on Plaintiff's side or
21 Defendant's side, had to acknowledge that it was vague,
22 difficult to interpret. There were all kinds of
23 different theories put out, you know, whether it be
24 light food and wine. Or whether it's a restaurant bar
25 or, a restaurant wine bar or wine bar restaurant. All

1 these terms were flying around. But what's evident is
2 there was a meeting of the minds with the people that
3 mattered at this REA meeting in Nalley's office and
4 everything was a go. My client clearly didn't have a
5 change of heart. He was pumping his own money and
6 effort into improving the place. Clearly, that email
7 from Nalley, which maybe one-eighty isn't the right
8 term, but when it's represented to you that, you know,
9 this concept that we all were on-board with, all of a
10 sudden, hey, we're going to shut you down if you do XYZ.
11 At that point, it was reasonable for Mr. Bagwell to feel
12 like, okay, I'm going to go forward, put more money into
13 this thing, and we're going to end up in litigation at
14 any rate. I also think it's relevant that the actual
15 terms of the lease didn't kick in until June. Most of
16 all this fur was flying before the lease even took
17 effect or was to commence as far as the application of
18 the property.

19 Judge, there's a number of defenses that were pled
20 in this case. I'm not going to flush them all out for
21 obvious reasons, but I would just like to know, you
22 know, we have a defense of failure of condition
23 precedent to the dispute resolution process, unclean
24 hands ---

25 THE COURT: Wait. Wait. No one ever asked

1 for arbitration. So both parties have consented to be
2 here. I haven't seen a motion to compel arbitration.
3 That's really off the table at this point. But excuse
4 me. Go ahead. I didn't mean to stop your flow.

5 MR. PRINGLE: I'm simply indicating that it
6 was mandatory per the contract and it didn't happen.
7 And there were other things in the contract that didn't
8 happen, as well. And I think that calls into question
9 the validity of the entire document and the
10 enforceability. Again, the unclean hands aspect. You
11 know, I think the testimony supported from defense
12 position that once the truth came out as far as what
13 Nalley and what was intended was going to happen, it
14 made at least frustration of purpose, but certainly made
15 it impractical or impossible to fulfill the intent of
16 the parties regarding the contract. And I'm not talking
17 about Walton, because he obviously had nothing to do
18 with any of the negotiations. It's clear he didn't know
19 what these people were saying to one another. But it's
20 also true that as a principal, you know, he's got to
21 stand by the actions and the representations made by his
22 agent. I think we've established clearly that Garrison
23 made representations to these folks in order to try to
24 induce them into the sale. Clearly, he was motivated,
25 as any salesperson would be, to earn their keep. And

1 that place had been vacant for two and a half years.

2 It's a bad market, they're desperate to fill it. The
3 whole thing stinks, Your Honor, when you take it in the
4 totality of circumstances.

5 And, again, if ever there was a case where
6 ambiguous terms where no one in the house can define
7 what that use restriction really means, this restaurant
8 that serves alcohol or alcohol place that's also a
9 restaurant. I mean, nobody could put their hands on
10 what that really meant. And given that that's very
11 ambiguous and hard to read, that's what triggers the
12 necessity to take a look at the outside evidence, the
13 extrinsic evidence. That's what hopefully we've been
14 able to put before you. We also believe
15 misrepresentation and estoppel, equitable remedies kick
16 in here. When you have an agent who makes
17 representations, we would say at best misguided, at
18 worst, blatantly false. And this thing about put the
19 sheets over the wine and whatnot. It defies any kind of
20 fair analysis or logic, you know. And my client clearly
21 relied upon these, you know, these representations that
22 were made to him. When you have a reliance, and
23 plaintiff is saying, well, wait a minute, you don't have
24 any right to rely on the agent, I find that disingenuous
25 because who would you have a right to rely upon if not

1 the agent or, you know, duly appointed representative
2 under the law for Dr. Walton. Of course, Mitch Bagwell
3 and his real estate agent, of course, they should be
4 able to rely on what Garrison is telling them, in a
5 peripheral sense what Nalley's telling them, but I would
6 agree Nalley is not a party, but he -- obviously, his
7 consent and his stamp of approval was fundamental to any
8 deal going forward in this thing.

9 We're arguing that what Mitch Bagwell did was
10 reasonable. We think that they terminated the agreement
11 and he did what he was not only advised to do, but what
12 was reasonable to do. If the Court finds in favor of
13 the plaintiff, certainly everything that we've put up
14 should function as mitigation with regard to the alleged
15 damages that they've listed. Thank you.

16 THE COURT: All right. Well, I don't see that
17 -- I've read the use restrictions in the ground lease.
18 I don't find anything -- the term nebulous has been
19 used. I think it's very clear, this is a lease
20 concerning real property, these are written documents.
21 What should have happened was that if there's concern
22 with respect to the use the property was going to be put
23 to, it should have been put in writing and there should
24 have been a written consent. But clearly if it was, as
25 it has been represented, that this was going to be a

1 restaurant modeled after North Hampton Wine, with which
2 I am familiar, it would not be defined as a tavern, bar,
3 night club, discotheque or any other establishment
4 selling alcoholic beverages for on-purpose consumption;
5 provided, however, the foregoing shall not prohibit the
6 operation of a restaurant with the sale of alcoholic
7 beverages incidental to the serving of food. It could
8 have been done in writing. It should have been done
9 prior to the termination of the lease. All of this
10 innuendo and all is fine and good. But the terms of the
11 lease are clear.

12 I do find that while there is an arbitration clause
13 in the lease agreement between the parties to this
14 action, whether or not it actually would comply with the
15 arbitration act with respect to the clarity of its
16 requirement, it was not for me to decide. But it was
17 not requested. No motion to compel arbitration was ever
18 filed, so I don't find that to be an issue. I do,
19 however -- do not see a provision in this lease which
20 would award attorney's fees outside of an arbitration.
21 And this is a contract matter and the contract must --
22 attorney's fees can only be awarded by statute or by
23 contract.

24 So I'm also going to find that it -- that the term
25 of the lease was for eighteen months. I'm going to find

1 for the plaintiff. I'm going to reduce the amount
2 requested on Plaintiff's Exhibit Number 10 by four
3 thousand dollars because it's an eighteen as opposed to
4 nineteen months. So fifty-one thousand six hundred and
5 sixty dollars. And I'm not going to award attorney's
6 fees and costs because it's not outlined -- it's not
7 delineated in the contract. So I'm awarding a judgement
8 to the plaintiff in the amount of fifty-one thousand six
9 hundred and sixty dollars. Okay. Mr. Brandt?

10 MR. BRANDT: Yes, sir.

11 THE COURT: I'd ask you to prepare a form
12 order to that effect or a formal order to that effect.

13 MR. BRANDT: Yes, sir.

14 THE COURT: Please share it with Mr. Pringle
15 before I get it.

16 MR. BRANDT: You just want a form order rather
17 than ---

18 THE COURT: No, I think you ought to have a
19 formal order.

20 MR. BRANDT: Okay. I misunderstood you. I'm
21 sorry.

22 THE COURT: Yeah. No, I said form first, but
23 I meant formal.

24 MR. BRANDT: Okay.

25 THE COURT: Okay. All right. Thank you very

1 much.

2 MR. BRANDT: Thank you.

3

4 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Circuit Court for Pickens
10 County, South Carolina, on the 20th day of February,
11 2013.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

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

16 July 2, 2013

17

18

19

20



Circuit Court Reporter

Executed Lease

LEASE AGREEMENT – TENANT SPECIFIC PROVISIONS

This agreement, which includes the Lease Agreement General Provisions (Version 1.07) incorporated by reference, is made on the date of the last signature between Landlord and Tenant. **THIS AGREEMENT IS SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (SC CODE TITLE 15 CHAPTER 48) OR THE FEDERAL ARBITRATION ACT (9 USC §§ 1-16).**

Landlord and Tenant agree:

Premises: Approx. 4,000 square feet of space located within the Lowes Center known as Walton Commons in Easley, SC. *19*

Term: This lease term shall be for *18* months beginning June 1, 2009 and ending at midnight on December 31, 2010. Possession of premises occurs when the Lease is formally executed.

Use: Tenant shall use the Premises only for the purpose of a restaurant business and for no other purpose, except by the express written consent of the Landlord, which consent will not be unreasonably withheld, conditioned, or delayed. Any use must specifically adhere to the Use Restrictions of the REA between Forest Acres Real Estate and Lowes Home Centers, Inc. dated January 31, 1995. Any violation of the REA will result in Lease termination.

Minimum Rent: \$3,000.00 per month through December 31, 2009 and \$4,000.00 per month, \$48,000 per year through December 31, 2010.
Rent is due on the first day of the month. In the event that the tenant obtains possession during the middle of the month, the minimum rent shall be pro-rated for that first month and each payment thereafter shall be due on the first day of the month for which such installment shall be applicable.

Additional Charges: \$750.00 per month, \$9,000 per year for prorata Taxes, Insurance and Exterior maintenance. Landlord agrees to accept \$250.00 for these additional charges for the first 3 months of this Agreement. Tenant agrees to commence paying the full \$750.00 per month on September 1, 2009.

Specific Terms: Tenant accepts the premises in an "as-is" condition. Tenant is responsible for all routine maintenance and repairs of HVAC systems not to exceed \$500.00 in any calendar year.

Tenant Improvements: Prior to beginning any work, Tenant shall submit to Landlord a detailed sketch/set of plans outlining Tenant's upfit. This lease agreement is subject to Landlord's reasonable approval of said sketch/plans. No alterations will take place on the exterior or outside the building footprint.

Dark Clause: In the event Tenant ceases to operate the business for a ninety (90) day period, Landlord shall have the right, but not the obligation, to terminate the Lease Agreement.

Real Estate Commission: Dr. John Walton, MD agrees to pay a real estate commission to Prudential Commercial / C. Dan Joyner Company equal to 6% of the gross value of this lease and any renewals which is payable on signing of the final lease document.

Addresses:

Landlord: <i>John Walton MD</i>	Tenant: <i>Mitchell L. Bagwell</i>
Dr. John Walton, MD	Mr. Mitch Bagwell
c/o Prudential Commercial Real Estate	110 Arcadian Lane
24 Vardry Street, Suite 400	Easley, SC, 29642
Greenville, SC 29601	<i>05/21/09</i>

Landlord and Tenant have duly executed this agreement in duplicate originals and affixed their respective seals hereto on the day and year last stated below.

John Walton MD
5/22/09



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Addresses: Landlord: Dr. John Walton, MD
c/o Prudential Commercial Real Estate
24 Vardry Street, Suite 400
Greenville, SC 29601

Tenant: *Mitchell L. Bagwell*
Mr. Mitch Bagwell


Landlord and Tenant have duly executed this agreement in duplicate originals and affixed their respective seals hereto on the day and year last stated below.

Date:

Date: 05/21/09

1. **Location Defined:** The "Premises" is the area leased from Landlord exclusively by Tenant and the "Center" includes the Landlord's adjacent property and improvements which are available for Tenant's use, but not exclusively, both of which are identified in the *Lease Agreement - Tenant Specific Provisions*. Tenant has had the opportunity to inspect the Premises and Center before entering into this agreement. Tenant accepts the Premises and Center in "as is," and Landlord makes no warranties about their condition.

2. **Term:** The "Term" is the period of the Lease set forth in *Lease Agreement - Tenant Specific Provisions*, including any extensions agreed to in writing. If Tenant occupies the Premises after the Term expires, then Tenant's occupancy will be month to month, and all other provisions of this Lease agreement will apply.

3. **Use:** Tenant's use as described in *Lease Agreement - Tenant Specific Provisions* shall not create a nuisance to the Landlord's other tenants or the public, including the emanation of odors from the Premises. Tenant shall provide Landlord with the amount of Tenant's annual gross sales from the Premises, which Landlord shall hold as a trade secret of Tenant. If Tenant ceases using the Premises as agreed, and substantially vacates the Premises, then Landlord may terminate the Lease upon 30 days notice.

4. **Rent:** Tenant will pay to Landlord minimum rent from the Lease commencement to its end. Minimum rent will be due and payable in advance on the first day each month. Other amounts due from Tenant to Landlord will be additional rent. All other payments due from Tenant to Landlord are additional rent and are due and payable 30 days from receipt of Landlord's bill. Examples of additional rent include Tenant's share of real estate taxes, insurance, and common area maintenance. Payment will be considered made when delivered to Landlord at the address shown in the *Lease Agreement - Tenant Specific Provisions*.

5. **Real Estate Taxes:** Landlord will pay all property taxes on the Premises and Center when due. Tenant will reimburse Landlord for Tenant's pro rata share of the taxes as additional rent. Landlord will bill Tenant for taxes enclosing applicable tax assessment notices, tax bills or tax receipts. For purposes of this agreement Tenant's "pro rata portion" will be based on the square footage of the Premises relative to the total square footage of buildings in the Center (exclusive of those

buildings which might be separately assessed, e.g., free-standing bank buildings). If the term of this agreement commences or terminates during any part of a year, Tenant will be responsible for property taxes only for the portion of the year when it was responsible to pay minimum rent. Tenant will pay all taxes attributable to its property.

6. **Landlord Insurance:** Landlord will keep the Center, including the Premises, insured by loss or damage by fire with extended coverage to the full, fair insurable value thereof. Landlord will also carry public liability insurance covering the Center in an amount of at least \$100,000 for personal injury to any one person, \$500,000 for personal injury in any single accident, and \$100,000 for property damage. Tenant will reimburse Landlord within 30 days of receipt of payment its pro rata portion of the insurance premium as additional rent.

7. **Common Facilities:** Landlord will reasonably maintain the Center's common facilities. Landlord reserves the right to make such changes and alterations to the Center as it deems necessary or appropriate, including the right to construct, alter, enlarge, demolish, add to, or otherwise change any existing or proposed building at or adjacent to the Center, and to designate such portions of the Center for customer and employee parking, for service areas, entrances and exits, as it may deem appropriate. Landlord will not permit a building or other structure on the Center, which materially and adversely interferes with the Tenant's access to the Center or Premises, customer parking, or visibility of the Premises. Landlord will maintain the exterior lighting system and will keep the Center parking area reasonably free and clear of refuse, snow, ice, and obstructions. Tenant will reimburse Landlord for its pro rata portion of common area maintenance costs.

8. **Utilities:** Tenant will pay all utility charges, including water, communications, cable, electricity, gas, and sewer used by Tenant upon the Premises.

9. **Landlord Maintenance:** Landlord will maintain (whether by repair or replacement) the roof, guttering, and down spouts, structural walls, and foundations and any other structural components of the Premises (specifically excluding windows and doors) within 30 days after notice of the necessity of repairs has been given by Tenant. If Landlord fails to maintain the Premises after notice, Tenant has the right to do so and to deduct the cost from rent due. Tenant will be

responsible for the costs of Landlord's repairs necessitated by the misuse of the Premises by Tenant, its suppliers, or its customers.

10. Tenant Maintenance: Except for Landlord's obligations to maintain the Premises, Tenant will maintain the Premises in good order and condition (e.g., utility systems, mechanical systems, and interior non-structural items). Tenant will surrender the Premises at the end of the Term, in as good condition as at commencement, reasonable wear and tear accepted.

11. Alterations: (A) Tenant may paint, plaster, and carpet within the Premises at any time. (B) If Landlord does not object (such objection must be reasonable), Tenant may alter the non-structural walls, entrances, exits, floor, and ceilings solely within the Premises (unless any are necessary to connect or support utility or mechanical systems of the Premises); such alterations may be made so long as those alterations do not adversely affect (i) the value of the Premises or Center, (ii) the structural integrity of the Premises or Center, or (iii) the operation of the utilities or mechanical systems of the Premises or Center. (C) If Landlord does not object (such objection may be in Landlord's sole discretion), Tenant may make any other alteration (subject to paragraphs 12 and 13 below). Tenant will notify Landlord of its desire to alter the Premises, with plans and specifications, at least 10 days prior to commencing any alteration and Landlord shall object within 5 business days of receipt thereof. Tenant will pay all costs for any alterations not otherwise agreed to in writing by Landlord, and upon termination of this agreement, at Landlord's discretion, Tenant will return the Premises to its condition prior to this agreement. All alterations made to the Premises are for the benefit of Tenant, and any consent of Landlord will only relate to improvement of Tenant's leasehold.

