THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson
Presiding Circuit Court Judge

Appellate Case No.: 2021-001170

Eddie B. Lewis. . . . . Respondent

v.

Saul, LLC and Wells Fargo Bank National Association, ...

Of Whom Saul, LLC is the Appellant and

Of Whom Wells Fargo Bank National Association is also the Respondent.

APPELLANT'S MEMORANDUM RETURN
TO RESPONDENT EDDIE B. LEWIS' MOTION TO DISMISS

Appellant Saul, LLC (hereinafter "Saul"), hereby submits the following return memorandum in opposition of Respondent Eddie B. Lewis' motion to dismiss the above captioned appeal. As sort forth below, this matter is immediately appealable pursuant to South Carolina Law.

A. PROCEDURAL HISTORY & MATERIAL FACTS

On or about May 23, 2016, Respondent, Eddie R. Lewis, (hereinafter "Respondent") entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer of Respondent Wells Fargo (hereinafter "Wells Fargo"). (Ex 1., Am. Compl. ¶ 9.). While exiting the parking lot, Lewis allegedly tripped and fell causing him injuries. (*See Id.*). Appellant, Saul,

LLC, (hereinafter "Saul") owns the premises located at 401 Port Republic Street, Beaufort, S.C. (*See Id.*). Said property was leased by Saul to Wells Fargo, who exercised complete control and responsibility of the property pursuant to the terms of the Lease. (*See gen.* Ex. 2-A, Mot. for Summ. J.). Respondent brings this action against Saul on the theory of negligence and premises liability. (Ex. 1, Am. Compl. ¶¶ 9-21.). Respondent alleges that Saul had a duty to "warn invites and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." (*See* Ex. 1, Am. Compl. ¶ 12, subsection A-L.) Wells Fargo has not asserted any direct claims against Saul. (*See* Ex. 3, Wells Fargo's Answer to P. Compl.). Saul moved for summary judgment ("Motion") as to the Respondent's Amended Complaint on January 20, 2020, based on the terms of the Lease. (*See* Ex. 2, Mot. for Summ. J.). Saul attached a full and complete copy of the Lease to this Motion as an exhibit. (*See* Ex. 2-A).

On March 13, 2020, the Prior Counsel for Wells Fargo emailed Respondent's counsel and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (*See* Ex. 4-A.). In response, on the same day, Counsel for Saul informed then-Counsel for Wells Fargo that he could not consent to the request for continuance and wanted the motion heard because of the impending scheduled mediation and trial not before date. (*See Id.*). On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See* Ex. 4-C.). That same day, counsel for the Appellant, Morgan S. Templeton, received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. (*See* Ex. 4-B.). During this call, Mr. Blackburn informed the undersigned that he had read the Motion, that he did not believe he had a basis to oppose the Motion. (*See Id.*).

On March 17, 2020, the Honorable Judge Deadra Jefferson (hereinafter "Trial Court") heard arguments on the Motion. Counsel for both the Respondent and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear.*** (*See* Ex. 5, Saul's Memo. in Opp. to Mot. to Set Aside.). During the hearing, Respondent's Counsel informed the Trial Court that counsel for Wells Fargo informed Respondent's Counsel that he was not going to attend the hearing on the Motion. (*See* Ex. 6, Hearing Transc. p. 2:12-17; *see also* Ex. 7, Pl. Memo. in Resp. at pg. 3.). Wells Fargo received notice of the hearing and willfully elected and/or failed to file a Motion for Continuance or any Memoranda in Opposition. (*See* Ex. 5, Saul's Memo. in Opp. to Mot. to Set Aside).

During the hearing on March 17, 2020, counsel for the Respondent informed the Trial Court that he believed the determination of the Motion would be important to the absent Wells Fargo, despite its absence. (*See* Ex. 6, Hearing Transc. p. 2:22-3:19.). The Trial Court questioned Respondent's Counsel whether he conceded to Saul's motion or whether it needed to be continued. (*Id.* p. 10:18-25.). In direct response to this question, Respondent's counsel conceded that Saul's Motion was supported by the law and by the facts. (*Id.* p. 10:18-25.). Specially, the hearing transcript evidences the following colloquy between the Trial Court and Respondent's Counsel:

> **THE COURT**: Well, you haven't filed anything. And you can't have it both ways. Either you concede the motion or it needs to be continued. But I am not going to straddle that line with you.
>
> **MR. FLEMING**: I understand. Well, I concede then, Your Honor. I concede that Saul is -- that their position, I believe, is most supported by the law and by the facts as we have gathered throughout this litigation.
>
> **THE COURT**: Based on that concession, Mr. Dodds, if you will prepare an order for the Court granting the summary judgment.

(*Id.*).

Based on the Respondent's concession, the Trial Court granted Saul's Motion. (*See Id.* p. 11:1-6; *see also* Ex. 8, Order Granting Saul's Mot. for Summ. J.). On March 18, 2020, Saul submitted its proposed Order to the Trial Court, which a Notice of Electronic file was sent to all parties of record as instructed by the Court. (*See* Ex. 5-A.).

On March 24, 2020, the Trial Court, after careful consideration of the record, granted Saul's Motion. (Ex. 8.). The Trial Court made approximately 15 changes to the Proposed Order before signing it. (*See* Ex. 4-E and Ex. 4-F.).[1] Neither the Respondent nor Wells Fargo filed a Rule 59(e) Motion. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*). On March 26, 2020, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Ex. 4-D.). On March 19, 2021, almost a year to the date of the entry of the Trial Court's Order, Wells Fargo first challenged the Trial Court's Order pursuant to Rules 60(b)(2) and (b)(3), SCRCP. (*See* Ex. 9, Wells Fargo's Mot. to Set Aside.). Wells Fargo's five paragraph Motion to Set Aside presented vague claims of "misrepresentation" and "newly discovered evidence;" however, it was devoid of any specific evidence, facts, or exhibits that

[1] A side-by-side review of Saul's Proposed Order and the Trial Court's Order highlights the edits and revisions made by the Trial Court prior to entering the Order. The Trial Court made a total of fifteen (15) changes/revisions to Saul's Proposed Order. Theses revisions included the following: 1) a Header was added, which included six additional lines; 2) The opening paragraph was completely changed; 3) a Footnote was added; 4) the words "**Applicable Law"** were struck; 5) The **Finding of Facts** section was moved to the front of the Order; 6) The first line of the Find of Facts section of the Proposed Order was struck; 7) the numbering of the paragraphs in the **Findings of Facts** section were struck; 8) throughout the Order the introductory signals were struck by the Trial Court; 8) the words "This Court makes the following conclusions of law" were struck; 9) The applicable legal standards sections were moved under the **Conclusions of Law**; 10) the numbering of the paragraphs in the **Conclusions of Law** section was struck; 11) The Summary Judgment Standard was completely revised which consisted of two paragraphs; 12) Additions to the citations under the Premises Liability Standard, which consisted of seven additions of the South Carolina Reporter citations; 13) A clerical edit was made on page 5 of the Order, which consisted in the addition of the word "Further;" 14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and 15) the **Order** section was struck by the Court.

supported these claims. (*See gen. Id.*; *see also* Ex. 5.). Further, Wells Fargo's Motion to Set Aside failed to cite to a single case in support of its arguments. (*See Id.*).

On March 31, 2021, Saul filed its Memorandum in Opposition to Wells Fargo's Motion to Set Aside (hereinafter "Saul's Memorandum in Opposition"), which made arguments: that Wells Fargo's Motion to Set Aside violated Rule 7(b), SCRCP, lacked standing, Wells Fargo waived its rights to make arguments, the motion was a veiled Rule 59, SCRCP, motion, and the parole evidence rule barred any newly discovered evidence in interpreting a lease. (*See* Ex. 5.).

On July 2, 2021, Respondent submitted his Memorandum in Response to Wells Fargo's Motion to Set Aside, which highlighted Wells Fargo's counsel's failure to participate in the litigation of this matter. (*See gen.* Ex. 7.). Further, Respondent's Memorandum exemplified that at the time of its filing: Wells Fargo had not identified which arguments constituted misrepresentation, presented any affidavits or other filings supporting their Motion to Set Aside. (*See Id.*, at pg. 4-5.). Thus, Wells Fargo had placed the Respondent in a position of being unable to address Wells Fargo's assertions. (*See Id.*).

On July 6, 2021, for the first time, Wells Fargo finally submitted its Memorandum in Support of its Motion to Set Aside, with exhibits. (*See* Ex. 10, Wells Fargo's Memo. in Supp.). Pursuant to the Trial Court's direction, three days later, Saul submitted its Reply Memorandum to Wells Fargo's Memorandum of Law in Support (hereinafter "Saul's Reply Memo."). (*See* Ex. 4.). Saul's Reply set out arguments that Wells Fargo's Memorandum of Law was full of errors, misstatements, and incorrect statements; that the Memorandum did not reach the difficult standards under Rule 60, SCRCP because it lacked newly discovered evidence; that Wells Fargo has no evidence of fraud upon the court; and that Wells Fargo has attempted to shift the burden of proof which deprived Saul of its due process rights. (*See Id.*).

Nonetheless, despite the Respondent and Saul's arguments and the record being unequivocally one sided, on September 21, 2021, the Trial Court granted Respondent Wells Fargo's Motion to Set Aside pursuant to Rule 60, SCRCP. (*See* Ex. 11, Order Granting Mot. to Set Aside.). The Trial Court's Order misstates the following: 1) that Wells Fargo was not afforded an opportunity to be heard, which for the reasons set out above and below is erroneous; 2) it was represented to the Trial Court at the hearing that Wells Fargo was not a necessary party, when the hearing transcript clearly establishes otherwise (*See* Ex. 6, Hearing Transc. p. 2:22-3:19); and 3) the Trial Court made fifteen (15) edits to the proposed Order, which counsel for Wells Fargo had notice of and made no edits or objections.

On October 14, 2021, Saul filed this timely appeal with the South Carolina Court of Appeals. On November 12, 2021, Saul filed its Initial Brief which set forth this appeal based on the argument that the Trial Court abused its discretion by granting Wells Fargo's Motion to Set Aside Judgement when the record establishes that the Respondent conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same. On November 30, 2021, Respondent filed a Motion to Dismiss this appeal. This response follows.

B. LEGAL AUTHORITY

An order granting a motion vacating a judgment is only appealable if there was *an erroneous exercise of discretion on the part of his honor*, the circuit court judge. *See Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922) (emphasis added), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which

resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, amounted to error of law. *See Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961).

IV. ARGUMENT

Saul has appealed the Trial Court's Order vacating its Order for Summary Judgment because there was an erroneous exercise of discretion on the part of the circuit court judge. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825 (emphasis added), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, amounted to error of law. *See Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). The South Carolina Supreme Court held in *Winslow Bros.* that an appeal from an order vacating a judgment is not appealable *unless there was an erroneous exercise of discretion on the part of the circuit court.* 120 S.C. 164, 112 S.E. 825. (emphasis added).

Saul's appeal arises from the Trial Court's abuse of its discretion by granting Wells Fargo's Motion to Set Aside Judgement when the record establishes that the Respondent conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same. (*See* Saul's Initial Brief.). As evidenced in Saul's Initial Brief, the Trial Court's holding was unsupported by any supporting facts and are contradicted by the record which amounted in an erroneous exercise of discretion. The question of whether an order is immediately appealable is determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The Trial Court's Order

in this matter is the exact "erroneous exercise of discretion" that was contemplated by the South Carolina Supreme Court in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, making, this matter immediately appealable.

The South Carolina Supreme Court's holding in *Winslow Bros.* is a published opinion that has not been overturned by the South Carolina Supreme Court and is binding precedent to date. The decisions of the South Carolina Supreme Court bind the Court of Appeals as precedent. *See Daniels v. City of Goose Creek*, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); *see also*, S.C. Const. art V, § 9. Pursuant to the South Carolina Supreme Court's holding in *Winslow Bros.*, Saul does indeed have an immediately appealable issue as there is ample evidence establishing that the Trial Court's Order vacating an Order for Summary Judgment was an erroneous exercise of discretion.

Respondent asserts that the right to immediately appeal is controlled by the holding in *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008) (holding an order granting a motion for relief from judgment is not immediately appealable). Any reliance upon *Pocisk* is misplaced, as the South Carolina Supreme Court's holding in *Winslow Bros.* binds the Court of Appeals. Thus, any modifications limiting the South Carolina Supreme Court's holding in *Winslow Bros.* must be done by the South Carolina Supreme Court. *See* S.C. Const. art V, § 9. Therefore, this Court is bound by the precedent in *Winslow Bros.* which holds that an order vacating a judgment is appealable if there is an erroneous exercise of discretion on the part of the circuit court. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825.

Nevertheless, this matter is distinguishable from *Pocisk* as it dealt with issues that are not present in this present appeal. 380 S.C. 584, 671 S.E.2d 98. In *Pocisk*, the Plaintiffs brought an action against a Contractor, and others, alleging their house had been defectively constructed. *Id.*

at 99 and 586. Although the Contractor's insurer denied coverage for the claim, it provided Contractor with a defense, pursuant to a full reservation of rights. *See Id.* After the other defendants settled with the Plaintiffs, Contractor and the Plaintiffs entered into a settlement agreement in which the Contractor confessed judgment and the Plaintiffs agreed not to seek satisfaction of the judgment from Contractor. *See Id.* Contractor assigned to the Plaintiffs, his rights in any claim involving insurance coverage and bad faith issues arising out the denied coverage. *See Id.* A judgment was entered against Contractor in the Beaufort County Court of Common Pleas, which did not mention the condition that the Plaintiffs would not seek satisfaction against Contractor. *See Id.* at S.C. 586, S.E.2d 100.

After the parties entered into the settlement agreement, the insurer brought a declaratory judgment action in the United States District Court seeking a declaration that it was not obligated to defend or indemnify Contractor for the Plaintiffs ' claim. *See Id.* Relying on opinions from the Fourth Circuit Court of Appeals, the district court held the settlement agreement was presumptively unreasonable and therefore invalid. *See Id.* S.C. 587, S.E.2d 100, (citing *St. Paul Travelers v. Payne,* 444 F.Supp.2d 519, 522 (D.S.C. 2006)). The court concluded that because the settlement agreement was invalid, the insurer was not obligated to indemnify the Contractor for the judgment. *See Id.* In its order on the Plaintiffs and Contractor's motion to alter or amend, the district court clarified that if the judgment entered on the underlying suit was vacated, it would then have jurisdiction to consider the issue of whether insurer's denial of the claim was appropriate. *See Id.*

The Plaintiffs then filed a motion in the Beaufort County Court of Common Pleas to vacate the consent judgment pursuant to Rule 60(b), SCRCP, and restore the action to the trial roster. *See Id.* The court initially denied the Plaintiffs the relief requested. *See Id.* The Plaintiffs filed a

motion to alter or amend asserting the court's ruling violated the doctrines of *res judicata* and collateral estoppel, which the Contractor did not file a return. *See Id.* The trial court granted the motion to alter or amend, finding the district court decision was binding on all parties to this action. *See Id.* It vacated the consent judgment and restored the case to the trial docket. *See Id.* Contractor filed a motion to reconsider, which the trial court denied, and an appeal followed based on arguments arising out of S.C. Code § 14-3-330(20). *See Id.* S.C. 588, S.E.2d 100. The Court of Appeals held that the order granting Plaintiffs' motion did not meet the requirements under S.C. Code § 14-3-330, which was the basis for Contractor's appeal, and as such was not immediately appealable. *See Id.* S.C. 589, S.E.2d 101.

This matter is distinguishable from the *Pocisk* as it has been appealed based on the South Carolina Supreme Court holding in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, and not pursuant to S.C. Code § 14-3-330. An order *generally* must fall into one of the several categories set forth in the statute governing appellate jurisdiction in order to be immediately appealable. *See State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010). (emphasis added). Determination of whether a party may immediately appeal an order issued before or during trial is governed *primarily* by statute. *See Pocisk*, 380 S.C. 584, 671 S.E.2d 98. (emphasis added). When making decisions on issues of appealability of matters under S.C. Code § 14-3-330, South Carolina Courts have consistently and carefully crafted their holdings to include qualifying language like "generally" and "primarily" which evidences that appeals may arise outside of categories set forth in the statutes governing appellate jurisdiction.[2] The question of whether an order is immediately appealable is determined

[2] Saul acknowledges the holding in *North Carolina Federal Sav. And Loan Ass'n v. Twin States Development Corp.*, 289 S.C.480, 347 S.E.2d 97 (1986). (holding an appeal pursuant to Rule 72, SCRCP, does not authorize an immediate appeal of a trial court's order). However, the holding in *North Carolina Federal Sav.* dealt entirely with an appeal based on Rule 72, SCRCP, which explicitly finds that the rules shall not be construed to extend or limit the jurisdiction of any court of this state. Id., citing Rule 82(a), SCRCP. This appeal arises pursuant to the South Carolina Supreme Court's holding in *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922) (holding that an order

on a case-by-case bases. *See Stone*, 426 S.C. 291, 826 S.E.2d 868. For example, the *Pocisk* court even acknowledged that the Appellate Court has considered appeals from the granting of Rule 60(b) relief. *See e.g. Johnson v. Johnson,* 310 S.C. 44, 425 S.E.2d 46 (Ct. App. 1992); *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

This matter is analogous to the facts found in *Mitchell Supply Co.*, which held that the trial court abused its discretion in vacating a judgment when the neglect relied on by the Respondents was their attorney's failure to properly review pleadings delivered to him. 297 S.C. 160, 375 S.E.2d 321. As shown above, this matter arises from an erroneous exercise of discretion by the Trial Court when the record establishes that the Respondent conceded to Saul's Motion for Summary Judgment and Counsel for Wells Fargo failed to make any arguments to the same. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. The record clearly evidences that counsel for Respondent Wells Fargo failed to make any argument on the Motion at the appropriate time. (*See gen.* Ex. 5.).

On January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (*See* Ex. 2.). On March 13, 2020, then counsel for Wells Fargo, Laura Robinson, emailed counsel for Respondent and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (*See* Ex. 4-A.). That same day, counsel for Saul informed Ms. Robinson that he could not consent to the request for continuance and wanted the motion heard because of the impending mediation scheduled and trial not before date. (*See Id.*). On March 16, 2020, attorney Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See* Ex. 4-C.). That same day, counsel for the Appellant, Morgan S. Templeton, received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020,

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granting a motion vacating a judgment is only appealable if there was *an erroneous exercise of discretion on the part of his honor*, the circuit court judge.). (emphasis added).

in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. (*See* Ex. 4-B.). During this call, Mr. Blackburn informed the undersigned that he had read the Motion, that he did not believe he had a basis to oppose the Motion, and that he would not be attending the hearing on the Motion. (*See Id.*).

On March 17, 2020, the Trial Court heard arguments on the Motion. (*See* Ex. 6.). Counsel for the Respondent and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. (*See* Ex. 5.). Wells Fargo failed to file a Motion for Continuance or any Memorandums in Opposition, despite having notice of the Motion since January 20, 2020. (*See Id.*). During the hearing, Respondent's counsel informed the Trial Court that counsel for Wells Fargo informed Respondent's Counsel that he was not going to attend the hearing on the Motion. (*See* Ex. 6, Hearing Transc. p. 2:12-17; *see also* Ex. 7.). After the Motion was granted, counsel for Wells Fargo received notice that the proposed Order was electronically filed on March 18, 2020. (*See* Ex. 5-A.). Counsel for Wells Fargo did not raise any objections to the proposed Order. (*See* Ex. 5.).

On March 24, 2020, the Trial Court granted Saul's Motion. (*See* Ex. 8.). On March 26, 2021, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Ex. 4-D.). Neither the Respondent nor Wells Fargo filed a Motion to Reconsider. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*).

On March 19, 2021, almost a year to the date of the entry of the Trial Court's Order, Wells Fargo first challenged the Trial Court's Order pursuant to Rules 60(b)(2) and (b)(3), SCRCP. (*See* Ex. 9.). Further, and most telling, Wells Fargo failed to make any argument or excuse as to why its counsel did not argue against Saul's Motion, file a motion or appeal the Trial Court's Order granting Saul's Motion. (*See Id.*).

Given this, there is nothing in the record to indicate that counsel for Wells Fargo did not have an opportunity to be heard and make an argument at the appropriate time. Rather, the record is replete with support for the exact opposite: ***Wells Fargo had every opportunity to be heard and failed this opportunity.*** *See Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321.

It is undisputed that Wells Fargo was represented by counsel during the entire aforementioned procedural history. It is also undisputed that Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concludes that Wells Fargo was not afforded an opportunity to be heard on Saul's Motion. (*See* Ex. 11.). As such, the Trial Court abused its discretion in vacating a judgment, when the neglect relied on by the Respondents was their attorney's failure to properly review pleadings delivered to him, which is analogous to *Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. The Trial Court clearly ignored the facts of the case: Wells Fargo failed to do even the bare minimum to argue against Saul's Motion. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo's counsel did nothing until March 19, 2021. Wells Fargo has waived any rights to raise any arguments that should have been made at the time of the hearing. *See gen. SPUR at Williams Brice Owners Ass', Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

Therefore, this matter is immediately appealable as the Trial Court's ruling that there was a basis to grant a motion to set aside which is based on Wells Fargo's Counsel's failure and neglect to argue at the appropriate time that resulted in an abuse of discretion which is appealable pursuant to *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825; *see gen. Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. (holding in which the court of appeals considered an appeal from the granting of Rule 60(b) relief.).

Assuming arguendo, the Court is still not persuaded that this matter is immediately appealable, Saul asserts that this matter should be certified to the South Carolina Supreme Court pursuant to Rules 204 and 242, S.C.A.C.R. Pursuant to Rule 204(b), S.C.A.C.R., "[i]n any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals."

V. CONCLUSION

For all of the aforementioned reasons, Saul respectfully submits this reply in opposition to Respondent Eddie B. Lewis' motion to dismiss the appeal and shows that the above captioned appeal is appropriate and the issues presented therein are immediately appealable.

Dated this 9th day of December, 2021. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

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EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED SUMMONS
	)	(Jury Trial Demanded)
Saul, LLC and Wells Fargo Bank, National Association,	)	
	)	
Defendant.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: *s/Cory H. Fleming*

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ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	
Saul, LLC, and Wells Fargo Bank, National Association	)	(Jury Trial Demanded)
	)	
Defendant.	)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.

2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.

3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.

4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 1011 Bay Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 1011 Bay Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;

B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;

C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;

D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;

G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;

H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;

I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;

J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;

K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;

L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;

B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;

C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;

D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;

G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;

H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;

I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;

J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;

K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;

L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident descried herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: *s/ Cory H. Fleming*

Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR. Plaintiff, versus SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION Defendants.	)	**Defendant Saul, LLC's Motion for Summary Judgment**

TO: COREY FLEMING, ATTORNEY FOR PLAINTIFF

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, will move before the presiding judge of the Court of Common Pleas for the County of Beaufort County, South Carolina, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard for an order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Saul submits that it had gave all control and duties of the subject property to Defendant Wells Fargo, and as a matter of law, owed no duty to the Plaintiff and summary judgment should be granted as to this Defendant.

ALLEGED FACTS

On or about May 23, 2016, Plaintiff, Eddie R. Lewis, entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer to Defendant Wells Fargo (hereinafter "Wells Fargo"). Am. Compl. ¶ 9. While exiting the parking lot, the Plaintiff allegedly tripped and fell causing him injuries. Am. Compl. ¶ 11. Saul owns the premises located at 401 Port Republic Street, Beaufort, S.C. Am. Compl. ¶ 7. Said property is and was leased by Saul to Wells

Fargo, who exercises complete control and responsibility of the property pursuant to the terms of the Lease. See gen. Exhibit A. Plaintiff brings this action against Saul on the theory of negligence and premises liability. Am. Compl. ¶¶ 9-21. Plaintiff alleges that Saul had a duty to "warn invites and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." Am. Compl. ¶ 12, subsection A-L.

For the reasons set forth below, Saul is entitled to summary judgment because, as a matter of law, Saul gave control and responsibilities to Wells Fargo and therefore owes no duty to Plaintiff.

ARGUMENT

1. **Saul gave complete control of the subject property to Wells Fargo, therefore, Saul owes no duty to the Plaintiff and cannot be found negligent as a matter of law.**

A plaintiff must prove three elements to recover on a claim for negligence: 1) a duty of care owed by the defendant to the plaintiff; 2) a breach of that duty by a negligent act or omission; and 3) damage proximately resulting from the breach. Chakrabati v. City of Orangeburg, 403 S.C. S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). "If any of these elements is absent a negligence claim is not stated." Id. citing Summers v. Harrison Constr., 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989). A legal duty is that which the law requires to be done or forborne with respect to a particular individual or the public at large. South Carolina Electric & Gas Co. v. Utilities Construction Co., 244 S.C. 79, 135 S.E.2d 613 (1964). Without a violation of such a legal duty, there is no negligence. Id. An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). This duty arises from the owner's superior knowledge of conditions on the premises within his control.

See Dunbar v. Charleston & W.C. Ry. Co., 211 S.C.209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. Id. After the premises is surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. Id. citing W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts 435 (5th ed. 1984).

Pursuant to Section 1.2 of the Lease, Saul, LLC (interchangeably "Landlord") leased the subject property to Wells Fargo/Wachovia (interchangeably "Tenant") with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. See Exhibit A: pg. 23- 24 (emphasis added). Attached as an exhibit to the Lease is the Site Plan, which defines the "Tenant Dedicated Parking Areas" as spaces designated "W." See Exhibit B.

Additionally, attached as Exhibit C, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that "Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis." See Exhibit C. Further, the email states that "[t]hese parking areas are not common area under the Lease." Id.

Further, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises… and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)" See Exhibit A. pg. 72. Moreover, Section 5.6(e) of the Lease states that, "[i]n any such event, Tenant shall notify

Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request." Id. at pg. 73.

Finally, Section 14.1 of the Lease states that: "[a]ny notice or other communication required or permitted to be given under this Lease (each, a "notice") must be in writing and shall be sent to all Notice Parties..." Id. The Lease provides under Section 5.5(a), that "Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas...." Id. However, the Lease fails to define maintenance and repairs.[1]

Further, there has not been any documents presented by Wells Fargo that states that they ever notified Saul about any hazardous conditions in the Tenant Controlled Parking Area. The Lease stipulated that Wells Fargo shall notify Saul of any need of repair, in writing. Rather, as noted in the attached Affidavit of Esther Shaver Harnett, Saul was never given any Notice, as defined by the Lease, for any needs to make any maintenance or repairs to the exclusive Wells Fargo parking area prior to the alleged incident. See Exhibit D. Saul gave all rights to the subject property to Wells Fargo pursuant to the terms of the Lease. Wells Fargo had full control over the Tenant Controlled Parking Area. Wells Fargo had a duty to exercise reasonable care in maintaining the exclusive Tenant Controlled Parking Area, and to let Saul know in writing any needs for repairs. Pursuant to the Affidavit of Esther Shaver Harnett, Saul was never notified of any needs for repairs in the Tenant Controlled Parking Area. See Exhibit D.

Pursuant to the lease, Wells Fargo had complete control of the property. See Exhibit A (Lease) and Exhibit C (Email from Wells Fargo's counsel). As such, there is no duty for Saul to seek out and determine whether any alleged defects or hazards existed in the parking lot which is

[1] An analysis on this issue will be provided in the following section.

not in Saul's control. See Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992) (establishing that in the absence of an agreement to the contrary, after a premises is surrendered to a lessee in good condition, the lessor typically is not responsible for hazardous conditions.) Wells Fargo exercised complete and exclusive control of the parking area where the alleged incident occurred, and therefore, Saul cannot be found liable to the Plaintiff as a matter of law.

2. **Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.**

At common law, where there is no duty to act, but an act is voluntarily undertaken, the actor assumes a duty to use due care. Sherer v. James, 290 S.C. 4040, 351 S.E.2d 148 (1986). In Byerly v. Connor, the Appellant argued that the lessor owed a duty to discover and warn of latent hazardous conditions because it undertook to inspect the property at issue. 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992). An agent of the Lessor testified that he conducted yearly inspections of the property solely for the purpose of ensuring that the property conformed to structural requirements of permits issued. Id. The South Carolina Supreme Court determined that the Lessor undertook a limited duty to use due care to discover structural nonconformity with permits, which did not include a duty to inspect for a latent hazardous condition. Id. "Summary Judgment can be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Id. citing Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). Courts will interpret contracts in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. See M and M Corp. of S.C. v. Auto-Owners Ins. Co., 390 S.C. 255, 701 S.E.2d 33, (2010). "Courts must enforce, not write, contracts... and their language must be given its plain, ordinary [,] and popular

meaning." Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Here, Saul leased the property to Wells Fargo "as-is." See Exhibit A. However, pursuant to the lease Saul had an obligation to give maintenance and service to the property. Id. However, the lease fails to address whether Saul had a duty to *inspect*. Saul agrees it has a duty to maintain the property pursuant to the terms of the Lease – *when asked to perform repairs*. Here, there is nothing that shows that Saul was asked by Wells Fargo to correct any condition in the parking lot – and certainly not this condition. The work orders submitted by Wells Fargo establish that no request for work on this area was requested. Additionally, Wells Fargo has issued letters to Saul indicating they "control" the parking lot. See Exhibit C. While this email is after the alleged fall, the Affidavit of Esther Shaver Harnett establishes that Saul exercised no control over the use of the property. See Exhibit D.

As established above, Saul had given complete and exclusive control over the subject property where the alleged incident occurred to Wells Fargo. Saul did not assume a voluntary duty, as shown by the Attached Affidavit of Esther Shaver Harnett. See Exhibit D. Saul was not asked to perform any maintenance or services on the area where the alleged incident occurred. As such, Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

CONCLUSION

Saul released the complete and exclusive control of the subject property to Wells Fargo, pursuant to the terms of the Lease and the email from Wells Fargo's counsel. Since Saul gave the control of the subject property to Wells Fargo, Saul maintained no duties or obligations as a matter of law to Plaintiff. Saul never assumed a voluntary duty to inspect the property for latent defects,

therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff. Therefore, all claims made by Plaintiff against Saul, LLC should be dismissed as a matter of law.

Dated this 20th day of January, 2020

WALL Ttempleton & HALDRUP, P.A.

s/Morgan S. Templeton

Morgan S. Templeton (SC Bar #15456)
David A. Nasrollahi (SC Bar #103242)
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500
Attorneys for Defendants Saul, LLC

EXHIBIT 2-A

Beaufort Main Financial Center
WBBD : 3410
PID: 506584

LEASE

between

FIRST STATES INVESTORS 3300, LLC

and

WACHOVIA BANK, NATIONAL ASSOCIATION

Dated as of September 22, 2004

Property Address:
1011 Bay Street
Beaufort, SC

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EXHIBITS

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of September 22, 2004, by and between FIRST STATES INVESTORS 3300, LLC, a Delaware limited liability company (hereinafter called "Landlord"), and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association (hereinafter called "Tenant"). Terms with initial capital letters used in this Lease shall have the meanings assigned for such terms in Section 1.1(b).

BACKGROUND

A. Tenant, as seller, and Landlord, as purchaser, are parties to the Purchase Agreement, pursuant to which Tenant agreed to sell and convey to Landlord, and Landlord agreed to purchase from Tenant, the Property as well certain other properties not covered by this Lease.

B. The closing of the Purchase Agreement as to the Property has occurred as of the date hereof, and this Lease is being executed and delivered thereat pursuant to the Purchase Agreement.

C. Wachovia Corporation, a North Carolina corporation, has agreed to guaranty and act as surety for the performance of Tenant's obligations hereunder pursuant to that certain Lease Guaranty dated of even date herewith.

D. Tenant and Landlord are parties to the Master Agreement (i) which contains certain additional covenants with respect to the subject matter of this Lease and certain other leases as more particularly provided therein, and (ii) which, during the Integration Period, shall be deemed integrated with, and constitute a part of, this Lease (and if, during the Integration Period, there shall be a conflict between the terms and provisions of the Master Agreement and those of this Lease, the terms and provisions of the Master Agreement control and govern):

ARTICLE I
BASIC LEASE INFORMATION, LEASED PREMISES, TERM, AND USE

1.1 Basic Lease Information; Definitions

(a) The following Basic Lease Information is hereby incorporated into and made a part of this Lease. Each reference in this Lease to any information and definitions contained in the Basic Lease Information shall mean and refer to the information and definitions hereinbelow set forth.

Commencement Date:	September 22, 2004.
Expiration Date:	September 30, 2024.
Initial Term:	Commencing on the Commencement Date, and, unless extended or sooner terminated as herein provided, ending on Expiration Date.

Leased Premises:	The Original Leased Premises, subject to additions to, and/or deletions from, the Leased Premises as herein provided. The "Original Leased Premises" shall be and consist of the areas of the Property identified on Exhibit B hereto as being demised and leased to Tenant hereunder, including the areas of the Building so identified and, if applicable, any Drive-Through Banking Facilities so identified. Each time there is an addition to, or deletion from, the Leased Premises as provided herein, including pursuant to Section 1.7 (Release Premises), Section 6.1 (Condemnation), Article X (Expansion Rights) and Article XI (Termination Rights), Landlord and Tenant, within thirty (30) days thereafter, shall execute and deliver a written instrument confirming the same, which instrument shall (x) set forth the then Net Rentable Area of the Leased Premises, the Annual Basic Rent and Tenant's Occupancy Percentage, and (y) be accompanied by a revised Exhibit B hereto showing the then location and configuration of the Leased Premises. References herein to the Leased Premises shall not include any Release Premises, except to the extent that former Release Premises are, at Tenant's election, added to the Leased Premises as expressly provided in Section 1.7 hereof.
Release Premises:	All those certain portions of the Building identified on Exhibit B-1 hereto as being "Release Premises", subject to deletions from the Release Premises pursuant to Section 1.7 (by virtue of either Tenant electing to add all or any portion of the Release Premises to the Leased Premises pursuant to Section 1.7(c) or Tenant electing to surrender any portion of the Release Premises prior to the end of the Preliminary Period pursuant to Section 1.7(d)(1) hereof). Each time there is a deletion from the Release Premises as herein provided, Landlord and Tenant, within thirty (30) days thereafter, shall execute and deliver a written instrument confirming the same, which instrument shall (x) set forth the then Net Rentable Area of the Release Premises and Tenant's Occupancy Percentage, and (y) be accompanied by a revised Exhibit B-1 hereto showing the then location and configuration of the Release Premises.
Landlord's Address for Notices:	First States Investors 3300, LLC c/o American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046 Attention: Operations Fax: (215) 887-9856
with a copy to:	American Financial Realty Trust 680 Old York Road, Suite 200 Jenkintown, Pennsylvania 19046

Attention: General Counsel
Fax: (215) 887-9856

Tenant's Address for Notices:

Wachovia Bank, N.A.
Corporate Real Estate
401 S. Tryon Street, 18th Floor, NC0340
Charlotte, NC 28202
Attention: Cindy Burns, Ops Leader, AVP
Fax: (704) 374-6832

with a copy to:

Wachovia Bank, N.A.
Corporate Real Estate
225 Water Street, Suite 850
Jacksonville, FL 32202
Attention: Neil C. King, SVP
Fax: (904) 489-3544

and to:

Wachovia Bank, N.A.
Corporate Real Estate
401 S. Tryon Street, 18th Floor
Charlotte, NC 28202
Attention: Sarah Muenow, AVP
Fax: (704) 374-6832

and to:

Wachovia Bank, N.A.
Corporate Legal Division
301 S. College Street, 30th Floor, NC0630
Charlotte, NC 28288-0630
Attention: Rebecca Olliff (PID # 506584)
Fax: (704) 715-4498

and to:

Wachovia Corporate Real Estate
201 N. Tryon St., 21st Fl, NC0114
Charlotte, NC 28288-0114
Attn: Lease Administration (PID#506584)

Interest Holder's Address for Notices:

Lehman Brothers Holdings Inc.
Commercial Mortgage Surveillance Group
399 Park Avenue, 8th floor
New York, New York 10022
Attention: Charles Manna
Fax: (646) 758-5366

with a copy to:

Dechert LLP
4000 Bell Atlantic Tower

1717 Arch Street
Philadelphia, Pennsylvania 19103
Attention: David W. Forti, Esq.
Fax: (215) 994-5106

(b) As used in this Lease, the following terms shall have the respective meanings indicated below, and such meanings are incorporated in each such provision where used as if fully set forth therein:

"AAA" shall mean the American Arbitration Association.

"Above Standard Services" shall have the meaning assigned to such term in Section 3.1(c).

"Above Standard Services Rent" shall mean any and all charges required to be paid by Tenant for Above Standard Services as expressed in Section 3.1(c).

"Actual Delivery Date" shall have the meaning assigned to such term in Section 10.3.

"Additional Rent" means Tenant's Operating Expense Share, Tenant's Tax Share, Above Standard Services Rent and all other sums (other than Annual Basic Rent) that Tenant is obligated to pay to or reimburse Landlord for by the terms of this Lease.

"Affiliate" of any party, shall mean any other person controlling, controlled by, or under common control with such party; the term "control", as used herein, shall mean both (i) the possession, direct or indirect, of the power to direct or cause the direction, of the management and policies of such controlled party or other person, and (ii) the ownership, directly or indirectly, of more than fifty percent (50%) of the equity (*i.e.*, the voting stock, general or other partnership interests, membership interests and/or other equity or beneficial interests) of such party or other person.

"Alterations" shall have the meaning assigned to such term in Section 5.2.

"Annual Basic Rent" shall mean the annual basic rent payable by Tenant under this Lease for the Leased Premises, which Annual Basic Rent shall, from time to time, be equal to the sum of (I) the *product of* (i) the Annual Basic Rent Factor, *multiplied by* (ii) the Net Rentable Area of the Base Leased Premises, plus (II) if any Short-Term Additional Space is then part of the Leased Premises, then, as to each thereof, the *product of* (i) the STAS Basic Rental Factor for such Short-Term Additional Space, *multiplied by* (ii) the Net Rentable Area of such Short-Term Additional Space. The Annual Basic Rent due under this Lease shall be re-calculated each time there is a change in (x) the Net Rentable Area of the Leased Premises (due to additions to, or deletions from, the Leased Premises), (y) the Annual Basic Rent Factor (including a change in the Initial ABR Factor pursuant to the proviso in the definition thereof), or (z) the STAS Basic Rental Factor for any Short-Term Additional Space; with any such re-calculation being effective as of the date of such change. Upon any such re-calculation, Landlord and Tenant shall execute and deliver a written instrument confirming the same, and incorporating the same into this Lease.

"Annual Basic Rent Factor" (i) for the Initial Term, shall mean a rate, per RSF, per annum, equal to the Initial ABR Factor, except, that (x) effective as of the first day of the sixth (6th) Lease Year, the Annual Basic Rent Factor shall be increased to be 101.5% of the Initial ABR Factor, (y) effective as of the first date of the eleventh (11th) Lease Year, the Annual Basic Rent Factor shall be increased to be 101.5% of the Annual Basic Rent Factor immediately prior to the eleventh (11th) Lease Year, and (z) effective as of the first date of the sixteenth (16th) Lease Year, the Annual Basic Rent Factor shall be increased to be 101.5% of the Annual Basic Rent Factor immediately prior to the sixteenth (16th) Lease Year, and (ii) for each Renewal Term, shall mean the rate, per square foot of Net Rentable Area, for such Renewal Term that is described and determined pursuant to Section 1.4(c)(1) hereof.

"Applicable Rate" shall mean an annual rate of interest equal to the lesser of (i) the greater of (a) the Prime Rate plus three percent (3%) and (b) thirteen (13%) percent, and (ii) the maximum contract interest rate per annum allowed by law.

"Appraiser" shall mean an independent licensed real estate broker, or independent licensed appraiser, having at least ten (10) years' experience in brokering commercial leasing transactions, or appraising commercial income properties, as the case may be, in the Market Area involving properties similar to the Property, and who shall be associated with a nationally or regionally recognized real estate brokerage or appraisal firm, with local offices within, or in the vicinity of, the Market Area, which firm is not under contract with or otherwise so associated with either Landlord or Tenant as to reasonably impair its or their ability to render impartial judgments.

"Arbitration Notice" shall have the meaning assigned to such term in Section 12.2(a).

"Assignment" shall have the meaning assigned to such term in Section 8.1.1.

"ATM" shall mean automated teller machine.

"Audit Notice" shall have the meaning assigned to such term in Section 2.5.

"Availability Date" shall have the meaning assigned to such term in Section 10.2.

"Available Leasable Areas" shall have the meaning assigned to such term in Section 10.1.

"Bank Divestiture Transaction" shall have the meaning assigned to such term in Section 8.5.1.

"Base Building" shall mean, collectively, (i) the Building's foundations and footings, and its structural slabs, beams, columns, girders, members and supports, (ii) the Building's roof(s) and roof terraces, exterior walls (including facade), exterior windows and exterior entrances (including entrance doors), and (iii) Building Systems.

"Base Leased Premises" shall mean, collectively, (i) the Original Leased Premises (for so long thereafter as the same shall remain demised hereunder), (ii) any Coterminous Former Release Premises (if, as and when the same are added to the Leased Premises pursuant to

Section 1.7(e), and for so long thereafter as the same shall remain demised hereunder), and (iii) any Coterminous Expansion Space (if, as and when the same are added to the Leased Premises pursuant to Section 10.4, and for so long thereafter as the same shall remain demised hereunder).

"BOMA" shall mean the Building Owners and Managers Association.

"Budget" shall have the meaning assigned to such term in Section 2.4(a).

"Budget Year" shall have the meaning assigned to such term in Section 2.4(a).

"Building" shall mean the building (or building complex) located upon the Land and identified on Exhibit A-1.

"Building Identification Signage" shall have the meaning assigned to such term in Section 3.4(a).

"Building Operating Hours" shall be the hours, designated as such, on Exhibit C hereto.

"Building Rules" shall have the meaning assigned to such term in Section 4.5.

"Building Signage" shall have the meaning assigned to such term in Section 3.4(a).

"Building Standard Services" shall have the meaning assigned to such term in Section 3.1(a).

"Building Standards" shall mean materials of the type, quality and quantity generally used throughout the Building and in Comparable Buildings.

"Building System HVAC Service" shall have the meaning assigned to such term in Section 3.1(a).

"Building Systems" shall mean the utility and service systems (including electrical, gas, plumbing, condenser water, elevator, HVAC, communication, life safety and other mechanical systems) of the Building, but only up to, and not beyond, the point of distribution to any Leasable Areas and/or the point of connection to the separate facilities of a particular tenant or other occupant.

"Building's CW System" shall have the meaning assigned to such term in Section 3.1(b).

"Building's Loading & Delivery Facilities" shall have the meaning assigned to such term in Section 3.1(a).

"Bureau of Labor Statistics" shall mean the U.S. Department of Labor, Bureau of Labor Statistics.

"Business Days" shall mean all days except Saturdays, Sundays and Holidays.

"Casualty" shall have the meaning assigned to such term in Section 6.3(a).

"Change in Control Transaction" shall have the meaning assigned to such term in Section 8.1.1.

"Closing" shall mean the closing and transfer of title to the Property to Landlord pursuant to the Purchase Agreement.

"Commencement Date" shall have the meaning assigned to such term in Section 1.1(a).

"Common Areas" shall mean (i) the Building's lobbies and corridors (located outside of Leasable Areas), including the Building's elevators, escalators, stairways and other Building Systems providing ingress and egress thereto and therefrom, (ii) the Building's loading and freight delivery areas (located outside of Leasable Areas), including any freight elevators located therein, (iii) the Building's lavatories (located outside of Leasable Areas), (iv) the Building's electrical, telephone and other utility or service rooms, closets and shafts (located outside of Leasable Areas), (v) the Parking Areas, (vi) the sidewalks, curb areas, plazas, walkways, driveways and other passageways upon the Land, together with any other landscaped areas of the Land (other than any Drive-Through Banking Facilities which, as herein-above provided, comprise part of the Leased Premises), and (vii) any other areas of the Property available, from time to time, for the common use of tenants and other occupants of the Property (and their customers, guests and invitees).

"Communications Equipment" shall have the meaning assigned to such term in Section 3.5(a).

"Comparable Buildings" shall mean buildings within the Market Area that have a use, quality, age, configuration and construction that is comparable to that of the Building.

"Contemplated OE Includable Capital Item" shall have the meaning assigned to such term in Section 2.4(a).

"Contemplated Sublease Area" shall have the meaning assigned to such term in Section 8.2.1.

"Contract of Sale" shall have the meaning assigned to such term in Section 9.1.1.

"Coterminous Expansion Space" shall have the meaning assigned to such term in Section 10.3.

"Coterminous Former Release Premises" shall have the meaning assigned to such term in Section 1.7(e).

"Damaged Property" shall have the meaning assigned to such term in Section 6.3(a).

"Damages Period" shall have the meaning assigned to such term in Section 7.1(b).

"Demising Work" shall have the meaning assigned to such term in Section 5.7(a).

"Demising Work Costs" shall have the meaning assigned to such term in Section 5.7(a).

"Drive-Through Banking Facility" shall mean the portion of the Leased Premises, if any, identified as a Drive-Through Banking Facility on Exhibit B hereto.

"Early Termination Date" shall have the meaning assigned to such term in Section 11.1.

"Electric Utility Company" shall have the meaning assigned to such term in Section 3.1(a).

"Eligible Sublease" shall have the meaning assigned to such term in Section 8.7.1.

"Environmental Information" shall have the meaning assigned to such term in Section 4.7(a).

"Environmental Matters" shall have the meaning assigned to such term in Section 4.7(a).

"Exempt LL Transfer" shall have the meaning assigned to such term in Section 9.1.1.

"Expansion Rights" shall have the meaning assigned to such term in Section 10.3.

"Expansion Space" shall have the meaning assigned to such term in Section 10.3.

"Expansion Space Acceptance" shall have the meaning assigned to such term in Section 10.3.

"Expiration Date" shall have the meaning assigned to such term in Section 1.1(a).

"Event of Default" shall have the meaning assigned to such term in Section 7.1(a).

"Existing Mortgage" shall have the meaning assigned to such term in Section 15.1.

"Existing Overlease" shall have the meaning assigned to such term in Section 15.2.

"Fair Market Rental Value Per RSF", for any Leasable Area at any time, shall mean the fixed rent, per RSF, per annum, that (at the time in question) would be offered and accepted under an arm's-length net lease (i.e., a lease under which the tenant separately pays its proportionate share of all operating expenses, real estate taxes, utilities and other pass-throughs, without any "*base year*" or "*stop*") between an informed and willing tenant (that is not then a tenant of any Leasable Area) and an informed and willing landlord, neither of whom is under any compulsion to enter into such transaction, demising such Leasable Area (determined with reference to market for space in Comparable Buildings that is comparable in size, location and quality to such Leasable Area), *assuming* (i) such arm's length net lease will demise the Leasable Area in its then "AS IS" condition (except that if such Leasable Area is already a part of the Leased Premises, then assuming a condition and state of repair consistent with the requirements of this Lease), and (ii) such arm's length net lease will be for a term equal to the then typical initial term of such a lease in the aforementioned market, and *further assuming the following factors* (and, based thereon, making any appropriate adjustments to the fixed rent which would otherwise be offered and accepted for such an arm's length net lease pursuant to the foregoing provisions of this definition): (I) that the tenant will not receive, and the landlord will not provide

or pay, (w) any workletter, (x) any improvement, relocation, moving or other allowance or contribution, (y) any rent abatement or other reduced or free rent period, or (z) any other allowance or concession, in connection with the tenant's leasing of the Leasable Area (except that if such Leasable Area is Short-Term Expansion Space, then assuming that the tenant is entitled to a free rent period equal in length to the free rent period that Tenant is entitled to, pursuant to Section 10.4(g), with respect to such Short-Term Expansion Space); (II) that the landlord will not pay any brokers' fee or commission in connection with the tenant's leasing of the Leasable Area; (III) that such arm's length net lease provides for the landlord's inclusion, and the tenant's payment, of amortized capital expenditures in operating expenses to the same extent as provided in this Lease; and (IV) that the creditworthiness of the tenant is the same as that of Tenant.

"Final Budget" shall have the meaning assigned to such term in Section 2.4(d).

"Final Contract of Sale" shall have the meaning assigned to such term in Section 9.1.1.

"Final SLC Plans & Specifications" shall have the meaning assigned to such term in Section 5.7(b).

"Final SLC Space Plan" shall have the meaning assigned to such term in Section 5.7(b).

"Fiscal Period" shall have the meaning assigned to such term in Section 2.3(a).

"Force Majeure Events" means events beyond Landlord's or Tenant's (as the case may be) control, which shall include, without limitation, all labor disputes, governmental regulations or controls, war, fire or other casualty, inability to obtain any material or services, acts of God, or any other cause not within the reasonable control of Landlord or Tenant (as the case may be).

"FSG" shall mean (i) FIRST STATES GROUP, L.P., a Delaware limited partnership, or (ii) a person constituting an immediate or remote successor to FIRST STATES GROUP, L.P. by virtue of one or more mergers, consolidations and/or transfers of all, or substantially all, the assets of FIRST STATES GROUP, L.P. (or another person described in this clause (ii)).

"GAAP" shall mean generally accepted accounting principles, consistently applied.

"Governmental Authority" means the United States, the state, county, city and political subdivision in which the Property is located or that exercises jurisdiction over the Property, Landlord or Tenant, and any agency, department, commission, board, bureau or instrumentality of any of the foregoing that exercises jurisdiction over the Property, Landlord or Tenant.

"Gross Revenue" shall mean all gross rental income of Landlord generated from the operation of the Property, including basic rents, additional rents and other charges collected from Tenant and other tenants or occupants of the Property, but excluding (a) any such rents and other charges which represent payment or reimbursement for any utilities or services provided to tenants or other occupants of the Property which are not provided to Tenant under this Lease without a separate charge, (b) revenue received by Landlord for parking (whether from Tenant, other tenants or occupants of the Property or otherwise), or from vending areas, cafeterias, fitness centers, etc., and (c) any revenue received by Landlord from any further development or

leasing of the Property. In no event shall the term "gross rental income", as used in this definition, ever be deemed to include (i) security deposits, unless and until such deposits are applied as rental income, (ii) interest on bank accounts for the operation of the Property, (iii) proceeds from the sale or refinancing of the Property (or any portion thereof), (iv) insurance proceeds or dividends received from any insurance policies pertaining to physical loss or damage to the Property, (v) condemnation awards or payments received in lieu of condemnation of the Property and (vi) any trade discounts and rebates received in connection with the purchase of personal property or services in connection with the operation of the Property.

"Hazardous Materials" means any flammable materials, explosive materials, radioactive materials, asbestos-containing materials, the group of organic compounds known as polychlorinated biphenyls and any other hazardous, toxic or dangerous waste, substance or materials defined as such in (or for purposes of) the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 to 9675, the federal Hazardous Materials Transportation Act, 42 U.S.C. §§ 5101 to 5127, the federal Solid Waste Disposal Act as amended by the Resources Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 to 6992k, the federal Toxic Substance Control Act, 15 U.S.C. §§ 2601 to 2692 or any other Legal Requirement from time to time in effect regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material.

"Holidays" shall mean New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Christmas Day and any and all other dates observed as bank holidays by national banks. If, in the case of any holiday described above, a different day shall be observed than the respective day described above, then that day that constitutes the day observed by national banks in the State on account of such holiday shall constitute the Holiday under this Lease.

"HVAC" shall mean heating, ventilating and air conditioning.

"Initial ABR Factor" shall mean $5.95 per RSF, per annum; provided, however, that if the provisions of Section 8 of the Master Agreement are applicable, then, effective as of the first (1st) day of the third Lease Year, the Initial ABR Factor shall be re-calculated in accordance therewith. Upon any such re-calculation, Landlord and Tenant shall execute and deliver a written instrument confirming the same, and incorporating the same into this Lease.

"Initial Term" shall have the meaning assigned to such term in Section 1.1(a).

"Interest Holder" shall mean each of (i) any Overlessor with which Tenant has entered into an Overlease SNDA, and (ii) any Mortgagee with which Tenant has entered into a Mortgage SNDA.

"Integrated Properties" shall mean all the Portfolio Properties, in which, at the time in question, space is demised under a lease which, at the time in question, is defined as an "*Integrated Lease*" pursuant to the provisions of the Master Agreement.

"Integration Period" shall mean all periods within the Term during which this Lease is defined as an "*Integrated Lease*" pursuant to the provisions of the Master Agreement.

"JAMS" shall mean Judicial Arbitration & Mediation Services, Inc.

"KWHs" shall have the meaning assigned to such term in Section 3.1(a).

"Land" shall mean the parcel(s) of land identified on Exhibit A hereto.

"Landlord" shall mean only the owner of Landlord's Estate, at the time in question; it being agreed that: (I) during the Integration Period, the foregoing provisions of this definition shall not be construed to relieve Landlord Named Herein, or any subsequent Landlord, from the obligations of Landlord under this Lease accruing during the period that it is Landlord hereunder or thereafter; (II) upon any transfer of Landlord's Estate that complies with the provisions of Article IX hereof, but results in the end of the Integration Period (and upon each subsequent transfer of Landlord's Estate that complies with the provisions of Article IX hereof), the transferor shall thereby be relieved and freed of all obligations of Landlord under this Lease accruing after such transfer; and (III) upon any transfer of Landlord's Estate, the transferee shall thereby be deemed to have assumed all obligations of Landlord under this Lease accruing after such transfer (and, during the Integration Period, such transferee shall also be deemed to have assumed all the obligations of Landlord under the Master Agreement).

"Landlord Appointed Property Manager" shall have the meaning assigned to such term in Section 3.6(a).

"Landlord Budget Objection" shall have the meaning assigned to such term in Section 2.4(f).

"Landlord Default Notice" shall have the meaning assigned to such term in Section 7.10.

"Landlord Electrical Invoice" shall have the meaning assigned to such term in Section 3.1(a).

"Landlord Event of Default" shall have the meaning assigned to such term in Section 13.1(a).

"Landlord Expansion Response" shall have the meaning assigned to such term in Section 10.2.

"Landlord Initiated Contest" shall have the meaning assigned to such term in Section 2.3(c).

"Landlord Management Period" shall have the meaning assigned to such term in Section 3.6(a).

"Landlord Named Herein" shall mean FIRST STATES INVESTORS 3300, LLC.

"Landlord Party" shall mean any principal (which shall include any shareholder, partner, member or other owner, direct or indirect, disclosed or undisclosed) of Landlord, or any director, officer, employee, agent or contractor of Landlord (or of any principal of Landlord).

"Landlord Repairs" shall have the meaning assigned to such term in Section 5.5(a).

"Landlord's Average Cost Per KWH" shall have the meaning assigned to such term in Section 3.1(a).

"Landlord's Estate" shall mean the estate and interest of Landlord in the Property, including fee title to the Property and/or the lessee's interest in an Overlease affecting the Property.

"Landlord's Liens" shall have the meaning assigned to such term in Section 7.3(a).

"Landlord's Offer Notice" shall have the meaning assigned to such term in Section 9.2.1.

"Landlord's Preliminary Notice" shall have the meaning assigned to such term in Section 9.3.1.

"Landlord's RCT Period" shall have the meaning assigned to such term in Section 8.3.2.

"Landlord's RCT Termination Notice" shall have the meaning assigned to such term in Section 8.3.2.

"Landlord's RCT Termination Option" shall have the meaning assigned to such term in Section 8.3.2.

"Landlord's Recapture Notice" shall have the meaning assigned to such term in Section 8.2.2.

"Landlord's Recapture Option" shall have the meaning assigned to such term in Section 8.2.2.

"Landlord's Recapture Period" shall have the meaning assigned to such term in Section 8.2.2.

"Landlord's Restoration Work" shall have the meaning assigned to such term in Section 6.3(a).

"Landlord's RFR Notice" shall have the meaning assigned to such term in Section 9.3.2.

"Landlord's Transfer Notice" shall have the meaning assigned to such term in Section 9.2.4.

"Leased Premises" shall have the meaning assigned to such term in Section 1.1(a). For purposes of this Lease, the Leased Premises, at any time, shall be deemed to consist only of the space within the inside surfaces of all the demising walls, exterior windows and entrances, and structural ceilings and floors, bounding the areas comprising the Leased Premises, at such time.

"Leasable Area Submeters" shall have the meaning assigned to such term in Section 3.1(a).

"Leasable Areas" shall, at any time, mean all areas of the Building that are then leased (or occupied), available for lease (or occupancy), or otherwise susceptible of being leased (or occupied), by tenants (or other occupants); whether or not the same are then being marketed or are then capable of being legally or physically occupied.

"Lease Year" means (i) the period commencing on the Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Commencement Date occurs (sometimes herein referred to as the first Lease Year), and (ii) each period of twelve (12) consecutive calendar months thereafter occurring within the Term (*i.e.*, the second Lease Year commences upon the expiration of first Lease Year and ends one (1) year later, and all subsequent Lease Years commence upon the expiration of the prior Lease Year), except, that the last Lease Year during the Term ends on the last day of the Term.

"Leasehold Improvements" shall mean all improvements, betterments and/or equipment installed within, and affixed or attached to, the Leased Premises, so as to become a part thereof, by, or on behalf of, Tenant (or any Tenant Party) (including (x) such improvements, betterments and/or equipment constructed or installed by Tenant prior to the date hereof, or such improvements, betterments and/or equipment constructed or installed by Tenant pursuant to Section 5.2 hereof). Without limiting the foregoing, the term *Leasehold Improvements* shall be deemed to include (i) permanent interior walls, permanent floor coverings (*e.g.*, wall-to-wall carpeting, but not area rugs or other un-affixed carpeting), permanent wall coverings (*e.g.*, wall paper, wood paneling) and drop ceilings, (ii) basic light fixtures (but not chandeliers or other lighting fixtures above the quality of Building Standard), (iii) doors, door hardware, (iv) window blinds, (v) to the extent that any portion of the Leased Premises is, immediately prior to the end of the Term, being used as a retail banking branch, the vaults, vault doors, teller counters and under-counter steel located in such portion of the Leased Premises, and, with respect to the Drive-Through Banking Facilities (if any), the pneumatic tubing and kiosks thereat, and (vi) Tenant's line, riser and other connections to the Building Systems. Notwithstanding the foregoing provisions of this definition, in no event shall the term "Leasehold Improvements" be deemed to include any property included within the definitions of "*Base Building*" or "*Tenant Property*" hereunder.

"Legal Requirements" means any law, statute, ordinance, order, rule, regulation or requirement of a Governmental Authority.

"LL Rent Schedule" shall have the meaning assigned to such term in Section 9.2.1.

"LL Transfer" shall have the meaning assigned to such term in Section 9.1.1.

"LL Transfer Permitted Encumbrances" shall have the meaning assigned to such term in Section 9.2.1.

"LRW Estimate" shall have the meaning assigned to such term in Section 6.3(a).

"Management Designation Notice" shall have the meaning assigned to such term in Section 3.6(c).

"Market Area" shall mean the metropolitan area within which the Property is located, which area may be more particularly identified on Exhibit C hereto.

"Master Agreement" shall mean that certain Master Agreement Regarding Leases by and between Landlord Named Herein and Wachovia, dated as of the date hereof.

"Measurement Standard" shall mean the Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1989, as promulgated by BOMA.

"Monthly Estimated OE Payments" shall have the meaning assigned to such term in Section 2.2(b).

"Mortgage" shall mean any mortgage or deed of trust which may now or hereafter affect the Property (and/or an Overlease).

"Mortgagee" shall mean any holder of any Mortgage.

"Mortgage SNDA" shall mean a subordination, non-disturbance and attornment agreement between a Mortgagee and Tenant in the form annexed as Exhibit D-1 hereto, and in proper form for recording, together with such changes thereto that are both proposed by a Mortgagee and approved by Tenant; *it being agreed that* Tenant shall not unreasonably withhold its approval of any such proposed change so long as (i) such proposed change is customary (at the time in question), and (ii) such proposed change does not (to more than a de minimis extent) decrease Tenant's rights, or increase Tenant's obligations, from those contained in the form of Mortgage SNDA annexed as Exhibit D-1 hereto.

"Net Rentable Area", of any Leasable Area, shall mean the number of RSF comprising the same determined in conformity with the Measurement Standard. References herein to the Net Rentable Area "*of the Building*" shall be deemed to mean the aggregate Net Rentable Area of all the Leasable Areas of the Building, as so determined. The final, and conclusively binding, determinations of the Net Rentable Areas of the Leased Premises (as the same exist on the Commencement Date), the Release Premises (as the same exist on the Commencement Date) and the Building (as the same exists on the Commencement Date) are as specified in Exhibit C hereto.

"Net Sublease Consideration" shall have the meaning assigned to such term in Section 8.4.2.

"Non-Consent Alterations" shall have the meaning assigned to such term in Section 5.2(c).

"Non-Dedicated Parking Areas" shall mean all portions of the Parking Areas other than Tenant Dedicated Parking Areas.

"Notice Parties" shall mean (i) in case of Landlord, the parties identified, with addresses, in Section 1.1(a) under the heading "*Landlord's Address for Notices*" (as the same may be modified consistent with the provisions of Section 14.1 hereof), and (ii) in the case of Tenant, the

parties identified, with addresses, in Section 1.1(a) under the heading "*Tenant's Address for Notices*" (as the same may be modified consistent with the provisions of Section 14.1 hereof).

"NPV Profit Amount" shall have the meaning assigned to such term in Section 8.2.3.

"OE Overpayment" shall have the meaning assigned to such term in Section 2.2(f).

"OE Includable Capital Item" shall have the meaning assigned to such term in Section 2.2(c)(3).

"OE Underpayment" shall have the meaning assigned to such term in Section 2.2(f).

"Operating Expenses" shall have the meaning assigned to such term in Section 2.2(b).

"Operating Expense Statement" shall have the meaning assigned to such term in Section 2.2(f).

"Original Leased Premises" shall have the meaning assigned to such term in Section 1.1(a).

"OT Building System HVAC Service" shall have the meaning assigned to such term in Section 3.1(c).

"Other Building Signage" shall have the meaning assigned to such term in Section 3.4(a).

"Other Demising Work" shall have the meaning assigned to such term in Section 5.7(a).

"Other Demising Work Costs" shall have the meaning assigned to such term in Section 5.7(a).

"Other Leasable Area Submeters" shall have the meaning assigned to such term in Section 3.1(a).

"Other Permitted Leases" shall have the meaning assigned to such term in Section 9.2.1.

"Other Qualified Rooftop Equipment" shall have the meaning assigned to such term in Section 3.5(d).

"Outside Completion Date" shall have the meaning assigned to such term in Section 6.3(d).

"Outside Expiration Date" shall mean September 30, 2054.

"Overlease" shall mean any ground lease, or other overlease, of the Property or any part thereof, now or hereafter existing.

"Overlessor" shall mean any lessor under an Overlease.

"Overlease SNDA" shall mean a subordination, non-disturbance and attornment agreement between an Overlessor and Tenant in the form annexed as Exhibit D-2 hereto, and in proper form for recording, together with such changes thereto that are both proposed by an Overlessor and approved by Tenant; *it being agreed that* Tenant shall not unreasonably withhold its approval of any such proposed change so long as (i) such proposed change is customary (at the time in question), and (ii) such proposed change does not (to more than a de minimis extent) decrease Tenant's rights, or increase Tenant's obligations, from those contained in the form of Overlease SNDA annexed as Exhibit D-2 hereto.

"Parking Areas" shall mean the parking areas and facilities for the Property as indicated on Exhibit A-1 hereto, together with (i) any walkways, driveways and other passageways upon the Land providing ingress and egress between such areas and facilities and the Building and/or between such areas and facilities and the Building, and (ii) any additional improvements now or hereafter located on the Land related to the foregoing areas and facilities.

"Personnel Costs" shall have the meaning assigned to such term in Section 2.2(c).

"Portfolio Properties" shall mean all properties acquired by Landlord pursuant to the Purchase Agreement.

"Preliminary Period" shall mean the first two Lease Years (*i.e.*, the period commencing on the Commencement Date and expiring on the last date of the second (2nd) Lease Year).

"Premises Submeter" shall have the meaning assigned to such term in Section 3.1(a).

"Primary Demising Work" shall have the meaning assigned to such term in Section 5.7(a).

"Primary Demising Work Costs" shall have the meaning assigned to such term in Section 5.7(a).

"Prime Rate" shall mean the "*prime rate*" announced by Wachovia Bank, National Association, or its successor, from time to time (or if the "*prime rate*" is discontinued, the rate announced as that being charged to said bank's most credit-worthy commercial borrowers).

"Prohibited Uses" shall have the meaning assigned to such term in Section 4.8(b).

"Property" means, collectively, (i) the Land, and (ii) all improvements now or hereafter located on the Land, including (x) the Building (inclusive of all improvements, betterments and/or equipment that, from time to time, are affixed or attached thereto, or otherwise constitute a part thereof), (y) the Common Areas (within or outside of the Building), including all sidewalks, curbs, plazas, paved walkways, driveways and other passageways upon the Land (as well as any other landscaping upon the Land), and (z) any Drive-Through Banking Facilities which comprise part of the Leased Premises, and (iii) any personal property belonging to Landlord which is located within or upon the Land and/or Building, and used in connection with the operation thereof.

"Property Manager" shall have the meaning assigned to such term in Section 3.6(a).

"Purchase Agreement" shall mean that certain Agreement of Sale and Purchase by and between Wachovia, as seller, and Landlord Named Herein, as purchaser, dated as of May 10, 2004.

"Qualified Damage" shall have the meaning assigned to such term in Section 6.3(b).

"RCT Termination Date" shall have the meaning assigned to such term in Section 8.3.3.

"RE Tax Contest" shall have the meaning assigned to such term in Section 2.3(c).

"Real Estate Taxes" shall have the meaning assigned to such term in Section 2.3(b).

"Recapture Effective Date" shall have the meaning assigned to such term in Section 8.2.3.

"Release Premises" shall have the meaning assigned to such term in Section 1.1(a).

"Release Premises Election Date" shall mean the last day of the sixth (6th) full calendar month of the second (2nd) Lease Year.

"Release Space Expiration Date" shall have the meaning assigned to such term in Section 1.7(d).

"Relevant Books and Records" shall have the meaning assigned to such term in Section 2.5(a).

"Remedial Work", as to any portion of the Property (including the Leasable Areas or the Common Areas), means the removal, relocation, elimination, remediation or encapsulation of Hazardous Materials from such portion(s) of the Property and, to the extent thereby required, the reconstruction and rehabilitation of such portion(s) of the Property pursuant to, and in compliance with, the provisions of this Lease.

"Renewal Appraisal Notice" shall have the meaning assigned to such terms in Section 1.4(e).

"Renewal Option" and "Renewal Options" shall have the meanings assigned to such terms in Section 1.4(a).

"Renewal Option Notice Date" shall mean, with respect to any Renewal Option, the date on which Tenant sends Tenant's Renewal Notice to Landlord as provided in Section 1.4.

"Renewal Term" and "Renewal Terms" shall have the meanings assigned to such terms in Section 1.4(a).

"Rent" means Annual Basic Rent and Additional Rent.

"Requesting Party" shall have the meaning assigned to such term in Section 12.1(a)(i).

"Required Above Standard Services" shall have the meaning assigned to such term in Section 3.1(c).

"Responding Party" shall have the meaning assigned to such term in Section 12.1(a)(i).

"Retail Conversion Transaction" shall have the meaning assigned to such term in Section 8.1.1.

"ROFO Closing" shall have the meaning assigned to such term in Section 9.2.3.

"ROFO Exercise Period" shall have the meaning assigned to such term in Section 9.2.2.

"ROFO Period" shall have the meaning assigned to such term in Section 9.1.1.

"ROFO Transfer Period" shall have the meaning assigned to such term in Section 9.2.4.

"RSF" shall mean rentable square feet.

"Scheduled Delivery Date" shall have the meaning assigned to such term in Section 10.3.

"SEC" means the Securities and Exchange Commission.

"Section 8.5 Transaction" shall have the meaning assigned to such term in Section 8.5.1.

"Security Areas" shall have the meaning assigned to such term in Section 4.2.

"Self-Insurance Net Worth Test" shall mean, as of any date, that (i) Tenant has a net worth of at least $1,000,000,000, and (ii) Tenant's long-term senior unsecured debt obligations are rated at least BBB (or its equivalent) by Standard & Poor's and Baa2 (or its equivalent) by Moody's as of that date; provided that if Tenant is rated by only one of Standard & Poor's or Moody's, such obligations shall have such rating from Standard & Poor's or Moody's, as the case may be, and a comparable rating from another nationally-recognized rating agency.

"Separate Charge Parking Areas" shall mean the portions of the Parking Areas that are designated as "*Separate Charge Parking Areas*" on Exhibit A-1 hereto.

"Separately Leasable Condition", when used with respect to any space in the Building, shall mean that such space (subject to the construction within such space of leasehold improvements of the type and nature normally found within legally occupied Leasable Areas) is legally capable of being separately leased to a tenant for general office purposes (or, in the case of ground floor space, general office, retail or banking purposes), including (i) being separately demised from any other Leasable Area (*i.e.*, bounded by demising walls), (ii) having an independent means of ingress and egress (*i.e.*, independent of any other Leasable Area) to, and from, the outside of the Building or to and from the Common Areas that serve such space, and (iii) being otherwise served by such Common Areas, whether general or limited, that, assuming the construction within such space of leasehold improvements of the type and nature normally found within legally occupied Leasable Areas, shall be legally sufficient to permit such space to separately leased as herein-above provided in this definition. The term "*leasehold*

improvements", as used herein, shall mean improvements and betterments to, and within the confines of, a demised Leasable Area, over and above the components of the Base Building therein.

"Service Failure" shall have the meaning assigned to such term in Section 3.1(f).

"Short-Term Additional Space" shall mean each of (i) the Short-Term Former Release Space (if, as and when the same are added to the Leased Premises pursuant to Section 1.7(f), and for so long thereafter as the same shall remain demised hereunder), or (ii) any Short-Term Expansion Space (if, as and when the same are added to the Leased Premises pursuant to Section 10.3, and for so long thereafter as the same shall remain demised hereunder).

"Short-Term Former Release Space" shall have the meaning assigned to such term in Section 1.7(f).

"Short-Term Expansion Space" shall have the meaning assigned to such term in Section 10.3.

"SLC Plans & Specifications" shall have the meaning assigned to such term in Section 5.7(b).

"SLC Space Plan" shall have the meaning assigned to such term in Section 5.7(b).

"SNDA" shall mean any of a Mortgage SNDA, an Overlease SNDA and a Sublease SNDA.

"STAS Basic Rental Factor", for any Short-Term Additional Space, shall, at any time, mean the rate, per square foot of Net Rentable Area, then applicable to such Short-Term Additional Space, as set forth (i) in the case of Short-Term Former Release Space, (x) in Section 1.7(f)(2), for all periods prior to the end of the Initial Term, and (y) in Section 1.4(c)(2), for any Renewal Terms, and (ii) in the case of any Short-Term Expansion Space, (xx) in Section 10.4(e)(2), for all periods prior to the end of the Initial Term (as well any Renewal Term during which such Short-Term Expansion Space is first added to the Leased Premises), and (yy) in Section 1.4(c)(2), for any Renewal Terms (other than the Renewal Term during which such Short-Term Expansion Space is first added to the Leased Premises).

"State" shall mean the State in which the Property is located.

"Sublease" shall mean any sublease demising the whole or any portion(s) of the Leased Premises.

"Subtenant" shall mean the subtenant under a Sublease.

"Sublease SNDA" shall mean a subordination, non-disturbance and attornment agreement between Landlord and a Subtenant in the form annexed as Exhibit D-3 hereto, and in proper form for recording, together with such changes thereto that are both proposed by a Subtenant and approved by Landlord; *it being agreed that* Landlord shall not unreasonably withhold its approval of any such proposed change so long as (i) such proposed change is

customary (at the time in question), and (ii) such proposed change does not (to more than a de minimis extent) decrease Landlord's rights, or increase Landlord's obligations, from those contained in the form of Sublease SNDA annexed as Exhibit D-3 hereto.

"Surrender Release Space" shall have the meaning assigned to such term in Section 1.7(d).

"Tax Statement" shall have the meaning assigned to such term in Section 2.3(a).

"Tenant" shall mean only the owner of Tenant's estate and interest under this Lease, at the time in question; *but* the foregoing provisions of this definition shall not be construed to relieve Tenant Named Herein, or any subsequent Tenant, from the obligations of Tenant accruing during the period that it is Tenant hereunder or thereafter.

"Tenant Budget Objection" shall have the meaning assigned to such term in Section 2.4(b).

"Tenant Business Group" shall have the meaning assigned to such term in Section 8.5.1.

"Tenant Controlled Contest" shall have the meaning assigned to such term in Section 2.3(c).

"Tenant Created Lien" shall have the meaning assigned to such term in Section 5.4(b).

"Tenant-Dedicated Parking Areas" shall mean the portions of the Parking Areas that are designated as "*Tenant Dedicated Parking Areas*" on Exhibit A-1 hereto.

"Tenant Expansion Notice" shall have the meaning assigned to such term in Section 10.1.

"Tenant Lien Cure Period" shall have the meaning assigned to such term in Section 5.4(b).

"Tenant Management Agreement" shall have the meaning assigned to such term in Section 3.6(c).

"Tenant Managed Property" shall have the meaning assigned to such term in Section 3.6(c).

"Tenant Management Period" shall have the meaning assigned to such term in Section 3.6(c).

"Tenant Management Services" shall have the meaning assigned to such term in Section 3.6(c).

"Tenant Named Herein" shall mean WACHOVIA BANK, NATIONAL ASSOCIATION.

"Tenant Party" shall mean (i) any principal (which shall include any shareholder, partner, member or other owner, direct or indirect, disclosed or undisclosed) of Tenant, or any director,

officer, employee, agent or contractor of Tenant (or of any principal of Tenant), or (ii) any Subtenant or other person claiming by, through or under Tenant (directly or indirectly), or any principal, director, officer, employee, agent or contractor of such Subtenant or such other person.

"Tenant Prominence Period" shall have the meaning assigned to such term in Section 3.4(b).

"Tenant Property" shall mean all movable personal property or trade fixtures (including any cabling or wiring installed within ceilings, ducts or chases of the Building but not permanently embedded within the walls of the Building) installed or maintained by, or at the instance of, Tenant (or any Tenant Party) within the Leased Premises (or, as expressly permitted hereunder, any areas outside of the Leased Premises).Without limiting the foregoing, the term *Tenant Property* shall be deemed to include the following: (i) any furniture, furnishings and equipment; (ii) moveable partitions and systems furniture; (iii) business, telecommunications and audio-visual equipment; (iv) computers, computer equipment, software and peripherals; (v) security systems and equipment; (vi) paintings and/or other works of art or decoration; (vii) all of Tenant's signage (whether exterior or interior), including Building Identification Signage and Tenant's Exterior Signage (but excluding Tenant's Monuments); (viii) ATMs connected to or located within the Building, or situated as freestanding structures on the Property, and any ATM related equipment; (ix) safes; (x) safe deposit boxes (including the nests or frames thereof); (xi) any equipment within the Leased Premises relating to Tenant's separate service systems (including, if within the Leased Premises, Tenant's Supplemental HVAC Equipment); (xii) Tenant's Exterior Equipment (including Tenant's Rooftop Equipment and, if outside the Leased Premises, Tenant's Supplemental HVAC Equipment); and (xiii) specialty fixtures, such as chandeliers or other lighting fixtures above the quality of Building Standard.

"Tenant Required Contest" shall have the meaning assigned to such term in Section 2.3(c).

"Tenant Sub-Manager" shall have the meaning assigned to such term in Section 3.6(c).

"Tenant's Allotted CW Capacity" shall have the meaning assigned to such term in Section 3.1(b).

"Tenant's Building Signage" shall have the meaning assigned to such term in Section 3.4(a).

"Tenant's Dedicated Electrical Capacity" shall have the meaning assigned to such term in Section 3.1(a).

"Tenant's Exclusive Period" shall have the meaning assigned to such term in Section 10.3.

"Tenant's Existing Exterior Equipment" shall have the meaning assigned to such term in Section 3.5(a).

"Tenant's Exterior Equipment" shall have the meaning assigned to such term in Section 3.5(c).

"Tenant's Occupancy Percentage" shall mean a fraction, expressed as a percentage, (i) the numerator of which is the Net Rentable Area of the Leased Premises (and, during the Preliminary Period to the extent provided in Section 1.7 hereof, the Net Rentable Area of the Release Premises) at the time the determination is made, and (ii) the denominator of which is Net Rentable Area of the Building. Tenant's Occupancy Percentage shall be re-calculated each time there is a change in the Net Rentable Area of the Leased Premises (due to additions to, or deletions from, the Leased Premises) (or, as applicable pursuant to Section 1.7 hereof, the Release Premises, due to additions thereto, or deletions therefrom); with any such re-calculation (and Tenant's obligations in respect of Additional Rent payable on the basis of Tenant's Occupancy Percentage) being effective as of the date of such change. Upon any such re-calculation, Landlord and Tenant shall execute and deliver a written instrument confirming the same, and incorporating the same into this Lease.

"Tenant's Offer Notice" shall have the meaning assigned to such term in Section 8.2.1.

"Tenant's Operating Expense Share" shall have the meaning assigned to such term in Section 2.2(a).

"Tenant's Renewal Notice" shall have the meaning assigned to such term in Section 1.4(b).

"Tenant Repairs" shall have the meaning assigned to such term in Section 5.6(a).

"Tenant's RCT Notice" shall have the meaning assigned to such term in Section 8.3.1.

"Tenant's RFR Exercise Notice" shall have the meaning assigned to such term in Section 9.3.3.

"Tenant's RFR Option" shall have the meaning assigned to such term in Section 9.3.3.

"Tenant's ROFO Option" shall have the meaning assigned to such term in Section 9.2.2.

"Tenant's ROFO Exercise Notice" shall have the meaning assigned to such term in Section 9.2.2.

"Tenant's Rooftop Equipment" shall have the meaning assigned to such term in Section 3.5(d).

"Tenant's Supplemental HVAC Equipment" shall have the meaning assigned to such term in Section 3.1(b).

"Tenant's Tax Share" shall have the meaning assigned to such term in Section 2.3(a).

"Tenant's Title Insurer" shall have the meaning assigned to such term in Section 9.2.3.

"Tenant's Transfer Period" shall have the meaning assigned to such term in Section 8.2.4.

"Tenant's Transfer Notice" shall have the meaning assigned to such term in Section 8.2.4.

"Tenant's Reimbursement Amount" shall have the meaning assigned to such term in Section 5.7(b).

"Term" shall have the meaning assigned to such term in Section 1.3.

"Termination Rights Exercise Notice" shall have the meaning assigned to such term in Section 11.1.

"Third Party Leasing Rights" shall have the meaning assigned to such term in Section 10.4.

"Threshold Alteration Amount" shall have the meaning assigned to such term in Section 5.2(c).

"Vacate Space" shall have the meaning assigned to such term in Section 11.1.

"Wachovia" shall mean (i) Tenant Named Herein, or (ii) a person constituting an immediate or remote successor to Tenant Named Herein by virtue of one or more mergers, consolidations and/or transfers of all, or substantially all, the assets of Tenant Named Herein (or another person described in this clause (ii)).

"Wachovia Party" shall mean Wachovia or any Affiliate of Wachovia.

"Wachovia's Termination Right" shall have the meaning assigned to such term in Section 11.1.

As used in this Lease, (i) the phrase "*and/or*" when applied to one or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question, (ii) the terms "*herein*" "*hereof*" and "*hereunder*", and words of similar import, shall be construed to refer to this Lease as a whole, and not to any particular Article or Section, unless expressly so stated, (iii) the term "*including*", whenever used herein, shall mean "including without limitation", except in those instances where it is expressly provided otherwise, (iv) the term "*person*" shall mean a natural person, a partnership, a corporation, a limited liability company, and/or any other form of business or legal association or entity, (v) the term "*alterations*" shall mean any alterations, additions, removals and/or any other changes, and (vii) the term "*contractor*" shall include any construction manager, general contractor, subcontractor or other trade contractor.