12. Signs: Before Tenant places any sign on, or visible from, the exterior of the Premises Tenant must obtain the consent of the Landlord, which will not be unreasonably withheld, conditioned, or delayed, so long as the sign is in general conformity as to all local ordinances applicable to such signs, size (proportional), and location with other signs on the buildings located within the Center.

13. Fixtures: Tenant will provide and install its own trade fixtures. Tenant will repair, or at Landlord's request pay for, any damage to the Premises from

installation or removal of any trade fixtures.

14. Lease Transfer: Tenant may assign or sublet the whole or any part of the Premises with consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed. Any assignment or sublease will not release Tenant from its obligations hereunder.

15. Premises Liability: Landlord will not be liable for any damage to the Tenant's property from any cause unless it is caused by Landlord's tortious conduct. Tenant will save harmless from and indemnify Landlord against bodily injury, loss, or damages of whatever nature (including the costs of legal representation) to persons or property arising within the Premises. Tenant will maintain and exhibit upon request, a contract of public liability insurance relating to its use of the Premises naming Landlord as additionally insured with limits of \$100,000 for personal injury to any one person, \$500,000 for personal injury in any single accident, and \$100,000 for property damage with a reputable insurance company. Tenant, not Landlord, is responsible for insuring all Tenant's property located within the Premises or at the Center.

16. Subrogation Waived: Notwithstanding any other provision herein, Landlord will not be liable to Tenant and Tenant will not be liable to Landlord for any loss or damage caused by and of the perils or casualties enumerated in standard fire, extended coverage, boiler and machinery, or multi-peril physical damage insurance policies and recovered by the insured party from its insurers even if such fire or other casualty or peril resulted from the negligence of the other party; and to the extent of such recovery, each party releases and waives all rights and claims against the other.

17. Casualty: If the Premises or any part thereof becomes damaged by fire, flood, Act of God, public enemy, or similar cause, so it is substantially unusable for Tenant's use for a period in excess of 30 days, then for 30 days either party may cancel this agreement by notice to the other party. Tenant's obligation to pay minimum and additional rent will be suspended as of the date the Premises are rendered unusable for the period Tenant cannot use the Premises. If the Premises are damaged, but not so much as to make it substantially unusable, then the Premises will be promptly repaired and restored to its former condition; the minimum and additional rent during the period of repairs will be prorated according to the extent of Tenant's use made of the Premises during the period.

18. **Condemnation:** If part of the Premises is condemned by public authority so it becomes substantially unusable by Tenant, then either party may cancel this agreement as of the date of the taking by the public authority by notice to the other party. The entire award rendered in a condemnation for the taking will be retained by Landlord and not the Tenant. However, if a part of the condemnation award specifically is comprised of Tenant relocation expenses, then all of such part of the award will belong to Tenant.

19. **Peaceable Possession:** Landlord warrants that it is seized of the Premises, has the right to lease it to Tenant, and Tenant will peaceably and quietly have, hold, and enjoy the Premises. So long as Tenant has performed its obligations under this agreement, Landlord will defend Tenant's peaceable possession to the Premises. Notwithstanding anything in this agreement to the contrary, Landlord will have full access to the Premises during Tenant's normal business hours upon reasonable notice, which may be oral.

20. **Notice:** Unless otherwise specifically provided, any notice or consent called for in this agreement must be in writing and (i) personally delivered, (ii) mailed prepaid by US Postal Service certified mail return receipt requested, or (iii) sent by a nationally recognized expedited package carrier with receipted delivery to the address set forth on the *Lease Agreement - Tenant Specific Provisions*. Notice is deemed given the day after effecting (i), (ii), or (iii) above.

21. **Performance:** If a party should fail to perform any of its obligations ("Breaching Party"), then after 30 days notice the other party will have a right to perform such obligation and recover the cost of performance along with interest at 12% per annum, compounded monthly. If, however, the Breaching Party, using commercially reasonable efforts is not able to resolve the performance shortcoming within 30 days, then it must diligently continue remedial action until completion. Any amounts owed by Tenant to Landlord under this paragraph are additional rent. Failure to remedy any failure to perform shall entitle the non-breaching party to any remedies available under applicable law for breach of lease.

22. **Relocation:** Upon Landlord's request Tenant shall promptly, but in no event more than 90 days after

receipt of such request, move from the Premises to a new location within the Center. Tenant's relocation obligation is subject to (i) Landlord bearing Tenant's expenses related to the relocation including all alterations and improvements reasonably necessary to cause the relocation premises to be substantially the same quality as the Premises; (ii) the relocation premises shall be substantially the same size and frontal area; and (iii) the rental amounts paid for the relocated premises (even if larger) shall be the same as for the Premises. Upon relocation the relocated premises shall, be deemed the Premises.

23. **Dispute Resolution:** If a dispute arises among the parties relating to this agreement, then the parties will endeavor to resolve the dispute with good faith discussions. Any dispute which cannot be resolved through discussions will be referred to arbitration before only one arbitrator. The dispute will be arbitrated under authority of the South Carolina Uniform Arbitration Act (SC Code Title 15 Chapter 48) or the Federal Arbitration Act (9 USC §§ 1-16), to the exclusion of the courts. A decision will be rendered within 30 days of submission of the dispute to the arbitrator. The place of arbitration will be in the county where the Premises are located. The person acting as arbitrator will be a qualified arbitrator, have been engaged primarily in the practice of law in the area of real property transactions for at least 10 years, and be a member of the state bar residing in the county of the Premises, or an adjacent county. The arbitrator shall be selected by the parties or, if they cannot agree, their respective legal counsel promptly upon notice that a dispute exists. The arbitrator will be compensated at his normal hourly rate. Unless otherwise determined by the arbitrator, the prevailing party will be entitled to be paid all of its out-of-pocket costs, including fees for legal services and arbitrator fees related to the arbitration, which will also apply to the extent of any action taken in a court of law to enforce the arbitrator's decision. Judgment upon an arbitrator's decision may be entered by any court having jurisdiction over the affected party. Subject to special rules in this paragraph, any arbitration will proceed in accordance with the CPR Non-Administered Arbitration Rules in effect on the date of this agreement.

24. **General:** The *Lease Agreement - Tenant Specific Provisions* are a part of this agreement. The captions in this agreement are for convenience and not interpretation. This agreement will inure to the benefit of and be binding upon Landlord, Tenant, and their

LEASE AGREEMENT - GENERAL PROVISIONS (Version 1.07)

successors and assigns. This is the entire agreement between the parties, and any subsequent agreements between the parties altering the provisions must in writing and signed by both parties. All words used in this agreement should be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word including does not limit the words or terms to which it refers. This agreement will be interpreted with reference to the laws of South Carolina, without regard to conflicts of laws principles. With regard to all dates and time periods set forth or referred to in this agreement, time is of the essence. This agreement may be executed in one or more counterparts, each of which will be treated as be an original and all of which, when taken together, will be deemed to constitute one agreement. Each party has had the opportunity to receive independent legal advice regarding the advisability of signing this agreement and the meaning of its provisions.

(Note: THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.)

Detail

Mitchell L. Bagwell
 1000 Highway 100
 P.O. Box 1000
 864 (864) 271-3310

3422

67-148/832
 BRANCH 422

Apr 21, 2009
 Date

Pay to the order of *C. Dan Dwyer Commercial Real Estate* \$10,500.00
Six thousand five hundred and 00/100 Dollars

First Citizens
 First Citizens Bank & Trust Company, Inc.

First First National Commercial
Mitchell L. Bagwell

⑆053201487⑆48048 9886207⑆ 3422



- Jun. 1. 2009 2:49PM Patterson & Associates P.A.

PATTERSON & ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS AT LAW

No. 0903 P. 2

JACQUELINE H. PATTERSON
NATHANIEL C. FARMER
Also Licensed in NC

June 1, 2009

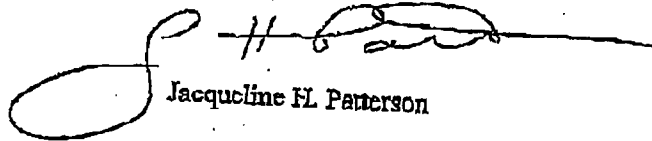
VIA FACSIMILEDr. John Walton, MD
c/o Prudential Commercial Real Estate
24 Vardry Street, Suite 400
Greenville, SC 29601

Re: Cellar Wine & Restaurant, LLC

Dear Dr. Walton:

As you are aware, Mitchell Bagwell's intended use of the property within Walton Commons is a wine bar. Ground Lessor has placed this office on notice that a wine bar violates the REA and that it will terminate any lease which does so. Therefore, Mr. Bagwell has decided to pursue an alternate location.

Yours very truly,


Jacqueline H. Patterson

CC: Mitchell Bagwell

PLAINTIFF'S
EXHIBIT

3-A

1088 NORTH CHURCH STREET • GREENVILLE, SC 29601
TELEPHONE: 864.329.0548 • FACSIMILE: 864.239.3818

WWW.PATT.LAW.FIRM.COM

06/01/2009 2:54PM (GMT-04:00)

Nathan Farmer

From: Jackie Patterson [jpatterson@pattlawfirm.com]
Sent: Tuesday, March 30, 2010 9:03 AM
To: 'Nathan Farmer'
Subject: FW: Cellar Wine & Restaurant, LLC

From: Jackie Patterson [mailto:jpatterson@pattlawfirm.com]
Sent: Friday, May 29, 2009 4:11 PM
To: 'Wes Nalley'
Subject: RE: Cellar Wine & Restaurant, LLC

thank you

Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, South Carolina 29601
864-329-0548 (main)
864-370-4160 (direct dial)
864-370-4184 (direct fax)

**PLEASE NOTE MY E-MAIL ADDRESS HAS CHANGED- THE NEW ADDRESS IS -
JPATTERSON@PATTLAWFIRM.COM**

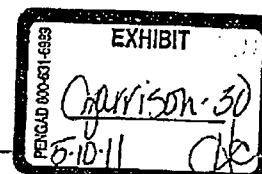
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From: Wes Nalley [mailto:wesnalley@nalleyproperties.com]
Sent: Friday, May 29, 2009 1:48 PM
To: 'Jackie Patterson'
Cc: 'Dawn Cataldo'
Subject: RE: Cellar Wine & Restaurant, LLC

Jackie, pursuant to our conversation please be advised that we will NOT accept a "wine bar" due to the covenants stated in the REA with Lowes. If it is the intent of Mr. Bagwell to operate in violation of the REA we will be forced to terminate the lease agreement and any other remedies available to us under the law.

Let me know if you have any questions or comments.

Wes



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FAX No. 864 670 5333

P. 002

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this 1st day of APRIL, 2010 by and between JOHN E. WALTON, hereinafter called "Landlord", and CLAY TAYLOR and FLYING ANCHOVEY, LLC, hereinafter collectively called "Tenant"; which terms "Landlord" and "Tenant" shall include, wherever the context admits or requires, singular or plural and the heirs, legal representatives, successors, and assigns of the respective parties.

WITNESSETH:

1. **PREMISES.** That the Landlord, in consideration of the covenants of the Tenant, does hereby lease and demise unto said Tenant, and the Tenant hereby agrees to take and lease from the Landlord, for the term hereinafter specified, the property located at 5530 Calhoun Memorial Highway, Easley, SC, more specifically described on Exhibit A, attached hereto and incorporated herein by reference.

2. **TERM.** TO HAVE AND TO HOLD the said premises for an initial term commencing on April 1, 2010 and terminating December 31, 2010.

3. **RENT.** The Tenant hereby covenants and agrees to pay to the Landlord for the initial term rent of \$2,000.00 Dollars per month, payable in advance on or before the first (1st) day of each month during the term of this Lease Agreement, beginning on the commencement date as heretofore provided, through the month of September 2010. For the months of October, November and December, 2010, the monthly rent shall be the sum of \$5,000.00. If the premises opens for public business prior to the date of October 1, 2010, then the Tenant shall pay to the Landlord additional rent of \$100.00 per day for each day prior to October that the premises is open for business. The Tenant shall also pay a pro rata share of the 2010 property taxes as additional rent for the months of October, November and December of 2010, which share of taxes shall be paid by the Tenant to the Landlord on or before December 15, 2010. For each day prior to October 1, 2010 that the Tenant has the premises open for business, the Tenant shall also pay to the Landlord as additional rent the daily share of the 2010 property taxes, payable to the Landlord on or before December 15, 2010. The Tenant shall further insure the property and its business operations with a financially sound insurance company authorized to do business in



APR/02/2010/FRI 09:03 AM PRUDENTIAL JOYNER

PAX No. 864 678 5333

P. 003

the State of South Carolina, naming the Landlord as an additional insured under the policy, with said policy providing liability coverage for both Tenant and Landlord of no less than \$2,000,000.00 per occurrence, unless waived in writing by the Landlord, and providing fire and hazard coverage adequate for the replacement of the building in the event of a total loss.

4. ALTERATIONS AND IMPROVEMENTS. Tenant agrees to accept the Demised Premises in an "as is" condition and any improvements, alterations, and/or remodeling will be done at the Tenant's expense subject to Article 10 and Article 12 herein.

5. USE OF PREMISES. The Demised Premises may be used by the Tenant solely for the operation of a restaurant and for no other purpose.

Tenant shall at all times fully and properly comply with all laws, ordinances, and regulations of every lawful authority having jurisdiction of said premises.

6. TAXES. The Tenant shall pay as additional rent a pro rata share of the the 2010 property taxes, as provided for hereinabove, payable to the Landlord on or before December 15, 2010, and the Tenant shall further pay any other assessments, and other charges which may be levied, assessed, or charged against the Demised Premises.

The Tenant shall pay all operating license fees for the conduct of its business and ad valorem taxes levied upon its trade fixtures, inventory, and stock of merchandise.

7. INDEMNIFICATION: Tenant agrees to indemnify and save Landlord harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from:

(a) The conduct or management of the business by Tenant inside and on the Demised Premises;

(b) Any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease Agreement; or

(c) Any act of negligence of Tenant, its agents, contractors, servants, employees, sublessees, concessionaires or licensees inside or on the Demised Premises.

However, Tenant shall be relieved from such Indemnification and hold harmless provision in the event that the negligence or intentional act on the part of

APR/02/2010/FRI 09:03 AM PRUDENTIAL JOYNER

FAX No, 864 678 5333

P. 004

Landlord, its employees, or agents results in the aforementioned claims or demands.

In case of any action or proceeding brought against Landlord by reason of any such claims shown in paragraphs a, b, and c above, which would not be relieved from indemnification or holding Landlord harmless as provided herein, upon notice from Landlord, Tenant covenants to settle, compromise, or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

All property kept, stored or maintained in the Demised Premises shall be so kept, stored or maintained at the sole risk of Tenant. The Landlord is not responsible for any roof leaks or other matters which result in loss or damage to the Tenant due to the condition of the Demised premises. Tenant agrees to pay and discharge any mechanic's, materialmen's, or other lien against the Demised Premises or Landlord's interest therein claimed in respect to any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or upon the request of Tenant, provided that Tenant may contest such lien claim upon furnishing to Landlord such indemnification for the final payment and discharge thereof, together with the costs and expenses of defending the same, as Landlord may reasonably require.

Landlord shall not be liable to Tenant for any damage occasioned by plumbing, electrical, gas, water, steam or other utility pipes, systems, and facilities, or by the bursting, stopping, leaking, or running of any tank, washstand, closet or waste or other pipes in or about which they are a part, nor for any damage occasioned by water being upon or coming through the roof, skylight, vent or trapdoor.