1.2 Leased Premises

Subject to and upon the terms hereinafter set forth, Landlord does hereby lease and demise to Tenant, and Tenant does hereby lease and take from Landlord, the Leased Premises. Tenant shall be entitled to the following as appurtenances to the Leased Premises: (I) the right to use, and permit Tenant Parties and/or the customers, invitees and guests of Tenant or any Tenant Parties, to use, (a) on an exclusive basis, the Tenant-Dedicated Parking Areas and (b) on a non-

exclusive basis (in common with Landlord and other tenants or occupants of the Property, their customers, invitees and guests), the Non-Dedicated Parking Areas and all the other Common Areas; (II) all rights and benefits appurtenant to, or necessary or incidental to, the use and enjoyment of the Leased Premises by Tenant for the purposes permitted by Section 1.5 hereof, including the right of Tenant, its employees and invitees, in common with Landlord and other persons, to use any non-exclusive easements and/or licenses in, about or appurtenant to the Property, including the non-exclusive right to use any walkways, tunnels, and skywalks connected to the Property; and (III) all other rights and benefits provided to Tenant with respect to the Property pursuant to this Lease (including the rights granted to Tenant to use the roof of the Building, and other portions of the Property located outside of the Premises, pursuant to Section 3.5 hereof).

1.3 Term

The Initial Term of this Lease shall be as defined in Section 1.1(a), which Initial Term may be renewed and extended as provided in Section 1.4 hereof (the Initial Term and, to the extent renewed and extended, the Renewal Terms, are hereinafter collectively called the "Term"). Tenant is in possession of the Leased Premises as of the date of this Lease and shall accept the Leased Premises in its "AS-IS" condition, as of the Commencement Date, subject to all applicable Legal Requirements and matters of title heretofore affecting the same. Landlord has made no representation or warranty (express or implied) regarding the suitability of the Leased Premises or the Building for the conduct of Tenant's business, and Tenant waives any warranty (express or implied) that (a) the Leased Premises, the Common Areas or the Building generally are suitable for Tenant's intended purposes, or (b) the Leased Premises, the Common Areas or the Building generally are now in compliance with Legal Requirements in effect on the Commencement Date. Except as otherwise expressly set forth in this Lease, in no event shall Landlord have any obligation for any defects existing on the Commencement Date in the Leased Premises, the Common Areas or the Building generally, or any legal limitation on the use thereof.

1.4 Options to Renew

(a) Subject to the conditions hereinafter set forth, Tenant is hereby granted options (individually, a "Renewal Option" and, collectively, the "Renewal Options") to renew the Term with respect to all, or any portion of, the Leased Premises as then demised hereunder for six (6) successive periods of five (5) years each (individually, a "Renewal Term" and collectively the "Renewal Terms"); provided that the Term shall not extend, for any portion of the Leased Premises, beyond the Outside Expiration Date.

(b) The first Renewal Term (if the first Renewal Option is exercised) shall commence at the expiration of the Initial Term, and each subsequent Renewal Term (if the pertinent Renewal Option is exercised) shall commence at the expiration of the immediately preceding Renewal Term. Tenant shall exercise each of its Renewal Options, if at all, by delivering notice of such exercise to Landlord (each, a "Tenant's Renewal Notice") not later than twelve (12) months prior to the then current expiration of the Term. In any case that Tenant exercises a Renewal Option with respect to less than all of the Leased Premises as then demised hereunder, Tenant shall identify the portion(s) of the Leased Premises with respect to which the Renewal

Option is being exercised. IN ORDER TO PREVENT TENANT'S INADVERTENT FORFEITURE OF ANY THEN REMAINING RENEWAL OPTION, IF TENANT SHALL FAIL TO TIMELY EXERCISE ANY AVAILABLE RENEWAL OPTION, TENANT'S RIGHT TO EXERCISE SUCH RENEWAL OPTION SHALL NOT LAPSE UNTIL LANDLORD SHALL DELIVER TO TENANT WRITTEN NOTICE THAT SUCH NOTICE OF EXERCISE HAS NOT BEEN DELIVERED AND TENANT SHALL THEREAFTER FAIL TO EXERCISE SUCH RENEWAL OPTION WITHIN TEN (10) BUSINESS DAYS FOLLOWING THE DELIVERY OF SUCH NOTICE.

(c) Tenant's leasing of the Leased Premises during any Renewal Term shall be upon all the then executory terms and conditions of this Lease (as applicable prior to such Renewal Term), *except as follows*:

(1) The Annual Basic Rent Factor for each Renewal Term shall be equal to the Fair Market Rental Value Per RSF of the Base Leased Premises for the Renewal Term (as determined by the parties or, in the absence of their agreement, determined by appraisal, all as herein-after provided); provided, however, that:

(A) if, as of the commencement of such Renewal Term, both (i) Tenant hereunder is a Wachovia Party, and (ii) the Integration Period has not ended, then the Annual Basic Rent Factor for such Renewal Term shall be adjusted as provided in Section 2 of the Master Agreement, as applicable;

(B) if, as of the commencement of such Renewal Term, the Tenant hereunder is not a Wachovia Party (whether or not the Integration Period has ended), then the Annual Basic Rent Factor for such Renewal Term shall not exceed a rate equal to 110% of the Annual Basic Rent Factor on the last day of the Initial Term or immediately preceding Renewal Term, as applicable; and

(C) if, as of the commencement of such Renewal Term, (i) the Tenant hereunder is a Wachovia Party, and (ii) the Integration Period has ended, then the Annual Basic Rent Factor for such Renewal Term shall not exceed the following: (x) in the case of the first Renewal Term, a rate equal to 110% of the Annual Basic Rent Factor on the last day of the Initial Term; and (y) in the case of each subsequent Renewal Term, a rate equal to 105% of the Annual Basic Rent Factor for the immediately preceding Renewal Term.

(2) The STAS Basic Rental Factor for each Short-Term Additional Space for each Renewal Term shall be equal to the Fair Market Rental Value Per RSF of such Short-Term Additional Space for such Renewal Term (as determined by the parties or, in the absence of their agreement, determined by appraisal, all as herein-after provided).

(d) Within thirty (30) days following the Renewal Option Notice Date with respect to any Renewal Option, Landlord shall deliver to Tenant, a proposal setting forth Landlord's determination of the Fair Market Rental Value Per RSF for the Leased Premises for the pertinent Renewal Term (which, if the Leased Premises as to which such Renewal Option is exercised includes any Short-Term Additional Space, then such determination shall include separate components for the Fair Market Rental Value Per RSF for the Base Leased Premises, and the

Fair Market Rental Value Per RSF of the Short-Term Additional Space). Thereafter, and until the delivery of a Renewal Appraisal Notice, Landlord and Tenant shall endeavor to reach agreement as to the Fair Market Rental Value Per RSF of the Leased Premises for the pertinent Renewal Term (and, as applicable, each component thereof).

(e) If Landlord and Tenant are unable to reach a definitive agreement as to the Fair Market Rental Value Per RSF for Leased Premises for any Renewal Term within sixty (60) days following the Renewal Option Notice Date, then either Landlord or Tenant, by written notice thereof to the other party (herein called a "Renewal Appraisal Notice"), may cause such Fair Market Rental Value Per RSF to be submitted for resolution in accordance with the following provisions of this Section 1.4(e):

(1) Within thirty (30) days after delivery of the Renewal Appraisal Notice, Landlord and Tenant shall each select and engage an Appraiser to determine such Fair Market Rental Value Per RSF. If either party fails to select and engage an Appraiser within such time, and if such failure continues for more than five (5) Business Days following such party's receipt of written notice that states in all capital letters (or other prominent display) that such party has failed to select an Appraiser as required under the Lease and will be deemed to have waived certain rights granted to it under the Lease unless it selects an Appraiser within five (5) Business Days, then the Appraiser engaged by the other party shall select the second Appraiser.

(2) Within thirty (30) days following the date on which the second Appraiser is selected, (i) each Appraiser shall prepare a sealed determination of the such Fair Market Rental Value Per RSF, (ii) the Appraisers, together with Landlord and Tenant, shall arrange a meeting at the Property during Building Operating Hours (or at such other place and time as is reasonably acceptable to both Appraisers, Landlord and Tenant) for the purpose of distributing such sealed determinations, and (iii) at such meeting, the Appraisers shall each simultaneously present their determinations of such Fair Market Rental Value Per RSF, to the other Appraiser and to Landlord and Tenant. If the higher of the two determinations of such Fair Market Rental Value Per RSF does not exceed one hundred five percent (105%) of the lower of the two determinations of such Fair Market Rental Value Per RSF, then the average of the two (2) determinations shall be such Fair Market Rental Value Per RSF (and the same shall constitute the final determination thereof). If the higher of the two determinations of such Fair Market Rental Value Per RSF exceeds 105% of the lower of the two determinations of such Fair Market Rental Value Per RSF, then within five (5) Business Day after receipt by Landlord and Tenant of both appraisal reports, the Appraisers selected by Landlord and Tenant shall agree on a third Appraiser (the "Third Appraiser") to make a determination of such Fair Market Rental Value Per RSF. The Third Appraiser shall not make an independent determination, but shall, within ten (10) Business Days after his or her designation, select one (1) of the two (2) determinations already made, whichever of the two determinations the Third Appraiser determines to be closest to such Fair Market Rental Value Per RSF, as the controlling determination with respect to such Fair Market Rental Value Per RSF. The decision of the Third Appraiser shall be conclusive and binding; and such Fair Market Rental Value Per RSF shall be as set forth in such controlling determination (which shall constitute the final determination thereof). Each party shall pay the costs of its Appraiser and one-half (1/2) of the cost of the Third Appraiser.

(3) The instructions to the Appraisers with respect to the determination of such Fair Market Rental Value Per RSF will be to determine the same solely in accordance with the definition *Fair Market Rental Value Per RSF* as set forth in this Lease (including the criteria and assumptions set forth therein). The Appraisers shall have no authority to alter any provisions of such definition, or any other provisions of this Lease.

(4) Within thirty (30) days following the final determination of such Fair Market Rental Value Per RSF, Tenant shall elect one (1) of the following options by written notice to Landlord: (A) to revoke the exercise of the pertinent Renewal Option, in which event, the Term shall automatically, and without further action of Landlord or Tenant, expire on the later of (1) the expiration of the Initial Term (or, if applicable, the expiration of the Renewal Term with respect to the immediately preceding Renewal Option) or (2) the last day of the calendar month that is six (6) months following the month in which Tenant's notice of revocation was given to Landlord; or (B) to ratify its exercise of the pertinent Renewal Option. If Tenant fails to exercise either of the foregoing options within such thirty (30) day period, then Tenant shall be deemed to have elected option (B). If Tenant elects (or is deemed to have elected) option (B), then Tenant thereby shall have irrevocably exercised the pertinent Renewal Option and Tenant may not thereafter withdraw the exercise of the Renewal Option.

(5) If the Fair Market Rental Value Per RSF of the Leased Premises for any Renewal Term shall not have been final determined prior to the commencement of the Renewal Term (and, accordingly, the actual Annual Basic Rent therefor is not finally known as of the commencement of such Renewal Term), then (i) for the period commencing on such first day of such Renewal Term and ending on the date that such Fair Market Rental Value Per RSF is finally determined, Tenant shall make payments, on account of the Annual Basic Rent for such Renewal Term (as and when Annual Basic Rent is payable under this Lease) based upon the Annual Basic Rent Factor in effect immediately prior to such Renewal Term, and, for any Short-Term Additional Space, the STAS Basic Rental Factor in effect immediately prior to such Renewal Term, and (ii) upon such Fair Market Rental Value Per RSF being finally determined, such payments on account of Annual Basic Rent shall be reconciled with the actual Annual Basic Rent, and, within thirty (30) days after such final determination, (x) if such payments on account of Annual Basic Rent made by Tenant during such period were less than the actual Annual Basic Rent for such period, then Tenant shall pay to Landlord the amount of such deficiency, together with interest thereon at the Prime Rate, and (y) if such payments on account of Annual Basic Rent made by Tenant during such period were in excess of the actual Annual Basic Rent for such period, then Landlord shall refund to Tenant the amount of such excess, together with interest thereon at the Prime Rate.

1.5 Use

The Leased Premises may be used and occupied only for (i) banking purposes, and uses incidental thereto, (ii) general office purposes, and uses incidental thereto, (iii) any other lawful purposes for which the Property is used on the Commencement Date, and/or (iv) any other lawful purposes as are consistent with the character of the Building. Without limiting the generality of the foregoing, the permitted uses of the Leased Premises shall include (without limitation): (a) conference, training and/or meeting facilities, (b) libraries, (c) coffee bars, (d) support staff facilities (including word processing and copy facilities), (e) lunchrooms, cafeterias

and kitchen facilities for use by Tenant and its employees and invitees, including vending machines and microwave ovens for use by Tenant and its employees and invitees, subject, however, to Legal Requirements, (f) storage space incidental to banking and general business office purposes only, (g) bank and storage vaults, (h) cash vaults, (i) telephone call centers, (j) retail banking and sales facilities, (k) child care facilities, (l) fitness centers, and (k) data and service center operations. Tenant is not obligated to maintain occupancy or conduct operations in all or any portion of the Leased Premises. For purposes of this Section 1.5, the term "banking" shall be deemed to include, without limitation, all traditional banking activities as well as the sale of insurance and annuities of all types, trust services, investment and financial advice, the sale of securities, credit card operations and sales, mortgage lending and servicing, and data and service center functions. In addition, and without limiting the generality of any of the foregoing provisions, the Leased Premises may be used for any operations or activities required to support or otherwise provide services in support of Tenant's business operations, regardless of whether or not those business operations are conducted within the Leased Premises. If Tenant receives notice of any material directive, order, citation or of any violation of any Legal Requirement or any insurance requirement, Tenant shall endeavor to promptly notify Landlord in writing of such alleged violation and furnish Landlord with a copy of such notice.

1.6 Survival

Any claim, cause of action, liability or obligation arising during the Term of this Lease in favor of a party hereto and against or obligating the other party hereto shall (to the extent not theretofore fully performed) survive the expiration or any earlier termination of this Lease.

1.7 Release Premises

(a) The rights and obligations of the parties with respect to the Release Premises shall be as set forth in this Section 1.7. The Release Premises shall not constitute part of the Leased Premises (unless and until, and only to the extent that, the same are added to the Leased Premises pursuant to the provisions of Section 1.7(e) or (f) below), but the same shall be deemed demised by this Lease, and the provisions of this Lease (other than this Section 1.7) shall apply to the Release Premises to the extent expressly provided in this Section 1.7.

(b) During the Preliminary Period, Tenant may use and occupy the Release Premises subject to, and in accordance with, the following:

(1) Tenant shall not pay any Annual Basic Rent with respect to the Release Premises.

(2) Tenant shall pay only Additional Rent with respect to the Release Premises, and shall do so on the same terms and conditions as it pays Additional Rent with respect to the Leased Premises, but not, with respect to any portion of the Release Premises, after the date (even if such date is prior to the end of the Preliminary Period) that Tenant shall have surrendered the same with reasonable notice to Landlord and otherwise consistent with the provisions of Section 1.7(d)(3) hereof (and, accordingly, solely for purposes of calculating Tenant's Occupancy Percentage during the Preliminary Period, the numerator thereof shall include, in addition to the Net Rentable Area of the Leased Premises, the Net Rentable Area of

the Release Premises to the extent the same has not yet been surrendered by Tenant consistent with the foregoing).

(3) Tenant's use of the Release Premises shall be subject to the provisions of Section 1.5 hereof, and, except for the provisions of this Lease requiring the payment of Rent, all the other provisions of this Lease shall apply to the Release Premises as fully as the same to the Leased Premises.

(c) On or prior to the Release Premises Election Date, Tenant shall advise Landlord of Tenant's election to (i) surrender any portion of the Release Premises as of a date not later than the expiration of the Preliminary Period, (ii) add any portion of the Release Premises to the Leased Premises on a coterminous basis pursuant to Section 1.7(e) effective as of the first day immediately following the Preliminary Period, or (iii) add any portion of the Release Premises to the Leased Premises on a short term basis pursuant to Section 1.7(f) effective as of the first day immediately following the Preliminary Period. Tenant shall be permitted to make different elections with respect to different portions of the Release Premises. If Tenant fails to notify Landlord of its election with respect to any portion of the Release Premises prior to the expiration of the Release Premises Election Date, then Tenant shall be deemed to have elected to surrender such portion of the Release Premises not later than the expiration of the Preliminary Period.

(d) With respect to any portion of the Release Premises that Tenant shall have elected (or is deemed to have elected) to surrender as herein-above provided (any such portion of the Release Premises being herein called "Surrender Release Space"), the following provisions shall apply:

(1) Tenant shall surrender all Surrender Release Space on or prior to the expiration of the Preliminary Period (the earlier of (x) the date upon which Tenant actually surrenders any Surrender Release Space, and (y) the last day of the Preliminary Period, is herein called the "Release Space Expiration Date" with respect to such Surrender Release Space).

(2) If Tenant shall fail to surrender any Surrender Release Space on or prior to the expiration of the Preliminary Period, then, for the period commencing on the date immediately following the Preliminary Period and ending on the date that such Surrender Release Space shall be surrendered, Tenant (i) shall pay Annual Basic Rent with respect to such Release Premises at the Fair Market Rental Value Per RSF thereof, and (ii) shall continue to pay Additional Rent on the same basis as during the Preliminary Period. Notwithstanding the foregoing, either Landlord or Tenant may terminate Tenant's right to possess and occupy such Surrender Release Space at any time following the expiration of the Preliminary Period upon thirty (30) days' prior written notice to the other party.

(3) Tenant shall surrender all Surrender Release Space consistent with the provisions of Section 4.1 hereof (as applied to Surrender Release Space as if the same were part of the Leased Premises), *subject, however,* to the provisions of Section 1.7(d)(4) below.

(4) If any Surrender Release Space is not in Separately Leasable Condition on the Release Space Expiration Date with respect thereto, then Landlord, promptly following the

Release Space Expiration Date, shall proceed to cause the Demising Work with respect to such Surrender Release Space to be performed in accordance with the provisions of Section 5.7 hereof; provided, however, that (i) any Demising Work performed by Landlord while Tenant is still in occupancy of the Surrender Release Space shall be performed subject to, and in a manner that is consistent with Tenant's continued occupancy, and (ii) Landlord shall not have the right or obligation under this Lease to perform any Demising Work with respect to any Surrender Release Space if, as of the Release Space Expiration Date with respect thereto, either (x) no Leased Premises or Release Premises is remaining within the Building, or (y) no Leased Premises exists in the Building, and Tenant's right to convert any remaining Release Premises to Leased Premises pursuant to in Sections 1.7(e) and (f) has either lapsed by its terms or been irrevocably waived by Tenant, in writing.

(e) Any Release Premises that Tenant shall have elected to add to the Leased Premises on a coterminous basis pursuant to this Section 1.7(e) ("Coterminous Former Release Premises"), as herein-above provided, shall be added to the Leased Premises, effective upon the date immediately following the Preliminary Period upon, subject to, and in accordance with, the provisions:

(1) (A) the initial term of this Lease with respect to the Coterminous Former Release Premises shall be the balance of the Initial Term (*i.e.*, the period commencing on the date immediately following the Preliminary Period and ending on the Expiration Date), and (B) the provisions of Section 1.4 hereof shall apply to the Coterminous Former Release Premises as fully and completely as the same apply to the balance of the Leased Premises;

(2) the Annual Basic Rent for the Coterminous Former Release Premises shall be payable at the same rate as that applicable to the balance of the Base Leased Premises (*i.e.*, at a rate, per RSF, equal to the Annual Basic Rent Factor from time to time in effect), and, accordingly, upon the date that the Coterminous Former Release Premises is added to the Leased Premises, the Annual Basic Rent hereunder shall be recalculated based on the addition of the Net Rentable Area of the Coterminous Former Release Premises to the Net Rentable Area of the Leased Premises;

(3) Additional Rent shall be payable with respect to the Coterminous Former Release Premises on the same basis as the same is payable with respect to the balance of the Leased Premises, and, accordingly, upon the date that the Coterminous Former Release Premises is added to the Leased Premises, Tenant's Occupancy Percentage shall be adjusted based on the addition of the Net Rentable Area of the Coterminous Former Release Premises to the Net Rentable Area of the Leased Premises; and

(4) subject to the foregoing, and except as otherwise expressly provided herein, all of the other then executory terms and conditions of this Lease shall apply to the Coterminous Former Release Premises as fully and completely as the same apply to the balance of the Leased Premises.

(f) Any Release Premises that Tenant shall have elected to add to the Leased Premises on a short-term basis pursuant to this Section 1.7(f) ("Short-Term Former Release Space"), as herein-above provided, shall be added to the Leased Premises, effective upon the

date immediately following the Preliminary Period upon, subject to, and in accordance with, the following provisions:

(1) (A) the initial term of this Lease with respect to the Short-Term Former Release Space shall be a five (5) year period commencing on the date immediately following the Preliminary Period and ending on the fifth (5^{th}) anniversary of such date, and (B) from and after such initial term (and until the end of the Initial Term), Tenant shall have the right(s) to renew the term of this Lease with respect to the Short-Term Former Release Space for one or more special renewal periods, as Tenant may elect, each equal to the lesser of (x) five (5) years or (y) the then remaining balance of the Initial Term, each such right to be exercisable, by written notice to Landlord, given not less than nine (9) months prior to the expiration of the then current term of this Lease with respect to the Short-Term Former Release Space, and (C) the provisions of Section 1.4 hereof shall apply to the Short-Term Former Release Space as fully and completely as the same apply to the balance of the Leased Premises;

(2) the Annual Basic Rent for the Short-Term Former Release Space, for the initial term of this Lease with respect to the Short-Term Former Release Space, and for each of the special renewal periods described in Section 1.7(f)(1)(B) above, shall be payable based on STAS Basic Rental Factor equal to the Fair Market Rental Value Per RSF for the Short-Term Former Release Space; it being agreed that the Fair Market Rental Value Per RSF for the Short-Term Former Release Space shall be determined separately for (i) the initial term of this Lease with respect to the Short-Term Former Release Space, and (ii) each such special renewal period in accordance with the following:

(A) within thirty (30) days following the Release Premises Election Date (in the case of such initial term), or the date of Tenant's exercise of such renewal right(s) (in the case of each such special renewal period), Landlord shall deliver to Tenant, a proposal setting forth Landlord's determination of the Fair Market Rental Value Per RSF for such Short-Term Former Release Space for such initial term or special renewal period, as the case may be;

(B) thereafter, and until the date that is sixty (60) days following the Release Premises Election Date (in the case of such initial term), or the date of Tenant's exercise of such renewal right(s) (in the case of each such special renewal period), Landlord and Tenant shall endeavor to reach agreement as to such Fair Market Rental Value Per RSF; and

(C) if Landlord and Tenant are unable to reach a definitive agreement as to such Fair Market Rental Value Per RSF within sixty (60) days following the Release Premises Election Date (in the case of such initial term), or the date of Tenant's exercise of such renewal right(s) (in the case of each such special renewal period), then either Landlord or Tenant, by written notice thereof to the other party, may cause such Fair Market Rental Value Per RSF to be submitted for determination in accordance the provisions of subsections (1) through (5) of Section 1.4(e) hereof, which subsections shall be applied, *mutatis mutandis*, to the determination of such Fair Market Rental Value Per RSF, and the rights and obligations of the parties in respect thereof;

(3) Additional Rent shall be payable with respect to the Short-Term Former Release Space on the same basis as the same is payable with respect to the balance of the Leased

Premises, and, accordingly, upon the date that the Short-Term Former Release Space is added to the Leased Premises, Tenant's Occupancy Percentage shall be adjusted based on the addition of the Net Rentable Area of the Short-Term Former Release Space to the Net Rentable Area of the Leased Premises; and

(4) subject to the foregoing, and except as otherwise expressly provided herein, all of the other then executory terms and conditions of this Lease shall apply to the Short-Term Former Release Space as fully and completely as the same apply to the balance of the Leased Premises.

ARTICLE II
RENTAL, OPERATING EXPENSES AND REAL ESTATE TAXES

2.1 Rental Payments

(a) Beginning on the Commencement Date, and continuing throughout the Term of this Lease, Tenant shall pay Annual Basic Rent and Additional Rent with respect to the Leased Premises, all as applicable and as required by and in conformity with the provisions of this Lease. Annual Basic Rent shall be due and payable in equal monthly installments on the first day of each calendar month during the Term, in advance. Tenant's Operating Expense Share and Tenant's Tax Share shall be due and payable in accordance with Sections 2.2 and 2.3 hereof. Unless otherwise specified herein, any Additional Rent (other than Tenant's Operating Expense Share and Tenant's Tax Share, but including any Above Standard Services Rent) shall be payable thirty (30) days following Landlord's submission to Tenant of an invoice therefor.

(b) If the Term commences on a day other than the first day of a calendar month, or if the Term expires or terminates on other than the last day of a calendar month, then all installments of Rent that are payable on a monthly basis shall be prorated for the month in which the Term commences or expires or terminates, as the case may be, and the installment or installments so prorated for the month in which such Term commences or expires or terminates, as the case may be, shall be paid in advance on the first day of such month occurring within the Term. Said installments for such prorated month or months shall be calculated by multiplying the full monthly installment by a fraction, the numerator of which shall be the number of days of such month occurring within the Term, and the denominator of which shall be the total number of days in such month. If the Term commences on other than the first day of a calendar year, or if the Term expires or terminates on other than the last day of a calendar year, then all Rent payable on a calendar year basis shall be prorated for such calendar year in which the Term commences or expires or terminates, as the case may be, by multiplying such Rent by a fraction, the numerator of which shall be the number of days of such calendar occurring within the Term, and the denominator of which shall be the total number of days in such calendar year. In such event, the foregoing calculation shall be made as soon as is reasonably possible. Landlord and Tenant hereby agree that the provisions of this Section 2.1(b) shall survive the expiration or termination of this Lease.

(c) Tenant agrees to pay all Rent as shall become due from and payable by Tenant to Landlord under this Lease at the times and in the manner provided in this Lease, without abatement (except as specifically provided in this Lease), demand, offset (except as specifically

provided in this Lease) or counterclaim, at Landlord's address as provided herein (or such other address in the continental United States as may be designated in writing by Landlord from time to time). Tenant shall have the right, at its option, to pay Rent by means of electronic funds transfer to such account and depository institution as Landlord shall specify from time to time upon Tenant's request.

(d) All past-due Rent owed by Tenant to Landlord under this Lease shall bear interest from the due date thereof until payment is received by Landlord at the Applicable Rate, but only if Tenant's failure to pay such Rent shall continue for a period of five (5) Business Days after notice of such failure from Landlord, which notice shall refer to this Section 2.1(d) and state, in all capital letters (or other prominent display), that Tenant's failure to pay such Rent by such 5th Business Day shall result in interest accruing thereon from the due date thereof. All past-due sums owed by Landlord to Tenant pursuant to this Lease shall bear interest from the date due thereof until payment is received by Tenant at the Applicable Rate, but only if Landlord's failure to pay such sums shall continue for a period of five (5) Business Days after notice of such failure from Tenant, which notice shall refer to this Section 2.1(d) and state, in all capital letters (or other prominent display), that Landlord's failure to pay such sums by such 5th Business Day shall result in interest accruing thereon from the due date thereof; *provided, further, however*, that, in any case that Landlord receives a late charge as provided in Section 2.1(e) below, interest shall only accrue from and after date that is thirty (30) days after the due date thereof. Any payments made by Landlord or Tenant to the other hereunder shall not be deemed a waiver by such party of any rights against the other party.

(e) Without limiting any other remedies for non-payment of Rent (other than as expressly provided in Section 2.1(d) above), (i) in the event any installment of Annual Basic Rent is not paid by Tenant on or before the fifth (5th) day of the month for which it is due, and such amount shall remain unpaid for more than five (5) Business Days after Tenant's receipt of written notice from Landlord that such amount is past due, then Tenant shall pay to Landlord a late charge equal to one percent (1%) of the past due installment of Annual Basic Rent, and (ii) in the event any payment of Additional Rent is not paid by Tenant on or before the due date thereof, and such amount shall remain unpaid for more than five (5) Business Days after Tenant's receipt of written notice from Landlord that such amount is past due, then Tenant shall pay to Landlord a late charge equal to one percent (1%) of the past due amount. Any notice from Landlord to Tenant of past-due Rent under this Section 2.1(e), to be effective, must refer to this Section 2.1(e) and state, in all capital letters (or other prominent display), that Tenant's failure to remit payment by the appointed date shall result in the imposition of a late charge. Landlord may not send any such notice of overdue payment to Tenant prior to the fifth (5th) day following the date such payment is due, and if any such premature notice is sent, it shall be deemed to have been sent on the fifth (5th) day following the date such payment was due. Notwithstanding the foregoing, Tenant shall not be obligated to pay a late charge on installments of Rent to the extent properly abated or set-off by Tenant pursuant to an express right to do so as set forth in this Lease or to the extent that Tenant's payment is deficient by an amount that is less than or equal to one (1%) percent of the total amount due (but the foregoing shall not relieve Tenant of its obligation to promptly remit the amount of any such deficiency). The late charge described herein is not intended as a penalty, but is intended as liquidated damages to compensate Landlord for its additional costs in processing the applicable late payment.

(f) If, during any period that multiple items of Rent are past-due, Landlord shall receive any payments from Tenant that are not expressly attributed to any particular items of Rent and are not otherwise evidently in payment of any particular items of Rent, then, and only in such events, such payments shall be applied by Landlord in the following order (as amongst then past-due items of Rent): (i) Annual Basic Rent, (ii) Tenant's Operating Expense Share, (iii) Tenant's Tax Share, (iv) Above Standard Services Rent, and (v) to any remaining items of Additional Rent.

(g) In those instances for which the right of offset is expressly provided hereunder, Tenant shall be entitled to offset against Rent next coming due, any amounts that are owed or payable by Landlord to Tenant under or pursuant to the terms of this Lease.

2.2 Operating Expenses

(a) For each calendar year occurring during the Term, Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Occupancy Percentage of the Operating Expenses for such calendar year as hereinafter provided (the amount so payable by Tenant being herein called "Tenant's Operating Expense Share"). However, (i) for the first calendar year occurring within the Term (*i.e.*, the calendar year commencing on January 1, 2004 and ending on December 31, 2004), Operating Expenses shall be deemed to consist only of amounts paid or incurred on, or subsequent to, the Commencement Date, and (ii) for any calendar year which ends later than the last day of the Term, the Tenant's Operating Expense Share shall be prorated to correspond to that portion of such calendar year occurring within the Term.

(b) Tenant shall pay Tenant's Operating Expense Share for each such calendar year pursuant to the following provisions:

(1) For each calendar month occurring during any such calendar year, Tenant, on the first (1st) day of such calendar month, shall make a payment on account of Tenant's Operating Expense Share equal to one-twelfth (1/12th) of Landlord's good-faith estimate of Tenant's Operating Expense Share for such calendar year as shown on the Final Budget for such calendar year (such payments on account being herein called the "Monthly Estimated OE Payments"). However, (A) Landlord, by notice to Tenant, may, at any time and from time to time during any calendar year, reduce the amount of the Monthly Estimated OE Payment for such calendar year, and (B) for the balance of the first calendar year occurring within the Term (*i.e.*, the period commencing on the Commencement Date and ending on December 31, 2004), the Monthly Estimated OE Payments shall be in the amount set forth on Exhibit C hereto, and shall be payable only on the first (1st) day of each calendar month occurring after the calendar month in which the Commencement Date occurs, and (C) for any calendar year which ends later than the last day of the Term, the Monthly Estimated OE Payments shall be made only for calendar months during such calendar year occurring within the Term.

(2) Any overpayment or underpayment of Tenant's Operating Expense Share for any calendar year based on the Monthly Estimated OE Payments on account thereof shall be reconciled after the end of such calendar year as provided in Section 2.2(f).

(c) "Operating Expenses", for each calendar year, shall be determined in accordance with the provisions of the following Sections 2.2(c)(1), (2) and (3) below, *sequentially applied*:

(1) Subject to the provisions of Section 2.2(c)(2) and (3) below, Operating Expenses shall include all expenses and costs of every kind and nature incurred by, or on behalf of, Landlord in connection with the operation, management, repair and maintenance of the Property in respect of such calendar year, consistent with accepted principles of sound management practices (determined with reference to the operation, management, repair and maintenance of Comparable Buildings), and which, except as otherwise expressly provided herein, shall be allocable to such calendar year in accordance with GAAP, on an accrual basis, including the expenses and costs set forth in items (i) through (ix) below:

(i) wages and salaries, including payroll taxes, insurance and fringe benefits (collectively, "Personnel Costs"), paid to employees of Landlord (or employees of the Property Manager, employed on Landlord's behalf) engaged in operation, management, repair and maintenance of the Property;

(ii) the costs of acquiring or leasing tools and equipment, and the costs of purchasing materials and supplies, to the extent used in the operation, management, repair and maintenance of the Property;

(iii) the costs of providing utilities and services (including electricity, water, gas, steam, sewer, cleaning and HVAC services) to the Leased Premises, other Leasable Areas and the Common Areas;

(iv) the costs of repairing, replacing and/or maintaining the Base Building and/or the Common Areas (together with any personal property of Landlord therein or thereon that constitute part of the Property) whether such repair, replacement and/or maintenance is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen;

(v) the costs of all maintenance and service agreements with respect to the Base Building and/or the Common Areas, including access control service, window cleaning, mechanical, electrical and plumbing service contracts, including elevator maintenance, janitorial service, security, landscaping maintenance, garbage and waste disposal;

(vi) insurance premiums under insurance with respect to the Property (including any personal property included within the definition of Property hereunder) that is either (a) required to be obtained by Landlord pursuant to this Lease or (b) customarily obtained by the owners of Comparable Buildings, including, as applicable, property and liability insurance, insurance against rental loss following fire, condemnation or other insured occurrences at the Property;

(vii) the costs of Remedial Work performed to the Common Areas (other than Common Areas located on floors not leased in whole or in part by Tenant);

(viii) the management fees of the Property Manager, but only up to (and not in excess of) an annual fee equal to two and one-half percent (2.5%) of Gross Revenues for the Property; provided, however, that, during any Tenant Management Period, Operating

Expenses shall include (in addition to the management fees paid to Tenant pursuant to the Tenant Management Agreement as set forth in Section 3.6(c)(2) hereof) the amount of the asset management fees that Landlord is entitled to receive pursuant to the provisions of Section 3.6(c)(4) hereof;

(ix) if, and only if, the Property Manager utilizes space in the Building as a management office for the Property, which space would otherwise constitute part of the Leasable Areas, then Operating Expenses shall be deemed to include an amount equal to the fair market rental of such management office; provided, however, that in no event shall Operating Expenses include the fair market rental of any such office to the extent used for development or leasing purposes (as opposed to management purposes) (it being agreed if any such office is used, in part, as a management office, and, in part, for development or leasing purposes, then such fair market rental shall be allocated on a fair and equitable basis between such uses); and

(x) rent payable under an Existing Overlease (exclusive of items of additional rent which reflect a pass-through of (i) items included in Real Estate Taxes or (ii) items otherwise included in Operating Expenses hereunder).

(2) Anything contained in the provisions of Section 2.2(c)(1) above notwithstanding, Operating Expenses shall not include any of the following:

(A) any Personnel Costs paid to (i) any persons above the grade of building or property manager, and/or (ii) any persons engaged in the development and/or leasing of the Property (it being agreed that Personnel Costs paid to employees, above the grade of building manager, who are, in part, engaged in the operation, management, repair and maintenance of the Property, and, in part, engaged in the development and leasing of the Property, shall be allocated on a fair and equitable basis between such duties);

(B) the costs of furnishing any utilities or services to any Leasable Areas, unless such utility or service is furnished by Landlord to the Leased Premises pursuant to this Lease as a Building Standard Service and otherwise without any additional or separate charge to Tenant;

(C) the costs of repairing and maintaining (as well as any costs of maintenance and service agreements with respect to) any Leasable Areas, *except* as to the components of the Base Building located within such Leasable Areas;

(D) the costs of performing any other work (including any work needed to effect compliance with Legal Requirements) in or to any Leasable Areas (or any Common Areas on floors not leased in whole or in part by Tenant), *except* as to the components of the Base Building located within such Leasable Areas (or, as the case may be, such Common Areas);

(E) any costs of Remedial Work performed to any Leasable Areas (or any Common Areas on floors not leased in whole or in part by Tenant), *even if* performed to the components of the Base Building located within such Leasable Areas (or, as the case may be, such Common Areas);

(F) any costs (including any costs of repairs or other work) occasioned by fire, windstorm or other casualty (except, subject to the other provisions hereof, to the extent of a commercially reasonable deductible under an insurance policy maintained by Landlord consistent with the provisions of this Lease);

(G) any costs (including any costs of repairs or other work) arising out of any condemnation or proceeding relating thereto;

(H) marketing, advertising and promotion costs relating to the Property and/or any other costs relating to the development and/or leasing of the Property;

(I) legal fees and disbursements, regardless of the purpose (other than legal fees and disbursements incurred to ascertain the need for, or scope of, Remedial Work or other work required to comply with Legal Requirements, but only if, and to the extent, the costs of such Remedial Work or other work is included within Operating Expenses hereunder);

(J) leasing and brokerage commissions, and any costs and expenses incurred in connection with (i) the negotiation or enforcement of any leases or prospective leases, and/or (ii) any negotiations or disputes with tenants or other occupants of the Property or prospective tenants or other occupants of the Property;

(K) any costs of any lease concessions or inducements, including workletters and work allowances, any costs of obtaining any temporary or permanent certificates of occupancy for any tenant or other occupant(s) and/or any other costs of renovating or otherwise improving or decorating or redecorating any part of the Property (including the Base Building and/or the Common Areas) for any particular tenant(s) or other occupant(s) of the Property;

(L) amortization (except as set forth in Section 2.2(c)(3))and depreciation;

(M) costs incurred due to the violation by Landlord or any tenant or other person of the terms and conditions of any lease or other agreement pertaining to the Property or of any Legal Requirement;

(N) fines or penalties incurred due to the Property being in violation of Legal Requirements;

(O) costs incurred due to acts of any tenant or other occupant causing an increase in the rate of insurance on the Building or its contents;

(P) any amounts paid to any Landlord Party or any Affiliate of Landlord for goods, services or other items, to the extent such amounts exceed the amounts which would have been paid or incurred for such goods, services or other items if the same had been furnished by unrelated and unaffiliated third parties on a arms-length basis;

(Q) management fees other than those expressly included in Operating Expenses pursuant Section 2.2(c)(1)(viii) above, as well as (i) any actual or deemed rental

payment for a building management office except as expressly included in Operating Expenses pursuant Section 2.2(c)(1)(ix) above, and (ii) any costs or expenses for services that are normally performed by a management company, without separate charge, when retained under a management agreement providing for a management fee equal to two and one-half percent (2-1/2%) of gross revenues for the property;

(R) principal, points, fees and interest on any Mortgage or other debt;

(S) rental or other charges under any Overlease (other than rent payable under an Existing Overlease, exclusive of items of additional rent which reflect a pass-through of (i) items included in Real Estate Taxes or (ii) items otherwise included in Operating Expenses hereunder);

(T) general overhead and administration expenses (including any costs and expenses relating to the preparation of partnership, corporate or limited liability company tax or disclosure statements, or other filings relating to the corporate, partnership or other organization status of Landlord or any Landlord Party);

(U) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;

(V) any costs or expenses to the extent Landlord is entitled to payment or reimbursement thereof from any tenant or other occupant, insurer or other person (other than from a tenant or other occupant through payment of its proportionate share of Operating Expenses);

(W) any costs incurred in installing, operating and maintaining any specialty facility, including an observatory, broadcasting facilities (other than the Building's music system, life support and security system), child-care facilities, and, to the extent not available to Tenant (or, if available to Tenant, Tenant nevertheless elects not to, and does not, utilize the same), the costs of any luncheon club, athletic or recreational club or facility;

(X) any expenses in connection with Separate Charge Parking Areas, except to the extent, if any, that such expenses exceed all income in connection with such Separate Charge Parking Areas;

(Y) any fines, penalties, legal judgments or settlements or causes of action by or against Landlord, any Landlord Party or the Property; and

(Z) Real Estate Taxes (as well as any taxes or charges expressly excluded from the definition of Real Estate Taxes, as set forth in Section 2.3(b) below), and any fines, penalties or interest payable in connection therewith;

(AA) any costs relating to any sale, financing or re-financing relating of, or involving, the Property or any interest in Landlord or any Landlord Party;

(BB) costs of any insurance, other than those expressly included in Operating Expenses pursuant Section 2.2(c)(1)(vii) above;

(CC) any costs (i) attributable to Landlord's violation of one or more provisions of this Lease (including any failure by Landlord to comply with the terms of Section 2.2(d) below), (ii) attributable to Landlord's default under other lease or other contract relating to the Real Property, or (ii) attributable to Landlord's willful misconduct or negligence; and

(DD) any overhead and profit associated with employees of Landlord (or employees of the Property Manager, employed on Landlord's behalf) who are engaged in the operation, management, repair and maintenance of the Property.

(3) Anything contained in the provisions of Section 2.2(c)(1) or Section 2.2(c)(2) above notwithstanding, Operating Expenses shall not include any costs for alterations, repairs and/or replacements or any other costs that are considered capital expenditures under GAAP (including capital improvements, capital repairs, capital equipment and capital tools), except as expressly permitted under the following provisions of this Section 2.2(c)(3). Operating Expenses shall include the costs incurred by Landlord for any OE Includable Capital Item, *but only* as amortized over the useful life of such OE Includable Capital Item (determined in accordance with GAAP), together with interest thereon at the Prime Rate (*i.e.*, there shall be included in Operating Expenses for each calendar year occurring within the period of the useful life of such OE Includable Capital Item, an amount equal to the sum of all the principal and interest payments which would have been payable during such calendar year under a hypothetical loan (w) in an original principal amount equal to the costs of such OE Includable Capital Item, (x) which was funded on the first day of such useful life and has a term equal in length thereto, (y) bearing interest at the Prime Rate (determined as of the first day of such useful life), and (z) providing for level monthly payments of principal and interest sufficient to fully amortize such loan over its term). As used herein, the term "OE Includable Capital Item" shall mean either of the following:

(A) any Remedial Work to the Common Areas (excluding Common Areas on floors not leased in whole or in part by Tenant), but only if (i) Landlord's failure to perform the Remedial Work constitutes a violation of Legal Requirements, (ii) Landlord is required to perform the Remedial Work by any notice of violation, order, decree, permit, rule or regulation issued by any Governmental Authority, or (iii) Landlord's failure to perform the Remedial Work would endanger the health, safety or welfare of any person on or about the Property; or

(B) any other repair or replacement of a capital nature, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, made by Landlord to the Base Building or the Common Areas (excluding Common Areas on floors not leased in whole or in part by Tenant) to the extent necessary to operate, repair and maintain the Property in conformity with the requirements of this Lease and in accordance with the accepted principles of sound property management (determined with reference to the operation, repair and maintenance of Comparable Buildings), excluding, however, any such repair or replacement which (aa) expands the Net Rentable Area of the Property, (bb) except as otherwise expressly required by this Lease, upgrades or improves the general character or quality of the Property, or (cc) was not properly included within the Final Budget (and without a Tenant Budget Objection being noted

thereon with respect to the same, other than a Tenant Budget Objection which was subsequently resolved in favor of Landlord).

(4) If (i) any particular item of cost incurred by, or on behalf of Landlord, is only attributable, in part, to the operation, management, repair and maintenance of the Property, and, in part, to the operation, management, repair and maintenance of one or more other properties owned or operated by Landlord or any Affiliates of Landlord, and (ii) such item of cost is otherwise includable in "Operating Expenses" (based on the foregoing Sections 2.2(c)(1), (2) and (3), *sequentially applied*), then item of cost shall be allocated between the Property and such other property or properties, on a fair and equitable basis.

(5) Whenever this Section 2.2(c) requires that a particular item(s) of cost is to be allocated on a "*fair and equitable basis*", the same shall be deemed to require that such item(s) of cost be allocated reasonably, (i) using an allocation method based on the comparative measure(s) that best reflect the appropriate portion of such item(s) of cost that should be included within "Operating Expenses" (*e.g.*, time, square footage and/or other measure as appropriate), and that is consistently applied from calendar year to calendar year, and (ii) otherwise in a manner that does not result in a profit to Landlord, result in a disproportionate burden to Tenant, or result in a disproportionate benefit to any other person(s) or propert(ies).

(d) Landlord shall use its reasonable efforts to make payments on account of Operating Expenses in a time and manner to obtain the appropriate discounts or rebates available. Landlord shall operate the Property in an efficient manner and exercise reasonable efforts to minimize Operating Expenses consistent with maintaining services at a level consistent with Comparable Buildings.

(e) If, during any calendar year, the Property is less than ninety five (95%) occupied, then appropriate adjustments shall be made (on a consistent basis from calendar year to calendar year) to those components of Operating Expenses which vary with Building occupancy, so as to calculate Operating Expenses as though the Building had been ninety five percent (95%) occupied during such calendar year. The percentage of Building occupancy during any calendar year shall be determined by adding together the total leased space on the first day of each month during such year and dividing by twelve (12). The foregoing notwithstanding, for any calendar year, Landlord shall not recover from Tenant and other the tenants and occupants of the Property, collectively, an amount in excess of one hundred percent (100%) of the total Operating Expenses with respect to the Property.

(f) Within ninety (90) days after the end of each calendar year during the Term or as soon thereafter as possible in the exercise of reasonable diligence (but, in all events, not later than one hundred twenty (120) days after the end of the calendar year), Landlord shall provide Tenant a statement (the "Operating Expense Statement") prepared by Landlord (i) showing Operating Expenses for such calendar year broken down by component expenses, in reasonable detail, (ii) calculating Tenant's Operating Expense Share for such calendar year, and (iii) reconciling the same with the Monthly Estimated OE Payments for such calendar year. The Operating Expense Statement shall be accompanied by a written certification of Landlord's controller, or other financial officer knowledgeable of the facts certified to therein, certifying to Tenant that, to the best of his or her knowledge, the Operating Expense Statement has been

prepared in accordance with the definitions and provisions pertaining to Operating Expenses contained in this Lease. If, for any calendar year, the Operating Expense Statement indicates that Tenant's Operating Expense Share exceeds the Monthly Estimated OE Payments theretofore made (any such excess being herein called an "OE Underpayment"), then Tenant shall pay the amount thereof to Landlord within thirty (30) days after delivery of the Operating Expense Statement. If, for any calendar year, the Operating Expense Statement indicates that the Monthly Estimated OE Payments theretofore made exceed the Tenant's Operating Expense Share (any such excess being herein called an "OE Overpayment"), then Landlord, together with such Operating Expense Statement, shall pay the amount thereof to Tenant; *it being further agreed* that if OE Overpayment exceeds five percent (5%) of Tenant's Operating Expense Share, then Landlord, together with its aforesaid payment to Tenant in the amount of the OE Overpayment, shall also pay to Tenant interest thereon, computed at the Prime Rate, for the period from July 1st of calendar year to which the Operating Expense Statement relates to the date that Landlord makes such aforesaid payment.

(g) (1) If, for any calendar year, Landlord shall fail to deliver an Operating Expense Statement on or prior to the date that is one hundred twenty (120) days after the end of the calendar year, then (i) Landlord shall still be obligated to deliver an Operating Expense Statement for such calendar year, and (ii) Landlord, together with such Operating Expense Statement, shall refund to Tenant the amount of such OE Overpayment, together with interest on the amount thereof at the Applicable Rate (rather than at the Prime Rate as provided in Section 2.2(f) above) for the period from July 1st of calendar year to which the Operating Expense Statement relates to the date that Landlord makes such refund.

(2) After delivery of an Operating Expense Statement for any calendar year, Landlord shall have the right to amend the same, subject, however, to the following provisions of this Section 2.2(g)(2). Notwithstanding any other provision of this Lease, Landlord shall be estopped from amending, and hereby waives the right to amend, any Operating Expense Statement not amended by Landlord within two (2) years after the end of the calendar year to which said Operating Expense Statement applies, nor shall Landlord have the right through any other procedures or mechanism to collect any Operating Expense not included on the pertinent Operating Expense Statement after the second (2nd) anniversary of the last day of the calendar year to which said Operating Expense Statement applies, unless before said second (2nd) anniversary Landlord has delivered to Tenant a revised Operating Expense Statement reflecting such revised Operating Expense (with a reasonably detailed explanation of the reasons for any such revision) and made a written demand for payment of said Operating Expense.

(h) Any Operating Expense Statement or other notice from Landlord pursuant to this Section 2.2 shall be subject to Tenant's rights of review and audit set forth in Section 2.5 hereof. Pending the resolution of any dispute, however, Tenant shall make payments in accordance with said Operating Expense Statement or other notice.

2.3 Real Estate Taxes

(a) Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Occupancy Percentage of each component of Real Estate Taxes as same becomes due and payable from time to time for each fiscal period fixed by any taxing authority with respect to

such component of Real Estate Taxes (each a "Fiscal Period") that occurs during the Term as hereinafter provided (the amount so payable by Tenant for such component being herein called "Tenant's Tax Share"). In respect of any Fiscal Period that begins prior to the first day of the Term, or ends later than the last day of the Term, the Tenant's Tax Share shall be prorated to correspond to that portion of such Fiscal Period occurring within the Term. Tenant shall pay Tenant's Tax Share for each such Fiscal Period pursuant to the following provisions:

(1) For the first Fiscal Period occurring during the Term (*i.e.*, the Fiscal Period within which the Commencement Date occurs), Tenant's Tax Share shall be paid on the Commencement Date (and, if applicable, adjusted) pursuant to the apportionment provisions of the Purchase Agreement.

(2) For each subsequent Fiscal Period, upon receipt of any invoice or bill for such component of Real Estate Taxes, Landlord shall deliver to Tenant a written statement (the "Tax Statement") which shall (A) set forth (i) the amount of such Real Estate Tax component (determined consistent with definition of Real Estate Taxes set forth below and the invoices in respect of such component theretofore received by Landlord), (ii) Tenant's Tax Share (consistent therewith, and assuming the then applicable Tenant's Occupancy Percentage), and (iii) the due date of such component of Real Estate Taxes, and (B) include a copy of such invoice or bill. Tenant, within thirty (30) days after its receipt such Tax Statement shall pay to Landlord the amount of Tenant's Tax Share indicated by the Tax Statement; provided, however, that if such component has a due date that is more than sixty (60) days after the rendering of such Tax Statement, then Tenant may defer the payment of Tenant's Tax Share until the date that is thirty (30) days prior to the due date of such component of Real Estate Taxes.

(3) If, after the delivery of any Tax Statement for any component of Real Estate Taxes for any Fiscal Period, there shall occur any decrease in such component of Real Estate Taxes in respect of such Fiscal Period (including a decrease therein resulting from any net refund of such component of Real Estate Taxes), then Landlord shall promptly (and, in all events, within thirty (30) days after such decrease shall become effective) furnish to Tenant a revised Tax Statement for such component of Real Estate Taxes for such Fiscal Period. If any revised Tax Statement shall set forth a Tenant's Tax Share that is less than that set forth on the previous Tax Statement, then Landlord, together with its delivery of the revised Tax Statement, shall pay to Tenant the amount of the difference between the Tenant's Tax Share set forth on the previous Tax Statement and the Tenant's Tax Share set forth on the revised Tax Statement.

(4) If, after the delivery of a Tax Statement for any component of Real Estate Taxes for any Fiscal Period, there shall occur any increase in the Real Estate Taxes in respect of such Fiscal Period (including any increase therein resulting from an assessment or rate adjustment), then, and in each such case, Landlord may furnish to Tenant a revised Tax Statement for such component of Real Estate Taxes for such Fiscal Period. If any revised Tax Statement shall set forth a Tenant's Tax Share that is greater than that set forth on the previous Tax Statement, then Tenant, within thirty (30) days after the delivery of such revised Tax Statement, shall pay to Landlord the difference between the Tenant's Tax Share set forth on the revised Tax Statement and the Tenant's Tax Share set forth on the previous Tax Statement.

(b) "Real Estate Taxes" shall mean all real estate taxes, assessments and other governmental levies and charges, general and special, ordinary or extraordinary, of any kind and nature (including any interest on such assessments whenever the same are permitted to be paid in installments) which may presently or hereafter be imposed, levied or assessed by any lawful taxing authorities upon or against the whole, or any part, of the Property, including taxes imposed on (i) the gross rents or gross receipts (but not the net income) of the Property and (ii) personal property of Landlord which comprises part of the Property, but only to the extent that the same would be payable if the Property were the only property of Landlord. If at any time during the Term the present system of ad valorem taxation of real property is changed or supplemented so that in lieu of, or in addition to, the ad valorem tax on real property, there shall be assessed on Landlord or the Property any new tax which, by its nature, is imposed in substitution for, or in lieu of, the whole or any part of a tax which would otherwise have constituted a Real Estate Tax, such new tax shall be included within the term *Real Estate Taxes*, but only to the extent that the same would be payable if the Property were the only property of Landlord. Such new taxes may include, but shall not be limited to, a capital levy or other tax on the gross rents or gross receipts (but not the net income) of the Property or similar tax, assessment, levy or charge measured by or based, in whole or in part, upon any such gross rents or gross receipts. Notwithstanding anything herein-above contained to the contrary, *Real Estate Taxes* shall never include (i) any transfer, sales, excise or similar taxes (*e.g.*, realty transfer taxes, sales taxes, recording taxes, etc.), (ii) taxes and assessments imposed, levied or assessed upon or against any personal property of tenants or other occupants of the Building (or any other personal property not included within the term *Property* hereunder), (iii) federal, state and local taxes on income, (iv) death taxes (including estate and inheritance taxes), (v) franchise taxes and the like (including unincorporated business taxes, etc.), (vi) any other taxes imposed or measured on or by the net income of Landlord or the net income from the operation of the Property, (vii) any other taxes attributable to the corporate, partnership or other organization status of Landlord or any Landlord Party (including filing fees, etc.), or (viii) any other taxes imposed in connection with any (direct or indirect) change of ownership of the Property. In addition, and notwithstanding anything herein-above contained to the contrary: (1) *Real Estate Taxes* shall be deemed reduced by the amount thereof, if any, that is attributable to the value of leasehold improvements of any other tenant of the Building hereafter made (or leasehold improvements already existing and separately charged as an expense to be paid by such tenant) to the extent the same exceed the value of the other leasehold improvements generally found in the Building; (2) any *Real Estate Taxes* for which a discount is available for early payment shall be deemed reduced by the greatest possible discount available to Landlord for such early payment, regardless of when such taxes are actually paid and regardless of whether Landlord actually obtains a discount for early payment; (3) *Real Estate Taxes*, for any Fiscal Period, shall include only the amounts actually due and payable during such Fiscal Period (determined net of any abatements, credits or offsets with respect thereto); and (4) in the case of *Real Estate Taxes* that may be paid in installments, only the amount of each installment due and payable during a Fiscal Period shall be included in *Real Estate Taxes* for such Fiscal Period.

(c) The rights and obligations of the parties with respect to the contest or appeal of the validity or amount of Real Estate Taxes by appropriate proceedings (any such contest or appeal being herein called a "RE Tax Contest") shall be as follows:

(1) Landlord, for any Fiscal Period, may, on its own initiative, bring a RE Tax Contest (any such RE Tax Contest being herein called a "Landlord Initiated Contest"). For each applicable Fiscal Period, Landlord shall advise Tenant, in writing, as to whether it will elect to bring a Landlord Initiated Contest sufficiently in advance of the applicable deadlines for bringing RE Tax Contests such that Tenant can effectively exercise, or refrain from exercising, its rights under the following provisions of Section 2.3(c)(2). If Landlord shall elect to bring a Landlord Initiated Contest, then Landlord shall timely and diligently bring and prosecute such Landlord Initiated Contest, and keep Tenant advised of the progress thereof. The costs of any Landlord Initiated Contest shall, subject to the provisions of Section 2.3(c)(4), be borne by Landlord.

(2) If, for any Fiscal Period, (i) Landlord shall elect not to bring a Landlord Initiated Contest, and (ii) Tenant's Occupancy Percentage is at least twenty-five percent (25%), then Tenant may, by notice to Landlord, require that Landlord bring a RE Tax Contest for such Fiscal Period (any such RE Tax Contest being herein called a "Tenant Required Contest"). If Tenant shall require Landlord to bring a Tenant Required Contest, then Landlord shall timely and diligently bring and prosecute such Tenant Required Contest, and keep Tenant advised of the progress thereof. The costs of any Tenant Required Contest shall, subject to the provisions of Section 2.3(c)(4), be borne by Tenant.

(3) If, for any calendar year, Tenant's Occupancy Percentage is at least ninety percent (90%), then Tenant may, by notice to Landlord, require Landlord to permit Tenant the sole and exclusive right to bring a RE Tax Contest for such Fiscal Period (any such RE Tax Contest being herein called a "Tenant Controlled Contest"). For each applicable Fiscal Period, Tenant shall advise Landlord, in writing, as to whether it will elect to require Landlord to permit Tenant the sole and exclusive right to bring a RE Tax Contest for such Fiscal Period sufficiently in advance of the applicable deadlines for bringing RE Tax Contests such that Landlord can effectively exercise, or refrain from exercising, its rights under the provisions of Section 2.3(c)(1). If Tenant shall require Landlord to permit Tenant to bring a Tenant Controlled Contest, then Tenant shall timely and diligently bring and prosecute such Tenant Controlled Contest, and keep Landlord advised of the progress thereof. Tenant may bring any Tenant Controlled Contest in Landlord's name; and Landlord shall cooperate with Tenant in bringing and prosecuting such Tenant Controlled Contest. The costs of any Tenant Controlled Contest shall, subject to the provisions of Section 2.3(c)(4), be borne by Tenant.

(4) If, for any Fiscal Period, any RE Tax Contest shall result in a reduction in Real Estate Taxes for such calendar year, then, after the final determination of such RE Tax Contest, the aggregate refund monies received thereon (including any amounts paid in respect of interest thereon) shall applied as follows: (i) first, the same may be retained by or paid to the party or parties bearing the costs of such RE Tax Contest, up to (but not in excess of) the reasonable out-of-pocket costs incurred by such party or parties (and, as among the parties, if applicable, in the same proportion as they bear such costs); and (ii) second, the balance thereof, shall be deemed a "net refund" of Real Estate Taxes for such Fiscal Period. Within thirty (30) days after such final determination, Landlord shall issue a revised Tax Statement as required under Section 2.3(a)(4) above reflecting Real Estate Taxes after such net refund.

(5) During the pendency of any RE Tax Contest, Tenant shall continue to make payments of Additional Rent due pursuant to the foregoing provisions of this Section 2.3.

(d) Any Tax Statement or other notice from Landlord pursuant to this Section 2.3 shall be subject to Tenant's rights of review and audit set forth in Section 2.5. Pending the resolution of any dispute, however, Tenant shall make payments in accordance with said Tax Statement or other notice.

2.4 Budget

(a) On or before June 1st of each calendar year during the Term, Landlord shall deliver to Tenant for Tenant's review and comment, a projected Budget for the next succeeding calendar year, except that (A) Landlord shall have no obligation to deliver a projected Budget for balance of the 2004 calendar year (*i.e.*, the period commencing on the Commencement Date and ending on December 31, 2004), and (B) the projected Budget for calendar year 2005 need only be delivered by Landlord to Tenant on or before the date that is ninety (90) days after the Commencement Date. The term "Budget", for any calendar year (as to each Budget, the "Budget Year"), shall mean a budget for the Property for such Budget Year, showing (i) estimates, in reasonable detail, of Operating Expenses, Tenant's Operating Expense Share and Real Estate Taxes for such Budget Year and Tenant's Tax Share of all components of Real Estate Taxes for all Fiscal Periods occurring within such Budget Year, (ii) the estimated amount for each major category of expense that is expected to be included in Operating Expenses for the Property for such Budget Year, including any items that constitute OE Includable Capital Items, (iii) without limiting the foregoing, an itemized estimate for each contemplated repair and/or replacement to any major component of the Base Building which Landlord believes will constitute an OE Includable Capital Item (each, a "Contemplated OE Includable Capital Item") (clearly distinguishing any such repair and/or replacement item, on the one hand, from ordinary repairs and maintenance, on the other), together with the resulting amortized amounts which would be included in Operating Expenses during the Term under Section 2.2(c)(3) hereof based on such Contemplated OE Includable Capital Item, assuming the same were made in accordance with such itemized estimate and properly constituted an OE Includable Capital Item, (iv) the estimated rates to be charged by Landlord for Above Standard Services (including Required Above Standard Services and other Above Standard Services then available to Tenant) for such Budget Year, and (v) the actual amounts for all such items for the calendar year prior to the Budget Year. It is understood and agreed by Landlord and Tenant that each Budget shall set forth amounts for Operating Expenses and Real Estate Taxes that are estimated, on a reasonable good faith basis, taking into consideration, among other things, the actual Operating Expenses and Real Estate Taxes for the calendar year prior to the Budget Year, actual known prospective increases therein and a good faith estimate of the rate of other increases therein likely to occur prior to, or during, the Budget Year, and a good faith estimate for contingencies for the Budget Year, which estimate shall be no more than five (5%) percent of the amount of the Final Budget.

(b) Tenant, after its receipt of the proposed Budget, shall have the right (but not the obligation) to object to any portion of the proposed Budget which fails to reflect the provisions of this Lease (including the inclusion in Operating Expenses or Real Estate Taxes of amounts not permitted to be so included hereunder) (any objection by Tenant pursuant to the provisions of this sentence being herein called a "Tenant Budget Objection"). If Tenant elects to raise Tenant Budget Objections, then it shall do so by notice to Landlord, which notice shall set forth the Tenant Budget Objections, in reasonable detail, stating the basis for each Tenant Budget Objection. Notwithstanding the foregoing, Tenant may raise the following objections, as Tenant

Budget Objections, only if Tenant's Occupancy Percentage is greater than twenty-five percent (25%): (1) an objection to Landlord's decision to make a Contemplated OE Includable Capital Item with respect to any major component of the Base Building, as opposed to performing ordinary repairs and/or maintenance with respect to such major component of the Base Building; and (2) an objection to Landlord's decision to perform ordinary repairs and/or maintenance with respect to such major component of the Base Building, as opposed to making a Contemplated OE Includable Capital Item with respect to such major component of the Base Building; provided, however, that clause (1) of this sentence shall never be deemed to preclude (regardless of Tenant's Occupancy Percentage) a Tenant Budget Objection relating to whether a particular Contemplated OE Includable Capital Item, set forth in Landlord's proposed Budget, is in fact an OE Includable Capital Item.

(c) Landlord and Tenant shall negotiate in good faith to resolve all Tenant Budget Objections with respect to the proposed Budget. If the parties shall be unsuccessful in their efforts to resolve all Tenant Budget Objections, then, subject to the provisions of the next succeeding sentence, all disputes with respect Tenant Budget Objections shall be resolved in accordance with the provisions of Article XII of this Lease. Notwithstanding the foregoing, and without regard to any arbitration result, it is agreed that (i) with respect to any Tenant Budget Objection described in Section 2.4(b)(1) above, Landlord shall have the right to make a Contemplated OE Includable Capital Item with respect to any major component of the Base Building, as opposed to performing ordinary repairs and/or maintenance with respect to such major component of the Base Building, if Landlord establishes, by certification of a qualified engineer reasonably acceptable to Tenant, that such component of the Base Building is beyond its useful life and that continued repair or maintenance (as opposed to replacement) is not commercially practicable (it being agreed that in any such case that Landlord, pursuant to this clause (i), establishes the right to make a Contemplated OE Includable Capital Item with respect to any major component of the Base Building, Tenant may still object to the characterization of such item as an OE Includable Capital Item for purposes of Section 2.2(c)(3) hereof, but only if the same otherwise fails to meet one or more of the requirements of an OE Includable Capital Item as delineated in such Section 2.2(c)(3) hereof), and (ii) with respect to any Tenant Budget Objection described in Section 2.4(b)(2) above, Tenant shall have the right to require Landlord to make a Contemplated OE Includable Capital Item with respect to any major component of the Base Building, as opposed to performing ordinary repairs and/or maintenance with respect to such major component of the Base Building, if Tenant establishes, by certification of a qualified engineer reasonably acceptable to Landlord, that such component of the Base Building is beyond its useful life and that continued repair or maintenance (as opposed to replacement) is not commercially practicable (it being agreed that in any such case that if Tenant, pursuant to this clause (ii), requires Landlord to make a Contemplated OE Includable Capital Item with respect to any major component of the Base Building, Tenant may not object to the characterization of such item as an OE Includable Capital Item for purposes of Section 2.2(c)(3) hereof).

(d) Within thirty (30) days after the resolution of all Tenant Budget Objections (by agreement of the parties or otherwise as contemplated by Section 2.4(c) above), Landlord shall prepare and deliver to Tenant the final Budget for the Budget Year, which final Budget shall reflect the resolution of all Tenant Budget Objections (such final Budget, for any Budget Year, being herein called the "Final Budget"). Notwithstanding the foregoing, even if all of the Tenant Budget Objections have not theretofore been resolved, Landlord, on or prior to the date that is

forty-five (45) days prior to the first (1st) day of the Budget Year, shall nevertheless issue a Final Budget; it being agreed, in such event, that all unresolved Tenant Budget Objections shall be duly noted thereon.

(e) Notwithstanding anything to the contrary contained in this Section 2.4, Tenant's right to receive Budgets under this Section 2.4, and to elect to raise Tenant Budget Objections with respect thereto, are rights in addition to (and are not intended in any manner to limit) the rights of Tenant hereunder; and, without limiting the generality thereof, neither (i) the issuance of any proposed Budget, (ii) Tenant's failure to raise (or its election not to raise) objections (or its election to raise certain objections and not others) with respect to any proposed Budget, nor (iii) the issuance of a Final Budget, shall, in any case, be deemed either (x) Tenant's agreement that any item set forth in such Budget is either properly includable within "Operating Expense" or "Real Estate Taxes", as the case may be, or otherwise an item by which it is bound, or (y) a waiver by Tenant of any of its rights under any provisions of this Lease, including the provisions of Section 2.5 hereof; provided, however, that (I) all Contemplated OE Includable Capital Items that are included within the Final Budget without a Tenant Budget Objection noted thereon shall be deemed an OE Includable Capital Item (but in no event shall the amounts to be included Operating Expenses based thereon, be deemed approved or accepted), and (II) all resolutions of Tenant Budget Objections (by agreement of the parties or otherwise as contemplated by Section 2.4(c) above) shall be binding upon both Landlord and Tenant.

(f) During any Tenant Management Period, Tenant shall be responsible for preparing the Budget and Final Budget and the foregoing provisions of this Section 2.4 shall apply *mutatis mutandis*, provided that: (i) references therein to "Landlord" shall be deemed to refer to Tenant, (ii) references therein to "Tenant" shall be deemed to refer to Landlord, (iii) references therein to "Tenant Budget Objection" shall be deemed to refer to a "Landlord Budget Objection", which term shall mean any objection by Landlord to Budget pursuant to the provisions of the first sentence of Section 2.4(b), (iv) the last sentence of Section 2.4(b) shall be deemed deleted, (v) the last parenthetical in Section 2.4(c) shall be deemed deleted, and (vi) Section 2.4(e) shall be deemed deleted.

2.5 Audit Rights

(a) Tenant, at Tenant's sole cost and expense, shall have the right, to be exercised by notice given to Landlord (each, an "Audit Notice") within two (2) years after receipt of an Operating Expense Statement, Tax Statement or other invoice, to audit and/or inspect (I) in the case of an Operating Expense Statement, Landlord's books and records pertaining to Operating Expenses for the calendar year for which such Operating Statement is issued (and/or any other items or matters that impact the amount of Tenant's Operating Expense Share for such calendar year), (II) in the case of a Tax Statement, Landlord's books and records pertaining to Real Estate Taxes for the calendar year for which such Tax Statement is issued (and/or any other items or matters that impact the amount of Tenant's Tax Share for such calendar year), (III) in the case of any OE Includable Capital Item(s), copies of all specifications, contracts and invoices pertaining to the OE Includable Capital Item(s), and (IV) in the case of any other invoice, Landlord's books and records pertaining to any and all sums stated to be due and owing from Tenant pursuant to such invoice (Landlord's books and records described in clauses (I), (II), (III) or (IV) of this sentence, as applicable, are herein called the "Relevant Books and Records"); *provided, that* (1)

such audit and/or inspection (i) commences within ninety (90) days after the later of (x) the date of the Audit Notice, and (y) the date that Landlord makes all the Relevant Books and Records available to Tenant consistent with the provisions of Section 2.5(b) below, and (ii) thereafter proceeds reasonably to conclusion, (2) Tenant may audit any single calendar year only once in response to any particular Operating Expense Statement, Tax Statement or other invoice (it being understood that any amended Operating Expense Statement, revised Tax Statement or other revised or re-submitted invoice shall be deemed a separate Operating Expense Statement, Tax Statement or invoice, as the case may be, for purposes of this Section 2.5). Tenant may conduct any audit or inspection of the Relevant Books and Records with Tenant's own employees, or through an accountant or other agent selected by Tenant, or both in combination. With respect any such audit or inspection, Tenant agrees to treat, and, if applicable, use all reasonable efforts to cause its accountant or other agent, to treat, all information regarding the Relevant Books and Records (other than information within the public domain) as confidential; provided, however, that nothing in this sentence shall prevent any disclosure in any dispute regarding the Relevant Books and Records, or otherwise in any court or arbitration proceeding under this Lease, or otherwise as required by any court or other Governmental Authority.

(b) Landlord shall cause all of its books and records which are (or may become) Relevant Books and Records to be maintained in a complete manner, and one which will permit any audit or inspection thereof to proceed reasonably to conclusion. Without limiting the foregoing in any manner, the Relevant Books and Records with respect to Operating Expenses, for any calendar year, shall include all records and other documentation needed to ascertain that any allocation made by Landlord with respect to the costs described in Section 2.2(c)(5) hereof conforms to the requirements of Section 2.2(c)(5) hereof (including, as applicable, records and documentation relating to Operating Expenses for prior calendar years, and records and documentation relating to other properties owned or operated by Landlord and/or Affiliates of Landlord).

(c) Promptly after its receipt of an Audit Notice, and until the pertinent audit or inspection is completed, Landlord shall make all the Relevant Books and Records continuously available to Tenant or Tenant's agents at one (1) single business location (which business location shall be either (i) the Property, or (ii) Landlord's headquarters or main office, which shall be located in the continental United States) during Building Operating Hours (until such audit or inspection is completed). Throughout Tenant's conduct of any such audit or inspection, Landlord agrees to cooperate in good faith therewith. As part of its conduct of any such audit or inspection, Tenant or Tenant's agents may make and retain copies of the whole or any portion of the Relevant Books and Records.

(d) If Tenant's audit or inspection of the Relevant Books and Records indicates that Landlord's calculation of Tenant's Operating Expense Share for any calendar year, Tenant's Tax Share for any calendar year, or any other invoiced component of Additional Rent, was overstated and resulted in Tenant overpaying the pertinent item of Additional Rent, or Landlord has included costs in the calculation of Tenant's Operating Expense Share for any calendar year that are not documented by Landlord, then (i) Landlord, within thirty (30) days after the completion of such audit and/or inspection, shall refund to Tenant the amount of such overpayment, together with interest on the amount thereof at the Applicable Rate for the period from date Tenant made such payment to the date that Landlord makes such refund, and (ii) if such overpayment exceeds

four percent (4%) of the actual amount of the pertinent item of Additional Rent, then, in addition, Landlord, within thirty (30) days after Tenant's request, shall pay to Tenant an amount equal to Tenant's reasonable out-of-pocket costs in conducting such audit or inspection.

(e) In any case, should Landlord disagree with the results of Tenant's audit or inspection, Landlord and Tenant shall refer the matter to a mutually acceptable independent certified public accountant, who shall work in good faith with Landlord and Tenant to resolve the discrepancy. The fees and costs of such independent accountant to which such dispute is referred shall be borne by the unsuccessful party and shall be shared pro rata to the extent each party is unsuccessful as determined by such independent certified public accountant, whose decision shall be final and binding.

ARTICLE III
BUILDING SERVICES, IDENTITY, SIGNAGE, AND MANAGEMENT

3.1 Building Standard and Above Standard Services

During the Term, Landlord shall furnish the following services to Tenant:

(a) Building Standard Services. Landlord shall furnish the following services to Tenant throughout the Term ("Building Standard Services"), all of which shall comply with and shall be subject to Legal Requirements and, except as expressly provided to the contrary in this Section 3.1(a), shall be equal to or exceed services customarily provided for Comparable Buildings:

(i) At all times, hot (*i.e.*, thermostat set in the range of 105° to 110° Fahrenheit for comfort and energy conservation purposes but with the capability to produce hot water for specified purposes at 140° Fahrenheit if requested by Tenant) and cold domestic water in, and for, (x) all restrooms, drinking fountains, kitchen and pantry areas (and other areas or facilities requiring domestic water) within the Leased Premises, and (y) all restrooms, drinking fountains, kitchen and pantry areas (and other areas or facilities requiring domestic water) located in Common Areas.

(ii) During Building Operating Hours, HVAC service to the Leased Premises and the Common Areas of the Building sufficient to maintain temperatures that are reasonably required for comfortable use and occupancy thereof, in conformity with the standards and specification in effect on the Commencement Date (such HVAC service, as to the Leased Premises, being herein called "Building System HVAC Service").

(iii) Electric lighting service for the Common Areas, including the Parking Areas, and, as more particularly set forth in subsection (vi) below, the Leased Premises, all in conformity with the practices for the Property on the Commencement Date.

(iv) Janitorial and landscaping service to the Leased Premises and the Common Areas in conformity with the janitorial and landscaping specifications for the Property as set forth in Exhibit C hereto; provided, however, that (A) Tenant, from time to time, shall have the right, upon sixty (60) days written notice to Landlord, to elect to separately contract for janitorial services for the Leased Premises, and, if Tenant makes such election, then, during all

such periods that such election is in effect, Operating Expenses shall exclude the cost of providing janitorial services to the Leased Premises and all other Leasable Areas (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly), and (B) during any Tenant Management Period, Tenant, in addition, shall, from time to time, have the right, upon sixty (60) days written notice to Landlord, to take over responsibility for providing janitorial and landscaping services for the Property, and, if Tenant makes such election, then, during all such periods for which such election is in effect, (I) Operating Expenses shall exclude the cost of providing janitorial and landscaping services to the Property (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly), and (II) Landlord shall reimburse Tenant an amount equal to the sum of (aa) the reasonable costs incurred by Tenant in providing such janitorial and landscaping services to the Leasable Areas outside the Premises, plus (bb) the *excess of* (x) the reasonable costs incurred by Tenant in providing such janitorial and landscaping services to the Common Areas, *over* (y) Tenant's Occupancy Percentage of such reasonable costs.

(v) Access control services for the Building providing Tenant and its employees access to the Leased Premises and the Common Areas at all times; it being understood that Tenant shall have the right, at Tenant's sole cost and expense, to install and operate such additional access control systems as it shall determine desirable for the purpose of limiting access to or within the Leased Premises, so long as any additional access control systems installed by Tenant are monitored and maintained by Tenant at Tenant's sole expense.

(vi) At all times, electricity to Tenant (for use within the Leased Premises and in connection with any Tenant Property located outside of the Leased Premises that consumes electricity), it being agreed that (A) dedicated electrical capacity shall be available to Tenant therefor, at all times, in an amount not less than the dedicated electrical capacity available therefor on the Commencement Date (such dedicated electrical capacity being herein called "Tenant's Dedicated Electrical Capacity") (it being agreed that Tenant's Dedicated Electrical Capacity shall not be deemed to include any electrical capacity available for any Common Areas and/or the operation of any Building Systems), and (B) such electricity shall be made available to Tenant at, and transformed to, a panel box(es) located in the core of each floor of the Building on which the Leased Premises are located (and/or such other panel box(es) servicing the Leased Premises on the Commencement Date). Without limiting the foregoing, Landlord shall have the right, but not the obligation, at Landlord's sole cost and expense, to install and operate one or more electrical submeters to separately measure Tenant's electrical consumption with respect to the Leased Premises and any Tenant Property located outside of the Leased Premises, but in no event any electrical consumption attributable to the Common Areas or the operation of any Building Systems (such submeter(s) being herein collectively called the "Premises Submeter"), but only if Landlord likewise installs one or more electrical submeters to separately measure the electrical consumption of all other tenants or occupants of the Property (which, in all events, shall include all electrical demand and consumption with respect to all Leasable Areas, other than the Leased Premises, even if vacant, and with respect to all property belonging to any such other tenants or occupants located outside of Leasable Areas) (such submeter(s) being herein called the "Other Leasable Area Submeters"). If Landlord installs and operates both the Premises Submeters and the Other Leasable Area Submeters (collectively, the "Leasable Area Submeters") pursuant to the preceding sentence, then, during all periods that all the Leasable

Area Submeters are operational, (I) Operating Expenses shall not include any costs of any electricity, the consumption of which is being measured (or which is required to be measured) by any of the Leasable Area Submeters (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly), and (II) Tenant, in respect of Tenant's electrical usage, shall pay to Landlord, as Additional Rent, for any billing period, within thirty (30) days following Tenant's receipt of Landlord's billing statement therefor (each, a "Landlord Electrical Invoice"), an amount equal to (a) the *product of* (x) Tenant's consumption of electricity, as measured, in KWHs, by the Premises Submeter for such billing period, *multiplied by* (y) Landlord's Average Cost Per KWH for such billing period, plus (b) if applicable, any sales tax or other charges payable, by law, on the amount described in clause (a) of this sentence. As used herein, the term "Landlord's Average Cost Per KWH", for any billing period, shall mean an amount equal to the quotient obtained by *dividing* (1) the total dollar amount charged to Landlord by the electric utility company serving the Property (the "Electric Utility Company") for all electricity furnished to the Property for such billing period, as shown on the Electric Utility Company's bill therefor (excluding, however, the amount of any sales tax or other charges payable, by law, which may be payable pursuant to such bill), *by* (2) the total number of kilowatt hours ("KWHs") of electricity consumed by or in the Property during such billing period, as shown on the Electric Utility Company's bill therefor. Landlord's Electrical Invoice, for any billing period, shall (aa) separately set forth (xx) Tenant's consumption of electricity, as measured, in KWHs, by the Premises Submeter for such billing period, (yy) Landlord's Average Cost Per KWH for such billing period, and a reasonably detailed computation thereof, and (zz) the sales tax or other charges payable, by law, that are payable by Tenant pursuant to such invoice (and Landlord covenants to remit to the appropriate governmental agency, all such sales tax and other charges paid by Tenant pursuant to such invoice), and (bb) be accompanied by the Electric Utility Company's bill for such billing period. Notwithstanding the foregoing, during any Tenant Management Period, Tenant shall, from time to time, have the right, upon sixty (60) days written notice to Landlord, to take over responsibility for making payments directly to the Electric Utility Company providing the electric service to the Property, and, if Tenant makes such election, then, during all such periods for which such election is in effect, (I) Operating Expenses shall exclude the cost of providing electricity (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly), and (II) Landlord shall reimburse Tenant an amount equal to the *excess of* (x) the reasonable costs incurred by Tenant in providing electricity, *over* (y) Tenant's Occupancy Percentage of such reasonable costs. In addition, Tenant shall indemnify and hold harmless Landlord from and against all third party claims (including claims by other tenants or occupants of the Property) arising out of or relating to any failure or alleged failure to adequately provide the electricity during such periods for which such election is in effect.

(vii) Security for the Property (including the Building, the Leasable Areas therein and the Common Areas, including the Parking Areas) and/or for the enforcement and control of Parking Areas, all substantially similar to the security services existing on the Commencement Date (such security being herein called the "Property Security"); *it being agreed that* any additional security (above the Property Security) required for the Leased Premises in order to comply with Legal Requirements in effect from time to time pertaining to banking security systems, devices, services, equipment and procedures, or as otherwise deemed necessary by Tenant, shall be the sole responsibility of Tenant, and not part of the Property Security, and

Landlord shall have no responsibility or liability therefor. Notwithstanding the foregoing, during any Tenant Management Period, Tenant shall, from time to time, have the right, upon sixty (60) days written notice to Landlord, to take over responsibility for providing the Property Security, and, if Tenant makes such election, then, during all such periods for which such election is in effect, (I) Operating Expenses shall exclude the cost of providing the Property Security (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly), and (II) Landlord shall reimburse Tenant an amount equal to the excess of (x) the reasonable costs incurred by Tenant in providing the Property Security, over (y) Tenant's Occupancy Percentage of such reasonable costs. In addition, Tenant shall indemnify and hold harmless Landlord from and against all third party claims (including claims by other tenants or occupants of the Property) arising out of or relating to any failure or alleged failure to adequately provide the Property Security during such periods for which such election is in effect.

(viii) All bulb and ballast replacement in all Common Areas and Building Standard bulb and ballast replacement in the Leased Premises, it being understood that replacement of all fluorescent, incandescent, halogen and other types of bulbs and ballasts in all fixtures existing in the Leased Premises as of the Commencement Date shall be deemed to be Building Standard and that Landlord shall not be obligated to replace any bulbs and ballasts in Tenant's furniture or furnishings in the Leased Premises.