8. **DAMAGES.** Should the Demised Premises be partially destroyed by fire or other casualty, the Landlord may, at his sole election and his own expense, repair or restore the same so that thereafter the property shall be substantially in the same condition as originally delivered to Tenant. In such event, the rents shall abate in proportion to the restrictive use by the Tenant prior to the repair or restoration.

Should the Demised Premises be so extensively damaged by fire or other casualty as to require rebuilding, then in such event, either party may terminate the agreement and the rent shall cease and abate from the date of such destruction.

9. **WAIVER.** (a) Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the term of this Lease Agreement for any and all of loss of or damage to any of its property located within or upon, or constituting a part of, the premises leased to Tenant hereunder, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies.

(b) Said mutual waivers shall be in addition to, and not in limitation of

APR/02/2010/FRI 09:03 AM PRUDENTIAL JOYNER

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derogation of, any other waiver or release contained in this Lease Agreement with respect to any loss of or damage to property of the parties hereto.

(c) Tenant agrees to furnish to each insurance company which has or will issue policies of fire and extended coverage insurance on Tenant's trade fixtures, merchandise and leasehold improvements written notice of the terms of the said mutual waivers and to have such insurance policies properly endorsed, if necessary, to acknowledge such waivers.

10. MAINTENANCE AND REPAIRS. The Tenant will, at its own expense, keep and maintain in good order and repair the exterior and structural portions of the Demised Premises, including without limitation the roof, gutters and drains, foundations, exterior walls, glass and doors, subfloors, and supporting columns.

Tenant further will, at its own expense, take good care of and will be responsible for all maintenance, upkeep, repair and replacement of all plumbing, heating, air conditioning and electrical fixtures and equipment in the Demised Premises. In addition, the Tenant shall forthwith, at its own cost and expense maintain, repair and replace the glass or other breakable materials used in any interior and exterior windows and doors including frames, jams and seals in the Demised Premises. Tenant will, at the end of the term of this Lease Agreement or any extensions thereof, deliver the Demised Premises to the Landlord in as good condition as the same were when received by it.

11. FIXTURES AND ALTERATIONS. Tenant, at its own expense and with the written approval of the Landlord, may from time to time during the term of this Lease Agreement make any interior alterations, additions, and improvements in and to the Demised Premises which it may deem necessary or desirable and which do not adversely affect the structural integrity thereof, but it shall make them in a good workmanlike manner and in accordance with all valid requirements of municipal or other governmental authorities. All permanent structural improvements shall belong to the Landlord and become a part of the premises upon termination or expiration of this Lease Agreement.

Tenant may construct and build or install in said premises any and all racks, counters, shelves and other fixtures and equipment of every kind and nature as may be necessary or desirable in the Tenant's business; which racks, counters, shelves, and other fixtures and equipment shall at all times be and remain the property of the Tenant, and Tenant shall have the right to remove all or any part of the same from said premises at any time; provided, Tenant shall repair or reimburse Landlord for the cost of repairing any damage to said premises resulting from the installation or removal of such items.

12. UTILITIES. In no event shall Landlord be liable for any interruption or failure in the supply of any utilities to the premises. During the term of this Lease Agreement, the Tenant shall pay for all electricity, heat, air conditioning, water, sewage,

APR/02/2010/FRI 09:03 AM PRUDENTIAL JOYNER

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P. 006

janitorial service, garbage disposal and other utilities or services by it in the use of the Demised Premises.

13. SIGNS. Tenant may place a sign at the designated area provided for the Demised Premises. Said sign to be approved by the Landlord and shall conform to all applicable laws, rules and regulations. The care and maintenance of such sign shall be the sole responsibility of the Tenant.

14. DEFAULT BY LANDLORD. If the Landlord shall fail to perform any of the affirmative covenants to be performed by the Landlord pursuant to this Lease Agreement then the Tenant may, at its option, after notice to the Landlord perform such affirmative covenant or make any such payments as the Landlord's agent and in the Tenant's sole discretion as to the necessity thereof and the full amount of the cost and expense entailed, if the payment is so made, shall immediately be owing by the Landlord to the Tenant. If Landlord shall fail to reimburse Tenant for such amount within thirty (30) days after demand is made, Tenant shall have the right to deduct the amount thereof, together with interest at the legal rate thereon from date of payment without liability of forfeiture, out of rents then due or thereafter coming due hereunder. The option given in this article is for the sole protection of the Tenant, and its existence shall not release the Landlord from any obligation to perform any of the covenants herein provided to be performed by the Landlord or deprive the Tenant of any legal right to which it may have by reason of any such default by the Landlord.

15. DEFAULT BY TENANT. In the event the Tenant shall fail to pay any of the monthly installments of rent or other charges as required by the terms hereof and the same shall remain unpaid for a period of more than ten (10) days after Landlord shall have given written notice to the Tenant of such delinquency, then Tenant shall be in default hereunder and the entire amount of the unpaid rental for the entire lease term shall, at the option of the Landlord, become immediately due and payable and Landlord shall have the right to institute legal proceedings to obtain judgment against the Tenant for the entire amount due, including cost and expenses and reasonable attorney's fees. This remedy shall not prohibit Landlord from pursuing the eviction of the Tenant and any other remedy available to him and shall be in addition to the remedies outlined in (a) and (b) as hereinafter stated.

If the Tenant shall fail to keep and shall violate any other conditions, stipulations, or agreements herein contained on the part of the Tenant to be kept and performed, and if either such failure or violation shall have continued for a period of thirty (30) days after the Tenant shall have received written notice, by certified or registered mail at its office address hereinafter designated, from the Landlord to pay such rent or to cure such violation or failure, then, in any such event, the Landlord, at its option, may either (a) terminate this Lease Agreement, or (b) re-enter the Demised Premises by summary proceedings or otherwise expel Tenant and remove all property therefrom and

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relet the premises at the best possible rent obtainable, making reasonable efforts therefore and receive the rent therefrom; but Tenant shall remain liable for the deficiency, if any, between Tenant's rent hereunder and the rental obtained by Landlord on reletting.

However, a default (except as to payment of rentals) shall be deemed cured if Tenant in good faith commences performance requisite to cure same within thirty (30) days after receipt of notice and thereafter continuously and with reasonable diligence proceeds to complete the performance required to cure such default.

16. **BANKRUPTCY.** The Tenant further covenants and agrees that if, at any time, Tenant is adjudged bankrupt or insolvent under the laws of the United States or of any state, or makes a general assignment for the benefit of creditors, or if a receiver of all the property of the Tenant is appointed and shall not be discharged within ninety (90) days after such appointment, then the Landlord may, at its option, declare the term of this Lease Agreement at an end and shall forthwith be entitled to immediate possession of the said premises.

17. **CONDEMNATION.** If the Demised Premises, or any part thereof, shall be taken in any proceeding by public authorities by condemnation or otherwise, or be acquired for public or quasi-public purposes, the Tenant shall have the option to terminate this Lease Agreement, in which case any unearned rent shall be refunded to it. In the event that only a portion of the Demised Premises shall be taken by condemnation or other proceeding and the remaining part of the premises shall be reasonably usable by the Tenant, and if the Tenant elects not to terminate this Lease Agreement, then the rent shall be reduced in the same proportion that the amount of floor space in the Demised Premises is reduced by such condemnation or other proceeding. In any such proceeding whereby all or part of said premises are taken, whether or not the Tenant elects to terminate this Lease, all parties shall be free to make claim against the condemning party for the amount of the actual provable damage done to each of them by such proceeding.

18. **ASSIGNMENT AND SUBLET.** Tenant may not assign this Lease Agreement or sublet the Demised Premises or any part thereof, without the prior written consent of the Landlord.

19. **SURRENDER.** Upon the termination of this Lease Agreement or any renewal thereof, Tenant shall surrender the premises in the same condition or repair as at the beginning of the term, ordinary wear and tear, damage by fire or other casualty, and damages not caused by Tenant excepted.

20. **QUIET ENJOYMENT.** The Landlord covenants, warrants and represents that upon commencement of the Lease term, the Demised Premises will be free and clear of all liens and encumbrances superior to the leasehold hereby created; that the Landlord has full right and power to execute and perform this Lease Agreement and to grant the estate demised herein; and that the Tenant on payment of the rent herein reserved and

APR/02/2010/FRI 09:04 AM PRUDENTIAL JOYNER

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performance of the covenants and agreements hereof shall peaceably and quietly have, hold, and enjoy the Demised Premises and all rights, easements, appurtenances, and privileges belonging or in anywise appertaining thereto, during the Initial Term of this Lease Agreement and any extensions thereof.

21. **NOTICES.** All notices required to be given to Landlord hereunder shall be sent by registered or certified mail to, and all rent payments shall be made to Landlord at, 402 Memorial Drive Ext., Greer, SC 29651, or to such other address as Landlord may direct from time to time by written notice forwarded to Tenant by registered or certified mail.

All notices required to be given to Tenant shall be sent by registered or certified mail to Tenant at 550 Calhoun Memorial Highway, Easley, SC 29640, or to such other address as Tenant may direct from time to time by written notice forwarded to Landlord by registered or certified mail.

22. **HOLDING OVER.** If the Tenant shall remain in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease Agreement with the Landlord's acquiescence and without any agreement of the parties, the Tenant shall be only a tenant at will, and there shall be no renewal of this Lease Agreement or exercise of any option by operation of law. Tenant further acknowledges and understands the Landlord holds a ground lease on the property which expires as of midnight on December 31, 2010, and the Landlord will not have any ownership or other interest in the property as of January 1, 2011.

23. **REMEDIES CUMULATIVE NONWAIVER.** No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate, and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease Agreement to Landlord or Tenant may be exercised from time to time as often as occasion may arise, or as may be deemed expedient. No right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein.

24. **FORCE MAJEURE.** In the event either Landlord or Tenant shall be delayed, hindered, or prevented from the performance of any act required hereunder, by reason of governmental restrictions, scarcity of labor or materials, strikes, or any other reasons beyond its control, the performance of such act shall be excused for the period of delay and the period for the performance of such act shall be extended for the period necessary to complete performance after the end of the period of such delay.

25. **BROKERAGE.** Tenant warrants that it has had no contacts with any broker.

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In connection with the negotiations or execution of this Lease Agreement, and Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by any broker or agent for Tenant with respect to this Lease Agreement.

Landlord acknowledges the services of NELSON GARRISON as Agent in this transaction and in consideration thereof does hereby agree to pay said agent for services rendered in accordance with their separate agreement.

26. PARTIAL INVALIDITY. If any term or provision of the Lease Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

27. SECURITY DEPOSIT. The Tenant, concurrently with the execution of this Lease, has deposited with the Landlord the sum of \$ NONE, the receipt being hereby acknowledged, which sum shall be retained by the Landlord as security for the payment by the Tenant of the rent herein agreed to be paid and for the faithful performance of the covenants of this Lease. If, at any time, the Tenant shall be in default in any of the provisions of this lease, the Landlord shall have the right to use said deposit, or so much thereof as may be necessary in payment of any rent in default as aforesaid and/or in payment of any expense incurred by the Landlord in and about the curing of any default by said Tenant, and/or in payment of any damages incurred by the Landlord by reason of such default of the Tenant, or at the Landlord's option, the same may be retained by the Landlord in liquidation of part of the damages suffered by the Landlord by reason of the default of the Tenant. In the event that said deposit shall not be utilized for any such purpose, then such deposit shall be returned to Tenant at the end of the term of this Lease or any renewal term thereof. Said deposit shall not bear interest.

28. BINDING EFFECT. This Lease Agreement shall be binding upon and shall inure to the benefit of the Landlord and Tenant hereunder and their respective successors in interest, heirs and/or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above written:

Witness

BY: _____

John E. Walton, Landlord

8

APR/02/2010/FRI 09:04 AM PRUDENTIAL JOYNER

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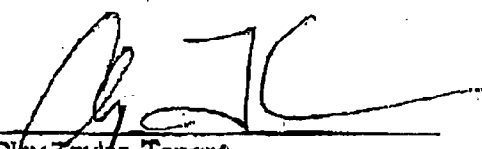
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Witness

Witness

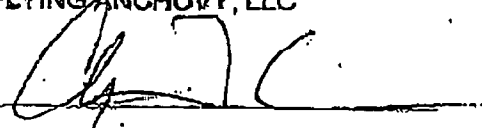
Witness

BY:


Clay Taylor, Tenant

FLYING ANCHOVY, LLC

By:


Its: MANAGING MEMBER

9

LARRY C. BRANDT, P.A.

ATTORNEY AT LAW

P.O. Box 738

3691 Blue Ridge Boulevard

Walhalla, South Carolina 29691

Phone: (864) 638-5406

Facsimile: (864) 638-7873

Larry C. Brandt
lcbrandt@mindspring.comThad B. Ball
tball.brandtfirm@att.net**Of Counsel**John F. Prescott, Jr.
jfprescott@bellsouth.net

October 14, 2009

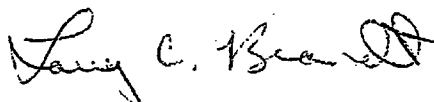
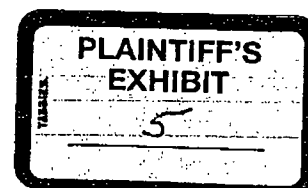
Ms. Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, South Carolina 29601**Re: Dr. John Walton / Cellar Wine & Restaurant, LLC**

Dear Ms. Patterson:

This letter is to advise you that I have been retained by Dr. John Walton to initiate arbitration against your client, Mitchell Bagwell, for breach of his lease agreement for 4,000 feet of commercial building space within the Lowes' Center known as Walton Commons in Easley, South Carolina. The lease agreement clearly states that Mr. Bagwell intended to use the premises as a restaurant which is clearly permitted by the use restrictions of the REA between Forest Acres Real Estate and Lowes Home Centers, Inc., and permission for same was expressly granted by Forest Acres Real Estate. Mr. Bagwell's change of plans to use it as a wine bar is of no consequence or excuse for his breach. I, therefore, demand that Mr. Bagwell honor the lease and immediately pay all rent that is presently in arrears in the amount of \$15,000.00 and that he continue to pay the monthly rent called for in the lease in a timely manner. In the event Mr. Bagwell is unwilling to do this, I request that we proceed to arbitration as soon as possible. I further request that, in order to save money for our clients, we submit the issue to only one (1) arbiter chosen by one of us nominating three (3) arbiters and the other one choosing the arbiter from the three (3) nominated.

I trust that this letter clearly expresses Dr. Walton's position in this matter but if you have any questions or desire to speak with me personally about it, please advise.

Sincerely,

LARRY C. BRANDT, P.A.Larry C. Brandt
AttorneyLCB/dcm
cc: Dr. John Walton
Prudential Commercial Real Estate

PATTERSON & ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS AT LAW

JACQUELINE H. PATTERSON
NATHANIEL C. FARMER*
*Also Licensed in NC

October 19, 2009



Larry C. Brandt
P.O. Box 738
3691 Blue Ridge Boulevard
Walhalla, SC 29691

Re: Dr. John Walton/Cellar Wine & Restaurant, LLC

Dear Mr. Brandt:

I am in receipt of your letter dated 10-14-09.

We disagree with the position you set forth in your letter and believe that testimony will support my client's position that at all times the property was to be used as a Wine Bar. My conversations with the Landlord indicated that the intended use was a violation of the Restrictions and that Mr. Walton was fully aware of the Restrictions. If your client intends to proceed, with this matter, then please serve a complaint which I will address appropriately.

With kind regards,

Yours very truly,

A handwritten signature in black ink, appearing to read "J. H. Patterson".