(ix) At all times, passenger elevator service to the Leased Premises, subject, outside of Building Operating Hours, to (x) temporary cessation for ordinary repair and maintenance (but, as to each floor of the Building on which the Leased Premises are located, such temporary cessation for ordinary repair and maintenance shall not occur simultaneously for all passenger elevator cabs serving such floor) and (y) reasonable security measures consistent with those generally being employed at Comparable Buildings.

(x) Maintenance and cleaning of the Property (including the Base Building and the Common Areas, including (aa) the Common Areas on each floor of the Building on which any part of the Leased Premises is located, (bb) the Parking Areas and (cc) all exterior landscaped portions on the Land or immediately adjacent thereto).

(xi) During Building Operating Hours, non-exclusive use (in common with Landlord and other tenants or occupants of the Property) of the Building's loading dock(s), freight elevator(s) and related facilities (if and to the extent that such the same either exist on the Commencement Date or are hereafter constructed) (collectively, the "Building's Loading & Delivery Facilities"), which use shall be without charge, on first-come, first-serve basis, and shall otherwise be subject to the Building Rules.

(xii) At all times, sanitary sewer service to the Leased Premises and Common Areas.

(xiii) Trash removal from the Property at designated locations; provided, however, that Tenant, from time to time, shall have the right, upon sixty (60) days written notice to Landlord, to elect to separately contract for trash removal services for the Leased Premises, and, if Tenant makes such election, then, during all such periods that such election is in effect, Operating Expenses shall exclude the cost of providing trash removal services to the Leased

Premises and all other Leasable Areas (and the calculation of the Monthly Estimated OE Payments and Tenant's Operating Expense Share shall be adjusted accordingly).

(xiv) Snow and ice removal services as required to maintain safe access to the Property at all times during Building Operating Hours.

(xv) Appropriate precautionary measures to protect the Property from windstorm, hurricanes, flooding and other predictable natural disasters as customarily taken by prudent property owners at Comparable Buildings or as may be required by the insurance provider for the Property.

(xvi) Maintenance, service and testing of any electric generation systems and equipment to the extent such equipment and systems serve the Common Areas, Leased Premises and Leasable Areas of the Building (and not exclusively the Leased Premises).

(xvii) Life safety services (through fire alarm systems, energy management systems, etc.) as provided as of the Commencement Date, and, thereafter, as needed to provide such services at level consistent with Comparable Buildings.

(xviii) Other utilities and services provided to Tenant, the Leased Premises or the Common Areas, as of the Commencement Date, including, if applicable, gas, steam, fuel oil, etc.

Landlord and Tenant acknowledge that Tenant owned and operated the Property prior to the Commencement Date, and Tenant is fully aware of the capabilities and limitations of the Building Systems as of the Commencement Date. Nothing in this Section 3.1(a) shall be deemed to be a covenant or agreement of Landlord, or a representation or warranty of Landlord, express or implied, that Landlord shall upgrade the Building Systems so that the same will hereafter be capable of greater performance then the same are capable of on the Commencement Date, and if the particular standards or specifications herein-above set forth for any Building Standard Service can not be furnished without such an upgrade, then, notwithstanding the foregoing provisions of this Section 3.1(a), Landlord need only provide such service at the highest level (or the level closest to such standards or specifications) which can be provided without such an upgrade (but, in all events, at a level at least equal to that being provided as of the Commencement Date). With respect to the Building Standard Services referenced in Section 3.1(a)(i), (ii), (v) and (ix), Landlord shall furnish such services in such quantities and at such levels that are at least equal to the quantities and levels being furnished at the Property immediately prior to the Commencement Date, with Tenant acknowledging and agreeing that Landlord shall not be required to provide during the Term greater quantities or higher levels of service than is capable of being provided through the Building Systems as the same exist as of the Commencement Date, and that Landlord has no obligation to replace or improve such Building Systems other than in the ordinary course as may be consistent with sound building management practices or as required by Section 5.5 hereof.

(b) (1) If Tenant requires electricity for use in the Leased Premises in excess of Tenant's Dedicated Electrical Capacity, and such required additional electrical capacity is then available at the Property or can be obtained for the Property by Landlord from the Electric Utility

Company, then Landlord shall, upon Tenant's request and at Tenant's sole cost and expense, furnish and install, or cause to be furnished and installed, the additional equipment (if any) that is reasonably required to furnish such additional electrical capacity to the Leased Premises (including, as needed, wires, risers, conduits, feeders, switchboards and circuit panels), whereupon Tenant's Dedicated Electrical Capacity shall be automatically increased by such additional electrical capacity.

(2) Tenant, from time to time, shall have the right to install within the Leased Premises (at locations selected by Tenant), or within the Common Areas, or on the grounds, or roof of the Building, subject to Landlord's approval not to be unreasonably withheld or delayed, one or more supplemental HVAC units, together with the equipment pads, ducts and other equipment needed to accommodate the equipment and distribute and vent the air generated thereby (collectively, the "Tenant's Supplemental HVAC Equipment") for the purpose of providing additional HVAC service (*i.e.*, HVAC service in addition to the Building System HVAC Service) for the Leased Premises or any portion thereof.

(3) If the Building Systems, as of the date hereof, shall include any chilled or condenser water system (herein called the "Building's CW System"), then Tenant, in connection with the operation of any Tenant's Supplemental HVAC Equipment, then Landlord, as a Building Standard Service, shall furnish chilled or condenser water therefrom to Tenant, at a level equal to the level that is being furnished to Tenant therefrom on the Commencement Date (such level being herein called "Tenant's Allotted CW Capacity") and at the times that such Tenant's Allotted CW Capacity is being furnished, or made available, on the Commencement Date, without charge to Tenant. If, at any time hereafter, Tenant, by notice to Landlord, may request an increase in Tenant's Allotted CW Capacity, and, in any such case, (i) if, at the time of such request, the Building's CW System has sufficient available capacity to permit the requested increase, then Tenant's Allotted CW Capacity shall be automatically increased by the requested increase, or (ii) if, at the time of such request, the Building's CW System does not have sufficient available capacity to permit the requested increase, then Landlord shall so notify Tenant, which notice shall indicate whether or not the Building's CW System is susceptible of an upgrade which would create sufficient available capacity to permit the requested increase. In any case that Landlord's notice to Tenant shall indicate that the Building's CW System is susceptible of an upgrade, Tenant shall have to authorize such an upgrade be effected, in which event Landlord, at Tenant's sole cost and expense, shall cause such upgrade to be effected with reasonable dispatch, whereupon Tenant's Allotted CW Capacity shall be automatically increased by such requested increase.

(c) (1) If and to the extent requested by Tenant from time to time and to the extent the same are reasonably available, Landlord shall provide Tenant with services in excess of Building Standard Services as described in Section 3.1(a) and Section 3.1(b)(3) hereof ("Above Standard Services"). All of the costs incurred by Landlord in connection with providing any special Tenant services shall be paid by Tenant as Above Standard Services Rent, including costs that would not have been incurred but for Tenant's request for Above Standard Services. Landlord's charges for Above Standard Services may be established and revised from time to time by Landlord; provided that at no time shall Landlord's charges for Above Standard Services exceed Landlord's actual out-of-pocket costs, nor shall Landlord (i) include any overhead or profit in the calculation of Above Standard Services costs or (ii) charge Tenant at a higher rate

for Above Standard Services than Landlord charges any other tenant of a Building for comparable services.

(2) Notwithstanding the provisions of Section 8.1(c)(1) above, or anything else to the contrary contained in this Lease, Landlord shall be required to furnish the following Above Standard Services (herein called the "Required Above Standard Services"), upon the following terms and conditions:

(A) If Tenant shall request that Building System HVAC Service be furnished to the Leased Premises during times other than during Building Operating Hours (such service, during such times, being herein called "OT Building System HVAC Service"), then Landlord shall furnish OT Building System HVAC Service to Leased Premises during such time or times, consistent with such request and the foregoing specifications. Tenant shall request OT Building System HVAC Service no later than 3:00 p.m. on the Business Day for which the same is requested, or no later than 3:00 p.m. on the last preceding Business Day, in any case where OT Building System HVAC Service is requested for any day that is not a Business Day. Tenant, in respect of OT Building System HVAC Service requested and furnished, shall pay to Landlord an hourly charge therefor, as Above Standard Services Rent, for each hour that OT Building System HVAC Service was requested and furnished, which hourly charge, during any calendar year, shall be at the rate(s) therefor set forth in the Final Budget for such calendar year, and shall not, in any event, exceed the hourly charge generally applicable in Comparable Buildings for overtime HVAC service or other tenants or occupants of the Property.

(B) If Tenant shall request use of the Building's Loading & Delivery Facilities during times other than during Building Operating Hours, then Landlord shall make the same available to Tenant to use the same during such times; subject to availability, which shall be on a first-reserved, first served, basis as amongst the tenants and other occupants of the Property. Tenant shall make such a request no later than 3:00 p.m. on the Business Day for which such use is requested, or no later than 3:00 p.m. on the last preceding Business Day, in any case where such use is requested for any day that is not a Business Day. Tenant's use of the Building's Loading & Delivery Facilities outside of Building Operating Hours shall be without charge, except that Tenant shall reimburse Landlord, as Above Standard Services Rent, for the actual, reasonable out-of-pocket costs to third parties (without allowance for overhead or profit) to furnish such service to Tenant.

(C) If Tenant shall request chilled or condenser water from the Building's CW System during times other than the times that chilled or condenser water is furnished, or made available, to Tenant on the Commencement Date, then Landlord shall furnish same to Tenant during such other times; provided, however, that if Landlord is not then generally furnishing, or making available, chilled or condenser water during such other times without an additional charge, then Tenant shall pay Landlord an hourly charge therefor, as Above Standard Services Rent, for each hour that chilled or condenser water was requested and furnished during such other times, which hourly charge, during any calendar year, shall be at the reasonable rate(s) therefor set forth in the Final Budget for such calendar year, but shall not, in any event, exceed either (x) the hourly charge generally applicable in Comparable Buildings for overtime chilled or condenser water service or (y) Landlord's hourly charge to other tenants or occupants of the Property for overtime chilled or condenser water service from the Building's CW System.

(d) Landlord shall furnish Tenant at least five (5) Business Days prior written notice of any non-emergency suspension or interruption in the Building Standard Services scheduled by Landlord for routine repairs or maintenance; provided, however, that (i) no such non-emergency suspension or interruption shall be during Building Operating Hours, and (ii) if any such non-emergency suspension or interruption will render the Common Areas or the Leased Premises inaccessible, without electric power, without cold domestic water or sanitary sewer service or otherwise untenantable in the ordinary course, then Landlord shall provide Tenant with not less than sixty (60) days' prior notice thereof.

(e) To the extent the services described in this Section 3.1 require electricity, water or other utility services supplied by public utilities, Landlord shall not be deemed to be in breach of Landlord's covenants hereunder because of the failure of a public utility to supply the required services so long as Landlord uses all commercially reasonable efforts to cause the applicable public utility to furnish the same. Except as expressly provided in Section 3.1(f) and Section 6.3, the failure by Landlord to furnish the services described in this Section 3.1 (or any cessation thereof), if caused solely by reason of Force Majeure Events, shall not render Landlord liable for damages to Tenant, be construed as an eviction of Tenant, give rise to an abatement of Rent, or relieve Tenant from fulfillment of any covenant or agreement hereof.

(f) Notwithstanding the foregoing, if (i) Landlord fails to provide any of the services Landlord is obligated to provide under this Lease (for any reason other than the gross negligence or willful misconduct of Tenant or any Tenant Party), (ii) such failure adversely impacts Tenant's use or enjoyment of the Leased Premises or any portion thereof (and Tenant actually ceases to use the affected area for business operations), and (iii) such failure continues for more than three (3) consecutive days after notice from Tenant to Landlord (any such failure, a "Service Failure"), then all Rent due under this Lease for the affected portion of the Leased Premises shall be abated for the entire duration of the Service Failure. In addition to Tenant's foregoing rights, Tenant shall have the right, but not the obligation, to cure any Services Failure if, and to the extent, permitted under Section 13.1(b) and, as provided therein, to recover the reasonable cost thereof from Landlord.

3.2 Separate Charge Parking Areas

(a) If there are any Separate Charge Parking Areas located upon the Property as of the Commencement Date, Landlord may assess a separate charge(s) for the use thereof (whether such use is by Tenant, any Tenant Parties and/or the customers, invitees and guests of Tenant or any Tenant Parties), *provided, that* any such separate charge(s) shall be uniformly applied to all users of the Separate Charge Parking Areas (including other tenants and occupants of the Property, and their customers, invitees and guests, as well as any others permitted to use the Separate Charge Parking Areas), and (iii) shall not exceed, in any event, the separate charge(s) generally applicable with respect to similar parking areas appurtenant to, or operated by owners or operators of, Comparable Buildings.

(b) Except for the Separate Charge Parking Areas (if any), Landlord may not assess any separate charge for use of any Parking Areas (whether Tenant Dedicated Parking Areas or Non-Dedicated Parking Areas), or the use of any other Common Areas.

3.3 Graphics and Building Directory

(a) On each floor of the Building on which the Leased Premises are located, and at each location within the Property where Tenant maintains such signage as of the Commencement Date, Tenant may install and maintain signage using Tenant's name, identity, logos and/or graphics (as Tenant may change its name, identity, logo and/or graphics from time to time), and/or the similar signage of any Tenant Party or Affiliate of Tenant occupying the Leased Premises, and/or any directory signage for the Leased Premises containing the name of Tenant and/or any Tenant Parties or Affiliates of Tenant occupying the Leased Premises, suite or room number references and/or businesses or departments references. Such signage shall be located on or adjacent to entrances to the Leased Premises (or, as to any such signage maintained as of the Commencement Date, it may be kept in its current location). If, at any time after the installation of any such signage on any particular floor of the Building on which the Leased Premises are located, no portion of the Leased Premises shall any longer be located on such floor of the Building, then Tenant, at its cost, shall remove such signage.

(b) If the lobby of the Building contained a building directory on the Commencement Date, or if Landlord elects to install or construct a building directory in the lobby of the Building at any time, then any such building directory board shall contain the listing of Tenant's name and such other information as Tenant shall reasonably require from time to time (including, at Tenant's option, the names of all of Tenant's businesses, Tenant Parties and Affiliates as Tenant shall designate), and Tenant shall be entitled to Tenant's Occupancy Percentage, from time-to-time, of the space contained in such directory. Any new listings designated by Tenant from time to time shall be installed by Landlord at Tenant's expense.

(c) Nothing contained in this Section 3.3 (or otherwise in this Lease) shall be deemed to restrict, in any manner, Tenant's rights to maintain any signage, directories or other displays, within the Leased Premises or any part thereof.

3.4 Building Signage; Exclusivity

(a) (1) For purposes hereof, the following terms shall have the meanings hereinafter ascribed thereto:

(A) "Building Signage" shall mean, collectively, (i) exterior building signage (i.e., signage affixed to the exterior of the Building), (ii) lobby signage (i.e., signage within the Building's main or other multi-tenant lobby or lobbies, but distinguished from any signage described in Section 3.3 hereof), (iii) monuments which accommodate signage anywhere upon the Property, together with any signage placed thereon, and (iv) any other signage upon the Property located outside of the interior of the Building.

(B) "Building Identification Signage" shall mean Building Signage which, due to its size, location and other incidents of prominence, has the effect of naming or identifying the Building, from the standpoint of the public.

(C) "Tenant's Building Signage" shall mean any and all Building Signage (i) installed or maintained by Tenant (or at its instance), and (ii) displaying the name,

identity, logo and/or graphics of (x) Tenant (and/or any of its Affiliates) or (y) any Tenant Party (and/or any of its Affiliates).

(D) "Other Building Signage" shall mean any and all Building Signage that is not Tenant's Building Signage.

(2) Tenant, throughout the Term, shall have the right to continue to maintain all Tenant's Building Signage existing as of the Commencement Date.

(3) In addition, Tenant, throughout the Term, shall have the right to (i) erect, install and maintain additional Tenant's Building Signage, (ii) make alterations to any then existing Tenant's Building Signage which change the name, identity, logo and/or graphics comprising the content thereof (so long as the same remains Tenant Building Signage as hereinabove defined), and/or (ii) make any other alterations to any then existing Tenant's Building Signage (it being understood that alterations to any then existing Tenant's Building Signage may include the removal and replacement thereof, or the mere removal thereof), but all such additional Tenant's Building Signage and/or any such alterations shall be subject to Landlord's approval (but only as to construction means and methods, size and location, and not as to content, style, shape, color or other aesthetics), which approval shall not be unreasonably withheld or delayed.

(4) Notwithstanding the foregoing, Tenant may not make any alterations to any Building Identification Signage which change the name comprising the content thereof unless the new name is either (i) the name of a Wachovia Party, (ii) the name of another financial institution (or one of its Affiliates), (iii) the name of a *Fortune 500 company* (or one of its Affiliates), or (iv) another name (not described in clauses (i) through (iii) of this sentence) which Tenant shall propose, and Landlord shall approve (which approval shall not be unreasonably withheld or delayed).

(5) In connection with any initial installation of, or alterations to, any Tenant's Building Signage during the Term (as well as any repair or maintenance of Tenant's Building Signage during the Term), Tenant, at Tenant's sole cost and expense, shall comply with all Legal Requirements. Tenant, in addition, shall repair any damage to the interior or exterior of the Building caused by Tenant's initial installation of, alterations to, any Tenant's Building Signage; but the foregoing shall not obligate Tenant to restore any portions of the Building's façade that are affected by Tenant's Building Signage being affixed thereto (but, in the case of Tenant's removal thereof, Tenant, at its expense, shall patch any holes in, and/or cover over, by sign blanks of similar size, shape and appearance, the affected areas of Building's façade, to the extent visible).

(b) Throughout the Term, Other Building Signage shall be restricted as follows:

(1) During any period during the Term that either (i) Tenant's Occupancy Percentage shall be at least fifty percent (50%), or (ii) the Leased Premises shall include a retail bank location (whether or not the same is then being operated) (any such period being herein called a "Tenant Prominence Period"), Landlord shall not erect, install or maintain, or permit any person (other than Tenant) to erect, install or maintain, any Other Building Signage, unless (x)

there is then existing Tenant's Building Signage, and (y) such Other Building Signage is *of less prominence* than such then existing Tenant's Building Signage.

(2) During any period during the Term other than a Tenant Prominence Period, Landlord shall not erect, install or maintain, or permit any person (other than Tenant) to erect, install or maintain, any Other Building Signage, unless (x) there is then existing Tenant's Building Signage, and (y) such Other Building Signage is *of equal or less prominence* than such then existing Tenant's Building Signage.

(3) Without limiting the foregoing in any respect, during any Tenant Prominence Period, Tenant shall have (i) the sole and exclusive right to name the Building (or any other part of the Property), and (ii) the sole and exclusive right to erect (or permit to be erected) any Building Identification Signage.

(c) During the Term, for so long as (i) Tenant's Occupancy Percentage shall be at least twenty-five percent (25%), or (ii) the Leased Premises shall include a retail bank location (whether or not the same is then being operated), Landlord will not allow any portion of the Property (other than the portion of the Property then leased to Tenant) to be used as a retail financial services operation, without Tenant's prior written consent, which consent may be withheld in Tenant's sole and absolute discretion. For purposes of this Lease, the term "*retail financial services operation*" shall include any retail banking, or other operation constituting a banking use or purpose, including any operation involving receiving deposits, making loans (commercial or consumer), sale of securities or mutual funds or sale of insurance products to the general public, whether done by a state bank, national bank, savings and loan association, trust company, credit union, mortgage or securities broker or company, insurance company, or other entity, whether by walk-up, drive-in teller facility or otherwise; provided, however, that (x) the term *retail financial services operation* shall not include general office use, and (y) in that regard, the offices of an insurance company engaged primarily in underwriting activities shall not be deemed a *retail financial services operation* solely because insurance policies are sold from such offices on an incidental basis.

(d) Tenant's exclusivity rights as described above at Section 3.4(c) hereof also includes the exclusive right to place ATMs in the Building or otherwise on the Property, including all exterior areas of the Building and the Land. Tenant shall have the right, for no additional Rent, to place not more than five (5) ATMs at locations outside of the Leased Premises in and about the Common Areas. There is no restriction on the number of ATMs that Tenant can maintain within the Leased Premises, including any Drive-Through Banking Facilities. However, except for any ATMs existing as of the Commencement Date, the plans and specifications, and specific locations, for any ATMs located outside the Leased Premises are subject to Landlord's prior written consent, which consent will not be unreasonably withheld or delayed. Tenant, at its expense, shall install, maintain, operate and repair such ATMs in compliance with all Legal Requirements. At the expiration or earlier termination of this Lease, Tenant, at its expense, shall remove the ATMs in accordance with Section 5.3 hereof. The restrictions set forth herein shall not apply to ATMs operated by third parties as of the date of this Lease.

(e) Notwithstanding anything to the contrary contained in this Lease, the rights granted to Tenant pursuant to this Section 3.4 shall be subject and subordinate to the rights of any Building tenants whose leases are in effect as of the Commencement Date (but if, and to the extent, such rights are set forth in such leases as of the Commencement Date). For example purposes only, and not as a means of limitation, if an existing tenant's lease (as in effect on the Commencement Date) requires such existing tenant's approval for a change in the name of the Building, then Tenant may not cause the name of the Building to change without such existing tenant's approval. As another example, if an existing tenant's lease (as in effect on the Commencement Date) provides for such existing tenant to place its name on exterior and/or monument signage, then any exercise of such existing tenant's rights shall not be deemed to be a violation of Tenant's rights under this Lease.

3.5 Tenant's Exterior Equipment

(a) Tenant, throughout the Term, shall have the right to continue to maintain and operate all of Tenant's communications, service and other equipment (including any satellite dishes, transmitters and/or antennas, Tenant's Supplemental HVAC Equipment, fuel tanks, generators, etc., as well as any other equipment required to operate the foregoing or to connect the same to the Leased Premises, *e.g.*, conduits and cables) which, as of the Commencement Date, are located upon the roof of the Building or otherwise in a portion(s) of the Property located outside of the Leased Premises (collectively, "Tenant's Existing Exterior Equipment").

(b) In addition to Tenant's Existing Exterior Equipment, Tenant, throughout the Term, shall have the right to install (and, after such installation, maintain and operate) additional communications, service and other equipment upon the roof of the Building and/or any other portion(s) of the Property outside of Leasable Areas, *subject, however,* to obtaining Landlord's consent thereto, which consent shall not be unreasonably withheld or delayed, *provided, that* (i) such additional communications, service and other equipment shall not materially compromise the aesthetics or appearance of the Building, (ii) such additional communications, service and other equipment shall not impose any additional expense upon Landlord which Tenant is not willing to pay or reimburse Landlord for, and (iii) such additional communications, service and other equipment shall be designed and installed in compliance with all Legal Requirements, and otherwise in a manner so as not to (1) adversely affect the Base Building, including the operation of any of then existing Building Systems, (2) create an unreasonable risk of injury to persons or property, or (3) in the case of equipment to be located upon the roof of the Building, void or impair any applicable roof warranty.

(c) The following provisions shall apply to Tenant's Existing Exterior Equipment, as well as any additional communications, service and other equipment installed by Tenant under Section 3.4(b) above (herein collectively called "Tenant's Exterior Equipment"):

(1) All Tenant's Exterior Equipment shall be maintained and operated at Tenant's sole cost and expense and in accordance with all Legal Requirements.

(2) Any material changes to any then existing Tenant's Exterior Equipment (i.e., changes regarding size, location, etc.) shall first be approved by Landlord, which approval will not be unreasonably withheld or delayed.

(3) At all times, Tenant and the pertinent Tenant Parties shall have unrestricted access to all the areas of the Property upon, or within, which any of Tenant's Exterior Equipment is located for purposes of operating, servicing, repairing or otherwise maintaining said equipment. In connection therewith, Tenant shall not unreasonably disturb any other tenants of the Building.

(d) The following provisions shall apply to Tenant's Exterior Equipment located on the roof of the Building (sometimes herein separately called "Tenant's Rooftop Equipment"):

(1) In order to maintain rooftop availability consistent with the needs of Tenant and other tenants and occupants of the Building, Landlord shall not install, or permit to be installed, any equipment on the roof of the Building other than Tenant's Rooftop Equipment and the Other Qualified Rooftop Equipment. "Other Qualified Rooftop Equipment" shall mean (i) any rooftop equipment constituting a component of the Building Systems, (ii) any communications or other rooftop equipment belonging to any other tenant or occupant of the Building for use in connection with its business operations in the Building, and (iii) if sufficient space on the roof of the Building is available therefor (after taking into account both the current and future needs of Tenant, and other tenants and occupants of the Building, and after consultation with Tenant as to its current and future needs), any communications equipment belonging to an area service provider.

(2) In the event that Landlord's performance of any repair or maintenance to the Common Areas, including the roofs of the Building, require the temporary relocation of any Tenant's Rooftop Equipment, then (i) Landlord shall provide Tenant with sixty (60) days' notice of the need therefor, (ii) Tenant, as soon thereafter as is reasonably practicable, shall effect such temporary relocation of such Tenant's Rooftop Equipment (it being understood that Tenant shall have the right to effect such temporary relocation in a manner that will prevent any interruption in the service provided by Tenant's Rooftop Equipment), (iii) Landlord shall complete its repair or maintenance in question as soon as reasonably practicable, and (iv) Tenant, as soon as reasonably practicable after Landlord's completion of such repair or maintenance, shall re-install such Tenant's Rooftop Equipment in its prior location; *it being agreed that* (x) the temporary relocation and re-installation work to be done by Tenant shall be done at Tenant's expense; it being agreed that in no event shall Operating Expenses ever include any amounts associated with the repair, maintenance or temporary relocation of any rooftop equipment (other than Other Qualified Rooftop Equipment constituting a component of the Building Systems, as opposed to any Other Qualified Rooftop Equipment of any tenant or occupant of the Building or any other person other than Landlord as to the Building Systems).

(3) If Landlord shall install, or permit the installation, of any Other Qualified Rooftop Equipment, then the same shall be located, designed and operated so as not to interfere with the operation (including, as applicable, any signals to and from) any of Tenant's Rooftop Equipment, the installation of which, in accordance with this Section 3.5, predates the installation of such Other Qualified Rooftop Equipment. Similarly, any Tenant's Rooftop Equipment hereafter installed by Tenant shall be located and designed so as not to interfere with the operation (including, as applicable, any signals to and from) any Other Qualified Rooftop Equipment that may have previously been installed. The party responsible for the equipment which interferes with equipment previously installed by the other shall be required, at its or their

expense, to take all measures necessary to eliminate the source of interference caused by such party's equipment.

3.6 Building Management

(a) During any period during the Term (each such period, a "Landlord Management Period") that is not a Tenant Management Period, Landlord, subject to and in accordance with the provisions of Section 3.6(b) hereof, shall appoint a property management company (each, a "Landlord Appointed Property Manager") to manage the Property. During any period during the Term that is a Tenant Management Period, Tenant, subject to and in accordance with the provisions of Section 3.6(c) hereof, shall itself be the property manager of the Property. The term "Property Manager" shall mean (i) during any Landlord Management Period, the Landlord Appointed Property Manager and (ii) during any Tenant Management Period, Tenant.

(b) During any Landlord Management Period, Landlord shall appoint the Landlord Appointed Property Manager (and Landlord shall have the right to change the Landlord Appointed Property Manager at any time, or from time to time, during such Landlord Management Period); provided, however, that (i) prior to appointing a Landlord Appointed Property Manager, Landlord shall notify Tenant of Landlord's intention to do so, which notice shall provide the name, address and profile of the property management company that Landlord intends to appoint as Landlord Appointed Property Manager, and Landlord shall not appoint a Landlord Appointed Property Manager as to which Tenant has a reasonable objection (it being acknowledged by Tenant that, as of the date hereof, it has no reasonable objection to an Affiliate of Landlord), and (ii) if any Landlord Appointed Property Manager consistently fails to perform its property management duties in a timely, complete and professional manner that is consistent with the highest level of property management services provided at Comparable Buildings, Tenant, by notice to Landlord, may require Landlord to replace such non-performing Landlord Appointed Property Manager with a new Landlord Appointed Property Manager appointed by Landlord, and reasonably approved by Tenant (in which event, Landlord, promptly after receipt of such notice, shall propose, for Tenant's consideration, one or more other property management companies to act as the new Landlord Appointed Property Manager, and upon Tenant's approval of any thereof, Landlord shall appoint such property management company as the new Landlord Appointed Property Manager).

(c) Tenant, from time to time during the Term, shall have the right, upon notice to Landlord (each, a "Management Designation Notice"), (i) to designate the Property as a "Tenant Managed Property" and (ii) if the Property is then designated as a Tenant Managed Property, to re-designate the Property as a "Non-Tenant Managed Property". If, at any time, Tenant shall designate the Property as a Tenant Managed Property, then each period that commences on the date forty-five (45) days after the date on which Tenant gives Landlord a Management Designation Notice so designating the Property and ending on the date forty-five (45) days after the date on which Tenant gives Landlord a Management Designation Notice re-designating the Property as a Non-Tenant Managed Property is herein referred to as a "Tenant Management Period". If Tenant shall give Landlord a Management Designation Notice designating the Property as a Tenant Managed Property, then the following provisions shall apply:

(1) Prior to the first day of the Tenant Management Period in question, Landlord shall (i) terminate its existing agreement(s) (if any) with the then current Landlord Appointed Property Manager (and Landlord shall pay, without any obligation on the part of Tenant to reimburse Landlord by way of Operating Expenses or otherwise, any premium or penalty associated with such termination), and (ii) enter into a property management agreement for the Property with Tenant (as the property manager of the Property), which agreement shall be in form and substance reasonably satisfactory to Landlord and Tenant, shall be consistent with the rights afforded Tenant in this Section 3.6(c) and shall set forth, among other things, the rights and obligations of the parties delineated in Section 3.6(c)(2) and (3) below. Each such property management agreement for the Property entered into by Landlord and Tenant is herein called a "Tenant Management Agreement"; the management services to be furnished by Tenant (as the property manager) from time to time pursuant to a Tenant Management Agreement are herein collectively referred to as the "Tenant Management Services".

(2) During any Tenant Management Period, Tenant, as reflected in the Tenant Management Agreement, (i) shall be the Property Manager (and may, from time to time during such Tenant Management Period, manage the Property using one or more groups of its own employees or through a Tenant, and/or a Tenant Sub-Manager appointed pursuant to the provisions of Section 3.6(c)(3) below), (ii) shall receive an annual management fee equal to two and one-half percent (2.5%) of Gross Revenues for the Property (and the amount of such management fee actually paid to Tenant shall be included in Operating Expenses pursuant to Section 2.2(c)(1)(viii) above), (iii) shall, without the need to obtain Landlord's prior approval, direct the day-to-day services, supervision of contractors and service providers, maintenance and repairs and the performance of work that is included in the Final Budget (capital or ordinary) for such calendar year, (iv) shall without the need to obtain Landlord's prior approval, have the right to perform (or cause to be performed) work that is required to address an emergency situation and that costs less than ten percent (10%) of the Final Budget for such calendar year, (v) shall, with Landlord's prior approval (which approval shall not be unreasonably withheld, and with Landlord having the obligation to respond within twenty-four (24) hours of Tenant's request), have the right to perform (or cause to be performed) other work that is required to address an emergency situation (i.e., work costing ten percent (10%) or more of the Final Budget for such calendar year), and (vi) shall, during any portion of the Tenant Management Period during which Tenant's Occupancy Percentage is ninety percent (90%) or greater, have the right to elect to have the Tenant Management Services include rent collection services, bill paying services or accounting services (collectively, the "Financial Services").

(3) During any Tenant Management Period, Tenant, at Tenant' sole cost and expense (which shall not be included in Operating Expenses), shall have the right to retain one or more third party property management companies as a sub-manager(s) (each, a "Tenant Sub-Manager") to perform some or all of the Tenant Management Services (which right shall include the right, at any time and from time to time during such Tenant Management Period, to change any Tenant Sub-Manager(s) and to eliminate the use of any or all Tenant Sub-Managers); provided, however, that (I) prior to appointing a Tenant Sub-Manager, Tenant shall notify Landlord of Tenant's intention to

do so, which notice shall, in the case of qualified third party property management company, provide the name, address and profile of the property management company that Tenant intends to appoint as a Tenant Sub-Manager, or, in the case of a designated group of Tenant's own employees, the qualifications of such designated employees, and Tenant shall not appoint, as a Tenant Sub-Manager, any third party property management company to which Landlord has a reasonable objection, and (II) if any property management company then serving as a Tenant Sub-Manager consistently fails to perform its property management duties in a timely, complete and professional manner that is consistent with the highest level of property management services provided at Comparable Buildings, Landlord, by notice to Tenant, may require Tenant to replace such non-performing Tenant Sub-Manager with a new Tenant Sub-Manager appointed by Tenant, and reasonably approved by Landlord (in which event, Tenant, promptly after receipt of such notice, shall propose, for Landlord's consideration, one or more other property management companies or group of Tenant's own employees to act as the new Tenant Sub-Manager, and upon Landlord's approval of any thereof, Tenant shall appoint such property management company or group of Tenant's employees as the new Tenant Sub-Manager).

(4) During any portion of any Tenant Management Period during which the Tenant Management Services include the Financial Services, there shall be included in the Operating Expenses (notwithstanding anything to the contrary contained in Section 2.2(c) above), and Landlord shall be entitled to receive, an asset management fee equal to one-half percent (0.5%) of the Gross Revenues for the Property attributable to such portion of Tenant Management Period. During any portion of any Tenant Management Period that the Tenant Management Services do not include the Financial Services, there shall be included in the Operating Expenses (notwithstanding anything to the contrary contained in Section 2.2(c) above), and Landlord shall be entitled to receive, an asset management fee equal to one percent (1.0%) of the Gross Revenues for the Property attributable to such portion of Tenant Management Period.

(d) Any disputes between Landlord and Tenant with respect to any matters arising under this Section 3.6 shall be subject to resolution as provided in Article XII.

ARTICLE IV
CARE OF PREMISES; LAWS, RULES AND REGULATIONS

4.1 Surrender of Leased Premises

Upon the expiration or any earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord subject to the provisions of Section 5.3 hereof, and otherwise in good condition and repair, reasonable wear and tear excepted (subject, however, in addition, to such damage or destruction that Tenant, as of such expiration or earlier termination, is not, pursuant to the express provisions hereof, obligated to repair or restore). Upon such expiration or termination of this Lease, Landlord shall have the right to re-enter and resume possession of the Leased Premises immediately.

4.2 Access of Landlord to Leased Premises

(a) Subject to the provisions of this Section 4.2, Landlord (through its authorized contractors, agents or representatives) may enter into and upon any part of the Leased Premises during reasonable hours and upon reasonable notice (which shall mean (x) except cases of emergency, at least 24 hours prior notice to Tenant, and (y) in cases of emergency, such prior notice, if any, or contemporaneous notice, as shall be reasonable under the circumstances), for the following purposes: (i) to make such alterations or repairs to the Property as Landlord is required, or expressly authorized, to make pursuant to this Lease; (ii) to otherwise perform Landlord's obligations under this Lease; (iii) for the purpose of showing the same to existing or prospective purchasers or lenders; (iv) at any time during the last twelve (12) months of the Term (assuming no further Renewal Option is then available to Tenant), to show the Leased Premises to prospective tenants; and (v) with respect to any portion of the Leased Premises which then constitutes Surrender Space, at any time after Landlord's receipt of the notice from Tenant rendering the same Surrender Space, to show the same to prospective tenants. Notwithstanding the foregoing, for so long as Landlord shall be providing routine janitorial services to the Leased Premises pursuant to Section 3.1(a)(iv) hereof, Landlord, through it cleaning contractor, shall have access, without any requirement of notice, to perform such routine janitorial service.

(b) With respect to any of the aforementioned authorized entries by Landlord into and upon any part of the Leased Premises (other than for routine janitorial service), Tenant shall be entitled to have its representative accompany Landlord.

(c) Tenant shall not be entitled to any abatement or reduction of Rent by reason of any of the aforementioned authorized entries by Landlord, so long as Landlord shall comply with its obligations hereunder (including those set forth in Section 4.2(d) below).

(d) Landlord shall not interfere with the operation of Tenant's business during any of the aforementioned authorized entries. Without limiting the generality of the foregoing, Landlord shall make any routine repairs requiring access to the Leased Premises after Building Operating Hours.

(e) Notwithstanding any of the foregoing, unless otherwise instructed by Tenant in writing, Landlord shall not enter areas designated by Tenant as high security areas (the "Security Areas") unless an emergency situation exists. All access by Landlord shall be subject to applicable federal banking regulations.

(f) If the demarcation point of services for the Building, including but not necessarily limited to telecommunications, electricity, water, fire suppression, etc. (the "Service Entrance") is located within the Leased Premises, then Landlord may, at Landlord's option, at Landlord's sole expense, relocate such Service Entrance to a location outside of the Leased Premises, and make all necessary modifications to maintain Tenant's then existing services to the Leased Premises. If the Service Entrance for the Building is located within the Leased Premises and if such location of the Service Entrance for the Building at any time in the future is deemed by Tenant to interfere with Tenant's desired reconfiguration of its use of or improvements in the Leased Premises, then Landlord shall, at Landlord's sole expense, relocate such Service Entrance to a location outside of the Leased Premises, and make all necessary modifications to maintain

Tenant's then existing services to the Leased Premises, within a reasonable time after Tenant's written request. If the Service Entrance for the Building is located within the Leased Premises, then until Landlord relocates such Service Entrance to a location outside of the Leased Premises, Tenant shall allow Landlord and other tenants of the Building reasonable access to the Service Entrance as required to connect services thereto, but each and any such access shall be subject to reasonable advance notice (not less than one (1) full Business Day, except in the case of emergencies), and shall be supervised by security or technical personnel designated by Tenant (which may be Tenant's own employees), Landlord shall be solely responsible for the cost of such security or technical personnel, and Landlord shall reimburse Tenant, upon demand, therefor, and for any and all additional costs incurred by Tenant because of such access. In no event shall Landlord or any tenant of the Building other than Tenant be entitled to connect to, extend from, modify, alter, interrupt or otherwise use, or in any way affect the operation of Tenant's services.

4.3 Nuisance

Tenant shall conduct its business, and use reasonable efforts to cause all Tenant Parties to conduct their activities upon the Leased Premises, in such a manner as not to create any nuisance, or unreasonably interfere with, or unreasonably annoy or disturb, any other tenant or occupant of the Property in its occupancy of the Leasable Areas demised to it or Landlord in its operation of the Property. Landlord shall operate the Property, and use reasonable efforts to cause all Landlord Parties to conduct their activities upon the Property, in such a manner as not to create any nuisance, or unreasonably interfere with, or unreasonably disturb Tenant or any Tenant Party in its occupancy of the Leased Premises. Landlord shall use reasonable efforts to cause all other tenants and occupants of the Property to conduct their businesses, and use reasonable efforts to cause their employees, agents and contractors to conduct their activities upon the Property, in such a manner as not to create any nuisance, or unreasonably interfere with, or unreasonably disturb Tenant or any Tenant Party in its occupancy of the Leased Premises.

4.4 Legal Compliance

(a) Tenant shall comply with all Legal Requirements requiring compliance (including compliance requiring the performance of any alterations or repairs) in, to or upon, or with respect to, the Leased Premises (inclusive of the Leasehold Improvements therein); provided, however, that Tenant shall not be required to perform any alterations or repairs to the Base Building in order to comply with Legal Requirements, *except to extent that* the need for such compliance arises by reason of Tenant's particular manner of use of the Premises.

(b) Landlord shall not enforce Tenant's obligations to comply with Legal Requirements as set forth in Section 4.4(a) above unless (i) Landlord's failure to do so constitutes a violation of Legal Requirements by Landlord or makes Landlord liable for Tenant's continuing violation, (ii) Landlord is required to do so by any notice of violation, order, decree, permit, rule or regulation issued by any Governmental Authority or (iii) Landlord's failure to do so would endanger the health, safety or welfare of any person on or about the Leased Premises or the Property.

(c) Landlord shall comply with all Legal Requirements requiring compliance (including compliance requiring the performance of any alterations or repairs) in, to or upon, or with respect to, the Base Building (except to the extent that Tenant, pursuant to the express provisions contained in the proviso to Section 4.4(a) above, is required to comply therewith) and/or the Common Areas.