Jacqueline H. Patterson

cc: Cellar Wine & Restaurant, LLC



STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

1/18/95
RECIPROCAL EASEMENT AGREEMENT

THIS AGREEMENT (hereinafter called the "REA"), made and entered into this 31st day of JANUARY, 1995, by and between FOREST ACRES REAL ESTATE CO., a South Carolina corporation, Party of the First Part and hereinafter referred to as "Seller" and LOWE'S HOME CENTERS, INC., a North Carolina corporation with its office and principal place of business in Wilkes County, North Carolina, Party of the Second Part and hereinafter referred to as "Lowe's".

WITNESSETH:

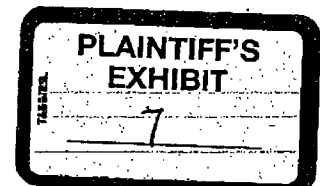
WHEREAS, Lowe's is the owner of that certain tract of land located in Pickens County, South Carolina, as more particularly described as Lowe's Property on Exhibit A attached hereto and shown on the site plan attached as Exhibit B (the "Site Plan"), both of which Exhibits are made by this reference a part hereof; and

WHEREAS, Seller is the owner of certain tracts of land located in Pickens County, South Carolina, located contiguous with and adjacent to Lowe's Property, which property is designated on Exhibit C, hereinafter called "Seller Property" and is more particularly shown on the Site Plan; and

WHEREAS, Seller Property is on this date improved by existing buildings which are leased for use for ice cream and yogurt sales and as a restaurant, to respectively, Palmetto Yogurt, Inc. and John E. Walton; and

WHEREAS, Seller and Lowe's propose to construct and/or operate on Lowe's Property a Lowe's building and related facilities and improvements (the Seller Property and the Lowe's Property being hereinafter collectively referred to as the "Combined Properties"); and

WHEREAS, in order to assure the proper orderly operation of the Combined Properties, the parties now desire to grant certain cross parking, ingress, egress and drainage rights and easements for the benefit of and to impose certain restrictions upon their respective properties.



NOW, THEREFORE, in consideration of the premises, the promises and covenants of the parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

(1) Exhibits. The following exhibits are attached hereto and form a part of this Agreement:

Exhibit A - Legal description of Lowe's Property.

Exhibit B - Site plan of the Seller's and Lowe's Property showing "Common Areas".

Exhibit C - Legal description of the Seller Property.

(2) Drainage Facilities. Each Party hereto agrees that the operation of the Combined Properties as to surface water drainage (the "Drainage System") shall be governed by the following provisions:

(a) Each Party (the "Grantor") hereby expressly grants to the other Party (the "Grantee") and its successors and assigns for the benefit of the Grantee's Property the easement for the drainage and discharge of surface waters from the Grantee's Property.

(b) With respect to the Drainage System described above, Lowe's shall have the right, on thirty (30) days prior written notice to the other, at any time to remove and relocate any such Drainage System located on any other party's property which is subject to the easement granted herein to such place on the party's property as Lowe's shall designate; provided, however, that such relocation shall be made at the sole cost and expense of Lowe's and that such relocation shall not interfere with, or increase the cost of, or unreasonably interfere with the conduct or operation of the other party's business or otherwise interfere in any material respect with the ability of the other party to expand or enlarge the other party's building or buildings within their respective properties or interfere with parking or traffic, as shown on the Site Plan.

(d) Each Party hereby agrees to enter into such easements, public works agreements, or other agreements as may be required by any public utility providing drainage service to the Combined Properties or by the Town of Easley or County of Pickens in connection with the development of the Combined Properties.

(3) Reciprocal Common Area Easements. Each Party (the "Grantor") hereby grants to the other Party (the "Grantee") nonexclusive and irrevocable easements, to use each portion of the Common Areas (including all driveways, roadways, entrances, sidewalks, and parking areas, but excluding Lowe's Exclusive Outside Storage Area) so designated on the Site Plan of each of the properties as constructed and as it may exist from time to time on its Site for its intended purpose; such easements shall be for the use of such party and its tenants, licensees, invitees, and other occupants holding under it. Included within the easements granted by this Section 4 are (without limitation):

(a) Easements to use the respective Parking Areas for parking, passage by pedestrians, and passage of passenger motor vehicles (and trucks in those areas designated on the Site Plan), so long as there is not unreasonable interference with customer parking, and at least a 5.0 per thousand square foot ratio is maintained on the Combined Properties; the Grantee or a tenant of the Grantee may conduct parking lot sales and display merchandise in that portion of the Common Areas directly in front of Grantee's building so long as it does not interfere with ingress and egress, is in accordance with customary practices at other similar stores, and is not in violation of any applicable law or ordinance.

(b) Easements to use all driveways, roadways and entrances to provide passage by motor vehicles and pedestrians between each property of the Combined Properties and adjoining public roadways, including but not limited to Pilgrim Drive, Biltmore Drive, and U.S. Highway No. 123 (By-Pass). The access points and driveways and roadways as shown on Exhibit B shall not be materially changed without the written permission of Lowe's or Seller, which consent shall not be unreasonably withheld.

(c) Easements to use the various walkways and all other portions of the Common Areas as designated on the Site Plan for the general use, comfort and convenience of the Grantor, the Grantee and their respective customers, tenants, licensees, and other occupants; and in addition, subject to the provisions of Section 4(a) above, the Grantee may display merchandise and conduct sidewalk sales on the sidewalks on the Grantee's Property so long as pedestrian passage is not obstructed.

(d) Any other easement labeled and designated on the Site Plan.

Each Party grants to the other Party the right of ingress, egress and regress over and through the Common Areas for the Grantee thereof and its tenants, licensees, invitees, and other occupants holding under it.

(4) Common Area Improvement. Excluding existing buildings and improvements now located on the Seller Property leased to Palmetto Yogurt, Inc. and John E. Walton (but not excluding future buildings and improvements in the event such existing buildings are demolished and new ones constructed thereon), after the time that one or more buildings are constructed on each Party's site, such Party shall improve, at its expense, the Common Areas on its Site (including the installation of driveways, roadways, entrances, parking areas, directional signs, and exterior lighting) at its sole cost and expense.

(5) Maintenance. Each Party hereto shall maintain the Common Areas on its property in good order and condition and state of repair, including (but not limited to) sweeping and removal of trash, litter and refuse, painting and striping of parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of ice and snow from driveways and parking areas, and maintenance and repair of lighting standards and signs. Each of the Parties covenants that it, in addition to other requirements of this Section, will keep the inside and outside of all glass in the doors and windows of its buildings clean; will maintain its buildings at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; will not permit accumulation of garbage, trash rubbish and other refuse, and will remove same at its own expense, and will keep such refuse in proper containers or compactors in places designated therefore until called for to be removed; and will not receive or ship articles of any kind except through the designated loading areas for its Buildings and will keep the common areas on its property clear of accumulations of ice and snow.

(6) Harmony. Seller and Lowe's each agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed by them on their respective Sites. After initial construction of the buildings (excluding existing buildings and improvements now leased to Palmetto Yogurt, Inc. and John E. Walton), neither Party shall make alterations that will substantially change the exterior of its buildings without the

consent of the other Party, such consent not to be unreasonably withheld. Lowe's may make changes in its buildings and improvements not inconsistent with the overall design of its initial building and a majority of its stores at the time of the changes.

(7) Use Restrictions on the Combined Property.

(a) During the term of this Agreement, no portion of the Combined Properties may be used for any of the following purposes without the written consent of both Seller and Lowe's (which consent shall not be unreasonably withheld):

(i) A tavern, bar, nightclub, discotheque, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein incidental to the serving of food; provided that such restaurant is primarily a restaurant with a complete line of food sales and not a bar with only incidental food sales.

(ii) A bowling alley or game room.

(iii) A theater (motion picture or legitimate).

(iv) A health club or spa.

(v) The sale of ice cream or yogurt (except for the existing space now occupied by Palmetto Yogurt, Inc.).

(b) During the term of this Agreement no portion of the Combined Properties may ever be used for any of the following uses whatsoever:

(i) An adult type bookstore or other establishment selling or exhibiting pornographic materials.

(ii) A massage parlor.

(iii) A skating rink.

(iv) A mortuary.

(v) A mobile home or trailer court, labor camp, junkyard or stockyard.

(vi) A land fill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

(8) Use Restrictions on the Seller Property. No portion of Seller Property shown on Exhibit B may be used for any of the following purposes (provided that such restrictions shall only apply to Seller Property for such period of time as Lowe's Property is used by

Lowe's as a retail and/or warehouse home improvement center, lumber yard, or building materials supply center):

(a) A hardware store containing more than 5,000 square feet of leasable floor area.

(b) An appliance and/or home electronics store containing more than 5,000 square feet of leasable floor area.

(c) A lawn and garden store containing more than 3,000 square feet of leasable floor area.

(d) A paint and/or decor center containing more than 5,000 square feet of leasable floor area.

(e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, substantially similar to that now operated by Lowe's, Home Depot, Home Owner's Warehouse and Home Quarters, Hechingers, Builders Square, 84 Lumber, Wickes, and Payless Cashways.

(f) Subject to these restrictions, Seller reserves the right to convey, lease or assign the Seller Property or any portion thereof through any means including, but not limited to, lease, ground lease, or condominium declaration.

(9) Damage and Destruction. In the event of the destruction and damage to any extent to the buildings and improvements on Seller Property or Lowe's Property, the affected Party shall either diligently commence and complete rebuilding of the same after such damage or destruction and/or clear away the ruins and leave the Site in a clean, orderly, sightly and safe condition within ninety (90) days after the date of such damage or destruction. Further, in the event that the affected Party elects not to rebuild its improvements, the restrictions placed on the non-affected Party's site by the affected Party shall be null and void and of no further force and effect.

(10) Estoppel Certificates. Each Party shall upon not less than twenty (20) days from receipt of written notice from the other Party, execute and deliver to such other Party a certificate in recordable form stating that (i) either this Agreement is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge the other Party is in default in any respect under this Agreement and if in default, specifying such default.

(11) Perpetuity of Agreement. Except as specifically set forth in this Agreement, the easements, covenants, conditions, restrictions, and agreements contained herein binding and benefiting the Parties shall be deemed to be perpetual and shall be construed to run with the land.

(12) Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States mail as certified mail, return receipt requested, postage prepaid, and addressed to the party being notified at the address given below (or such other address which any party may designate for itself from time to time hereafter by written notice to the other parties):

Seller: Forest Acres Real Estate Company, Inc.
Post Office Box 1929
Easley, South Carolina 28641

Lowe's: Lowe's Home Centers, Inc.
Attn: Senior Vice President/Real Estate
Box 1111
Highway 268 East (28659)
North Wilkesboro, North Carolina 28656

(13) Outparcel Development. Any Outparcel (herein defined as a Property after removal of existing buildings on the same) resold or developed on the Combined Properties will only be developed under the following guidelines:

(a) Any building constructed on any of the Outparcels shall not exceed eighteen (18) feet in height, as measured from the mean finished elevation of the parking area of the Combined Properties.

(b) Any building constructed on any of the Outparcels shall not exceed 5,000 square feet (excluding buildings now in existence on the date hereof and continuously in use after construction of the Lowe's building).

(c) Any rooftop equipment installed on any Outparcel shall be screened in a manner reasonably satisfactory to Seller and Lowe's.

(d) No rooftop signs shall be erected on any building constructed on any Outparcel.

(e) A freestanding identification sign may be erected on any Outparcel only with the prior written consent of Lowe's, but in no event shall such freestanding identification sign exceed the height of any Lowe's pylon sign or block the visibility of the

Lowe's building or pylon sign. Lowe's approval shall not be unreasonably withheld. If any owner of the Outparcel desires to erect such freestanding sign, he shall make his request in writing to Lowe's. Lowe's shall then have ten (10) business days from receipt of written notice to object to the proposed sign. If Lowe's does not object within the ten (10) day period, then the proposed sign shall be conclusively deemed approved, and Lowe's shall not have the right to any further objection. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3' 3" in height, the type and location of such signs to be approved by Lowe's.

(f) Any Outparcel shall be kept neat, orderly, planted in grass and trimmed until improved and constructed.

(g) Any building, structure, or improvement constructed on any of the Outparcels shall be used for retail, restaurant, or office purposes only. Banks and financial institutions shall be deemed retail purposes subject to the further limitations set forth in Paragraph 7(a) and (b) hereof.

(h) In the event any building, structure or other improvement on an Outparcel shall be damaged or destroyed by any casualty, the owner, lessee or user of the Outparcel shall within twenty (20) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to the condition required by this Paragraph 13 or Paragraph 9; or (b) level such improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly, planted in grass and trimmed, until subsequently improved and constructed upon.

(i) Any of the restrictions set forth in this Paragraph 13 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by Seller and Lowe's; provided that either Party shall not waive, amend, modify, release, or terminate this Agreement without the prior written consent of the other Party. However, Seller and/or Lowe's, as the case may be, shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on an Outparcel without the prior written consent of the fee owner of the Outparcel. The fee owner of such Outparcel, however, may impose additional restrictions on an Outparcel as



such fee owner deems appropriate, subject to any exceptions thereto imposed on said fee owner at the time of conveyance of said Outparcel by Seller to said fee owner.

(j) Seller may convey, lease or assign any Outparcel or any portion thereof through any means including, but not limited to, lease, ground lease, or condominium declaration.

(k) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of Lowe's Property and Seller Property. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest of in any of the Outparcels.

(14) Assignment by Seller. The rights and obligations of Seller hereunder may be assigned by Seller in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between Seller and such ground lessee or lessees.

(15) Limitation of Liability. Any person acquiring a fee or leasehold title to Lowe's Property or Seller Property or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person.

(16) Insurance: Indemnification: Waiver of Subrogation. Each Party will at all times maintain or cause to be maintained with respect to its Site: (i) casualty insurance against loss or damage by fire, lightning and other risks and (ii) comprehensive public liability insurance against claims for bodily injury, death or property damage occurring on, in or about such Party's Site with such insurance policies to be in such amount as are generally obtained by owners and operators of similar properties. To the extent not covered by the insurance policies described above, each Party (the "Indemnitor") will pay and indemnify and save harmless the other Party (the "Indemnitee") from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from: (i) any injury to or death of a person or loss of or damage to property, including the Indemnitor's real property and the personal property of any tenant of the Indemnitor, occurring on the Indemnitor's Site; (ii) any use or condition of the Indemnitor's Site; and (iii) any negligence or tortious acts of the Indemnitor or any of his tenants, licensees, invitees, customers, agents or employees. Each

party (the "Releasor") hereby releases the other Party (the "Releasee") from any and all liability or responsibility to the Releasor or anyone claiming through or under the Releasor by way of subrogation or otherwise for any incurred loss or damage to any person or property caused by fire or other casualty or other such loss, damages, or other insured event or negligence of the Releasee, or anyone for whom such Releasee may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the Releasor's policy or policies of insurance shall contain a waiver of subrogation endorsement, to the effect that any such release shall not adversely affect or impair said policy or policies or prejudice the right of the Releasor to recover thereunder. For the purposes of this paragraph, Lowe's at its option may be a self-insurer and stand in the place and stead of any insurance carrier where Lowe's is required to carry insurance.

(17) Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof and shall run with the land, and shall inure to the benefit of and be binding upon the parties, their successors, assigns, and tenants, including any ground lessee under a ground lease and the customers, employees, and invitees of such parties. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Agreement or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the owner of any property covered by this Agreement and by any mortgagee of said property; however, enforcement hereunder shall be sought solely against the then owner of the property or of the parcel (or the owner of an interest in such property or parcel) alleged to be in default.

(18) Breach. In the event of breach or threatened breach of this Agreement, only all record owners of the Seller Property or any ground lessee of the Seller Property or the record owner of Lowe's Property so long as it or any affiliate has an interest as owner or lessee of Lowe's Property, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Party shall pay the reasonable attorney's fees of the prevailing Party(s).

(19) Consents. Upon the occurrence of any event provided for throughout this Agreement which requires that the consent of one or both of the Parties be obtained, such consent shall be deemed given if a Party fails to respond within fifteen (15) calendar days of a request for that Party's consent.

(20) Counterparts. This Agreement may be signed in counterparts by each of the parties hereto in which event this Agreement shall be binding upon the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first written above.

WITNESSES:

SELLER:

Christine Caldwell
General

FOREST ACRES REAL ESTATE CO.

By: Alvin B. Nelson Jr.
Its: President

LOWE'S:

LOWE'S HOME CENTERS, INC.

Stephanie Eller
Jess H. Miller

By: Gregory Dodge
Its: Senior Vice President

ADM
EA
DUP

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named FOREST ACRES REAL ESTATE CO., by its duly authorized officer, sign, seal and as its act and deed deliver the within written deed and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN TO BEFORE ME this
21st day of January, 1995.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 4/6/02

[Signature]

STATE OF NORTH CAROLINA
COUNTY OF WILKES

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named LOWE'S HOME CENTERS, INC. by its duly authorized officer, sign, seal and as its act and deed deliver the within written deed and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN TO BEFORE ME this
21st day of January, 1995.

[Signature] (SEAL)
Notary Public for North Carolina
My Commission Expires: 8-11-96

[Signature]

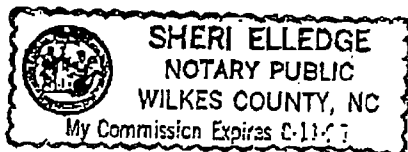


EXHIBIT A

ALL those certain pieces, parcels or tracts of land together with all buildings and improvements situate, lying and being on the northern side of U.S. Highway No. 123 ByPass (Calhoun Memorial Highway), the western side of Pilgrim Drive and the eastern side of Biltmore Drive in the City of Easley, Pickens County, South Carolina being shown on a survey for Lowe's Home Centers, Inc. on a plat made by Robert R. Spearman, Surveyor, dated July 28, 1994 as Tract A containing 13.648 acres, Tract B containing 1.600 acres and Tract D containing 0.007 acres, and having according to said plat, the following metes and bounds to wit:

BEGINNING at a point on the northern side of U.S. Highway No. 123 By-Pass at the corner of property conveyed to First Federal Savings and Loan Association in Deed 12-I, Page 396 and running thence along the northern side of U.S. Highway No. 123 By-Pass S 75-52-38 W 791.30 feet to a point; thence with a line of Out Parcel No. 1 N 14-07-22 E 240.00 feet to a point; thence S 75-44-30 W 155.00 feet to an iron pin; thence N 14-15-30 W 110.37 feet to a point; thence S 75-44-30 W 200.00 feet to a point; thence S 66-50-45 W 61.09 feet to a point on the eastern side of Biltmore Drive; thence crossing an entrance way on Biltmore Drive N 24-22-42 W 12.60 feet to a point; thence continuing with a triangular strip fronting the eastern side of Biltmore Drive N 24-22-42 W 15.00 feet to a point; thence along the line of property now formerly owned by Nora G. Cantrell N 62-33-28 E 40.64 feet to an iron pin; thence N 42-41-18 east 209.90 feet to an iron pin; thence N 42-54-27 E 559.63 feet to a point; thence N 42-54-33 E 68.05 feet to a point; thence S 73-31-00 E 110.92 feet to a point; thence S 89-33-46 E 245.56 feet to a point; thence S 65-14-52 E 155.08 feet to a point; thence S 14-06-53 E 147.76 feet to a point; thence S 75-53-04 W 40.93 feet to a point; thence S 14-07-00 E 141.11 feet to a point; thence S 76-18-50 W 190.05 feet to a point; thence N 47-00-48 E 20.00 feet to a point on the western side of Pilgrim Drive; thence along the western side of Pilgrim Drive S 22-39-00 E 138.50 feet to a point; thence along the line of property conveyed to First Federal Savings and Loan Association S 75-57-04 W 170.75 feet to a point; thence continuing with said line S 14-03-00 E 200.00 feet to the point of beginning.

(REA
EXHIBIT C)

ALL that certain piece, parcel or tract of land situate, lying and being on the northern side of Calhoun Memorial Highway (US Highway No. 123 By-Pass) in the City of Easley, Pickens County, South Carolina being shown and designated as Outparcel 1, containing 0.852 acres on a survey for Lowe's Home Centers, Inc. made by Robert R. Spearman, Surveyor, dated July 28, 1994 and having the following metes and bounds, to-wit:

BEGINNING at a point at the corner of property owned by Robinson on the northern side of Calhoun Memorial Highway and running thence with the line of said property N 14-15-30 W 239.63 feet to a point; thence N 75-44-30 E 155.00 feet to a point; thence S 14-07-22 E 240.00 feet to a point on the northern side of Calhoun Memorial Highway; thence with the northern side of said highway S 75-52-38 W 154.43 feet to the point of BEGINNING.

ALSO, all that certain piece, parcel or tract of land situate, lying and being on the western side of Pilgrim Drive in the City of Easley, Pickens County, South Carolina being shown and designated as Outparcel 2, containing 0.627 acres on a survey for Lowe's Home Centers, Inc. made by Robert R. Spearman, Surveyor, dated July 28, 1994, having according to said plat the following metes and bounds, to-wit:

BEGINNING at a point on the western side of the right-of-way of Pilgrim Drive at the corner of property now or formerly owned by Donald Franklin Parrott and running thence S 75-53-04 W 135.57 feet to a point; thence S 75-53-04 40.93 feet to a point; thence S 14-07-00 E 141.11 feet to a point; thence N 76-18-50 E 190.05 feet to a point; thence N 47-00-48 E 20.00 feet to a point on the western side of Pilgrim Drive; thence with the western side of the right-of-way of Pilgrim Drive N 27-16-29 W 136.46 feet to the point of BEGINNING.

FILE COPY

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) GROUND LEASE

THIS LEASE, made and entered into by and between FOREST
ACRES REAL ESTATE COMPANY, hereinafter referred to as "Lessor"
and JOHN E. WALTON, hereinafter referred to as "Lessee".

W I T N E S S E T H:

WHEREAS, Lessor herein obtained an Option Agreement dated
May 16, 1994 from Lessee herein to acquire Lessee's present
leasehold estate in that certain property containing 15.073
acres (more or less) on U.S. Highway 123 Bypass at Biltmore
Drive and Pilgrim Drive, City of Easley, County of Pickens,
State of South Carolina, known as "Foothills Mall";

WHEREAS, Lessee herein has previously acquired all the
right, title, and interest in that Ground Lease on a 25,505
sq. ft. portion of the above referred to property located on
Pilgrim Drive held by Billy L. Brown, as Trustee and all of
the improvements (previously used as a "steakhouse") on said
property;

WHEREAS, Lessor has become owner of the fee simple title
to the property and Lessee and Lessor both desire that Lessee
herein retain ownership of the improvements during the term of
this Lease for the purpose of subleasing to others under the
terms and conditions of this Lease Agreement; and

PLAINTIFF'S
EXHIBIT

8

WHEREAS, Lessor herein has sold a major portion of the above referred to 15.073 acre tract to Lowe's Home Centers, Inc. on which Lowe's intends to construct a home center facility and parking area.

Lessor has entered into a Real Estate Operating Agreement affecting the Lowe's tract as well as the Parcel leased herein by Lessor to Lessee.

IN CONSIDERATION of the mutual covenants, and the rent to be paid by the Lessee to the Lessor during the term, the receipt of which is hereby acknowledged, the Lessor does hereby lease, rent and demise unto the Lessee, and the Lessee does hereby lease and rent from the Lessor the property located on U.S. Highway 123 Bypass at Biltmore Drive and Pilgrim Drive in the City of Easley, County of Pickens, State of South Carolina described on Exhibit "A" attached hereto incorporated herein by reference and made a part hereof as though fully set forth (hereinafter called the "Leased Premises") upon the terms and conditions hereinafter set forth, together with all rights, privileges and appurtenances connected therewith upon the following terms and conditions:

1. SPECIAL CONDITIONS - RESTRICTIONS AND USE: At all times during the term of this Lease and any renewal of the term hereof, the Leased Premises (including buildings and improvements owned by Lessee) shall be operated and used by Lessor and Lessee only in accordance with the terms, uses and conditions of that Real Estate Operating Agreement between Lessor and Lowe's Home Centers, Inc. (herein called "R.E.A.")

relating to parking, ingress and egress and drainage rights and easements and the use of common facilities on the Leased Premises and adjoining property owned by Lowe's Home Centers, Inc. and to any use restrictions on the Leased Premises for the benefit of Lowe's Home Centers, Inc. as set forth in said agreement, attached hereto and incorporated herein by reference and made a part hereof as though fully set forth, which agreement with Lowe's Home Centers, Inc. shall supersede and control any contrary terms and conditions set forth in this Ground Lease.

Lessee hereby assumes any and all responsibility and costs (such as taxes, insurance, pro rata common area maintenance and repair, etc.) imposed by the R.E.A. on the Lessor only insofar as those responsibilities and costs relate to the Leased Premises referred to in this Lease Agreement between Lessee and Lessor. Any other costs of Lessor in connection with the R.E.A. shall be the responsibility of Lessor or others.

Lessee will not violate that previous exclusive granted to Palmetto Yogurt, Inc. dated May 27, 1987 contained in Paragraph 7 of that Lease as follows:

"... 7. The Landlord agrees to grant the Tenant the exclusive right to operate an ice cream or yogurt bar on the "Demised Premises" known as Foothills Mall during the tenant's leasehold term and any option period. It is understood that this exclusive right does not preclude existing tenants from selling ice cream or yogurt products currently marketed. Also, it is understood that future restaurants located within the Foothills Mall shall have the right to market ice cream or yogurt as secondary menu items or deserts."

Lessee shall not permit a nuisance to exist upon the Leased Premises, and Lessee hereby saves Lessor harmless from any and all acts committed or permitted by the Lessee upon the premises resulting from the creation of a nuisance or other use of the premises prohibited by law or by the R.E.A.

2. TERM OF LEASE: This Lease shall have a term of fifteen (15) years eleven (11) months to commence on February 1, 1995, and shall continue, unless sooner terminated until midnight December 31, 2010.

3. RENTAL - ORIGINAL TERM: The annual rental to be paid to Lessor by Lessee for the first eleven (11) months of this Lease shall be One Dollar (\$1.00) per month. Beginning January 1, 1996, the annual rental during each year of this Lease shall be Eleven Thousand Four Hundred and No/100 Dollars (\$11,400.00) payable in equal monthly installments of Nine Hundred Fifty and No/100 Dollars (\$950.00) in advance on or before the tenth (10th) day of each month of each Lease Year thereafter commencing January 1, 1996.

If the Lessee fails to pay the rent within thirty (30) days after receipt of written notice of such failure to pay given to Lessee by Lessor, then the Lessor may cancel this Lease.

4. ADDITIONAL RENTAL: All rentals payable under this Lease in Paragraph (3) shall be "net" to Lessor. Lessee shall pay annually, as invoiced by Lessor, all costs of any buildings, improvements to the Leased Premises, all taxes and assessments, all fire and liability insurance premiums, and

all maintenance and operational costs including common area maintenance costs.

- a) Lessee shall pay all ad valorem property taxes and assessments applicable to the Leased Premises throughout the term of this Lease and the first and last years of the term shall be prorated between Lessee and Lessor according to the portion of the year which has expired as of the beginning or end of the leasehold term. Lessor will request tax assessor to send notice for the Leased Premises directly to Lessee.
- b) The insurance referred to herein is set forth in Paragraphs 8 and 9 of this Lease.
- c) The payment for the common area charges shall be not more than or less than that amount actually paid by Lessor for such charges and services applicable only to the Leased Premises and its pro rata portion of parking. The pro rata portion of parking applicable to the Leased Premises is approximately 6% of the total parking shown on the site plan attached hereto and attached to the REA Agreement referred to throughout this Lease. Lessor will invoice Lessee annually with appropriate accounting and proof of payment information for actual cost of charges incurred applicable to the Leased Premises.

5. CONDEMNATION: In the event the Leased Premises is taken by any authority vested with the powers of eminent domain, whether the taking is of a fee simple interest or leasehold interest in a portion, or all, of the Leased Premises, or of an easement or right-of-way, the respective rights of the parties shall be determined as follows:

- a) If the taking is minor in nature and scope, and does not substantially interfere with the use of the Leased Premises by Lessee, and it's sublessees (as such premises were

used immediately prior to the taking) this Lease shall remain in full force and effect, unaffected by such taking.

b) If the taking is substantial and materially and adversely affects the use and enjoyment of the Leased Premises by Lessee and it's sublessees, but does not reasonably require the abandonment of the Leased Premises for its use as a commercial facility, the proceeds from such taking shall be divided between Lessor and Lessee, according to their respective interests in the Leased Premises.

c) If the taking is complete, either Lessor or Lessee may terminate this Lease effective on the date of taking.

6. **DEFAULT:** In the event of default by the Lessee in the performance of the terms, conditions and provisions herein, then and only in such an event, in addition to all remedies provided by law, and after thirty (30) days written notice from Lessor, the Lessee shall transfer, assign and set over to the Lessor all subleases outstanding as well as rents outstanding or thereafter becoming due to Lessee. Nothing herein contained shall be deemed to vest in the Lessor any present right or privilege in and to any sublease unless and until such default shall have occurred after notice, and Lessee has failed to cure such default or defaults.

7. **COVENANTS:** The parties hereto covenant and agree with each other as follows:

a) Lessor covenants with and for the benefit of Lessee:

i) Lessor is the owner of the Leased Premises in

fee simple and has a marketable and insurable record title thereto and has the right to lease, rent and demise same, and that the same are free and clear of all liens and encumbrances, except for taxes for the current year and such general utility easements for local utility services to the Leases Premises and the rights of Lowe's and Palmetto Yogurt and other parties to the R.E.A. attached hereto.

ii) That Lessor shall execute at the appropriate time all necessary utility and other easements which may be reasonably necessary for the continued use of the subject property. These easements shall be mutually beneficial and will run with the land.

iii) That Lessee shall have the privilege of quiet and peaceful possession of the Leased Premises, free from any interference by Lessor or any other parties claiming to by, through, or under said Lessor so long as Lessee is not in default of any of the provisions contained herein.

b) Lessee covenants with and for the benefit of Lessor:

i) Lessee is the present owner of the building and improvements located on said property and acknowledges that Lessor assumes no responsibility, legal or otherwise, in relation thereto. Lessee further covenants that no other party (other than Lessor herein) has a prior right to the Leased Premises or the building and that Lessee has full authority to enter into this Lease Agreement.

ii) Lessee covenants and agrees that during the

first year of this Lease (prior to Lowe's opening for business) Lessee will renovate and remodel the exterior of the building on the Leased Premises in accordance with plans and design standards submitted in advance and approved by Lessor. Lessee shall not enlarge the existing building on the Leased Premises or construct additional buildings thereon without the previous written consent of Lessor.

iii) Lessee shall comply with any local, state, or federal laws, rules, or regulations with regard to the building and improvements and shall hold Lessor harmless from any loss arising from any violation of said laws, rules, or regulations.

iv) Lessee will promptly pay all rentals due or to become due under this Lease within the times herein stipulated.

v) Lessee will pay all ad valorem taxes before such taxes become delinquent, and that Lessor shall have the right and option to pay same, after any delinquency, with such payments by Lessor to be reimbursed immediately to said Lessor by Lessee, and with such payment to be considered additional rental for purposes of the default provisions herein contained.

vi) Lessee shall use and enjoy the premises for lawful purposes only, and shall not cause or permit any unlawful use thereof and shall not permit a violation of the Use provisions contained in Paragraph 1 of this Lease.

vii) Lessee will promptly, and before any default,

comply with all it's obligations of any sublessees.

viii) Lessee acknowledges the proposed major construction activities to be conducted by Lowe's and/or their contractor in order to use the Lowe's property for its intended purpose including, but not limited to, the regrading and resurfacing of the parking areas. Lessee acknowledges the expected inconveniences and annoyance caused by construction activities and Lessee will furnish from Lessee and obtain from Lessee's subtenants in connection with necessary inconveniences created by the above referred to construction.

c) All parties hereby covenant with each other to execute promptly, upon request, any estoppel certificates which may be requested from time to time by Lowe's, any mortgagee or purchaser to state whether or not the Ground Lease is in full force and effect and that to date there exists no defaults. All parties agree to execute any reasonable attornment agreements required by sublessees, mortgagees, Lessee herein or Lessor herein, and any party with an interest in the R.E.A.

d) All time limits stated in this Lease are of the essence.