4.5 Rules of Building

Tenant shall comply with, and use its reasonable efforts to cause all Tenant Parties to comply with, the existing rules and regulations of the Building, which are set forth in Exhibit C hereto, and such reasonable changes therein as Landlord at any time or times may hereafter make, and communicate in writing to Tenant, for the safety, protection, care and cleanliness of the Leased Premises, the Building and the Property, the operation thereof, the preservation of good order therein and the comfort of the tenants of the Building and their agents, employees and invitees, consistent with Comparable Buildings, which reasonable changes shall be binding upon Tenant upon Tenant's receipt of notice thereof (such existing rules and regulations, as the same may be changed consistent herewith, being herein called the "Building Rules"). In the event of a conflict between the provisions of this Lease and the Building Rules, the provisions of this Lease shall control. In no event shall the Building Rules impose any monetary obligations upon Tenant. Landlord shall use its reasonable efforts to cause all tenants of the Building to comply with the Building Rules to the extent that failure to so comply will materially affect Tenant's use or enjoyment of the Leased Premises. Landlord shall not enforce the Building Rules with respect to Tenant in a manner that is more restrictive than Landlord's enforcement of the Building Rules as to any other tenants of the Building.

4.6 Use and Violations of Insurance Coverage

(a) Tenant shall not occupy or use the Leased Premises, or permit any portion of the Leased Premises to be occupied or used, for any business or purpose that (i) is unlawful, (ii) creates noxious or offensive odors emanating from the Leased Premises into other Leasable Areas or the Common Areas, or (iii) increases the rate of fire insurance coverage on the Property or its contents unless Tenant pays for the cost of such increased insurance premium. Tenant shall have the right to amend any then existing certificate of occupancy relating to the Leased Premises, or pursue any separate license or permit, to permit additional lawful uses consistent with the provisions of Section 1.5 hereof; and Landlord shall reasonably cooperate with Tenant's efforts in that regard, including promptly executing (and providing any information known by Landlord for) any applications or similar documents with respect thereto.

(b) Tenant shall not cause or permit any Hazardous Materials to be used, generated, treated, installed, stored or disposed of in, on, under or about the Leased Premises, except for such quantities of the same which are included within items used by Tenant (or any Tenant Party) in connection with its business at the Leased Premises; *provided, that* (i) the use of such Hazardous Materials is consistent with the customary and reasonable business practice of entities conducting similar business to that being conducted at the Leased Premises, and (ii) Tenant complies with all Legal Requirements applicable to such Hazardous Materials. It is hereby agreed that possession and use of copy machines and machines used to electronically accept or produce written data which utilize small amounts of chemicals which may be included in the

definition of Hazardous Materials shall be considered a "customary and reasonable business practice" within the meaning of the previous sentence.

4.7 Environmental Laws

(a) Tenant has conveyed the Property to Landlord, and Landlord has accepted and acquired ownership of the Property, pursuant to the Purchase Agreement. As used herein, the term "Environmental Information" shall mean all environmental reports and studies delivered to Landlord by Tenant or obtained by Landlord in connection with the acquisition of the Property, which reports and studies are listed on Exhibit C hereto. The term "Environmental Matters" shall mean any matters reported in the Environmental Information.

(b) Landlord shall be solely responsible for and shall undertake all Remedial Work required by any Governmental Authority, or as necessary to comply with, and not violate, Legal Requirements, arising from: (1) Hazardous Materials on or in the Property as of the Commencement Date (including the Environmental Matters to the extent thereon or therein), *excluding, however,* Hazardous Materials on or in the Leased Premises (inclusive of the components of the Base Building located within the Leased Premises) as of the Commencement Date (including the Environmental Matters to the extent thereon or therein); or (2) Hazardous Materials introduced on, in or under the Property solely by Landlord or any Landlord Party after the Commencement Date.

(c) Landlord hereby agrees to and does indemnify, defend, and hold harmless, Tenant and any Tenant Party from and against any and all claims, demands, causes of action, fines, penalties, costs, expenses (including attorneys' fees and court costs), liens, or liabilities, if, and to the extent, caused by, or arising out of Landlord's failure to comply with its obligations under Section 4.7(b) above.

(d) Tenant shall be solely responsible for and shall undertake all Remedial Work required by any Governmental Authority, or as necessary to comply with, and not violate, Legal Requirements, arising from: (1) Hazardous Materials on or in the Leased Premises (inclusive of the components of the Base Building located within the Leased Premises) as of the Commencement Date (including the Environmental Matters to the extent thereon or therein); or (2) Hazardous Materials introduced on, in or under the Property solely by Tenant or any Tenant Party after the Commencement Date. Landlord shall not enforce Tenant's performance of Remedial Work unless (i) Landlord's failure to do so constitutes a violation of Legal Requirements by Landlord or makes Landlord liable for Tenant's continuing violation, (ii) Landlord is required to do so by any notice of violation, order, decree, permit, rule or regulation issued by any Governmental Authority or (iii) Landlord's failure to do so would endanger the health, safety or welfare of any person on or about the Leased Premises or the Property.

(e) Tenant hereby agrees to and does indemnify, defend, and hold harmless, Landlord and all Landlord Parties from and against any and all claims, demands, causes of action, fines, penalties, costs, expenses (including attorneys fees and court costs), liens, or liabilities, if, and to the extent, caused by, or arising out of Tenant's failure to comply with its obligations under Section 4.7(d) above.

4.8 Prohibited Uses

(a) Throughout the Term, Landlord shall not further develop the Property, other than consistent with the provisions of this Lease, and, without limiting the generality thereof, no such further development shall be permitted if (1) the same would cause a violation of the provisions of Section 4.8(b) hereof or Section 14.20 hereof, or (2) the same would otherwise result in (i) an increase in the amount of any Additional Rent payable by Tenant hereunder, (ii) any other cost or expense being imposed upon Tenant or any Tenant Party, (iii) any reduction in the value of the Leased Premises to Tenant or any Tenant Party, (iv) parking or traffic flow on the Property being adversely affected from the perspective of Tenant or any Tenant Party, (v) any reduction in the function or utility of the Common Areas (or any portion thereof) from the perspective of Tenant or any Tenant Party.

(b) Throughout the Term, Landlord shall not use, or permit the use of, the Property (or any part thereof) for any Prohibited Uses. The term "Prohibited Uses" shall mean (i) any use that emits an obnoxious odor, noise or sound that can be heard or smelled outside of the premises; (ii) any use in violation of zoning regulations or any other governmental restrictions applicable to the Property; (iii) any use that, by its nature, (even if such use is legally permissible) would result in parking or traffic flow on the Property being materially adversely affected from the perspective of Tenant or any Tenant Party; (iv) any operation primarily used as a warehouse or storage facility, assembling or manufacturing, distilling, refining, rendering, processing, smelting, agricultural or mining operations; (v) any mobile home park or sales, trailer court, labor camp, junk yard or stockyard; (vi) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to on-site services oriented only to pickup and delivery by consumers; (vii) any automobile, truck, trailer or recreational vehicle sales, leasing, display, repair or body shop; (viii) any living quarters, sleeping apartments, hotel or lodging rooms; (xi) veterinary hospitals, animal raising or breeding facilities, animal boarding facilities or pet shops; (x) mortuaries or funeral homes; (xi) any establishment that sells, rents or exhibits pornographic materials; (xii) massage parlors or any form of sexually oriented business (including novelty merchandise sales); (xiii) bars, taverns or brew pubs; (xiv) flea markets, amusement or video arcades, computer game rooms, pool or billiard halls, bingo halls, dance halls, discos or night clubs; (xv) sales of paraphernalia for use with illicit drugs; (xvi) carnivals, amusement parks or circuses; (xvii) pawn shops, auction houses, second hand stores, consignment shops, army/navy surplus stores or gun shops; (xviii) gambling facilities or sports betting parlor; (xix) churches, synagogues or other places of worship; (xx) assembly halls or meeting facilities; (xxi) technical or vocational schools or any other operation primarily engaged in education or training activities; (xxii) medical clinics, abortion clinics, medical laboratories or screening facilities; (xxiii) any agency (public or private) providing health, welfare, social or human services, or (xxiv) tattoo parlors, fortune telling or spiritual readings; (xxv) facilities that collect donated goods and products; (xxvi) bowling alleys, skating rinks, archery or gun ranges, (xxvii) postal facilities, tax collectors, tag agencies, jails or detention centers, courthouses or any other form of agency dealing with civil authority. Notwithstanding the foregoing, the term "*Prohibited Uses*" shall not include any use which is permitted under a third party tenant lease of space in the Building which is in effect as of the Commencement Date.

ARTICLE V
LEASEHOLD IMPROVEMENTS AND REPAIRS

5.1 Leasehold Improvements

Subject to the provisions of this Lease, Tenant hereby accepts the Leased Premises, including any and all existing Leasehold Improvements, in their "AS-IS" condition, and acknowledges that Landlord has no obligation to construct additional Leasehold Improvements or to provide any money, work, labor, material, fixture, decoration or equipment toward the construction of any Leasehold Improvements.

5.2 Alterations

(a) Except as provided below (as to Non-Consent Alterations), and as provided in Section 3.6 hereof as to Tenant Managed Properties, Tenant shall not make or allow to be made any alterations in or to the Leased Premises (collectively, "Alterations"), without first obtaining the written consent of Landlord to the plans and specifications and contractors therefor, which consent shall not be unreasonably withheld or delayed.

(b) All Alterations shall be made in compliance with Legal Requirements.

(c) Notwithstanding the foregoing, Tenant shall have the right to make Non-Consent Alterations without Landlord's consent. The term "Non-Consent Alterations" shall mean any Alterations that (i) either (x) cost less than Threshold Alteration Amount, or (y) regardless of cost, are of such a nature as not to require a building permit, and (ii) do not materially, adversely affect the Base Building. The term "Threshold Alteration Amount" shall mean (1) during any Tenant Management Period or any period that Tenant's Occupancy Percentage is greater than seventy-five percent (75%), an amount equal to One Million Five Hundred Thousand Dollars ($1,500,000.00), and (2) during any other period during the Term, Seven Hundred Fifty Thousand Dollars ($750,000.00).

(d) Prior to commencing any Alterations (other than Non-Consent Alterations for which no building permit is required), Tenant shall (i) notify Landlord thereof, (ii) furnish Landlord with plans and specifications therefor (unless, consistent with Legal Requirements, no such plans and specifications were prepared), and (iii) inform Landlord of the names of the contractors then retained with respect thereto (all of which shall be of Tenant's own choosing).

(e) Upon the completion of any Alterations, Tenant shall provide Landlord with "as-built" plans related thereto.

(f) If any Alterations involve work to be performed in, or which otherwise impacts operations in, areas of the Property located outside the Leased Premises, then Tenant shall coordinate such work with the Property Manager.

(g) Landlord shall reasonably cooperate with Tenant's efforts to obtain any building permit, or governmental approval, sign-off or certificate, in connection with the performance or completion of any Alterations, including promptly executing (and providing any information known by Landlord for) any applications or similar documents with respect thereto.

(h) In no event shall Tenant be obligated to pay any charge to Landlord or any Landlord Party for (i) the supervision of any Alterations, (ii) obtaining Landlord's consent to any plans and specifications setting forth any Alterations (in cases where such consent is required hereunder), (iii) Landlord's cooperation pursuant to Section 5.2(g) above, or (iv) Landlord's review of plans or specifications setting forth proposed Alterations (other than the actual, out-of-pocket costs reasonably incurred by Landlord to have Tenant's plans and specifications reviewed to (x) confirm that same do not materially, adversely affect the Base Building, and/or (y) determine whether its consent thereto is required, and/or, if required, whether to grant or reasonably withhold the same).

5.3 Leasehold Improvements; Tenant Property

(a) Upon the expiration or any earlier termination of this Lease, Tenant shall surrender the Leased Premises together with the then existing Leasehold Improvements.

(b) Upon, or prior to, the expiration or earlier termination of this Lease, Tenant shall remove all Tenant Property from the Leased Premises; provided that Tenant shall not be required to remove any cabling or wiring installed within the walls, ceilings, ducts or chases of the Building (the "Tenant's Cabling"). Tenant shall repair any damage to the Property (including the Leased Premises) resulting from any such removal of Tenant Property. Any items of Tenant Property other than Tenant's Cabling which shall remain in the Premises after the expiration or earlier termination of this Lease, may, at the option of Landlord, be deemed to have been abandoned, and in such case such items may be retained by Landlord, as its property, or disposed of by Landlord (at Tenant's expense) in such manner as Landlord shall reasonably determine. Any Tenant's Cabling which shall remain in the Premises after the expiration or earlier termination of the Lease shall, upon the date this Lease expires or earlier terminates, become the property of Landlord.

5.4 Mechanics Liens

(a) Tenant shall have no authority or power, express or implied, to create or cause to be created any mechanic's, materialmen's or other lien, charge or encumbrance of any kind against any Leased Premises.

(b) If any mechanic's, materialmen's or other lien, charge or encumbrance of any kind be filed against the Leased Premises by reason of Tenant's acts or because of a claim against Tenant (each, a "Tenant Created Lien"), then Tenant shall cause the same to be cancelled or discharged of record by bond or otherwise within the Tenant Lien Cure Period as to such Tenant Created Lien. The "Tenant Lien Cure Period", with respect to any Tenant Created Lien, shall mean the period of sixty (60) days after Landlord shall have given notice to Tenant of such Tenant Created Lien; provided, however, that Tenant, after notice thereof to Landlord, shall have the right to contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Tenant Created Lien, in which event the Tenant Lien Cure Period shall be extended during the pendency of such contest, *provided that* (x) the Leased Premises shall not thereby be placed in danger of being forfeited or lost, and (y) Landlord would not thereby be subject to any criminal or civil penalty or fine. If Tenant shall fail to cancel or discharge any Tenant Created Lien within the Tenant Lien Cure Period, Landlord may, at its sole

option, cancel or discharge the same, and upon Landlord's demand, Tenant shall promptly reimburse Landlord for all reasonable costs incurred in canceling or discharging such liens. Except to the extent that such costs are caused by Landlord's actions.

(c) Tenant shall indemnify and hold Landlord harmless from and against all costs (including reasonable attorneys' fees and costs of suit), losses, liabilities, or causes of action if, and to the extent, arising out of the performance of any Alterations, including any Tenant Created Lien asserted in connection therewith.

(d) Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Leased Premises or the Property shall be subject to any lien for improvements made by Tenant in or for the Leased Premises, and that Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. Landlord may file in the public records of the county in which the Building is located, a public notice containing a true and correct copy of this paragraph.

5.5 Repairs by Landlord

(a) Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings (any such maintenance and/or repairs for which Landlord is responsible being herein collectively called "Landlord Repairs").

(b) If, and to the extent that, the need for any Landlord Repair arises out of any negligent or wrongful act or omission by Tenant or any Tenant Party, then Tenant, within thirty (30) days after written demand, shall pay or reimburse Landlord for all the reasonable out-of-pocket costs incurred by Landlord in performing such repair (together with interest thereon, at the Applicable Rate, from the date incurred to the date so paid or reimbursed).

(c) Landlord shall promptly make all Landlord Repairs (considering the nature and urgency of the repair), and perform the same in a good and workmanlike manner. Access to the Leased Premises in connection with the making of any such repairs shall be governed by the provisions of Section 4.2 above.

(d) If Landlord should fail to make any Landlord Repair with reasonable promptness after written notice from Tenant, then Tenant's cure rights under Section 13.1(b) hereof shall be applicable to the extent provided therein, and, as provided therein, Tenant may (except to the extent that the provisions of Section 5.5(b) hereof are applicable) recover the reasonable cost thereof from Landlord.

5.6 Repairs by Tenant

(a) Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of the Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").

(b) If, and to the extent that, the need for any Tenant Repair arises out of any negligent or wrongful act or omission by Landlord or any Landlord Party, then Landlord, within thirty (30) days after written demand, shall pay or reimburse Tenant for all the reasonable out-of-pocket costs incurred by Tenant in performing such repair (together with interest thereon, at the Applicable Rate, from the date incurred to the date so paid or reimbursed).

(c) Tenant shall promptly make all Tenant Repairs (considering the nature and urgency of the repair), and perform the same in a good and workmanlike manner.

(d) If Tenant should fail to make any Tenant Repair with reasonable promptness after written notice from Landlord, then Landlord's cure rights under Section 7.1(f) hereof shall be applicable to the extent provided therein, and, as provided therein, Landlord may (except to the extent that the provisions of Section 5.6(b) hereof are applicable) recover the reasonable cost thereof from Tenant.

(e) Notwithstanding the foregoing, if, and to the extent that, Tenant shall request that Landlord perform any Tenant Repairs, then Landlord agrees to perform the same, as Above Standard Services. In any such event, Tenant shall notify Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request.

5.7 Demising Work

(a) For purposes of this Agreement, the following terms shall have the following meanings:

(1) "Demising Work", with respect to any Surrender Release Space (that is not then in Separately Leasable Condition) or Vacate Space (that is not then in Separately Leasable Condition), shall mean all the work in and to the Building (including in and to such space) that is required to cause such space to be put in a Separately Leasable Condition; provided, however, that in no event shall the term "*Demising Work*" ever be deemed to include (i) any work which internally sub-divides such space, or any other work designed to permit such space to be occupied by multiple tenants or occupants (as opposed to a single tenant or occupant), or (ii) the construction of any leasehold improvements within such space.

(2) "Primary Demising Work", with respect to any Surrender Release Space (that is not then in Separately Leasable Condition) or Vacate Space (that is not then in Separately Leasable Condition), shall mean the following portions of the Demising Work with respect to such space (if, and to the extent, the same are part of such Demising Work): (i) the construction of demising walls, and independent entrances, for such Leasable Area; (ii) the construction of corridors and other passageways required to provide an independent means of access (*i.e.*, independent of any other Leasable Area) for such space to, and from, the outside of the Building and the Common Areas, and (iii) in the event access to existing Common Areas of the Building is impractical or unachievable, the construction of additional Common Areas which will serve such space.

(3) "Other Demising Work", with respect to any Surrender Release Space (that is not then in Separately Leasable Condition) or Vacate Space (that is not then in Separately

Leasable Condition), shall mean all the portions of the Demising Work with respect to such space (if any) that are not Primary Demising Work, but may be required to any pre-existing component of the Base Building and/or Common Areas in order to obtain a building permit or other governmental approval with respect to the Primary Demising Work.

(4) "Demising Work Costs" shall mean all the costs of designing and prosecuting the Demising Work (including architectural, space planning and engineering expenses, building permit and other governmental fees and all construction costs.

(5) "Primary Demising Work Costs" shall mean the portion of the Demising Work Costs attributable to the Primary Demising Work.

(6) "Other Demising Work Costs" shall mean the portion of the Demising Work Costs attributable to the Other Demising Work.

(b) Any Demising Work required to be performed by Landlord (i) under Section 1.7(d)(4) hereof with respect to any Surrender Release Space or (ii) under Section 11.2(b)(3) hereof with respect to any Vacate Space, shall, in each instance, be performed as follows:

(1) Landlord shall retain a licensed architect, space planner or engineer, reasonably acceptable to Tenant, to develop a space plan (the "SLC Space Plan") in connection with the Demising Work. The SLC Space Plan shall be subject to the reasonable approval of both Landlord and Tenant, and Landlord shall cause the same to be revised until the same has been approved by both parties (the SLC Space Plan, as finally approved by both Landlord and Tenant, being herein called the "Final SLC Space Plan"). Any disputes with respect to either party's approval of the SLC Space Plan shall be resolved in accordance with Article XII hereof. The SLC Space Plan shall (i) detail the functional layout of the affected areas (including (x) the Surrender Release Space or the Vacate Space, as the case may be, and (y) the balance of the Leased Premises), (ii) identify the need, if any, to establish additional Common Areas, (iii) separately identify, and sufficiently describe the scope of, each of the Primary Demising Work and the Other Demising Work, (iv) provide measurements of the affected areas in accordance with the Measurement Standard, and (v) include an estimate of each of the Demising Work Costs, the Primary Demising Work Costs and the Other Demising Work Costs.

(2) After both parties have approved the SLC Space Plan, Landlord shall cause design professionals reasonably acceptable to Tenant to prepare plans and specifications setting forth the Demising Work (including, as applicable, architectural, mechanical, electrical, lighting and plumbing plans), based on the Final SLC Space Plan, and detailing all of the proposed improvements shown on the SLC Space Plan (such plans and specifications being herein called the "SLC Plans & Specifications"). The SLC Plan & Specifications shall be subject to the reasonable approval of both Landlord and Tenant, and Landlord shall cause the same to be revised until the same has been approved by both parties (the SLC Plan & Specifications, as finally approved by both Landlord and Tenant, being herein called the "Final SLC Plans & Specifications"). Any disputes with respect to either party's approval of the SLC Plans & Specifications shall be resolved in accordance with Article XII hereof. The SLC Plans &

Specifications shall reflect improvements of a type and quality consistent with Building Standards.

(3) After both parties have approved the SLC Plans & Specifications, Landlord will (i) apply for, and obtain, all necessary governmental approvals and permits in connection with the Demising Work as shown on the Final SLC Plans & Specifications, and (ii) cause the Demising Work to be performed in substantial accordance with the Final SLC Plans & Specifications, utilizing one or more contractors reasonably approved by Tenant; *it being agreed*, in that regard, that Landlord shall solicit bids from no less than three (3) contractors for the Demising Work and review the same with Tenant prior to proposing a contractor for Tenant's reasonable acceptance. Landlord shall cause all contractors to allocate their price and/or costs between the Primary Demising Work and the Other Demising Work. Landlord and Tenant shall cooperate with each other, in good faith, to coordinate the scheduling of the Demising Work in an effort to complete the same in as timely a manner as practicable, consistent with (x) the requirements of Section 1.7(d)(4) or Section 11.2(b)(3) hereof, as the case may be, and (y) in all events, Tenant's continued use and occupancy of any adjoining portions of the Leased Premises.

(4) All Demising Work Costs shall be paid by Landlord; provided, however, that Tenant, as hereinafter provided, shall be obligated to pay to Landlord, as Additional Rent, an amount ("Tenant's Reimbursement Amount") equal to the *sum of* (i) 100% of the portion of the Primary Demising Work Costs, *plus* (ii) Tenant's share of the Other Demising Work Costs, determined by multiplying the Other Demising Work Costs by the Tenant's Occupancy Percentage (determined immediately following the surrender of such Surrender Release Space or Vacate Space, as the case may be). Within thirty (30) days after completion of the Demising Work (and finalization, between the parties, of the Primary Demising Work Costs and the Other Demising Work Costs), Tenant shall either (i) pay Tenant's Reimbursement Amount to Landlord in a lump-sum payment, or (ii) elect to pay the same to Landlord on an amortized basis over the balance of the Initial Term, with an interest factor using a rate equal to the Prime Rate (in effect as of the completion of the Demising Work), in which event, Tenant shall pay such amount, as so amortized, through equal monthly Additional Rent payments payable on the first day of each month then remaining in Initial Term; provided, however, that if, for any reason (other than any act of, or default by, Landlord), the Initial Term shall end prior to the Expiration Date, then any unamortized portion of such amount shall be paid by Tenant to Landlord within thirty (30) days after the end of the Term. Notwithstanding the foregoing, during the Integration Period, Tenant shall have the right to finance Tenant's Reimbursement Amount pursuant to Section 10 of the Master Agreement.

(5) Landlord and Tenant hereby acknowledge that, pursuant to the Purchase Agreement, Tenant, as seller, agreed to a reduce the purchase price for certain Portfolio Properties (*i.e.*, those defined in the Purchase Agreement as "*Demising Work Properties*") by an amount defined in the Purchase Agreement as the "*Estimated Tenant Reimbursement Amount*" with respect to such Portfolio Property. Notwithstanding the foregoing provisions of this Section 5.7, if the Property constitutes one of such *Demising Work Properties* under the Purchase Agreement, then, in consideration of such reduction in such purchase price, the following provisions shall apply: (A) Tenant shall not be obligated to pay any Tenant Reimbursement Amounts that accrue hereunder prior to the last day of the third Lease Year, except for the reconciliation payment that may be required of Tenant under Section 5.7(b)(5)(C)(I) hereof; (B)

within thirty (30) days after the last day of the third Lease Year, Landlord and Tenant shall *reconcile* (i) all Tenant Reimbursement Amounts that shall have accrued hereunder prior to the last day of the third Lease Year (collectively, the "Accrued TRA"), *with* (ii) the *Estimated Tenant Reimbursement Amount* which constituted a reduction in the purchase price for the Property under the Purchase Agreement; and (C) within thirty (30) days after such reconciliation shall become final between the parties, (I) Tenant shall pay to Landlord the amount (if any) by which the Accrued TRA shall exceed such *Estimated Tenant Reimbursement Amount*, which payment shall be in full satisfaction of all Tenant Reimbursement Amounts that shall have accrued prior to the last day of the third Lease Year, or (II) Landlord shall pay to Tenant the amount (if any) by which such *Estimated Tenant Reimbursement Amount* shall exceed the Accrued TRA.

5.8 Payment of Refund Amount Per Section 26 of Purchase Agreement

Section 26 of the Purchase Agreement provides that, under certain circumstances set forth in the Purchase Agreement, Landlord, as purchaser, may, have the obligation to pay to Tenant, as seller, with respect to the Property, a certain amount that is defined therein as the "*Refund Amount*". Landlord and Tenant hereby agree that any such obligation to pay Tenant the Refund Amount with respect to the Property is hereby incorporated into this Lease as an obligation of Landlord (as Landlord hereunder), and, accordingly, in the event that Landlord shall fail to pay to such amount as and when due, then Tenant shall have all its rights and remedies hereunder on account thereof (including, as applicable, its rights and remedies under Section 13.2 hereof).

ARTICLE VI
CONDEMNATION, CASUALTY AND INSURANCE

6.1 Condemnation

(a) If all or a portion of the Property as would render the continuance of Tenant's business from the Leased Premises impracticable (as reasonably determined by Tenant) is permanently taken or condemned for any public purpose, then Tenant shall have the option of terminating this Lease upon the giving of notice to Landlord within twenty (20) days from the date of such condemnation or taking.

(b) If all or substantially all of the Property, or so much thereof as to cause the remainder not to be economically feasible to operate, as reasonably determined by Landlord, is permanently taken or condemned for any public purpose, and Landlord theretofore (or therewith) terminates all similarly affected leases in the Building, then Landlord shall have the option of terminating this Lease upon the giving of notice to Tenant within twenty (20) days from the date of such condemnation or taking.

(c) If this Lease is terminated as provided in Sections 6.1(a) or (b) above, then this Lease shall cease and expire as to such Leased Premises as of the date of transfer of possession of the Leased Premises, the Property, or the applicable portion thereof, as if such date was the expiration date of this Lease.

(d) If, upon any condemnation or taking of a portion of the Leased Premises, this Lease is not terminated by either Landlord or Tenant as aforesaid, then Tenant shall pay all Rent

up to the date of transfer of possession of such portion of the Leased Premises so taken or condemned and this Lease shall thereupon cease and terminate with respect to such portion of the Leased Premises so taken or condemned as if the date of transfer of possession of the Leased Premises was the expiration date of the Term relating to such portion of the Leased Premises. Thereafter, the Annual Basic Rent, and Tenant's Operating Expense Share and Tenant's Tax Share shall be calculated based on the Net Rentable Area of the Leased Premises not so taken or condemned. If any such condemnation or taking of all or any part of the Property occurs and this Lease is not so terminated, then Landlord shall, within sixty (60) days after the date of such condemnation or taking, commence such restoration work to the remaining portions Property (including the Building, the Common Areas, the Leased Premises and the other Leasable Areas, but not including, in any event, any Tenant Property or the trade fixtures or personal property of other tenants or occupants) as shall be needed so that such remaining portion of the Property shall constitute a complete architectural unit, reasonably fit for Tenant's occupancy and business as reasonably determined by Tenant and Landlord. If Landlord fails to cause such restoration work to be substantially completed within twelve (12) months after the date of such condemnation or taking, for any reason other than a delay caused by an act or omission of Tenant, and such failure materially interferes with Tenant's use and occupancy of the Property, then Tenant shall have the right to terminate this Lease by notifying Landlord in writing of such termination within thirty (30) days after the expiration of such 12-month period. The 12-month period described in the preceding sentence shall be automatically extended for each day of delays caused by Force Majeure Events; but such extensions, in the aggregate, shall not exceed a total of sixty (60) days.

(e) In the event of any condemnation or taking of all or a portion of the Leased Premises, and in the event of any condemnation or taking of all or a portion of the Parking Areas or other Common Areas of the Property which materially adversely affects the value of or Tenant's use or enjoyment of the Leased Premises, Tenant, at Tenant's expense may, jointly appear with Landlord in proceedings relative to such taking, and Tenant may claim, prove and recover, in such proceedings, (i) the value of any Tenant Property taken, (ii) the loss of Tenant's business as the result of such condemnation or taking, and (iii) any relocation and moving expenses.

(f) If (i) any taking or condemnation for any public purpose is of a portion (but less than all) of the Leased Premises or any portion thereof, (ii) the same occurs for only a period of three (3) months or less, and (iii) during such period, the portions of the Leased Premises not so taken, together with the portions of the Common Areas not so taken, are in Tenant's reasonable judgment sufficient to allow the conduct of Tenant's business in the portion of the Leased Premises not so taken to substantially the same extent and quantity as before the taking (and Tenant, in fact, ceases its use, for business purposes, only in the portions of the Leased Premises so taken, but continues to operate in the portions of the Leased Premises not so taken), then such taking or condemnation shall be deemed a temporary taking and this Lease shall continue in full force and effect, except that, throughout the period of such temporary taking, Annual Basic Rent, Tenant's Operating Expense Share and Tenant's Tax Share shall be calculated based on the Net Rentable Area of the Leased Premises not so taken.

6.2 Damages from Certain Causes

Except as provided in Section 3.1, Section 6.3 and/or Section 6.6, and subject to Landlord's obligations to restore, repair and maintain as specifically provided in this Lease, Landlord shall not be liable or responsible to Tenant for any loss or damage to any property or person if, and to the extent, occasioned by one or more Force Majeure Events.

6.3 Casualty Clause

(a) If, at any time during the Term, the Property (including the Building, the Common Areas, the Leased Premises, inclusive of the Leasehold Improvements, and the other Leasable Areas and the leasehold improvements therein) or any part thereof (collectively, the "Damaged Property") is damaged by fire, earthquake, flood or by any other casualty of any kind or nature (a "Casualty") then, unless this Lease is terminated as hereinafter provided in this Section 6.3(a) or Section 6.3(b) below, Landlord shall proceed to rebuild or restore the Damaged Property at Landlord's sole cost and expense; provided, that, in no event shall Damaged Property include, nor shall Landlord or Tenant have any obligation to rebuild or restore, any of Tenant's Property or the trade fixtures or personal property of other tenants or occupants. Such rebuilding and restoration work required of Landlord is herein collectively called "Landlord's Restoration Work". If any Casualty shall render the Leased Premises completely or partially untenantable for any period (regardless of whether the Damaged Property includes any part of the Leased Premises), then all Rent shall be abated in the proportion that the untenantable area of the Leased Premises bears to the total area of the Leased Premises for the period of such untenantability. The term "untenantable", when used with respect to the Leased Premises, or any portion thereof, shall mean that the Leased Premises, or such portion thereof, is not reasonably capable of being used (and, in fact, is not used) by Tenant or any Tenant Party theretofore occupying the same for the purposes demised hereunder. Within thirty (30) days following any Casualty, Landlord shall cause to be prepared and delivered to Tenant an estimate of the date by which the Landlord's Restoration Work necessitated by Casualty shall be completed (which estimate shall be prepared by an independent reputable contractor, registered architect or licensed professional engineer designated by Landlord, and reasonably approved by Tenant) (such estimate being herein called the "LRW Estimate"). If the LRW Estimate is a date later than the date that is eighteen (18) months after the date of the Casualty, then Tenant may terminate this Lease by giving Landlord notice to such effect within thirty (30) days after the LRW Estimate is delivered to Tenant (and in the event of such termination, the Rent shall be prorated and adjusted as of the date of such termination, subject to the abatement provisions herein-above set forth).

(b) In the case of a Casualty resulting in Qualified Damage, Landlord may elect to terminate this Lease on account thereof by delivering written notice to Tenant within forty-five (45) days after the date of the Casualty; provided, that Landlord theretofore (or therewith) also terminates all other similarly affected leases in the Building. As used herein, a "Qualified Damage" shall mean any one or more of the following:

(i) Damage to the Building to an extent greater than fifty percent (50%) of the replacement cost of the Building, above the foundation, and such damage or destruction shall be caused by a risk covered by insurance maintained or required to be

maintained (whether or not actually maintained) by Landlord pursuant to this Lease (*i.e.*, an "insurable risk").

(ii) Damage to the Building, resulting from a risk other than an insurable risk, to an extent greater than twenty-five percent (25%) of the replacement cost of the Building, above the foundation.

(c) Notwithstanding any language herein to the contrary, if at the time of any substantial damage to the Leased Premises from a Casualty, less than one (1) year remains in the Term (and Tenant has no further outstanding Renewal Options), then (i) Landlord shall have the right, in its sole option, to elect not to rebuild or restore the Damaged Property, such right to be exercised, if at all, by written notice to Tenant within thirty (30) days after the date of such Casualty, and (ii) Tenant shall have the right, in its sole option, to terminate this Lease, such right to be exercised, if at all, within thirty (30) days after the date of such Casualty or within thirty (30) days after Tenant's receipt of Landlord's notice pursuant to Section 6.3(c)(i) above.

(d) If Landlord is herein required to perform any Landlord's Restoration Work (*i.e.*, a Casualty shall occur and this Lease shall not be terminated as herein-above provided), then the following provisions shall apply:

(1) Landlord shall commence Landlord's Restoration Work as expeditiously as possible but not later than sixty (60) days following the Casualty, and shall thereafter diligently prosecute the same to completion. Landlord shall notify Tenant of the date on which it commences Landlord's Restoration Work, which notice shall be accompanied by the written statement of Landlord's architect supervising such work certifying to such date.

(2) Notwithstanding anything herein contained to the contrary, if Landlord fails to substantially complete Landlord's Restoration Work (it being understood that in no event shall Landlord's Restoration Work be deemed *substantially completed* unless and until the Leased Premises are tenantable and the Common Areas functional for all purposes hereunder) on or prior to the Outside Completion Date, then Tenant may terminate this Lease by delivering written notice to Landlord within thirty (30) days after the Outside Completion Date, but before Landlord's Restoration Work shall have been substantially completed. If Tenant fails to deliver such notice within such thirty (30) day period, then Tenant shall have waived its right to terminate this Lease under this Section 6.3(d)(2) for a period of six (6) months; after which 6-month period, such right shall again be available for a period of thirty (30) days, on the same terms, if the Landlord's Restoration Work is still not substantially completed. The provisions of the two immediately preceding sentences shall implemented repeatedly until the Landlord's Restoration Work is substantially completed or this Lease is terminated as therein provided. The "Outside Completion Date" shall mean the date of the LRW Estimate; provided, however, that the Outside Completion Date shall be automatically extended one day for each day by which Landlord is delayed in substantially completing Landlord's Restoration Work by reason of Force Majeure Events (but in no event shall the Outside Completion Date be extended, in the aggregate, for more than sixty (60) days by Force Majeure Events).

6.4 Property Insurance

Landlord shall maintain standard fire and extended coverage insurance covering the Property (including the Building, the Common Areas, the Leased Premises, inclusive of the Leasehold Improvements, and the other Leasable Areas and the leasehold improvements therein, but excluding Tenant Property and the personal property and trade fixtures of other tenants and occupants of the Property) against loss or damage by reason of fire and/or other risks and perils included within a standard "all risk" insurance policy (or its equivalent, *e.g.*, a "special causes of loss" policy), containing a so-called "extended coverage endorsement" (or its equivalent), and/or, to the extent not otherwise included therein, by reason of acts of terrorism, in an amount not less than one hundred percent (100%) of the full replacement cost thereof above the foundation. The policy of such insurance shall include a waiver of the insurer's right of subrogation against Tenant consistent with release and waiver provisions of Section 6.7 below. Upon the request of Tenant, a copy of a duly executed certificate of insurance reflecting Landlord's maintenance of the insurance required under this Section 6.4 (including the aforementioned waiver of subrogation) shall be delivered to Tenant. Said insurance shall be maintained with a reputable insurance company selected by Landlord and qualified and licensed to do business in the State and having a current Best's Rating of A or better (provided, that, during any period that the required insurance coverage is not available on commercially reasonable terms from insurers with such a rating, then Landlord may utilize a company with a lower rating, so long as such company has a rating equal to the highest rating as among the insurers then making available the required insurance coverage on commercially reasonable terms). All payments for losses thereunder shall be made solely to Landlord.

6.5 Liability Insurance

Landlord and Tenant shall each maintain a policy or policies of commercial general liability insurance, with the premiums thereon fully paid on or before the due dates, issued by and binding upon a reputable insurance company qualified and licensed to do business in the State, with a current Best's Rating of A or better (provided, that during any period that the required insurance coverage is not available on commercially reasonable terms from insurers with such a rating, then Landlord or Tenant may utilize a company with a lower rating, so long as such company has a rating equal to the highest rating as among the insurers then making available the required insurance coverage on commercially reasonable terms). Such insurance shall be written on occurrence basis, and shall afford minimum coverage (which may be effected by primary and/or excess coverage) of not less than Five Million Dollars ($5,000,000.00) for bodily injury, death or property damage in any one (1) accident or occurrence. Notwithstanding anything to the contrary contained herein, so long as Tenant satisfies the Self-Insurance Net Worth Test, Tenant may elect to self-insure in lieu of meeting Tenant's liability insurance requirements under this Section 6.5. If, and to the extent, Tenant does not, in whole or in part, carry insurance that complies with the requirements of this Section 6.5, then Tenant shall be deemed to have elected to self-insure to such extent. Either Landlord or Tenant may, from time to time, request the consent of the other party to increase the aforementioned level of minimum coverage, and such other party shall not unreasonably withhold its consent thereto, so long as the requested increased level of minimum coverage is not in excess of the limits then generally maintained by similarly situated parties in Comparable Buildings. Notwithstanding the foregoing provisions of this Section 6.5, if, and for so long as, Tenant hereunder is a Wachovia Party,

Tenant may elect to maintain the liability insurance required of Tenant under this Section 6.5 though policies issued by a captive insurance company that is wholly owned by Wachovia Corporation (whether or not such insurance company is licensed or rated as herein-above otherwise required). The policy shall maintained by each party under this Section 6.5 hereof, (i) shall name the other party as an additional insured as its interest may appear, and (ii) shall provide that no less than thirty (30) days prior written notice of cancellation or non-renewal shall be given to the other party. Each party shall furnish the other with a certificate of such insurance evidencing the foregoing insurance required of it under this Section 6.5 prior to (or upon execution of) this Lease (which certificate shall indicate the amounts of such insurance, and the requirements of the preceding sentence).

6.6 Hold Harmless

(a) Landlord shall not be liable to Tenant, or to any Tenant Party, for any damage to person or property to the extent caused by any negligent act or omission of Tenant or any Tenant Party; and Tenant agrees to and does hereby indemnify, defend and hold harmless, Landlord and all Landlord Parties from and against any and all claims, demands, causes of action, fines, penalties, costs, expenses (including reasonable attorneys' fees and court costs), liens or liabilities to the extent caused by any willful misconduct, or negligent act or omission, of Tenant or any Tenant Party.

(b) Tenant shall not be liable to Landlord, or to any Landlord Party, for any damage to person or property to the extent caused by any negligent act or omission of Landlord or any Landlord Party; and Landlord agrees to and does indemnify, defend and hold harmless Tenant and all Tenant Parties from and against any and all claims, demands, causes or action, fines, penalties, costs, expenses (including reasonable attorneys fees and costs), liens or liabilities to the extent caused by any willful misconduct, or negligent act or omission, of Landlord or any Landlord Party.