8. INDEMNITY AND INSURANCE: The Lessee shall indemnify and save Lessor harmless from any and all claims made or actions brought arising from the conduct or management of any work, or from any accident, injury or damage on the Leased Premises as a result of any alleged negligence on the part of Lessee or Lessee's subtenants. Lessee agrees, at it's own

cost and expense, to procure and keep in force throughout the term of this Lease, public liability insurance in an amount no less than Five Hundred Thousand and No/100 (\$500,000.00) Dollars for personal injury to any person and One Million and No/100 (\$1,000,000.00) Dollars for personal injury in any single accident, and Five Hundred Thousand and No/100 (\$500,000.00) Dollars for property damage. Lessee will furnish Lessor with a certificate of coverage therein, at Lessor's request, with the initial coverage being furnished thereon at Lessor's request.

9. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY:

During the term of this Lease, Lessee shall, at it's own cost and expense, procure and keep in force fire and extended coverage insurance equal to the then replacement cost value of the building or buildings erected on the Leased Premises, said insurance to be payable to Lessee and any mortgagee holding a lien on said building or buildings, as their interest may appear.

10. ASSIGNMENT: Lessor and Lessee reserve the right and privilege to sublease or assign their interests in all or any portion of the Leased Premises, but such sublease or assignment shall not relieve Lessor or Lessee of their liabilities hereunder for the full performance of all covenants, conditions, and obligations contained herein.

11. SUCCESSORS: The terms and conditions contained in this Lease shall inure to the benefit of and become binding upon the undersigned parties, their heirs, assigns, successors and personal representatives.

12. NOTICES: All notices required under the terms of this Lease shall be given by either Lessor or Lessee to the other in writing addressed to the other at their last given mailing address, or as changed from time to time by either party on notice to the other, by certified United States mail, with postage prepaid, and the expiration of thirty (30) days after written notice of any default or breach shall have been mailed to such party.

13. MISCELLANEOUS: All rights and remedies of the respective parties shall be governed by the provisions of this Lease Agreement and by the laws of the State of South Carolina, as such laws relate to the respective rights and duties of the landlords and tenants. The rights of the Lessor and Lessee to this Lease Agreement insofar as condemnation proceeds are concerned shall be subject to the rights of the owner and holder of any mortgage lien on the Leased Premises. The parties may at any time request of the other a memorandum or short form lease agreement in form recordable on the public records of Pickens County, South Carolina, which shall constitute notice to third parties of the term of this Lease Agreement and any other portions of this Agreement by excepting the rental provisions.

14. EXPIRATION OF LEASE: At the expiration of the fifteen (15) year term of this Lease Agreement, Lessee agrees to deliver to Lessor physical possession of the premises "broom clean" in good condition, ordinary wear and tear excepted.

15. OBLIGATIONS OF SUCCESSORS: The covenants and conditions of this Lease Agreement shall run with the land and bind the parties hereto, their heirs, assigns, successors and personal representatives. This instrument contains the entire agreement between the parties and no amendment, modification or discharge hereof shall be of any force and effect unless in writing, signed by the Lessor and Lessee.

16. VACANCY OF PREMISES: Lessee will cause the demised premises to be vacated and free of subtenants within thirty (30) days after the closing of the sale of the demised premises and adjoining premises from John E. Walton d/b/a Oates and Walton to Forest Acres Real Estate Company, Inc. The premises will remain vacant during the time of construction of the Lowe's building and improvements on the adjoining property. The time contemplated for construction will be approximately ten (10) months. Lessee shall not permit any subtenant to operate on the premises until after December 31, 1995.

17. SUPERSEDEDENCE: This Lease supersedes, cancels, and takes the place of that certain Lease between Carozell, as Landlord, and Billy L. Brown, as Trustee, as Tenant, and that Lease dated December 11, 1978 between Billy L. Brown, Trustee, as Lessor, and Alfred N. Bell and John B. Ferguson, as Lessees, and any subsequent Lease or Lease Agreements made between John E. Walton and any tenant currently occupying the premises; all of which will be cancelled at or before closing of the above referred to sale.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto
set their hands and seals this 31 day of January, 1995.

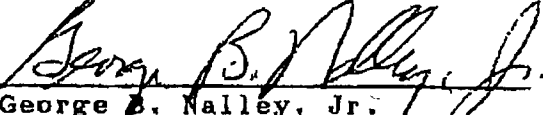
WITNESSES:



As to Lessor

LESSOR:

FOREST ACRES REAL ESTATE COMPANY

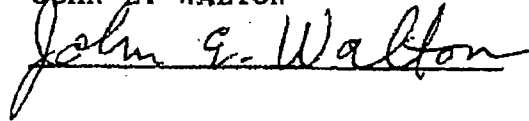
BY: 
George B. Nalley, Jr.
President

LESSEE:

JOHN E. WALTON



As to Lessee



LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land situate, lying and being on the western side of Pilgrim Drive in the City of Easley, Pickens County, South Carolina being shown and designated as Outparcel 2, containing 0.627 acres on a survey for Lowe's Home Centers, Inc. made by Robert R. Spearman, Surveyor, dated July 28, 1994, having according to said plat the following metes and bounds, to-wit:

BEGINNING at a point on the western side of the right-of-way of Pilgrim Drive at the corner of property now or formerly owned by Donald Franklin Parrott and running thence S 75-53-04 W 135.57 feet to a point; thence S 75-53-04 40.93 feet to a point; thence S 14-07-00 E 141.11 feet to a point; thence N 76-18-50 E 190.05 feet to a point; thence N 47-00-48 E 20.00 feet to a point on the western side of Pilgrim Drive; thence with the western side of the right-of-way of Pilgrim Drive N 27-16-29 W 136.46 feet to the point of BEGINNING.

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

COURT OF COMMON PLEAS

John Walton,)
Plaintiff,)
vs.)
Mitchell L. Bagwell,)
Defendant.)

**AFFIDAVIT OF ATTORNEY
FEES AND COSTS**

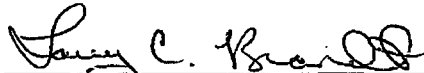
Case #2010-CP-39-405

I, the undersigned, Larry C. Brandt, after being duly sworn on oath, depose and say:

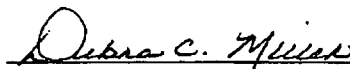
My name is Larry C. Brandt and I am an attorney practicing law in Walhalla, South Carolina. I am a member in good standing of the South Carolina Bar and Oconee County Bar Associations, and I have been duly licensed to practice law in the State of South Carolina since September, 1970, and have been in private practice in Oconee County, South Carolina, since April 1, 1975.

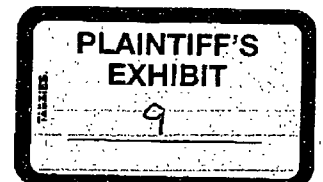
On March 9, 2009, I was retained by the Plaintiff, John Walton, to represent him in an action against Mitchell L. Bagwell for breach of Lease Agreement.

My agreement with Mr. Walton was that I would represent him for a fee of \$250.00 per hour, plus reimbursement of all out-of-pocket expenses incurred. To date, I have expended a total of **77.00 billable hours, plus costs**, which total the sum of **TWENTY THOUSAND SIX HUNDRED TWENTY NINE AND 18/100 (\$20,629.18) DOLLARS**, as more fully set out in detail upon the statements attached hereto.


Larry C. Brandt
Attorney For Plaintiff

Sworn to before me this 20th
day of February, 2013.


Notary Public for South Carolina
My Commission Expires: 7-19-2021



LARRY C. BRANDT, P.A.
P.O. BOX 738
3691 BLUE RIDGE BOULEVARD
WALHALLA, SC 29691
864/638-5406

Invoice submitted to:
DR. JOHN WALTON
402 MEMORIAL DRIVE EXTENSION
GREER, SC 29651-1818

In Reference To:
MITCHELL BAGWELL
CELLAR WINE & RESTAURANT

Jan. 23, 2012

Professional Services		<u>Hrs/Rate</u>	<u>Amount</u>
8/5/2011	Phone conference with Nathan Farmer - wants to amend Answer [LC]	0.10 \$ 250.00/hr	25.00
9/19/2011	Received email of desired Answer and Counter Claim; reviewed with original Answer and compared; dictated Reply; phone conference with Nathan Farmer [LCB]	2.00 \$ 250.00/hr	500.00
9/20/2011	Reviewed proposed Amended Answer; dictated Reply; phone conference with Nathan Farmer [LCB]	2.00 \$ 250.00/hr	500.00
9/30/2011	Review of Reply to Defendant's first amended answer [LCB]	0.20 \$ 250.00/hr	50.00
11/7/2011	Phone call to Nathan Farmer regarding Amended Answer - received filed copy of Amended Answer and responded thereto [LCB]	0.20 \$ 250.00/hr	50.00
For professional services rendered		4.50 \$	1,125.00
Costs - Additional Charges:			
12/31/2011	Long distance and fax charges		\$ 2.50
Total costs			\$ 2.50
Total amount of this bill			<u>\$ 1,127.50</u>

LARRY C. BRANDT, P.A.
P.O. BOX 738
3691 BLUE RIDGE BOULEVARD
WALHALLA, SC 29691
864/638-5406

Invoice submitted to:
DR. JOHN WALTON
402 MEMORIAL DRIVE EXTENSION
GREER, SC 29651-1818

In Reference To:
MITCHELL BAGWELL
CELLAR WINE & RESTAURANT

Feb. 19. 2013

	Professional Services	<u>Hrs/Rate</u>	<u>Amount</u>
12/6/2012	Phone call to Kraig Pringle (2 times - message to call me) [LCB]	0.20 \$ 250.00/hr	50.00
1/15/2013	Email from Cheryl - Pickens COC; phone call to Dr. Walton (C - left message); phone conference with Dr. Walton (C - left message); phone call to Dr. Walton's office (voice message); phone conference with Kraig Pringle; email to Cheryl	1.00 \$ 250.00/hr	250.00
1/17/2013	Brief phone conversation with Kraig Pringle - discussed facts of case and court date; phone call to Pringle at home (884-2343) [LCB]	0.80 \$ 250.00/hr	200.00
1/21/2013	Email from Pringle; answered email regarding cancelling today's appointment [LCB]	0.10 \$ 250.00/hr	25.00
1/29/2013	Emails from Pringle - supposedly tied up in Magistrate Court [LCB]	0.30 \$ 250.00/hr	75.00
2/13/2013	Office conference with Kraig Pringle [LCB]	1.50 \$ 250.00/hr	375.00
2/18/2013	Phone conference with Dr. Walton - scheduled phone conference in morning at 10 am to prepare for trial; returned phone call to Sam Outten regarding Nelson Garrison; (at home) went through file; read depo of Nalley [LCB]	2.90 \$ 250.00/hr	725.00

		<u>Hrs/Rate</u>	<u>Amount</u>
2/19/2013	Preparation for trial [LCB]	10.00	\$ 2,500.00
2/20/2013	Trial (travel to and from Pickens) [LCB]	10.00	\$ 2,500.00
	For professional services rendered	26.80	\$ 6,700.00
	Costs - Additional Charges:		
2/12/2013	Charles Nelson Garrison Subpoena-Witness Fee/Travel		\$ 47.04
2/18/2013	Service of Garrison Subpoena		\$ 106.50
	Attempted service of Subpoena upon Wes Nalley		\$ 47.46
2/20/2013	Mileage to Pickens for hearing (53.6 miles @ \$.565/mile)		\$ 30.28
2/20/2013	Long distance and fax charges		\$ 20.00
	Total costs		\$ 251.28
	Total amount of this bill		\$ 6,951.28
	Previous balance		\$ 1,127.50
2/1/2012	Payment - thank you		\$ (1,127.50)
	Balance Due		\$ 6,951.28

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

COURT OF COMMON PLEAS

John Walton,)
)
Plaintiff,)
vs.)
)
Mitchell L. Bagwell,)
)
Defendant.)
_____)

WALTON DAMAGES

Case #2010-CP-39-405

Monies due per Bagwell Lease

Rent	\$3,000 x 7 months	\$ 21,000.00
Rent	\$4,000 x 12 months	\$ 48,000.00

Taxes - Ins - Maint.	\$250.00 x 3 months	\$ 750.00
	\$750.00 x 16 months	<u>\$ 12,000.00</u>

TOTAL DUE PER BAGWELL LEASE \$ 81,750.00

LESS: Monies collected - Clay Taylor

Rent	\$ 25,500.00
Taxes	<u>\$ 1,670.00</u>
Total Rent and Taxes	\$ 27,170.00
LESS: R/E Commission Paid	<u>\$ (1,080.00)</u>

TOTAL MONEY TO WALTON \$ (26,090.00)

Lease Differential (Lost Income) \$ 55,660.00

ADD: Attorney Fees & Costs \$ 20,629.18

TOTAL DAMAGES: \$ 76,289.18



Page 1 of 6

Nelson Garrison**From:** Mason, Frank - Frank N [Frank.N.Mason@Lowes.com]**Sent:** Monday, April 13, 2009 2:02 PM**To:** Nelson Garrison**Subject:** RE: Submittal checklist / Easley, SC

I reviewed provisions of the Reciprocal Easement Agreement between Forest Acres Real Estate and Lowe's dated 31 January 1995 (excerpt below) and find no restrictions for a restaurant user other than described below. A consent letter is not required unless a variance from Section (7) of the REA is required for the restaurant user.

(7) Use Restrictions on the Combined Property.

(a) During the term of this Agreement, no portion of the Combined Properties may be used for any of the following purposes without the written consent of both Seller and Lowe's (which consent shall not be unreasonably withheld):

(i) A tavern, bar, nightclub, discotheque, or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein incidental to the serving of food; provided that such restaurant is primarily a restaurant with a complete line of food sales and not a bar with only incidental food sales.

(ii) A gambling alley or game room.

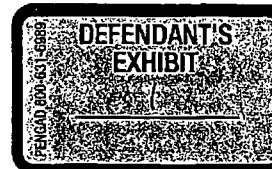
(iii) A theater (motion picture or legitimate).

(iv) A health club or spa.

(v) The sale of ice cream or yogurt (except for the existing space now occupied by Palmera Yogurt, Inc.).

Frank Mason (336) 658-4462

PLAINTIFF'S
EXHIBIT



NALLEY PROPERTIES

Fax: 8648591136

Apr 24 2009 8:31

P.01

Nov 02 08 03:21p

Sun Heating

8643700717

P.1

Nelson
C. Garrison

Lowe's
Walton Building

meeting
sometime
w/ Nelson
& Terri

January 14, 2009

Dear Mr. Garrison,

Mitchell Bagwell has authorized me to present this letter of intent so that he might lease the 4000 square foot (approx) building adjacent to Lowe's inasley. Below is a summary of the terms and conditions for which he would move toward a formal lease.

Property: Premises consisting of 4000 sq feet including all parking assigned to property and all ingress/egress/easements

Term: 36 month lease beginning no later than March 01, 2009

Options: 1 additional 3 year terms

Lease Price: ~~\$12.00~~ Asking price per square foot (triple net) \$12.00 PSF

Deposit: First, Last, and Security

Use: Wine Bar and light food establishment with intention for food and kitchen expansion up fit will greatly improve building aesthetic

Tenant: Mitchell Bagwell

Tenant Possession: No later than March 01, 2009

Lease Commencement: Upon issuance of a certificate of occupancy by city of Hasley and all other applicable licenses

Landlord: Have premises professionally cleaned and address all existing repair issues

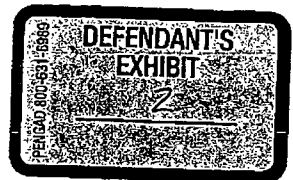
Tenant: Complete all interior and exterior modifications according to code

Contingency: City of Hasley issuing all necessary permits and licenses
tenant prefers to only lease sections 1 and 2 of interior but will accept entire interior in order to secure property

Dee Bauknight
Prudential Real Estate

JUST WINE?

Nelson, This is where my concerns rest. What does "intention" for food mean?? Why don't we meet w/ Bagwell. Wes



PRUDENTIAL / C DAN JOYNER
COMMERCIAL LEASE APPLICATION

Landlord/Lessor: _____ Date of Application: _____
 Location of Leased Premises: _____
 Center _____ Suite # _____ S.F. _____

Business Name: CELLAR
 Name of Person who will sign lease:
 Person 1: MITCHELL L. BAGWELL
 (First) (Middle) (Last)
 Street Address: _____
 City _____ State _____ Zip _____
 Phone Number (Work): () _____
 Phone Number (Home): (864) 304-9193
 Phone Number (Mobile): (864) 304-7799
 E-mail Address: SUNHEATING@AOL.COM
 Driver's License No. 006742021 State of Issuance: SC
 Social Security Number: _____ Date of Birth: 04/27/71
 Is your business a corporation, LLC or other entity? ☒ Yes ☐ No
 - If yes, what form of business entity? T.B.A.
 - Federal Tax ID Number: T.B.A.
 - State in which entity formed? SC
 - Names of Person(s) who will Guarantee Lease
 - Person 1: Mitchell L. Bagwell
 - Person 2: _____

(We need to fill out a separate form if you are married)

Proposed use of premises? Wine Bar / RESTAURANT
 Experience in business (please describe):
PRESIDENT / CEO SUN HEATING SUPPLIES INC
1996 - PRESENT, MANAGED EVERY ASPECT OF
THE CORPORATION (HIRE/FIRE, SALES, INVENTORY, ACCOUNTS, ETC.)
COMMERCIAL RENTAL HISTORY

Present Address: _____

 Rent ☐ Own ☐ Rent/Payment _____ From/To: _____

 Previous Address: _____

 Rent ☐ Own ☐ Rent/Payment _____ From/To: _____

(Continued on Page 2)

Conditions and Information

All pages of this lease application must be signed by all persons who will sign the lease agreement. Additional tenant information is on page 2.

The completion of this application by Tenant and the acceptance of this application by Landlord creates no obligation of Landlord to approve the application.

This application will be approved or rejected usually within two (2) days of being submitted to Landlord. However, there is no obligation of Landlord to notify Tenant unless the application is approved.

If this application is approved, Tenant must make the security deposit and sign the lease before the tenancy begins.

The information provided herein shall be kept confidential and will only be used by Landlord, Prudential Commercial / C Dan Joyner Co., and their agents to determine approval of Tenant's application.

For Landlord's Use Only

Rent Amount: _____
 Deposit: _____
 Date Lease to begin: _____
 End of Lease: _____

By your signature hereon, you agree that the information disclosed by you herein is true, complete and accurate to the best of your knowledge, and you agree that the information disclosed by you herein is material to the potential Lessor's decision with respect to granting or denying your application to enter into a lease.

Signed: _____

244

Date: _____

CREDIT REFERENCE (current or former landlords, banks, vendors, etc.)

Name: MARU ANN HARPER ALLEN
 Address: [REDACTED]
 City State Zip: [REDACTED] 835-0189
 Contract: _____ Phone: _____

CURRENT MONTHLY INCOME

Name/Source	Amount	Name/Source	Amount
<u>FAMILY TRUST</u>	<u>7K</u>		

CURRENT MONTHLY EXPENSES

Creditor	Amount	Creditor	Amount
	<u>3,500.00</u>		

ASSETS	VALUE	SOURCE	LIABILITIES	AMOUNT	CREDITOR
Cash on Hand & in Banks	<u>17K APPROX</u>	<u>FIRST CIT</u>	Accounts Payable		
Savings Accounts			Notes Payable to Banks	<u>216,000.00</u>	<u>1,900.00</u>
IRA/Retirement Accounts			Auto Payments	<u>-0-</u>	
Accounts Receivable			Other Installment Accounts	<u>-0-</u>	
Insurance Cash Surrender			Loans on Life Insurance	<u>-0-</u>	
Stocks & Bonds			Mortgages on Real Estate		
Real Estate	<u>510,000.00</u>	<u>HOME</u>	Unpaid Taxes	<u>-0-</u>	
Automobiles	<u>65,000.00</u>	<u>99 911 2003 SCORPIO</u>	Other Liabilities	<u>-0-</u>	
Other Personal Property	<u>300,000.00</u>	<u>WALKER HOME/SERVICED</u>	Other Liabilities	<u>-0-</u>	
Other Assets					
Other Assets			TOTAL LIABILITIES:	<u>216,000.00</u>	
Other Assets					
TOTAL ASSETS:	<u>952,000.00</u>		NET WORTH:	<u>\$ 736,000.00</u>	

CONSENT TO CREDIT CHECK

I, Mitchell L. Baggett, the undersigned applicant(s) authorize landlord, _____, or his/her/their agent to order and review my/our credit and criminal history and investigate the accuracy of the information contained in the application. I/We further authorize all banks, employers, creditors, credit card companies, references, and any and all other persons to provide to Landlord any and all information concerning my/our credit.

Signed: _____

Date: 02/23/09



Dee Bauknight, Caring Realtor, Prudential C. Dan Joyner

Cell: 864.616.9889

office: phone: 864.220.5100

fax: 864.679.5501

1909 East Main Street

Easley, SC 29640

From: Nelson Garrison

Sent: Tue 9/23/2008 5:16 PM

To: Dee Bauknight

Cc: 'wesnalley@nalleyproperties.com'

Subject: FW: Walton Commons next to Lowes

Dee,
Here is a copy of the Ground Lease language regarding the serving of alcohol. It seems to leave a good bit to actual interpretation of a specific use. If your client is a wine bar, but serves soups, salads, sandwiches and deserts, it may pass. I am copying Mr. Nalley on this for his response.

Thanks,
Nelson

C. Nelson Garrison
Prudential Commercial Real Estate
C. Dan Joyner Company
Vardry Street, Suite 400
Greenville, SC 29601
864.335.2038 - Direct
864.679.5665 - Fax
864.430.2356 - Cell

—Original Message—

From: ehearndon@joynercommercial.com [mailto:ehearndon@joynercommercial.com]

Sent: Tuesday, September 23, 2008 5:38 PM

To: Nelson Garrison

Subject: Scanned image from SHARP Copier

DEVICE NAME: Prudential Commercial-M350N (JK355)

DEVICE MODEL: AR-M350

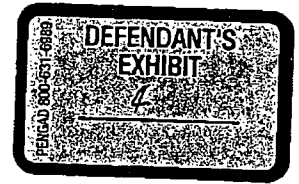
LOCATION: Work Area

FILE FORMAT: PDF MMR(G4)

RESOLUTION: 200dpi x 200dpi

Attached file is scanned image in PDF format.
This file can be read by Adobe Acrobat Reader.
The reader can be downloaded from the following URL:

<http://www.adobe.com/>



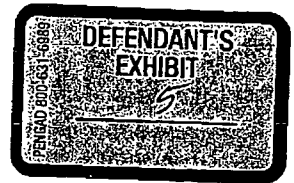
Dawn Cataldo

From: Nelson Garrison [ngarrison@joynercommercial.com]
Sent: Monday, March 23, 2009 4:05 PM
To: wesnalley@nalleyproperties.com
Cc: Dawn Cataldo
Subject: restaurant use

Wes,
Thanks for getting back to me. I think I understand your concern for not upsetting Lowes, but would they not be the one to decide whether this restaurant would or would not be in compliance with the REA agreement? I cannot believe that a restaurant structured around the North Hampton's model would be a welcome addition to this location.
Best regards,
Nelson

C. Nelson Garrison
Prudential Commercial Real Estate
C. Dan Joyner Company
24 Vardry Street, Suite 400
Greenville, SC 29601
864.335.2038 - Direct
864.679.5665 - Fax
864.430.2356 - Cell

3/24/2009



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From: Mason, Frank - Frank N [mailto:Frank.N.Mason@Lowe.com]
Sent: Friday, April 03, 2009 4:56 PM
To: Nelson Garrison
Subject: RE: Submittal checklist / Easley, SC

I see no reason why the original consent letter would prevent the new restaurateur from taking possession of the premises. We consented to the use; the only reason that I can think we need another letter would be if there will be substantial changes to the sign package (i.e. greater square footage).

Or, you might print the pictures (or save to a CD) and send to my address below.

Frank Mason, CPM
Manager-Property Management
Lowe's Companies, Inc.
1605 Curtis Bridge Road (FMN6)
Wilkesboro, North Carolina 28697

(336) 658-4462 tel / (336) 658-3643 fax / (336) 403-0791 cell

From: Nelson Garrison [mailto:ngarrison@joynercommercial.com]
Sent: Friday, April 03, 2009 4:37 PM
To: Mason, Frank - Frank N
Subject: RE: Submittal checklist / Easley, SC

What do you suggest? I have half a dozen pictures of this existing building for your review and file. I also have a restaurant user ready to move forward, actually anxious, on a lease and opening a table cloth restaurant in this location.

C. Nelson Garrison
Prudential Commercial Real Estate
C. Dan Joyner Company
24 Vardry Street, Suite 400
Greenville, SC 29601
864.335.2038 - Direct
864.679.5665 - Fax
864.430.2356 - Cell

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(00:40-1W9) WdZ2:3 6002/50/50



Lease Agreement/ Tenant Specific Provisions

May 5, 2009

Dear Nelson,

Please see on the Lease Agreement two items circled.

1 Exterior maintenance. Please specify why there are seasonal changes in fees.

Tenant accepts the premises in "as is" condition. # 2 Please specify.

Mr. Bagwell and I went inside the building late yesterday afternoon (May 4). There were three substantial leaks. One leak is coming through a wall.

Mr. Bagwell is rebuilding interior walls that must be in place for his business to function. Walls and structural improvements would typically be made by the landlord if a long term lease were in place. Tenant therefore requests that landlord consider paying the tax portion of the triple net lease until tenant's opening to the public, September 1, 2009. Mr. Bagwell is willing to be responsible for up to \$500 of repairs in the triple net lease for the duration of this agreement with Dr. Walton.

Are there blueprints of the building available?

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee Bauknight". The signature is written in dark ink and is positioned above the typed name.

Dee Bauknight, Prudential C Dan Joyner



Prudential

Prudential Commercial Real Estate
C. Dan Joyner Co.
24 Vardry Street, Suite 401, Greenville, SC 29601
Bus 864 233-7724 Fax 864 678-5333
www.joynercommercial.com



May 27, 2009

Dr John Walton, MD
402 Memorial Dr. Ext.
Greer, SC 29681

INVOICE

Re: Services Rendered in Lease Negotiations between Dr. John Walton, MD,
as Landlord and Mr. Mitch Bagwell., as Tenant

Premises: Approximately 4,000 square feet
Highway 123, Walton Commons
Easley, SC 29641

Lease Term: 19 Months

Annual Rent:	<u>YEAR</u>	<u>ANNUAL TOTAL</u>
	1	\$25,000.00
	2	\$48,000.00

Total Rental Due: \$73,000.00

Commission Rate: 6%

Commission Due: \$4,380.00

Payment Terms: 50% due on receipt
Balance due by October 31, 2009

Please make check to:

Prudential Commercial Real Estate / C. Dan Joyner Company
24 Vardry Street, Suite 400
Greenville, SC 29601
Attention: C. Nelson Garrison

*This invoice
was never
submitted for
payment.*



Steve Greer

From: ngarrison@joynercommercial.com
[ngarrison@joynercommercial.com]
To: Steve Greer
Cc:
Subject: Re:
Attachments:

Sent: Tue 11/3/2009 4:35 PM

That is correct. Bagwell never submitted a written menu. He did say repeatedly that his model was North Hampton Wines restaurant. There several meetings, as you know. The most damning should be the Nalley encounter.

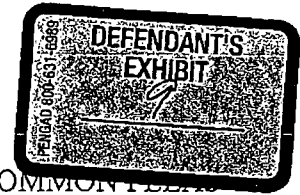
Sent from my Verizon Wireless BlackBerry

From: "Steve Greer" <sgreer@joynercommercial.com>
Date: Tue, 3 Nov 2009 13:44:39 -0500
To: Nelson Garrison <ngarrison@joynercommercial.com>
Subject:

Nelson

Dr. Walton's lawyer wants all correspondence between you and Mitch Bagwell. He mentioned a menu that you may have sent him I see no such thing other than a menu attached to an applicant named John Hall.

Thank You
Steve Greer
C. Dan Joyner Commercial
Direct: 864-335-2036
Cell: 864-444-0296
Fax: 864-679-5692



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF PICKENS)

Case No. 2010-CP-39-405)

John Walton,)

Plaintiff,)

v.)

**ATTORNEY FEE AFFIDAVIT OF
KRAIG A. PRINGLE, ESQ.**

Mitchell Bagwell,)

Defendant.)

PERSONALLY appeared before me the undersigned, who, after being duly sworn, and joined herein deposes and states as follows:

1. He is an attorney duly licensed to practice law in the State of South Carolina, practicing in the area of Criminal, Civil and Family law matters.
2. That he was retained by the Defendant in this action pending before the Court. That this Affidavit is filed in support of his request for attorney's fees, costs, and expenses. That his client joins in the execution of this document.
3. That he incorporates herein Rule 32 Rules of the South Carolina Supreme Court, which contains the Canons of Ethics concerning setting attorney's fees. That he further calls the attention of the Court to the plethora of case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in the setting of attorney's fees. That he relies upon the discretion of this Court in the determination of the amount of fees, based among other things, upon the Court's file herein and its knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, time necessarily expended, the results accomplished, and other factors set forth in the Canons of Ethics and case law decisions of this State.
4. That they are informed and believe that the time spent thus far in this matter has been necessary for the protection of their client's interests and for the purpose of making as clear a presentation to the Court of the issues as possible. That the undersigned, in accordance with his time and expense records, maintained on a daily basis, states to the Court that the time necessarily devoted to this action through conclusion of the trial, including research, review

of and preparation of documents, discovery, office visits, telephone calls, correspondence, and Court appearance(s).

5. That the client has agreed to pay \$250.00 per hour for legal services rendered plus costs and expenses. That through the trial (anticipated), the time spent was 29.0 hours, for a total fee of Seven Thousand Two Hundred Fifty Dollars (\$7,250.00), summarized as follows:

Initial conference with client, 2.1;

Research, 0.5;

Teleconferences, 0.5;

Conference(s) with client, wife 3.3;

Review client file, 1.0;

Correspondence with client, Patterson, 0.7;

Review, rebuild, and assembly of client file, pleadings, documents, discovery, 4.1;

Correspondence with client, 0.3;

Teleconference and correspondence with Brandt, 0.7;

Conference with Brandt, 3.9;

Teleconference with client, Brandt re: settlement, 0.5;

Conference with client, Bauknight, 1.5;

Trial preparation, 6.9;

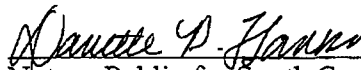
Trial, 4.0 (anticipated)

6. Based upon the foregoing, the undersigned is informed and believes that \$7,250.00 should be granted as reasonable attorney's fees, costs and expenses, for Kraig A. Pringle, for legal services rendered to date as set forth in the attached invoice.