6.7 WAIVER OF RECOVERY

ANYTHING IN THIS LEASE TO THE CONTRARY NOTWITHSTANDING, LANDLORD AND TENANT EACH HEREBY WAIVES ANY AND ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION, AGAINST THE OTHER, AND ITS AGENTS, SERVANTS, PARTNERS, SHAREHOLDERS, DIRECTORS, OFFICERS OR EMPLOYEES, FOR ANY LOSS OR DAMAGE THAT MAY OCCUR TO THE LEASED PREMISES, THE PROPERTY OR ANY IMPROVEMENTS THERETO OR THEREON, OR ANY PROPERTY OF SUCH PARTY THEREIN OR THEREON, BY REASON OF FIRE, THE ELEMENTS, OR ANY OTHER CAUSE THAT IS INSURED AGAINST (OR IS INSURABLE, WHETHER OR NOT ACTUALLY INSURED) UNDER THE TERMS OF STANDARD FIRE AND EXTENDED COVERAGE INSURANCE POLICIES IN THE STATE, REGARDLESS OF THE AMOUNT OF THE PROCEEDS, IF ANY, PAYABLE UNDER SUCH INSURANCE POLICIES AND THE CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF THE OTHER PARTY HERETO, OR ITS AGENTS, OFFICERS, PARTNERS, SHAREHOLDERS, SERVANTS OR EMPLOYEES, AND COVENANTS THAT NO INSURER SHALL HOLD ANY RIGHT OF SUBROGATION AGAINST SUCH OTHER PARTY ON ACCOUNT THEREOF.

ARTICLE VII
DEFAULTS, REMEDIES, BANKRUPTCY, SUBORDINATION

7.1 Default and Remedies

(a) The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Lease on the part of Tenant:

(i) Tenant shall default in the payment of any Rent when due (including Annual Basic Rent, Tenant's Operating Expense Share, Tenant's Tax Share and Above Standard Services Rent), and such default shall continue for a period of ten (10) Business Days after written notice thereof from Landlord to Tenant; or

(ii) At any time that Tenant does not satisfy the Self-Insurance Net Worth Test, Tenant shall default in its obligation to maintain any policy of insurance that Tenant is required to maintain under Section 6.5 hereof, and such default shall continue for a period of ten (10) Business Days after written notice from Landlord to Tenant of such default, which notice shall (A) specifically refer to Section 6.5 hereof, and the insurance policy which Tenant has failed to maintain, and (B) state, in all capital letters and in a prominent place, that the continuance of such failure to maintain insurance for ten (10) Business Days after Tenant's receipt of such written notice will constitute an Event of Default under this Section 7.1(a)(ii); or

(iii) Tenant shall default under any of its other obligations under this Lease (other than any default described in Section 7.1(a)(i) and (ii) above), and such default shall continue for a period of thirty (30) days after written notice from Landlord to Tenant thereof (or, if such default is curable but reasonably cannot be cured within such thirty (30) day period, then Tenant shall not commence the cure thereof within such thirty (30) day period or thereafter shall not diligently pursue such cure until the same is accomplished).

(b) Upon the occurrence of an Event of Default, subject to Section 7.1(e) below, Landlord, in addition to all other remedies available to it at law or in equity, shall have the right to terminate this Lease, or terminate Tenant's right to possession hereunder, by written notice to Tenant, whereupon the following provisions shall apply:

(i) Tenant shall immediately vacate the Leased Premises pursuant to Section 4.1 hereof, whereupon Landlord shall have the right to re-enter and take possession of the Leased Premises.

(ii) Landlord may immediately or at any time thereafter re-enter the Leased Premises, and (x) repair any condition which shall constitute a default on Tenant's part hereunder, and (y) remove any Tenant Property then located within the Leased Premises consistent with the provisions of Section 5.3 hereof.

(iii) Landlord may immediately or at anytime thereafter relet the Leased Premises or any part thereof, for such time or times, at such rental or rentals and upon such other terms and conditions as Landlord deems reasonable, and Landlord may make any alterations or repairs to the Leased Premises that are necessary or proper to facilitate such reletting as office space. Landlord hereby agrees to use its commercially reasonable efforts to

relet the Leased Premises to mitigate or otherwise reduce the damages for which Tenant may be liable hereunder; provided that in no event shall Landlord's leasing or attempted leasing of other space in the Building instead of the Leased Premises, in and of itself, violate the provisions of this sentence. Any such reletting may be for such rent, for such time, and upon such terms as the Landlord, in the Landlord's good faith discretion, shall determine, provided, that the same shall, in all events, be commercially reasonable. Landlord shall be deemed to have exercised commercially reasonable efforts to relet the Leased Premises so long as Landlord or Landlord's agents employ marketing methods and procedures substantially similar to marketing methods and procedures used by Landlord or Landlord's agents to market and lease other vacant space in the Building or other buildings, which are similar in nature and quality to the Building, owned by Landlord or an Affiliate of Landlord.

(iv) Landlord shall have the right to recover from Tenant, as damages, the *sum of* (1) the full amount of all unpaid Annual Basic Rent and Additional Rent payable up to the time of such termination of this Lease (or termination of Tenant's right to possession, as the case may be) (including, if applicable, any unpaid interest payable by Tenant under Section 2.1(d) hereof), *plus* (2) all reasonable costs incurred by Landlord in connection with (x) evicting Tenant from the Leased Premises, and (y) any repairs or removals made pursuant to Section 7.1(b)(ii) above, *plus* (3) damages pursuant to either "(A)" or "(B)" below, as Landlord shall elect:

(A) damages, payable monthly throughout the period (the "Damages Period") commencing on the day after the date of such termination and ending on the last day of the Term (determined without regard to any theretofore unexercised Renewal Options), in a monthly sum equal to the *excess (if any) of* (i) the monthly Rent which would have been payable by Tenant under this Lease for such month had this Lease remained in effect, *over* (ii) the monthly sums payable to Landlord for such month under any lease(s) of the Leased Premises then in effect (net of the reasonable costs incurred by Landlord to re-let the Leased Premises pursuant to such lease(s)) (it being agreed that Tenant shall not be entitled to receive any excess of the sums described in clause (ii) of this sentence over the sums described in clause (i) of this sentence); or

(B) damages, payable in a one-time lump-sum, equal to the *excess, if any, of* (i) the present value (discounted at the Prime Rate) of the total amount of all Rent which would have been payable by Tenant under this Lease for the entire Damages Period had this Lease remained in effect, *over* (ii) the present value (discounted at the same rate) of the fair market rental value of the Leased Premises for the entire Damages Period.

(c) If Landlord re-enters the Leased Premises after terminating this Lease pursuant to Section 7.1(b) above, Tenant hereby waives all claims for damages that may be caused by such re-entry by Landlord, other than claims based on Landlord's willful misconduct or negligence.

(d) The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided or otherwise permitted at law or in equity. Except as otherwise provided in this Lease, remedies provided for in this Lease are cumulative and may, at

the election of Landlord, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

(e) Notwithstanding the provisions set forth in Section 7.1(b), Landlord may not terminate this Lease pursuant thereto unless Tenant shall have failed to pay, without the contractual right to abate or offset as herein otherwise provided, Rent in an amount equal to or greater than the Threshold Default Amount, and such failure to pay continues, beyond the point of becoming an Event of Default, for an additional period of ten (10) Business Days following Tenant's receipt of second written notice thereof from Landlord, which notice shall refer to this Section 7.1(e), and state in all capital letters (or other prominent display) that this Lease may be terminated if Tenant fails to promptly pay all overdue Rent. The "Threshold Default Amount" shall mean an amount equal to two (2) months' Annual Basic Rent hereunder.

(f) If (i) Tenant shall default in the performance of any of Tenant's obligations under this Lease, and (ii) such default shall thereafter become an Event of Default hereunder (or, in cases of emergency only, such default shall continue for 24 hours after notice thereof from Landlord to Tenant), then Landlord, without thereby waiving such default (and without limiting any other right or remedy it might have on account thereof, in law or in equity), may (but shall not be obligated to) perform such obligation for the account, and at the expense, of Tenant. In any such event, Tenant, within thirty (30) days after Landlord's delivery of an invoice therefor (together with reasonable supporting documentation), shall reimburse Landlord for any reasonable out-of-pocket expenses incurred by Landlord (including reasonable attorneys' fees) in connection with Landlord's performance of any such obligation for the account of Tenant pursuant to this Section 7.1(f), together with interest thereon, at the Applicable Rate, from the date that such expenses were incurred by Landlord to the date that the same are reimbursed to Landlord by Tenant.

7.2 Insolvency or Bankruptcy

The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or any general assignment by Tenant for the benefit of creditors, or any action taken by Tenant under any insolvency, bankruptcy, or reorganization act, or an involuntary proceeding against Tenant that is not dismissed or bonded against within one hundred twenty (120) days after the filing thereof, shall at Landlord's option, constitute an Event of Default hereunder (and the provisions of Section 7.1 hereof shall apply in respect thereof). In no event shall this Lease be assigned or assignable by voluntary or involuntary bankruptcy or a proceeding in lieu thereof, other than in accordance with Article VIII hereof.

7.3 Negation of Lien for Rent

(a) Landlord hereby expressly waives and negates any and all contractual liens and security interests, statutory liens and security interests or constitutional liens and security interests arising by operation of law (collectively, "Landlord's Liens") to which Landlord might now or hereafter be entitled on all property of Tenant (whether owned or Leased by Tenant) now or hereafter placed in or upon the Leased Premises, except for judgment liens, if any.

(b) To the extent that the aforesaid waiver and negation is not effective or unenforceable, Landlord hereby subordinates all of Landlord Liens to any and all liens placed on the property of Tenant (whether owned or leased by Tenant), including all liens created as a result of any security interest granted in or chattel mortgage placed upon such property of Tenant.

(c) Landlord shall from time to time, upon request of Tenant, confirm the aforedescribed waiver and negation or subordination, as applicable, in writing. If (x) Landlord shall fail to execute (and if requested by Tenant, acknowledge) such confirmation within twelve (12) Business Days after Tenant's request and (y) such failure shall continue for five (5) Business Days after delivery of a notice from Tenant indicating such failure, which notice shall refer to this Section 7.3(c) and recite, in all capital letters (or other prominent display), the provisions of Section 7.3(c), then Tenant shall be appointed Landlord's true and lawful attorney-in-fact, coupled with an interest, for the purpose of executing and delivering such confirmation.

7.4 Attorney's Fees

If either party shall bring any legal action or proceeding in any court of competent jurisdiction to enforce its rights or the other party's obligations under this Lease, or if the parties hereto shall otherwise become adverse parties in any such action or proceeding, then the prevailing party in such action or proceeding shall be entitled to be reimbursed by the non-prevailing party for all reasonable attorneys' fees and disbursements actually incurred by the prevailing party (without regard to any statutory presumption) in connection with such action or proceeding (at all levels, before, during and after trial, and on appeal).

7.5 No Waiver of Rights

No failure or delay of Landlord or Tenant in any one instance to exercise any remedy or power given it herein or to insist upon strict compliance by Tenant or Landlord of any obligation imposed on it herein in any other instance and no custom or practice of either party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by such party in any one instance or any right it has herein to demand strict compliance with the terms hereof by the other party in any other instance. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and then only for the time and in the manner specified in such waiver. No person has or shall have any authority to waive any provision of this Lease unless such waiver is expressly made in writing and signed by an authorized officer of Landlord or Tenant. No endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

7.6 Holding Over

(a) Except as provided in Section 7.6(b), in the event of holding over by Tenant after expiration or termination of this Lease without the written consent of Landlord, Tenant shall pay throughout the entire holdover period (*i.e.*, the period commencing on such expiration or termination and continuing until Tenant shall no longer be holdover in the Leased Premises), as

liquidated damages, rent (or a charge in respect of use and occupancy) at a per diem rate, (A) equal, for each day of the first one hundred twenty (120) days of such holdover period, to one hundred twenty-five (125%) percent of the average per diem rate of Rent payable by Tenant during the last month of the Term, and (B) equal, for each day of the holdover period thereafter, to one hundred fifty (150%) percent of the average per diem rate of Rent payable by Tenant during the last month of the Term. Nothing in this Section 7.6(a) shall be construed as granting Tenant a right to retain possession of the Leased Premises, or as limiting Landlord's right to recover possession of the Leased Premises, after the expiration or termination of this Lease.

(b) Notwithstanding the provisions of Section 7.6(a), Tenant shall be permitted to holdover in the Leased Premises, or a portion thereof, for a period of time not to exceed sixty (60) days after the expiration of the Term (whether the Initial Term or the Term as renewed) if and only if: (1) Landlord has not already leased the portion of the Leased Premises in which Tenant is holding over; and (2) Tenant gives Landlord written notice of such intent to holdover within thirty (30) days prior to the expiration of the Term; such written notice shall specify the length of time Tenant intends to holdover and the portion of the Leased Premises in which Tenant intends to holdover. If Tenant elects to holdover pursuant to the preceding sentence, such holdover will be on an AS-IS basis except that the Annual Basic Rent shall be one-hundred ten percent (110%) of the Annual Basic Rent applicable to such Leased Premises immediately prior to such holdover.

7.7 Subordination

(a) Landlord represents to Tenant that, as of the date of this Lease, (i) except for the Existing Mortgages (if any) identified in Section 15.1 hereof, there are no Mortgages affecting the Property, and (ii) except for the Existing Overleases (if any) identified in Section 15.2 hereof, there are no Overleases affecting the Property.

(b) This Lease shall be and remain superior to any and all Mortgages which may hereafter take effect, unless and until, in the case of any such Mortgage, the Mortgagee thereunder and Tenant shall execute, acknowledge and deliver a Mortgage SNDA (in which event this Lease shall be subordinated to such Mortgage pursuant to such Mortgage SNDA). If, in the case of any Mortgage that hereafter takes effect, (i) Landlord shall deliver to Tenant a form of Mortgage SNDA (*i.e.*, an agreement meeting the definition thereof herein-above set forth) executed and acknowledged by the Mortgagee thereunder, together with Landlord's written request that Tenant counter-execute, acknowledge and deliver the same, and (ii) such Mortgagee shall be an institutional lender that is not an Affiliate of Landlord, then Tenant shall counter-execute, acknowledge and deliver such Mortgage SNDA within the period of twelve (12) Business Days thereafter. Furthermore, if (x) Tenant shall fail to counter-execute, acknowledge and deliver such Mortgage SNDA within such twelve (12) Business Day period, and (y) such failure shall continue for a period of five (5) Business Days after delivery of a notice from Landlord indicating such failure, which notice shall refer to this Section 7.7(b) and recite, in all capital letters (or other prominent display), the provisions of this Section 7.7(b), then Tenant shall be deemed to have counter-executed, acknowledged and delivered such Mortgage SNDA.

(c) This Lease shall be and remain superior to any and all Overleases which may hereafter take effect, unless and until, in the case of any such Overlease, the Overlessor

thereunder and Tenant shall execute, acknowledge and deliver an Overlease SNDA (in which event this Lease shall be subordinated to such Overlease pursuant to such Overlease SNDA). If, in the case of any Overlease hereafter entered into as part of a Sale-Leaseback Transaction,, (i) Landlord shall deliver to Tenant a form of Overlease SNDA (*i.e.*, an agreement meeting the definition thereof herein-above set forth) executed and acknowledged by the Overlessor thereunder, together with Landlord's written request that Tenant counter-execute, acknowledge and deliver the same, and (ii) such Overlessor shall be an institutional lender that is not an Affiliate of Landlord, then Tenant shall counter-execute, acknowledge and deliver such Overlease SNDA within the period of twelve (12) Business Days thereafter. Furthermore, if (x) Tenant shall fail to counter-execute, acknowledge and deliver such Overlease SNDA within such twelve (12) Business Day period, and (y) such failure shall continue for a period of five (5) Business Days after delivery of a notice from Landlord indicating such failure, which notice shall refer to this Section 7.7(c) and recite, in all capital letters (or other prominent display), the provisions of this Section 7.7(c), then Tenant shall be deemed to have counter-executed, acknowledged and delivered such Overlease SNDA.

7.8 Estoppel Certificate

At the request of either Landlord or Tenant, the other party will execute within twelve (12) Business Days from the date of receipt of the request, from time to time, an estoppel certificate substantially in the form attached as Exhibit E hereto, or in such other form as may be reasonably requested by the requesting party (so long as such other form contains only those statements set forth on the form attached as Exhibit E hereto, and other statements confirmatory of reasonably ascertainable matters regarding the express provisions of this Lease); *provided that* any request submitted by Landlord requesting an estoppel certificate by Tenant shall be accompanied by an estoppel certificate executed by Landlord indicating whether or not there are any then existing defaults by Tenant under this Lease, and if so, describing said defaults. Tenant and any third party certifying, to the best of such party's knowledge and belief, to the facts (if true) described in such certificate.

7.9 Subsequent Documents

Any provision in this Lease expressly requiring that Tenant or Landlord execute any estoppel certificate, SNDA or other document, is subject to the requirements that, except as provided in this Lease or otherwise agreed to, no such estoppel certificate, SNDA or other document shall (i) effect (or purport to effect) either (x) any diminution of Tenant's or Landlord's rights provided for in this Lease, or (y) any increase in Tenant's or Landlord's obligations provided for in this Lease, or (ii) impose any additional liability or costs upon Tenant or Landlord beyond that contemplated by this Lease; and any statements contained in any estoppel certificate regarding Lease defaults or breaches shall be limited to the actual knowledge of the signing representative.

7.10 Interest Holder Privileges

If, as and when Tenant shall give any Landlord Default Notice hereunder, Tenant shall give a copy of such notice to any Interest Holder whose address shall have been furnished to Tenant, such copy to be delivered to said Interest Holder at the same time such notice is

thereof from Tenant to Landlord), then Tenant, without thereby waiving such default (and without limiting any other right or remedy it might have on account thereof, in law or in equity), may (but shall not be obligated to) perform such obligation for the account, and at the expense, of Landlord. In any such event, Landlord, within thirty (30) days after Tenant's delivery of an invoice therefor (together with reasonable supporting documentation), shall reimburse Tenant for any reasonable out-of-pocket expenses incurred by Tenant (including reasonable attorneys' fees) in connection with Tenant's performance of any such obligation for the account of Landlord pursuant to this Section 13.1(b), together with interest thereon, at the Applicable Rate, from the date that such expenses were incurred by Tenant to the date that the same are reimbursed to Tenant by Landlord.

(c) The exercise by Tenant of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Tenant of any one or more of the other rights and remedies herein provided or otherwise permitted at law or in equity. Except as otherwise provided in this Lease, remedies provided for in this Lease are cumulative and may, at the election of Tenant, be exercised alternatively, successively, or in any other manner, and are in addition to any other rights provided for or allowed by law or in equity, including the right to claim that Tenant has been constructively evicted.

13.2 Offset Rights

If (i) Landlord shall default in the payment of any monetary sum to Tenant when due (including any sums due and owing to Tenant pursuant to the provisions of Section 13.1(b) hereof), and (ii) such default shall thereafter become a Landlord Event of Default hereunder, then Tenant, without thereby waiving such default (and without limiting any other right or remedy it might have on account thereof, in law or in equity), may, at any time thereafter (if, and to the extent that, such sums remain unpaid), set-off the amount of such sums against any installments of Rent thereafter becoming due and payable to Landlord pursuant to the provisions of this Lease.

ARTICLE XIV
MISCELLANEOUS

14.1 Notices

Any notice or other communications required or permitted to be given under this Lease (each, a "notice") must be in writing and shall be sent to all Notice Parties (*i.e.*, notices sent by Landlord shall be sent to all Tenant's Notice Parties, and notices sent by Tenant shall be sent to all Landlord's Notice Parties), and sent (i) by certified United States Mail, return receipt requested, or (ii) by Federal Express or other nationally recognized overnight courier service. Any notice shall be deemed given upon receipt or refusal thereof. Either party shall have the right to change its Notice Parties (by addition and/or subtraction), and/or the addresses thereof, and/or the party to whose attention a notice thereto shall be directed, by giving the other party notice thereof in accordance with the provisions of this Section 14.1; *provided that* (x) such notice of any such change shall become effective only upon the other party's receipt or refusal thereof, and (y) neither Landlord or Tenant may designate more than five (5) Notice Parties, in total, as its Notice Parties. Additionally, Tenant agrees that copies of all notices of a Landlord

EXHIBIT 2-A

Default Notices hereunder shall also be sent to each Interest Holder that notifies Tenant in writing of the address to which copies of such notices are to be sent. Any notice sent by either party pursuant to this Section 14.1 shall set forth the address of the Property.

14.2 Brokers

(a) Tenant represents that it has not engaged any broker, agent or similar party with respect to the transactions contemplated by this Lease, nor has it dealt with any broker, agent or similar party with respect to the transactions contemplated by this Lease. Tenant agrees to indemnify and hold harmless Landlord from and with respect to any claims for a brokerage fee, finder's fee or similar payment with respect to this Lease which is made by any broker, agent or similar party with which Tenant has dealt and Landlord has not dealt.

(b) Landlord represents that it has not engaged any broker, agent or similar party with respect to the transactions contemplated by this Lease, nor has it dealt with any broker, agent or similar party with respect to the transactions contemplated by this Lease. Landlord agrees to indemnify and hold harmless Tenant from and with respect to any claims for a brokerage fee, finder's fee or similar payment with respect to this Lease which is made by any broker, agent or similar party with which Landlord has dealt and Tenant has not dealt.

14.3 Binding on Successors

This Lease shall be binding upon and inure to the benefit of Landlord and its permitted successors and assigns, and shall be binding upon and inure to the benefit of Tenant and its permitted successors and assigns. Where appropriate the pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other.

14.4 Rights and Remedies Cumulative

Except as otherwise provided herein, all rights and remedies of Landlord and Tenant under this Lease shall be cumulative and none shall exclude any other rights or remedies allowed by law.

14.5 Governing Law

This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State, including all matters of construction, validity and performance, except laws governing conflicts of law; provided that to the extent the law of the jurisdiction where the Property is located requires that the laws of such jurisdiction apply to any aspect of this Lease, then, to that extent, such laws of such jurisdiction will also apply to the Property.

14.6 Rules of Construction

The terms and provisions of this Lease shall not be construed against or in favor of a party hereto merely because such party is the "Landlord" or the "Tenant" hereunder or such party or its counsel is the draftsman of this Lease.

EXHIBIT 2-A

14.7 Authority and Qualification

Tenant warrants that all consents or approvals required of third parties (including its Board of Directors) for the execution, delivery and performance of this Lease have been obtained and that Tenant has the right and authority to enter into and perform its covenants contained in this Lease. Landlord warrants that all consent or approvals required of third parties (including its Board of Trustees) for the execution, delivery and performance of this Lease have been obtained and that Landlord has the right and authority to enter into and perform its covenants contained in this Lease. Landlord and Tenant each also represents and warrants that it is lawfully doing business in the State.

14.8 Severability

If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the extent permitted by law.

14.9 Quiet Enjoyment

Landlord covenants that Tenant shall and may peacefully and quietly have, hold and enjoy the Leased Premises, subject to the other terms hereof; provided that no Event of Default shall then be outstanding.

14.10 Limitation of Personal Liability

Tenant specifically agrees to look solely to Landlord's interest in the Property and, during the Integration Period, Landlord's interest in the other Integrated Properties (which interest, in either case, shall be deemed to include the rent and other income or proceeds derived from such Property and/or, if applicable, the other Integrated Properties) for the recovery of any monetary judgment against Landlord, it being agreed that neither Landlord nor any Landlord Party shall ever be personally liable for any such judgment or for any other liability or obligation of Landlord under this Lease beyond such interest in the Property (and, if applicable, the other Integrated Properties). The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have (i) to obtain injunctive relief (or other equitable relief) against Landlord or any other person, (ii) to offset sums due and owing to Tenant against the Rent hereunder, or (iii) to prosecute any suit or action in connection with enforcement of Tenant's rights hereunder or Landlord's obligations hereunder.

14.11 Memorandum of Lease

Upon the written request of Tenant, Landlord and Tenant shall enter into a short form of this Lease for the purpose of recording the same, and Tenant shall, at Tenant's expense, have the right to record the same.

EXHIBIT 2-A

14.12 Master Agreement

The Master Agreement has been executed and delivered by the parties thereto contemporaneous with the execution and delivery of this Lease. Throughout the Integration Period, (i) the Master Agreement shall be deemed integrated into, and shall form a material part of, this Lease, and (ii) this Lease shall be deemed integrated into, and shall form a material part of, the Master Agreement. Throughout the Integration Period, to the extent any provisions of this Master Agreement are expressly referenced in one or more provisions of this Lease, such referenced provisions of this Master Agreement shall be deemed incorporated into such provisions of this Lease, as fully as if expressly set forth herein, and shall be controlling in the case of any conflicts.

14.13 Amendments

This Lease may not be altered, changed or amended, except by an instrument in writing signed by Landlord and Tenant.

14.14 Entirety

This Lease, together with the Master Agreement, embodies the entire agreement between Landlord and Tenant relative to the subject matter of this Lease and all summaries, proposals, letters and agreements with respect to the subject matter of this Lease that were entered into prior to the date of this Lease shall be of no further force and effect after the date hereof.

14.15 References

All references in this Lease to days shall refer to calendar days unless specifically provided to the contrary.

14.16 Counterpart Execution

This Lease may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

14.17 No Partnership

Nothing in this Lease creates any relationship between the parties other than that of lessor and lessee and nothing in this Lease, whether the computation of rentals or otherwise, constitutes the Landlord a partner of the Tenant or a joint venturer or member of a common enterprise with the Tenant.

14.18 Captions

The captions and headings used in this Lease are for convenience and reference only and in no way add to or detract from the interpretation of the provisions of this Lease.

EXHIBIT 2-A

14.19 Required Radon Notice

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT A HEALTH RISK TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN THE STATE. ADDITIONAL INFORMATION REGARDING RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

14.20 Changes by Landlord

(a) Landlord shall have the right at any time, without the same constituting an actual or constructive eviction and without incurring liability to Tenant therefor, to make reasonable alterations to the Common Areas (including the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, and bathrooms in the Common Areas), so long as:

(1) (x) the number of parking spaces located within the Parking Areas shall not be reduced, and (y) access to and from the Parking Areas (*i.e.*, the ingress and egress between Parking Areas and the street, and ingress and egress between the Parking Areas and the Leased Premises) shall remain equivalent to, or become better than, the access to and from the Parking Areas available on the Commencement Date;

(2) access to and from the Leased Premises (*i.e.*, the ingress and egress between the Leased Premises and the street) shall remain equivalent to, or become better than, the access to and from the Leased Premises available on the Commencement Date, and

(3) neither (i) the visibility of the ground floor portion(s) of the Leased Premises, nor (ii) the visibility or prominence of any Tenant's Building Signage shall be adversely affected.

(b) Landlord shall have the right to close, from time to time, portions of the Common Areas for such temporary periods as Landlord reasonably deems legally necessary and sufficient to evidence Landlord's ownership and control thereof so as to prevent any claim of adverse possession by, or any implied or actual dedication to, the public or any party other than Landlord, so long as a reasonable means of ingress and egress to and from the Leased Premises is maintained at all times.

(c) Landlord may make alterations to the Leasable Areas other than the Leased Premises; provided, however, that no reduction made to the aggregate amount of Leasable Areas shall reduce the denominator used in computing Tenant's Occupancy Percentage.

14.21 Waiver of Jury Trial

LANDLORD AND TENANT EACH HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS LEASE.

EXHIBIT 2-A

14.22 Termination of Lease

If, as of any date occurring after the Commencement Date and prior to the Expiration Date, no space is demised under this Lease (i.e., (i) no Leased Premises shall be demised hereunder, and (ii) no Release Premises shall be demised hereunder), then, effective as of such date, this Lease (if, for any reason, not already terminated) shall automatically terminate and be of no further force or effect, and, accordingly, neither Landlord nor Tenant shall have any further rights or obligations hereunder (or under the Master Agreement with respect to this Lease).

ARTICLE XV
ADDITIONAL PROVISIONS

15.1 Existing Mortgage(s)

15.1.1 The term "Existing Mortgage(s)" shall mean the following Mortgage(s) existing as of the date hereof: that certain Mortgage, Deed of Trust, Deed to Secure Debt or similar security instrument, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of September 22, 2004, from First States Investors 3300, LLC, a Delaware limited liability company, to or for the benefit of Lehman Brothers Holdings Inc.

15.1.2 Simultaneous herewith, Tenant, Landlord and the Mortgagee under each Existing Mortgage shall execute, acknowledge and deliver a Mortgage SNDA with respect to such Existing Mortgage.

15.2 Existing Overlease(s)

15.2.1 The term "Existing Overlease(s)" shall mean the following Overlease(s) existing as of the date hereof: none

15.3 Agreements Benefiting the Property

Landlord covenants and agrees that: (i) throughout the Term, it shall not amend, modify or supplement any easement or other agreement benefiting the Property (each a "Beneficial Agreement"), if any, in any manner that would shorten the term thereof (unless the term as shortened shall expire after the Outside Expiration Date), increase Tenant's obligations or otherwise adversely affect Tenant's rights hereunder; and (ii) it shall not terminate or cancel and/or take any action or fail to take any action that would result in the termination of any Beneficial Agreement prior to the Outside Expiration Date or such earlier date as this Lease shall expire or terminate.

EXHIBIT 2-A

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date aforesaid.

LANDLORD:

Witness:

Name: ARLENE GORMAN

FIRST STATES INVESTORS 3300, LLC, a Delaware limited liability company

By:
Name: Sonya A. Huffman
Title: Vice President

TENANT:

Witness:

Name: ARLENE GORMAN

WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association

By:
Name: Tom Markert
Title: Vice President

EXHIBIT 2-A

WBBD 3410
PID#: 506584
Beaufort Main Financial Center
Beaufort County, SC

Exhibit "A"
Legal Description

All that certain piece, parcel, lot or tract of land with any improvements thereon, situate, lying and being in the Town of Beaufort, County of Beaufort, State of South Carolina, as shown on a plat prepared for The South Carolina National Bank by BES, Inc., dated June 13, 1986 and recorded July 2, 1986 in Plat Book 34 at Page 4, Office of the Register of Deeds for Beaufort County, and having the following metes and bounds: Beginning at an iron pin on the Northern right of way of Bay Street approximately 94 feet from the Western right of way of Charles Street, thence N53°22'20"W for a distance of 167.57 feet to an "X" on the concrete; thence turning and running N00°44'00"E for a distance of 198.45 feet to an iron pin; thence turning and running S89°41'30"E for a distance of 47.94 feet to an iron pin; thence turning and running N00°51'00"E for a distance of 133.61 feet to an iron pin; thence turning and running S89°30'00"E for a distance of 155.73 feet to an iron pin; thence turning and running S00°00'49"W for a distance of 62.88 feet to an iron pin; thence turning and running S00°21'45"E for a distance of 62.45 feet to the corner of a brick wall; thence turning and running S89°33'55"E for a distance of 104.24 feet to the corner of a brick wall; thence turning and running S01°09'30"E for a distance of 85.27 feet to an old fence corner; thence turning and running S88°20'38"E for a distance of 103.21 feet to an iron pin; thence turning and running S00°15'23"E for a distance of 136.08 feet to an iron pin; thence turning and running N89°16'00"W; thence turning and running for a distance of 73.09 feet to an iron pin; thence along lands of a museum S01°36'16"W for a distance of 80.92 feet to an iron pin at the point of beginning.

This being the same property conveyed to The South Carolina National Bank (now known as Wachovia Bank, National Association by virtue of that certain Affidavit of Name Change as recorded in Book 710 at Page 232 and that certain Affidavit of Merger and Name Change as recorded in Book 954 at Page 362), by deed of TXL Properties Limited 86-102, recorded June 23, 1993 in Book 633 at Page 270, Office of the Register of Deeds for Beaufort County.

TMS#: 121-004-000-0847 & 848

LESS AND EXCEPT:

All that certain lot of land, together with the improvements thereon, situated at 314 Charles Street in the City of Beaufort, County of Beaufort, State of South Carolina; containing 0.13 acres, more or less; lying within the northeast corner of Beaufort City Block 81; and being shown on a plat prepared by David E. Gasque, dated March 5, 1997, and recorded in Deed Book 933 at Page 122, Office of the Register of Deeds for Beaufort County, the said lot having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

This being the same property conveyed to IBIS, Inc. by deed of Wachovia Bank of South Carolina, N.A., dated March 27, 1997 and recorded April 3, 1997 in Deed Book 933 at Page 119, Office of the Register of Deeds for Beaufort County.

TMS#: 121-004-000-0847B

EXHIBIT 2-A

EXHIBIT 2-A

EXHIBIT A-1

Site Plan

EXHIBIT 2-A

AmericanNational llc
3465 S. Arlington Rd, Suite E#183, Akron, OH 44312
Phone and fax 330-294-1077, www.a-national.com

ALTA/ACSM Land Title Survey

Wachovia – BBD
BEAUFORT MAIN FINANCIAL CENTER
1011 BAY STREET
BEAUFORT, SC, BEAUFORT COUNTY
CLIENT SITE # 3410
CLIENT PO# 506584

506584

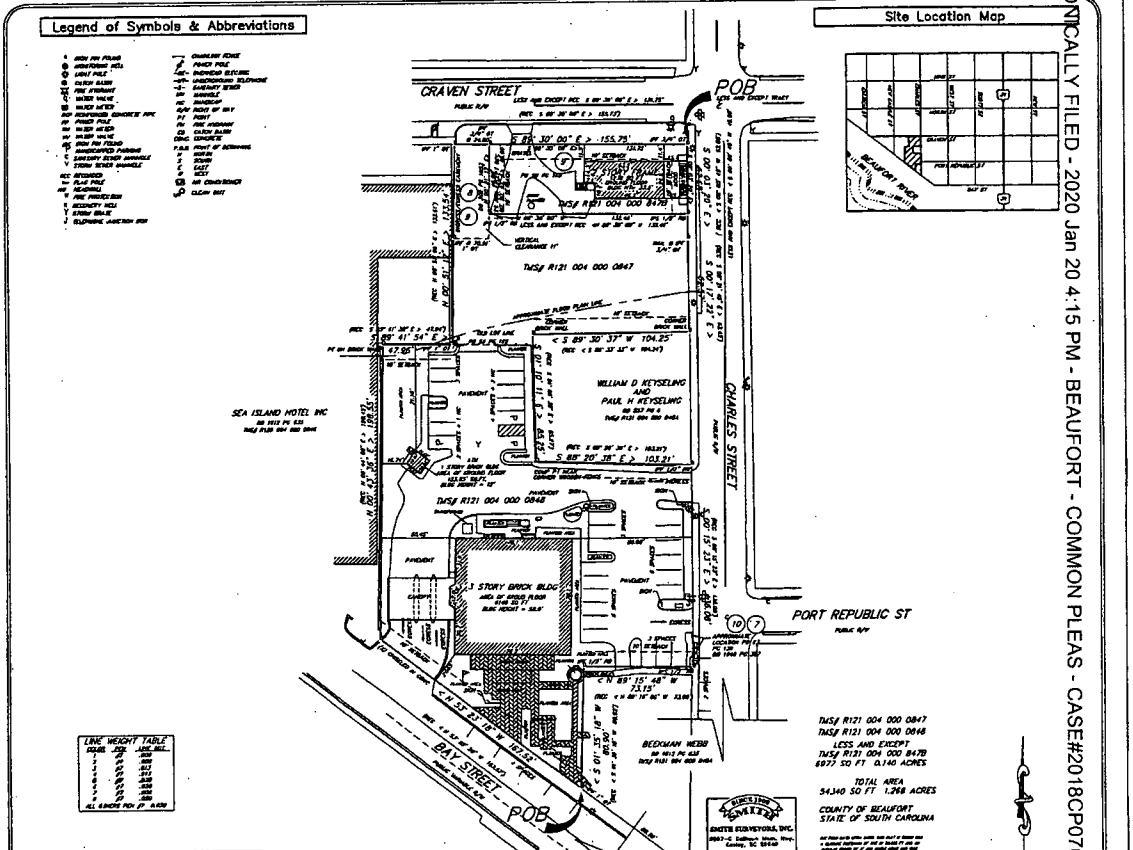
Surveyor's Certification

Legal Description

RECORDED LEGAL DESCRIPTION

Legend of Symbols & Abbreviations

Site Location Map



LINE WEIGHT TABLE

FLOOD NOTE:

Sheet 1 of 2

EXHIBIT A-1
(continued)

Site Plan
(Parking Areas)

Key to attached site plan:

"Tenant Dedicated Parking Areas" = (i) Spaces, if any, designated "W"; (ii) all parking spaces if noted that Wachovia will lease, need, retain or have the right to use all parking (or other words of similar import); and/or (iii) the areas designated on the site plan as "for Wachovia parking" (or other words of similar import).

"Separate Charge Parking Areas" = Spaces, if any, designated "S". Separate Charge Parking Areas do not include any Tenant Dedicated Parking Areas, regardless of whether Wachovia charges its employees for use of same.

"Non-Dedicated Parking Areas" = (i) Spaces, if any, designated "AF" or otherwise indicated "AFRG Parking" or to be turned over or surrendered to AFRT and (ii) all parking areas that are not Tenant Dedicated Parking Areas or Separate Charge Parking Areas.