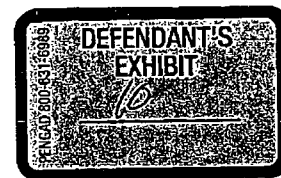


Kraig Alan Pringle
Attorney for the Defendant

SWORN TO BEFORE ME
this 20 day of February, 2013.


Notary Public for South Carolina
My Commission expires: 5-4-14

Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601



Ph:864-329-0548

Fax:864-239-3816

Mitchell Bagwell
110 Arcadian Lane
Easley, SC
29642 United States

March 22, 2012

Attention:

File #: 10-026

Inv #: Settle

RE: John Walton, M.D. vs. Mitchell L. Bagwell

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-10-10	Meeting; Review of file	1.00	240.00	JHP
Mar-24-10	Preparation of Answer to Plaintiff's Complaint; Review of Complaint	2.00	330.00	NCF
Mar-25-10	Review of Lease Agreement	0.50	82.50	NCF
Mar-26-10	Phone call to Mitchell re: evidence to show use of property as wine bar	0.40	66.00	NCF
Mar-29-10	Meeting with Mitchell; Preparation of Affidavit to Bauknight; Review of documents provided by Mitchell	1.75	288.75	NCF
Mar-30-10	Research re: defenses and parol evidence	0.35	57.75	NCF
Mar-31-10	Research re: third party claims against Garrison; Preparation of Third-party Complaint; Research	1.50	247.50	NCF
Apr-01-10	Revisions to Summons and Complaint re: third-party claims; Correspondence with Register of Deeds re: restrictions; Phone call from Bauknight; Review of lease and restrictions	3.50	577.50	NCF
Apr-02-10	Preparation of letters to Court and opposing counsel; Preparation of Certificate of Service; Research	1.00	165.00	NCF

Apr-05-10	Phone call with Dee Bauknight; Correspondence with Court re: filing	0.25	41.25	NCF
Apr-08-10	meeting with Mitch; review of affidavit	0.40	96.00	JHP
May-07-10	Preparation and service of Interrogatories and Request for Production to Plaintiff; Preparation of letter to opposing counsel	2.50	412.50	NCF
Jun-04-10	Phone call with opposing counsel re: discovery and arbitration	0.35	57.75	NCF
Aug-25-10	Receipt and review of production of documents and answers to interrogatories	0.75	123.75	NCF
Nov-01-10	Preparation of letters to Mitchell and opposing counsel; Telephone call to court and opposing counsel	1.00	165.00	NCF
Nov-29-10	Telephone call with Mitch regarding discovery	0.20	33.00	NCF
Dec-01-10	Meeting with Mitch regarding discovery requests; Review of file in response to discovery	1.25	206.25	NCF
Dec-07-10	Preparation of Answers to Interrogatories and Responses to Request for Production	3.00	495.00	NCF
Dec-09-10	Preparation of letter to opposing counsel; Finalize discovery	1.00	165.00	NCF
Jan-18-11	E-mail to Wes Nalley re: Affidavit	0.20	48.00	JHP
Feb-02-11	Drafting and preparation of Second Interrogatories, Requests for Production and Requests to Admit	2.00	330.00	NCF
Feb-03-11	Drafting and preparation of Affidavit for Nalley; preparation of Requests to Admit	2.00	330.00	NCF
Feb-04-11	Finalize Requests to Admit, Request for Production and Interrogatories	1.25	206.25	NCF
Feb-16-11	Several email exchanges with Wes Nalley regarding Affidavit	0.20	48.00	JHP
	Revisions to Nalley Affidavit per Nalley; drafting and preparation of Motion for Summary Judgment; preparation of letter to the Court	2.25	371.25	NCF

Feb-18-11	Receipt and review Nalley Affidavit	0.20	33.00	NCF
Feb-22-11	Prepare letter to the Court regarding Affidavit of Nalley	0.40	66.00	NCF
Mar-03-11	Receipt and review of Plaintiff's Responses to Requests to Admit; preparation of additional Requests to Admit and Interrogatories	2.00	330.00	NCF
Mar-17-11	Preparation of memo supporting summary judgement	0.50	82.50	NCF
Mar-18-11	Preparation of Memorandum for Summary Judgment; Legal research re: parole evidence	4.50	742.50	NCF
Apr-02-11	Legal research regarding parole evidence rule; Correspondence with opposing counsel regarding summary judgment hearing	2.00	330.00	NCF
Apr-05-11	Correspondence with Court and letter to Ball regarding memo requirements; Email to Ball	0.40	66.00	NCF
Apr-06-11	Research regarding agency and parole evidence; Receipt and review of responses to Request to Admit	1.25	206.25	NCF
Apr-07-11	Preparation of Subpoena and Certificate of Service to Prudential; Legal research regarding Subpoena; Phone call with opposing counsel	2.00	330.00	NCF
Apr-12-11	Phone call with Mitch regarding hearing and subpoenas	0.20	33.00	NCF
Apr-13-11	Phone call with Garrison's counsel regarding subpoena and deposition dates	0.40	66.00	NCF
Apr-14-11	Phone calls with Bauknight and Prudential's counsel regarding deposition	0.50	82.50	NCF
Apr-16-11	Preparation of letter to Outten; Review of Notice of Depositions; Correspondence with opposing counsel regarding depositions	1.25	206.25	NCF
Apr-19-11	Revisions of letters to Outten and Garrison; Correspondence with Bauknight regarding lease	0.65	107.25	NCF
Apr-25-11	Preparation of Amended Notice of Deposition for Bauknight and Garrison; Preparation of letter to Ball, Outten and Wilson	0.75	123.75	NCF

Apr-26-11	Email to Wes Nalley; Discussion with Nathan regarding Nalley Testimony	0.50	120.00	JHP
	Preparation of subpoenas to Forest Acres and Nalley; Letter regarding the same	1.25	206.25	NCF
Apr-27-11	Phone calls with Prudential's counsel and Walton's counsel regarding depositions and discovery; Phone call with Mitch regarding deposition; Receipt and review of discovery responses from Walton	2.25	371.25	NCF
Apr-28-11	Call with Wes Nalley; receipt and review of Production by Wes	0.75	180.00	JHP
	Review of documents from Walton; Receipt and review of documents from Nalley	3.25	536.25	NCF
Apr-29-11	Preparation of Deposition	1.00	240.00	JHP
May-02-11	Receipt and review of documents from Garrison; Email to Nalley	3.00	495.00	NCF
May-03-11	Phone calls with Nalley regarding Garrison production	0.40	66.00	NCF
May-06-11	Preparation for Bauknight and Garrison depositions	3.50	577.50	NCF
May-09-11	Preparation for depositions of Bauknight and Garrison	1.50	360.00	JHP
	Receipt and review of affidavit prepared by Ball; Call with Wes Nalley; Review of Deposition preparation	1.50	360.00	JHP
May-10-11	Depositions	6.00	1,440.00	JHP
	Depositions of Garrison, Bauknight and Bagwell	6.00	990.00	NCF
May-12-11	Phone calls with Mitch and opposing counsel regarding deposition dates for Nalley	0.40	66.00	NCF
May-24-11	Review of memorandum for Summary Judgment Motion	1.00	240.00	JHP
	Preparation of memorandum; Review of deposition transcripts and exhibits;	6.00	990.00	NCF

	Correspondence with opposing counsel regarding hearing			
May-25-11	Deposition of Wes Nalley; Preparation of Deposition	3.00	720.00	JHP
May-26-11	Preparation of Memorandum; Review of transcripts; Legal Research	3.00	495.00	NCF
May-27-11	Review of Summary Judgment Motion	0.50	120.00	JHP
	Finalize Memo and Exhibits per Jackie; Shepardize case law; Correspondence with Court regarding memo; Email to Opposing Counsel; Correspondence with reporter regarding Nalley transcript; Call to Dawn Cataldo	5.25	866.25	NCF
May-30-11	Review of transcript; Phone call with Mitch; Preparation of letter to Court; Email to Opposing Counsel	0.75	123.75	NCF
May-31-11	Correspondence with Court and Ball regarding continuance of hearing; Email and letter to Court; Correspondence with Bagwell	1.25	206.25	NCF
Jun-22-11	Status Conference	0.25	60.00	JHP
	Meeting with Jackie regarding amendments to pleading	0.20	33.00	NCF
Jun-23-11	Research regarding fraudulent inducement and equitable indemnification	0.50	82.50	NCF
Jun-24-11	Legal research regarding claims against Garrison	4.00	660.00	NCF
Jun-27-11	Preparation of memorandum regarding claims against Garrison and Plaintiff	0.50	82.50	NCF
Jun-28-11	Preparation of memorandum regarding Fraud, Indemnification and Trade Practices Act	1.25	206.25	NCF
Jul-01-11	Preparation of Motion to Amend Answer and First Amended Answer	1.50	247.50	NCF
Jul-07-11	Review of File	1.00	240.00	JHP
Jul-11-11	Receipt and review of "mistake" research	0.50	120.00	JHP

	Research regarding unilateral and mutual mistake and rescission	2.00	330.00	NCF
Jul-13-11	Review and summary of Garrison deposition	1.50	247.50	NCF
Jul-14-11	Preparation of Deposition Summaries for Garrison, Bagwell, Bauknight and Nalley	5.00	825.00	NCF
Jul-15-11	Review Summary of Depositions	0.50	120.00	JHP
Jul-20-11	Organize file; index Plaintiff's and Defendant's discovery requests and responses for Jackie's review	3.00	150.00	PAR
Aug-05-11	Phone call with opposing counsel regarding consent to amended pleading; Amendments to Answer	3.00	495.00	NCF
Aug-08-11	Amendments to Motion for Summary Judgment	0.50	82.50	NCF
Sep-06-11	Finalize First Amended Answer and Counterclaim	1.25	206.25	NCF
Sep-12-11	Status meeting regarding amending Answer; Research regarding unilateral mistake and misrepresentation	0.50	82.50	NCF
Sep-15-11	Status Conference	0.50	120.00	JHP
	Status Meeting	0.40	66.00	NCF
Sep-16-11	Review of revised Answer	0.50	120.00	JHP
	Finalize First Amended Answer; Preparation of letter to opposing counsel	0.50	82.50	NCF
Sep-19-11	Phone call with Mitch regarding Amended Answer	0.25	41.25	NCF
Sep-20-11	Phone call with Larry Brandt	0.40	66.00	NCF
Sep-21-11	Preparation of Consent Order to Amend Pleadings; Preparation of letter to opposing counsel; Phone call with Mitch	0.50	82.50	NCF
Sep-23-11	Amend motion for summary judgment; Preparation of brief	1.00	165.00	NCF

Oct-03-11	Receipt and review of Reply; Email to Brandt	0.40	66.00	NCF
Oct-04-11	Draft letter to Presiding Judge forwarding Consent Order to Amend Pleadings	0.40	20.00	PAR
Nov-02-11	Preparation of letter to Court regarding amended pleading	0.40	66.00	NCF
Nov-15-11	Correspondence with C Dan Joyner's attorney; Research regarding Statute of Limitations on claims against Walton	0.25	41.25	NCF
Totals		132.10	\$22,965.50	

DISBURSEMENTS

	Filing Fee	25.00
	Postage	9.48
Apr-08-10	Overnight Packages	25.00
Apr-17-10	Overnight Packages	25.00
Nov-01-10	Postage Expense	0.44
Feb-04-11	Postage Expense	1.56
Feb-16-11	Postage Expense	2.10
Feb-21-11	Postage Expense	0.44
Feb-22-11		2.00
Mar-04-11	Postage Expense 2 @ 0.78	1.56
Apr-04-11	Postage Expense 4 @ 0.44	1.76
Apr-05-11	Postage Expense 2 @ 0.44	0.88
Apr-08-11	Postage Expense	6.93
Apr-19-11	Deposition fee 25.00/mileage 1.48	26.48
	Postage Expense	7.51
Apr-26-11	Postage Expense 2 @ 5.79	11.58
	Postage Expense	3.84
May-26-11	Postage Expense	0.44
Jul-14-11	Postage Expense	0.44
Sep-21-11	Postage Expense	2.52
Oct-04-11	Postage Expense	5.16
	Postage Expense 2 @ 2.08	4.16
Nov-03-11	Postage Expense	4.40
	Copy Expense 51 @ 0.10	5.10
Totals		\$173.78

Total Fee & Disbursements for all charges on this matter**\$23,139.28**

TAX ID Number 20-2412837

PAYMENT DETAILS

Apr-17-10	Attorney Fee	1,090.00
May-18-10	Attorney Fee	28.80
May-18-10	Attorney Fee	96.00
May-18-10	Attorney Fee	1,031.25
Jun-30-10	Payment for invoice: 2765	0.78
Jun-30-10	Payment for invoice: 2765	148.12
Dec-02-10	Attorney Fee	500.00
Jan-22-11	Rtnr alloc on Inv: 3424	0.00
Feb-04-11	Payment for invoice: 3448	1,393.47
Mar-22-11	Payment for invoice: 3477	606.53
Jun-08-11	Payment for invoice: 3585	4,000.00
Jul-18-11	Invoice#3642 Mitch Bagwell	10,139.80
Aug-05-11	Payment for invoice: 3678	2,280.44
Sep-14-11	Payment for invoice: 3767	577.50
Oct-18-11	Payment for invoice: 3834	1,034.52
Nov-03-11	Payment for invoice: 3876	95.32
Total Payments		\$23,022.53

TRUST STATEMENT

	Disbursements	Receipts
May-17-10 Received From: transfer accounting from quicken Retainer		1,410.00
May-18-10 Paid To: Patterson & Associates, P.A. Attorney Fee	1,156.05	
Paid To: Patterson & Associates Attorney Fee -payment on invoice 2307 dated 10-30-09	105.05	
Jun-30-10 Paid To: Patterson & Associates, P.A. Payment for invoice: 2765	148.90	
Dec-06-10 Received From: Mitchell L. Bagwell Attorney Fee		2,000.00
Feb-04-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3448	1,393.47	
Mar-22-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3477	606.53	
May-10-11 Received From: Mitchell Bagwell Legal Fees		4,000.00
Jun-08-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3585	4,000.00	
Jul-18-11 Received From: Mitchell Bagwell Invoice#3642 and retainer		20,000.00
Paid To: Patterson & Associates Invoice#3642	10,139.80	
Aug-05-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3678	2,280.44	
Aug-26-11 Paid To: Foothills Court Reporting Walton vs Bagwell taken 05/25/11	104.50	
Sep-14-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3767	577.50	
Oct-04-11 Paid To: Pickens County Clerk of Court Filing Fee -Consent Order	25.00	
Oct-18-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3834	1,034.52	
Nov-03-11 Paid To: Patterson & Associates, P.A. Payment for invoice: 3876	95.32	

Total Trust

\$21,667.08\$27,410.00**Trust Balance****\$5,742.92**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2010-CP-39-405

RECEIVED

APR 02 2014

John Walton

Respondent

SC Court of Appeals

v.

Mitchell L. Bagwell

Appellant,

CERTIFICATE OF SERVICE

I, Kraig Alan Pringle, Attorney at Law, do hereby certify that I have this thirty-first day of March, 2014, served three (3) copies of the Record on Appeal upon the individual(s) below, by placing the same in the United States Mail, postage prepaid and return address clearly indicated, to the following address:

Mr. Larry C. Brandt
P.O. Box 738
Walhalla, SC 29691
Facsimile 864-638-7873



Kraig Alan Pringle, #73694
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2010-CP-39-405

John Walton

Respondent

v.

Mitchell L. Bagwell

Appellant,

CERTIFICATE OF COUNSEL

I, Kraig Alan Pringle, Attorney at Law, do hereby certify that that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I further certify that the Personal Data Identifiers and Other Sensitive Information has been redacted per Supreme Court of South Carolina rule dated August 13, 2007.



Kraig Alan Pringle, #73694
Attorney for Appellant