EXHIBIT 2-A

Beaufort Main
Beaufort, SC

W=Wachovia spaces

EXHIBIT 2-A

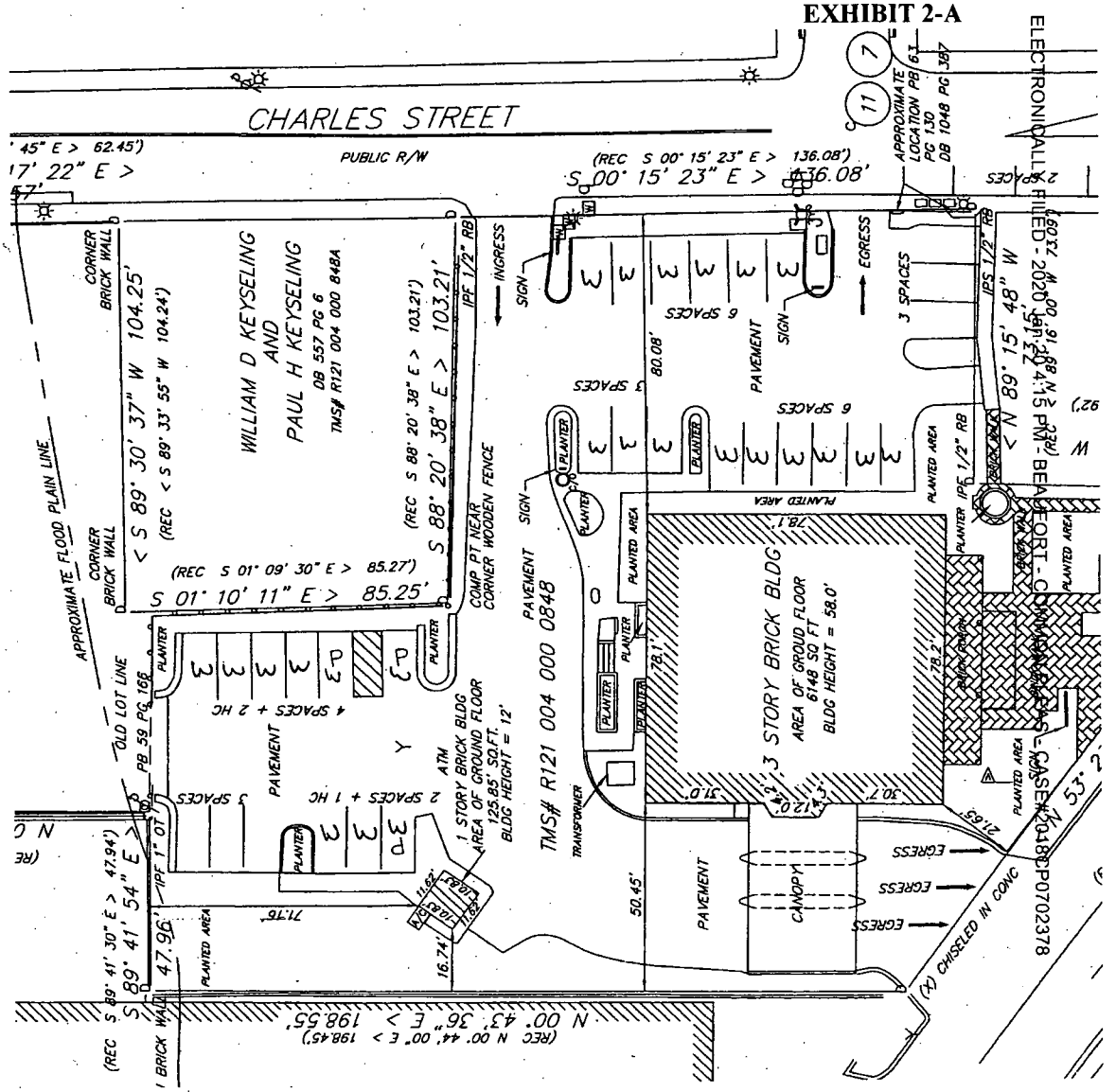
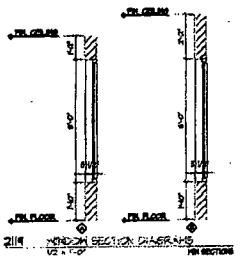


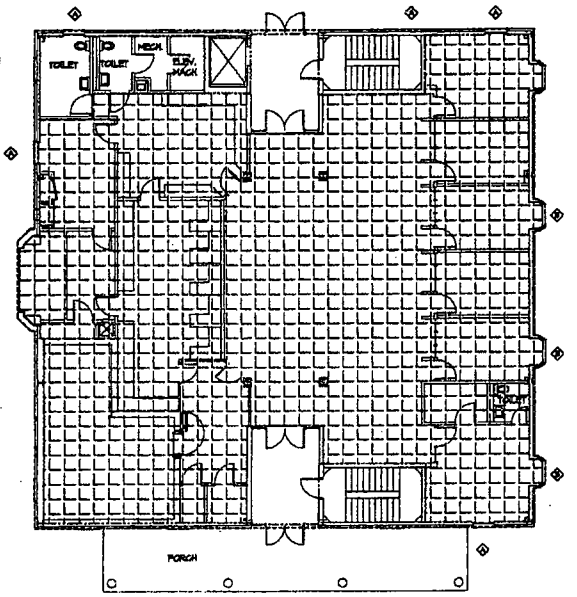
EXHIBIT 2-A

EXHIBIT B

Leased Premises

EXHIBIT 2-A





WALTER ROBBS CALLAHAN & PIERCE Architects, PA
305 West Fourth Street
Suite 2A
Winston-Salem, NC
Telephone 336-725-
Fax 336-725-1466

HATCH LEGEND:

- GROSS SQUARE FOOTAGE
- RENTABLE SQUARE FOOTAGE
- WACHOVIA 20 YR SPACE
- TENANT AREA
- VACANT
- 2 YR RELEASE AREA

BOMA AREA CALCULATIONS

FLOOR "GROSS"	6,153 SF
FLOOR RENTABLE	5,523
FLOOR USABLE	4,910
20 YEAR USABLE	4,910 SF
20 YEAR RENTABLE	5,523
TWO YEAR RELEASE USABLE	0
TWO YEAR RELEASE RENTABLE	0
TENANT USABLE	0
TENANT RENTABLE	0
VACANT USABLE	0
VACANT RENTABLE	0

WACHOVIA

AMERICAN FINANCIAL REALTY TRUST

FLOOR AREA MEASUREMENTS

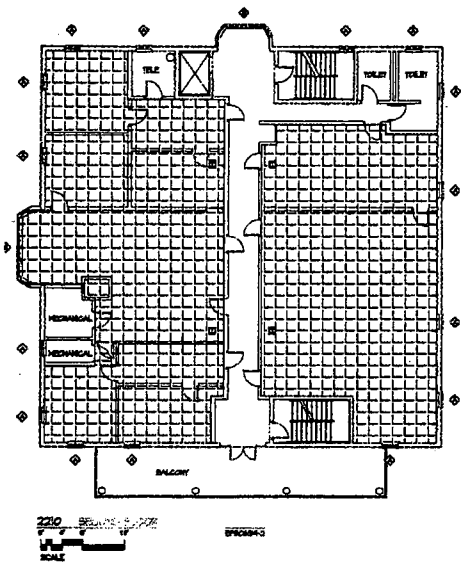
PIPEDREAM
1011 BAY STREET
BEAUFORT, SC

PID 506584

PROJECT #	04-494
DATE	05-18-04
SCALE	NTS

A2.1

EXHIBIT 2-A



WALTER ROBBS CALLAHAN & PIERCE Architects, PA

305 West Fourth Street
Suite 2A
Winston-Salem, NC 27101
Telephone 336-725-1377
Fax 336-725-1466

HATCH LEGEND:

- GROSS SQUARE FOOTAGE
- RENTABLE SQUARE FOOTAGE
- WACHOVIA 20 YR SPACE
- TENANT AREA
- VACANT
- 2 YR RELEASE AREA

BOMA AREA CALCULATIONS

FLOOR "GROSS"	6,191 SF
FLOOR RENTABLE	5,586 SF
FLOOR USABLE	4,316 SF
20 YEAR USABLE	4,316 SF
20 YEAR RENTABLE	5,586 SF
TWO YEAR RELEASE USABLE	0 SF
TWO YEAR RELEASE RENTABLE	0 SF
TENANT USABLE	0 SF
TENANT RENTABLE	0 SF
VACANT USABLE	0 SF
VACANT RENTABLE	0 SF

WACHOVIA

AMERICAN FINANCIAL REALTY TRUST

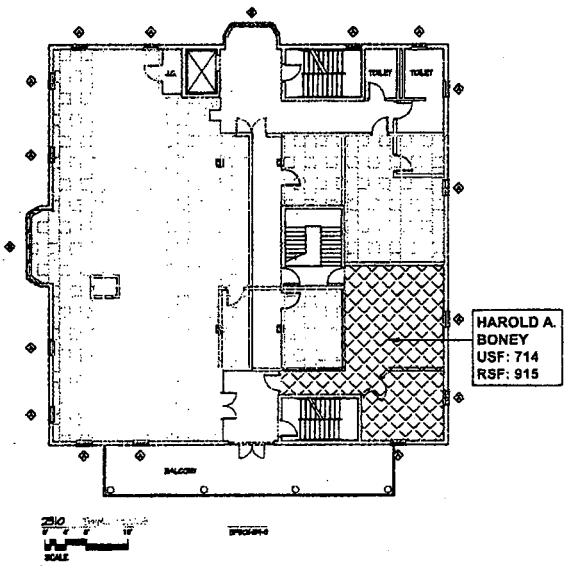
FLOOR AREA MEASUREMENTS

PIPEDREAM
1011 BAY STREET
BEAUFORT, SC
PID 506584

PROJECT # 04-494
DATE 05-18-04
SCALE NTS

A2.2

EXHIBIT 2-A



WALTER ROBBS CALLAHAN & PIERCE Architects, PA
305 West Fourth Street
Suite 2A
Winston-Salem, NC 27101
Telephone 336-725-1971
Fax 336-725-1405

HATCH LEGEND:

- GROSS SQUARE FOOTAGE
- RENTABLE SQUARE FOOTAGE
- WACHOVIA 20 YR SPACE
- TENANT AREA
- VACANT
- 2 YR RELEASE AREA

BOMA AREA CALCULATIONS

FLOOR "GROSS"	6,191 SF
FLOOR RENTABLE	5,362 SF
FLOOR USABLE	4,202 SF
20 YEAR USABLE	0 SF
20 YEAR RENTABLE	0 SF
TWO YEAR RELEASE USABLE	0 SF
TWO YEAR RELEASE RENTABLE	0 SF
TENANT USABLE	714 SF
TENANT RENTABLE	915 SF
VACANT USABLE	3,488 SF
VACANT RENTABLE	4,467 SF

WACHOVIA

AMERICAN FINANCIAL REALTY TRUST

FLOOR AREA MEASUREMENTS

PIPEDREAM
1011 BAY STREET
BEAUFORT, SC
PID 506584

PROJECT #	04-494
DATE	05-18-04
SCALE	NTS

A2.3

EXHIBIT 2-A

EXHIBIT B-1

Release Premises

EXHIBIT 2-A

None

EXHIBIT C

Property Specific Information

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the lease to which this Exhibit C is annexed.

1. Property Address: 1011 Bay Street, Beaufort, SC
2. Net Rentable Area of the Leased Premises: 11,109
3. Net Rentable Areas of the Release Premises: -0-
4. Net Rentable Areas of the Building: 16,491
5. Monthly Estimated OE Payment: 3,087
6. Building Operating Hours:
    a. Monday through Thursday (other than Holidays) 8:00 a.m. through 6:00 p.m.
    b. Friday (other than Holidays) 8:00 a.m. through 7:00 p.m.
7. Market Area shall mean: Metropolitan Beaufort, Southwest Downtown
8. Landscaping and Janitorial Specifications: Annexed hereto as Schedule 1
9. Rules and Regulations of the Building: Annexed hereto as Schedule 2
10. List of Reports and Studies Containing Environmental Information: Annexed hereto as Schedule 3

Exhibit C
Schedule 1

Landscaping and Janitorial Specifications

Landscaping Specifications

1. Lawn Maintenance:

(a) **Mowing** - Mowing will be accomplished as needed during the growing season. Except when weather conditions dictate, the minimum mowing frequency **shall not exceed seven (7) days**. Mowing during all other periods of time will be performed if necessary based on turf growth.

(b) **Edging** - The landscaping contractor (the "Supplier") shall edge plants, walkways, roadway edges, space between planter beds and lawn areas and all asphalt and hard surfaces by mechanical means each visit**, not to exceed 7 days**. Clippings shall be either vacuumed or blown off all surfaces, and removed from premises at the time edging is completed.

(c) **Trimming** - Supplier shall use a string trimmer around trees, fences, fire hydrants, buildings, signs, walkways, roadway edges, driveways, curbs, etc. on **a weekly basis**. Clippings shall be either vacuumed or blown off all hard surfaces, and removed from premises when completed.

(d) **Fertilization** - Turf fertilization shall be preformed a minimum of **4 times annually**. The fertilization of shrubs, trees, ground cover, perennials etc. shall be preformed bi-annually. When necessary, soil testing shall be done.

(e) **Insects** - The Supplier shall be responsible for treatment of all grass damaging insects on a **preventive basis**.

(f) **Disease** - Turf damage by disease shall be chemically treated to maintain all turf in a healthy and attractive condition.

(g) **Weed Control** - The Supplier shall apply a **minimum of 3 times annually** and according to environmental and seasonal conditions, chemicals to control weeds in turf. Turf damage due to excessive weed conditions or improper application of chemicals shall be the responsibility of the Supplier. **Annually the Supplier shall apply a pre emergence** weed control.

2. PLANT, SHRUB AND PRUNING:

(a) Plants and shrubs shall be pruned by the Supplier at the best time for flower bud development, foliage growth, and as the health of the plant may require.

(b) Formal shrubs will be pruned/sheared as required maintaining their shape year round.

(c) Informal shrubs will be pruned to remove older wood to maintain a healthy and natural appearance year round.

(d) Removal of dead, diseased and or dying plant material will be preformed as necessary.

(e) Perennial and ornamental shrubs will be pruned as required and cutback at the appropriate time of the growing season.

(f) Shrubs shall not be clipped into a ball or box form unless such is required by the design.

(g) Shrubs and plants adjacent to building entrance, night depositories and ATM's must be kept small in order to maintain Tenant's safety.

(h) Shrubs located at parking lot ingress and egress must be pruned to ensure safe visibility for cars entering and exiting. **Shrubs are to be kept trimmed low to a maximum height of 36 inches and 12 inches away from the building in all cases.**

3. GROUND COVER MAINTENANCE:

(a) Ground cover will be pruned as required to contain them within the confines of their beds and clear of shrubs year round.

(b) Supplier shall remove non-hedge growth from hedges and shrubs; such as but not limited to Spanish moss, vines, and grasses.

(c) Landscape areas must not create a place where a person can hide.

4. BED MAINTENANCE:

(a) **Insects and Disease** - The Supplier is responsible for treatment of insects and disease. Any plant, which contracts root fungi, will be drenched with the appropriate treatment upon first observation.

(b) **Weeds** - Weeds and grass growth will be removed and kept clear from all planters, beds, curbs and hard surface cracks and expansion joint areas using a chemical and mechanical means **weekly.**

(c) **Mulching** - Supplier is to maintain all mulched beds at a **consistent two- (2) inch depth year round**. Mulched areas will be turned over starting in March and quarterly thereafter; depending on type of material used, to provide a fresh, neat and well-groomed appearance.

5. TREE MAINTENANCE:

(a) **Pruning** - Pruning of trees will only be done **to a height no greater than twelve (12) feet.** The Supplier will be responsible for thinning trees for light penetration and air circulation and dead wood removal of dead, dying, diseased and/or **dying branches, sucker, etc.**. **Branches and suckers are to be removed to a height of ten (10) feet.** All palm trees, regardless of size, shall be trimmed bi-annually, removing husks and palm fronds.

(b) **Insects and Disease** - The Supplier is responsible for treatment of insects and diseases. The Supplier shall notify the Property Manager representative of any insect or fungus infestation and the control recommended prior to treatment.

6. LITTER REMOVAL:

(a) Supplier shall pick up all bottles, trash, leafs, sand, cans, fallen limbs, palm fronds, cigarettes and pieces of paper from the premises on **a weekly basis year round**.

(b) Clippings shall be removed from the planter beds, turf, sidewalks, curbs/gutters and paved areas, subsequent to mowing, to the extent readily noticeable and/or if Property Manager specifies their removal.

(c) Debris caused by normal seasonal wind and thunderstorms will be removed from site.

(d) The Supplier shall arrange for an appropriate, suitable area, not on Tenant's property, in which normal litter (clippings, hedge trimmings and weeds) can be deposited. Litter and debris shall be removed from all turf and ground areas prior to mowing.

7. IRRIGATION MAINTENANCE:

(a) The Supplier will be responsible for proper water management and that such systems are functioning properly. All systems should end their cycles as early in the morning as possible.

(b) Supplier will be responsible for normal maintenance, including winterization, spring start-up, **head replacement** where necessary and time and day settings of controllers.

(c) The Supplier shall maintain the irrigation system and pump station(s) for normal operation. All heads will be maintained for proper adjustment. Heads will be cleaned to provide proper arc and trajectory.

(d) The Supplier is responsible to eliminate any and all over spray on buildings, signs, walkways and parking lots, etc.

(e) The entire system, including, time clocks and controllers, shall to be checked completely weekly.

(f) On systems with pumps, these items are to be checked every 3 months during season: Motor bearing, packing box and Motor grease cups.

8. GENERAL PROCEDURES:

(a) In the event that time is lost due to heavy rains, the Supplier shall reschedule his crews and divide their times accordingly to visit each account during the time remaining. The Supplier shall work on Saturdays/Sundays if needed to make up rain days.

(b) Any turf, tree, shrub ground cover damaged or destroyed due to the Supplier's operations, negligence, and misuse of chemicals or improper fertilization shall be replaced by Supplier.

(c) Ants shall be exterminated with "Andro", or equal, applied adjacent to the mound weekly or as necessary. Inactive mounds shall be knocked down and blended with the

natural grade. Treatment includes, but is not limited to lawn, planter beds, trees, walkways and parking lots.

RESPONSE TIME PRIORITY CODES

Supplier shall comply with the following prioritization of established procedures in the performance of the services described herein. Property Manager's requirements hereunder for the specific occurrences set forth below shall in no way be construed to limit Supplier's obligations under this Agreement. Supplier is expected to act with prudence, exercising reasonable judgment.

Priority Type Number	Priority Type Name	Priority Type Example	Remarks
1	EMERGENCY	• Major irrigation problem(water flowing, cannot be shut off) • Broken glass in parking lot.	2 Hours or less response time
2	Same Day Response	• Damaged or broken heads.	Type 2 calls cannot be given after 2 PM; calls have to be 1's or 3's.
3	24 Hour Response	• Plant/turf dying. • Irrigation system running, check timing. • Storm damage clean-up • No Show. • Need trash picked up in parking lot.	Next Day Response
4	One Week Response	• Quoted work.	Perform quoted work after approval's been received.

EXHIBIT 2-A

Janitorial Specification

Typical Schedule of Services ("Janitorial Services")

Service	Minimum Frequency**
Basic Services:	
Space Cleaning:	
Emptying Waste Containers:	Nightly
Low Dusting:	
Dusting: Teller Counters, Waiting Areas, Lobby:	Nightly
Dusting: Other:	Weekly
General Cleaning:	Nightly
High Dusting/Cleaning:	Quarterly
Glass Cleaning:	
Main Entrance Doors: (Interior/Exterior)	Nightly
Other:	Weekly
Cleaning Walk-Off Mats:	Nightly
Elevator Cleaning:	Weekly
ATM/Night Depository Cleaning:	
Financial Center ATM/ND	Nightly
ATM's within the Site Plan annexed to the Lease as Exhibit A-1	Nightly
Financial Center Exterior Cleaning:	
Drive-up Windows:	Nightly
Night Depositories:	Nightly
Visual Automatic Teller Units:	Nightly
Damage Reporting:	Nightly
Vault/Coupon Booth Cleaning:	Weekly
Cleaning Blinds/Window Coverings:	Annually
Exterior Window Cleaning:	Annually
Floor Care:	
Vacuuming Carpets and Rugs:	
Entrance Mats, Lobby, Teller Line:	Nightly
Other Carpeted Areas:	Weekly
Sweeping/Dust Mopping:	Nightly
Damp Mopping:	Nightly
Stripping and Re-Waxing Floors:	Quarterly
Ceramic Tile/Marble Floor Cleaning:	Quarterly
Shampooing Carpets and Rugs:	Annually
Restroom Services:	
Cleaning:	Nightly
Servicing:	Nightly
Other Services:	
Policing Grounds:	Nightly
Day Porters and Day Maids:	Provided Where Required

**Additional service frequency may be required occasionally due to exceptional circumstances.

Janitorial Specification

A. GENERAL REQUIREMENTS: The janitorial contractor (the "Supplier") shall furnish all labor, management, supervision, tools, equipment, materials, supplies, and transportation necessary to provide Janitorial Services. Designated spaces include, but are not limited to, halls, restrooms, offices, conference rooms, kitchens, cafeterias, work areas, entranceways, lobbies, storage areas, elevators, vaults, ATM's within the Site Plan annexed to the Lease as Exhibit A-1, stairways, and other areas classified as Tenant property.

B. Quality:

a. Cleanliness quality means an entirely "like new" appearance or:

1) The absence of litter or undesirable debris, which can be eliminated.

2) The absence of un-bonded dust build-up on any surface of any items subject to appropriate dusting techniques.

3) The complete, comprehensive and detailed cleaning of any item subject to cleaning, including: corners, inside, outside, top, bottom, under and over all surfaces.

4) The absence of any surface marks, spills or other undesirable bonded surface residue, which can be eliminated by appropriate damp or wet cleaning techniques.

5) The absence of any soil, wax, or other undesirable bonded build-up, which can be eliminated by appropriate heavy duty, cycle or project cleaning techniques.

6) The presence of appropriate surface gloss, protection, or reflective capacity in line with "like new" or designated gloss levels.

7) The absence of minor spots, finger marks, or other limited surface soil, which can be eliminated by appropriate spot cleaning techniques.

8) The absence of dust, lint and other in-fiber accumulation in fabric and carpeted areas, which can be eliminated by appropriate vacuum cleaning techniques.

9) The issuance of maintenance and other work requests to eliminate or correct problems with damaged, non-functioning, repair or replacement oriented items which cannot be corrected through appropriate cleaning techniques (does not affect cleanliness measurements).

10) The presence of appropriate levels of paper products, soap, and personal hygiene products in all restrooms and other dispensers to prevent any un-stocked situation.

C. SUPPLIER FURNISHED ITEMS: The Supplier shall provide all facilities, equipment, materials, labor, transportation, and supplies to perform the Janitorial Services. Equipment, materials, and supplies furnished shall conform to the applicable specifications listed below.

Supplier may make substitutions if of equal quality. Items not listed shall be of acceptable commercial grade and quality.

1) Multi-fold Towels - Scott #180 (or equal)

2) Toilet Tissue – Georgia Pacific Savory-TM6120 (or equal)

3) Small Liners - Medium weight. Clear bags only.

4) Large Liners - Institutional brand (or equal), Clear bags only.

5) Anti-bacterial Lotionized Hand Soap

6) Tampax Tampons and Stay Free Sanitary Napkins: Supplier shall supply these items only where vending machines exist and proceeds shall go to Supplier. Property Manager shall control price where applicable.

7) Ladies sanitary bags & seat covers where dispensers for same exists.

8) Trash Bag Identification Tags – (Must be PreApproved by Property Manager)

D. MANAGEMENT:

a. Allowable Work Hours:

1) All work shall be performed during "Cleaning Hours" as indicated below. If the Supplier desires to carry on work on Saturday, Sunday, Bank Holidays, or outside regular "cleaning hours", the written approval of Tenant must be obtained.

1. Financial Centers (Bank Branches): (including financial centers located within an office building) – Financial Center Cleaning shall NOT start before the close of the vault, and all Services shall be completed, and Supplier Personnel out of the branch, by 11:00 PM, Monday through Friday, and by 6:00 PM for Branches open on Saturdays, unless otherwise specified on a location-by-location basis and communicated by the Tenant Corporate Real Estate Property Manager or designated Tenant Representative. **Exception:** ***Vault vacuuming and cleaning of other areas that Tenant designates as "Secure" or "Restricted" must be performed during regular banking hours and must not interfere with normal operations.***

E. JANITORIAL SERVICES REQUIREMENTS:

a. **Basic Services:** Basic services shall be performed at the locations and frequencies shown and shall consist of the services listed for the spaces indicated. Furniture and other items moved while performing basic services shall be returned to its original position. Performance requirements for these services include the following:

Janitorial Specification

1) **Space Cleaning:** Space cleaning shall consist of the following services performed at the frequencies indicated in the Schedule of Services.

1. Emptying Waste Containers: All waste containers including those in ATM Vestibules shall be emptied as necessary and contents handled in accordance with the Confidential Data Destruction Program (described in paragraph E(13) below) and plastic liners replaced. Any plastic liner with food wastes or that is soiled or leaking shall be replaced with a new plastic liner. Waste containers shall be washed as needed inside and outside using a disinfectant and shall be free of odors. After washing, containers shall be wiped dry and new plastic liners installed. Boxes, cans, bottles, and other items placed adjacent to waste containers and marked "TRASH" shall also be removed and disposed of.

2. Low Dusting: All furniture, counters, partitions, radiators, equipment, hand railings in stairways, grills, window blinds, horizontal ledges, and sills shall be dusted.

3. General Cleaning: Walls, doors, and partitions shall be wiped clean (including glass in partitions and doors) to a height of 9'-0" above floor level. If present, break room counters, appliances, chalkboards, chalk trays, and erasers shall be cleaned. Corridor, lobby, and entrance walls and doors shall be cleaned. Miscellaneous hardware and bright metal work shall be wiped clean. Drinking fountains shall be cleaned and disinfected; all surfaces shall be free of stains, smudges, and scale. Litter to be picked up in lobbies, office areas, break areas, elevators, and stairwells.

4. High Dusting/Cleaning: All dust, lint, litter, and soil shall be removed from vertical and horizontal surfaces above 9'-0" from floor level, including overhead piping and ceiling areas. Walls shall be free of dirt, smudges, and marks. Ceilings shall be free of cobwebs and loose dirt.

5. Glass Cleaning: Interior glass surfaces shall be maintained free of streaks, film, deposits, stains and handprints. Specific areas include, but are not limited to, glass table tops, partitions, doors and windows up to a height of 8'-0". Adjacent surfaces, such as window ledges, shall be kept clean as well. Care must be taken to not damage tinting or lettering.

6. Cleaning Walk-off Mats: Each time floors are swept/dust mopped or vacuumed; walk-off mats in that area shall be cleaned. Soil and moisture underneath mats shall be removed and the floor cleaned as appropriate along with the rest of the floor. Mats shall be returned to their original locations afterward. The Supplier shall notify the Property Manager Representative in writing when walk-off mats are no longer effective because they are worn out.

7. Elevator Cleaning: Where present, all elevator doorjambs and sensors shall be maintained free of dirt, dust, debris, and foreign objects. Elevator tracks will also be maintained in the same manor to include a high gloss shine. Elevator floor indicator lights and call buttons shall be maintained free of dust, finger prints, and smudges.

8. ATM/Night Depository Cleaning (To Include ATM's Within the Site Plan Annexed to the Lease as Exhibit A-1): ATM's, Night Depositories, and ATM Cabinets/Vestibules shall be maintained free of dirt, dust, grime, smudge marks, handprints, gum, and any foreign material, such as advertisements and tape. This includes the monitor screen, keypad, envelope bins, light cover, and surrounding fascia. Remove all gum, spills, and debris from concrete in from of ATM. No chemicals shall ever be used on the ATM. A clean, lint-free cloth shall be used to wipe the ATM face, screen, and the ATM surround. Windex or any product containing ammonia on the ATM or the ATM surround must never be used. To remove spilled liquids, a mild soap mixed with water must be used. Accessible trash containers shall be maintained emptied and clean. Noticeable damage or graffiti shall be reported to the designated Property Manager Representative.

9. Financial Center Exterior Cleaning:

   a. Drive-up Windows: Drive-up teller windows and frames shall be maintained free of dirt, pollen, streaks, smudge marks, tape and any other foreign material.

   b. Night Depositories: Night depositories shall be maintained free of all deposits, tarnish, film, handprints, and cobwebs.

   c. Visual Automatic Teller Units: VAT's shall be maintained free of dirt, dust, stains, advertisements, tape, or any other foreign matter.

   d. Damage: Noticeable damage or graffiti to any of Tenant's property shall be reported to the designated Property Manager representative.

10. Vault/Coupon Booth Cleaning: Vault and Coupon Booth Floors shall be maintained free of all dirt, debris, dust, marks, and spots. Vault door thresholds shall be maintained accordingly. Where applicable, day gates shall be maintained free of handprints, and smudges. Cleaning of the vault doors is not part of this Agreement and should not be performed by the Supplier. ***Vault vacuuming must be performed during regular banking hours and must not interfere with normal operations and must be arranged with the Customer Service Representative at the Financial Center.***

11. Cleaning Blinds/Window Coverings: Venetian blinds, window draperies, including mini-blinds, shall be removed and cleaned free of all dust and embedded dirt, and re-hung in working order. Once removed for cleaning, the blinds shall be re-hung by the Supplier within 5 working days.

12. Exterior Window Cleaning: Clean exterior windows by removing dirt and impurities from inside and outside of windows and doors and all glass frame-work, using a non-residue cleaner.

13. Confidential Data Destruction: Any dry trash shall be collected by Supplier in a designated receptacle. Tenant's data destruction firm shall remove such dry trash from the Leased Premises.

2) **Floor Care**: Floor care shall consist of the following services.

1. Vacuuming: Carpeted areas (to include Elevators and ATM Vestibules) and Rugs shall be maintained free of dirt, debris, dust and spots. Light furniture, such as chairs and stands, shall occasionally be moved, vacuumed under, and replaced to original position. Special care must be given, while vacuuming, so as not to nick or otherwise damage furniture legs and bases, walls and doors, or other furnishings. Spot cleaning shall be performed as required to keep carpet free of gum, tar, stains, and deposits.

2. Sweeping/Dust Mopping: Concrete/quarry tile, terrazzo, wood, and resilient flooring (to include ATM vestibules) shall be swept or dust mopped to remove all loose dirt, dust, and debris.

3. Damp Mopping: Prior to damp mopping, floors shall be swept/dust mopped. Floors shall be damp mopped with an approved cleaning solution to remove dirt, streaks, smears, and stains. Spot Clean as needed.

4. Stripping and Re-Waxing Floors: Resilient flooring shall be swept/dust mopped and stripped to remove all built-up wax and imbedded dirt prior to re-waxing. After application of wax, areas shall be buffed (if required) sufficiently for maximum gloss and uniform sheen from wall to wall, including corners. The re-waxed floor shall present a clean appearance free from scuffmarks or dirt smears. Furniture or other equipment moved during floor stripping and re-waxing shall be returned to their original positions.

5. Cleaning of Ceramic Tile/Marble Floors: Ceramic Tile/Marble flooring to be machine scrubbed and cleaned to include grout.

6. Shampooing Carpets and Rugs: Prior to shampooing by the steam or hot-water extraction method, carpets and rugs shall be vacuumed free of all loose soil and debris. Carpets and rugs shall be shampooed free

of streaks, spots, and stains, and have a bright, uniform color. Remove furniture from rooms before cleaning, or if impractical, place plastic film under and around the legs of chairs, tables and other furniture to prevent rust or furniture stains from developing on the carpet. After drying, furniture or other equipment moved for shampooing shall be returned to their original positions. Steam or Hot Water Cleaning Method does not apply for areas containing raised flooring.

3) **Restroom Services:** The following work requirements shall be performed each time restroom services are performed.

1. Cleaning: Restroom fixtures, including water closets, urinals, lavatories, and sinks shall be washed inside and outside using a disinfectant, and shall be free of stains and odors. Brushes, sponges, and cloths that have been used to clean any other part of the restroom (including water closets, urinals, walls, floors, and partitions) shall not be used to clean lavatories or sinks. Floors shall be swept/dust mopped free of dirt, then mopped with a disinfectant. Floor drains shall be cleaned and flushed with a disinfectant. Wainscoting, partitions, walls, and doors shall be cleaned free of dirt, stains, and graffiti. Mirrors shall be cleaned and polished. All metal fixtures and hardware shall be cleaned. Waste containers shall be emptied, disinfected, and plastic liners replaced. If present, shower stall rooms and locker/dressing rooms shall be considered part of the restrooms, and cleaned accordingly.

2. Servicing: Servicing restrooms shall include inspecting, cleaning, and replenishing all supply dispensers. Restroom supplies include, but are not limited to, paper towels, toilet tissue, sanitary napkins, and soap. The Supplier shall stock restrooms with sufficient supplies to insure they will last until the next scheduled service. If dispensers become empty before the next scheduled servicing, the Supplier shall replenish them.

4) Other Services:

1. Policing Grounds: Cigarette butts, paper, bottles, cans, and other trash and refuse shall be removed from all grounds, sidewalks, and interior courts **within twenty (20) feet** of the buildings. Entrance doors and side glass (including frames) shall be clean and free of dirt and handprints. Exterior Ashtrays and receptacles to be cleaned. Remove gum, tar, etc. from surfaces.

Exhibit C
Schedule 2

Rules and Regulations

1. OBSTRUCTION OF PASSAGEWAYS: The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors and public parts of the Property and the Building shall not be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress.

2. PROJECTIONS FROM BUILDING: Except as expressly permitted under the Lease, no equipment or other fixtures shall be attached to any part of the outside walls or the window sills of the Building or otherwise affixed so as to project from the Building, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord consents to all projections from the Building on the Commencement Date.

3. SIGNS: Except as expressly permitted under the Lease, no sign, advertisement or lettering shall be permanently affixed by Tenant to any part of the outside of the Leased Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord consents to all signs, advertisements and lettering permanently affixed to the outside of the Leased Premises on the Commencement Date.

4. WINDOWS: No bottles, parcels or other articles shall be placed on the window sills, in the halls or in any other part of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of the Leased Premises, nor shall the same be visible from the exterior of the Building without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Such curtains, blinds and shades must be of a quality, type, design and color, and attached in a manner approved by Landlord. Notwithstanding the preceding two sentences, Landlord's consent shall not be required with respect to curtains, blinds shades or screens existing on the Commencement Date and or reasonably similar replacements thereof. All blinds shall be shut at the end of Building Operating Hours or as may otherwise be required to comply with local laws, ordinances, resolutions and regulations dealing with lighting.

5. ENTRANCE DOORS: Building entrance doors shall be kept closed at all times except for ingress and egress.

6. INTERFERENCE WITH OCCUPANTS: Tenants, their employees or others shall not make or commit any unreasonable noises or disturbances of any kind in the Building, nor smoke in the elevators, mark or defile the elevators, water closets, toilet rooms or the walls, windows, doors or any other part of the Property. Tenant and their employees will comply with the State's law regarding smoking in public places and will only smoke in designated areas. Tenant shall not permit to be played any musical instrument in the Leased Premises; permit to be played any radio, television, recorded or wired music in such unreasonably loud manner as to disturb or annoy other tenants of the Building; or permit any unusual odors to be emitted from upon the Leased Premises.

Canvassing, soliciting and peddling in the Building are prohibited, and Tenant shall cooperate to prevent the same.

7. MOVEMENT OF FURNITURE, FREIGHT OR BULKY MATTER: The following rules pertain to moving furniture, equipment and supplies in and out of the Building. Any movers selected by Tenant that do not adhere to the following rules will not be allowed to enter the Leased Premises or will be required to discontinue the move. The delivery of materials and other supplies to Tenants in the Building will be permitted only under the reasonable supervision of Landlord.

   a) Clean masonite sections will be used as runners on all finished floor areas where heavy furniture or equipment is being moved with wheel or skid type dollies. The masonite must be at least one fourth inch thick, 4' x 8' wide sheets in elevator lobbies and corridors and 32" wide sheets through doors in the Building. All sections of masonite must be taped to prohibit sliding.

   b) Tenant must cause its mover to provide and install protective coverings on all walls, door facings, elevator cabs and other areas along the route to be followed during the move. These areas will be inspected for damage after the move.

   c) The moving company will be required to remove all boxes, trash, etc. when leaving the Building.

   d) There shall not be used in the Leased Premises or in the Building either by Tenant or by others in the delivery or receipt of merchandise, supplies or equipment, any hand trucks except those equipped with rubber tires and side guards.

8. SAFES AND OTHER HEAVY EQUIPMENT: Landlord reserves the right to reasonably prescribe the weight and position of all safes and other heavy equipment so as to distribute properly the weight thereof and to prevent any unsafe condition from arising. Business machines and other equipment shall be placed and maintained by Tenant at Tenant's reasonable expense in settings sufficient in Landlord's reasonable judgment to absorb and prevent unreasonable vibration, noise and annoyance. Notwithstanding the preceding two sentences, Tenant shall not be required to move or remove any safes, business machines or other equipment existing in the Leased Premises or the Building on the Commencement Date.

9. NON-OBSERVANCE OR VIOLATION OF RULES BY OTHER TENANTS: Landlord shall not be responsible to Tenant for the non-observance or violation of any of these Rules and Regulations by any other tenants; provided, however, that Landlord shall enforce all rules in a uniform and non-discriminatory manner with respect to Tenant.

10. AFTER-HOUR USE: Landlord reserves the right to exclude during other than Building Operating Hours all persons who are not authorized in advance by Tenant to enter the Building on their behalf. Landlord shall in no case be liable in any manner for the admission or exclusion of any person from the Building.

11. PLUMBING FACILITIES USE: Tenant shall not use the Building's toilet rooms, water closets, sinks and other water and plumbing facilities for any purpose other than that for

which they were constructed and will not permit any foreign substance of any kind to be thrown therein.

12. VEHICLES: No bicycles, mopeds, motorcycles or other vehicles of any kind shall be brought into or kept in, on or about the Leased Premises, or Building, except in those locations specifically designated by Landlord for same. No automobiles, trucks or service vehicles or person working, or making deliveries or pickups in the Building shall park in any manner that encroaches on Building sidewalks or in any way obstructs Building entrances or fire lanes.

13. ANIMALS, SLEEPING AND COOKING: No animal of any kind (other than for seeing eye dogs used by the visually impaired) shall be brought into, kept in, on or about the Leased Premises. The Leased Premises shall not be used for lodging or sleeping purposes, and cooking therein is prohibited, except for in the kitchen and/or cafeteria areas. Microwave cooking within the Leased Premises is acceptable.

14. HEATING AND COOLING: Storage or placement of furniture in front of base board radiators is prohibited. Tenant shall not inhibit the flow of air by taping diffusers.

15. CONFLICT WITH LEASE: If these Rules and Regulations shall conflict or otherwise be inconsistent with the terms and conditions of the lease to which they are attached, the terms and conditions of the lease shall control.

EXHIBIT 2-A
Wachovia BBD 3410
PID #506584

Exhibit C
Schedule 3

1. Entrix, Inc., Phase I Environmental Site Assessment (June 2004).

2. Real Estate Advisory, L.L.C., Asbestos Assessment (May 21, 1997).

Popular Name: Beaufort Main Financial Center
Address: 1011 Bay Street, Beaufort, SC

EXHIBIT D-1

Form Of Mortgage
Subordination, Non-Disturbance And Attornment Agreement

RECORD AND RETURN TO:

[Insert Name and Address of Tenant's Attorneys]

MORTGAGE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Mortgage Subordination, Non-Disturbance Agreement and Attornment ("**Agreement**") made this __ day of _____, ____ by and among _____, having an address of _____, _____, Attention: _____ ("**Mortgagee**"), _____, _____, having an office at _____, _____, _____, _____, Attention: _____ ("**Tenant**") and _____, _____, having an office at _____, _____, _____, _____, Attention: _____ ("**Landlord**").

WITNESSETH:

WHEREAS, Landlord is the owner in fee simple of that certain parcel or tract of land lying and being in the County of _____, City of _____ and State of _____, more particularly described in Schedule 1 annexed hereto (the "**Land**"; and together with the buildings and other improvements erected thereon, the "**Mortgaged Property**"); and

[OR]

[WHEREAS, Landlord is the sole owner of the lessee's interest under that certain [_____ *(Insert Name of Agreement of Overlease)*], dated as of _____, between _____ and Landlord, (as the same heretofore has been or may hereafter be amended the "**Mortgaged Property**"); and

WHEREAS, Mortgagee is the owner and holder of that certain mortgage dated as of _____, 20__ and made by Landlord that encumbers the Mortgaged Property (which mortgage, together with all increases, renewals, supplements, consolidations, reinstatements, amendments, modifications, substitutions and extensions thereof, all advances and re-advances

made thereunder and all sums secured thereby now or hereafter made are hereinafter referred to as the "**Mortgage**"); and

WHEREAS, Tenant has entered into a lease with Landlord, dated _____, 20__ (such lease, as amended, modified or supplemented prior to the date hereof, the "**Property Lease**") for all or a portion of the Mortgaged Property ("**Leased Premises**"), and a true, correct and complete copy of the Lease has been delivered by Landlord to Mortgagee; [which Property Lease is currently integrated with, and subject to, that certain Master Agreement as defined in the Lease (such agreement, as amended, modified or supplemented prior to the date hereof, the "**Master Agreement**"), and a true correct and complete copy of the Master Agreement has been delivered by Landlord to Mortgagee (the term "**Lease**", as used herein, shall mean (i) the Property Lease together with the Master Agreement, for so long as the Property Lease and the Master Agreement shall remain integrated, and (ii) merely the Property Lease, from and after the point, if any, that the Property Lease and the Master Agreement are no longer integrated, except that, at all times references herein to particular Articles or Sections of the Lease, shall refer only to the particular Articles or Sections of the Property Lease, with references to Sections of the Master Agreement expressly so indicating)][1/] ; and

WHEREAS, subject to the provisions hereof, Mortgagee has agreed to recognize the status of Tenant in the event Mortgagee shall acquire the Mortgaged Property and Tenant has agreed to attorn to Mortgagee in any such event.

NOW, THEREFORE, in consideration of ten dollars and other good, valuable, sufficient and received consideration and intending to be legally bound hereby, Mortgagee and Tenant covenant and agree as follows:

1. Subject to the provisions hereof, the Lease and Tenant's interest thereunder is, and shall at all times continue to be, subject and subordinate in each and every respect to the lien of the Mortgage. The provisions of this Paragraph 1 shall be self-operative and no further instrument shall be required; however, Tenant, upon request, shall execute and deliver any certificate or other instrument which the Mortgagee may reasonably request to confirm said subordination by Tenant.

2. As long as no default then exists under the Lease that has theretofore continued beyond the expiration of any applicable notice and/or grace period, and would then permit Landlord to terminate the Lease pursuant to its terms, (i) Tenant shall not be named or

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1/ Include parenthetical if the lease is then integrated with the Master Agreement; otherwise, lease should merely be defined as the Lease (as opposed to the Property Lease, and any references to the Property Lease should be conformed).

joined in any action or proceeding to foreclosure or otherwise enforce the Mortgage (unless Tenant is a necessary party thereto under applicable law, in which event such naming or joinder of Tenant shall be subject to the provisions of this Agreement, including, without limitation, the provisions of clauses (ii) and (iii) of this sentence), (ii) the Lease shall not be terminated nor shall any of the rights of Tenant under the Lease be diminished or interfered with by Mortgagee (or by anyone claiming by, through or under Mortgagee), and (iii) Tenant's occupancy of the Leased Premises shall not be disturbed by Mortgagee (or by anyone claiming by, through or under Mortgagee). Upon (I) the transfer of the Landlord's interest in the Mortgaged Property, through a foreclosure or other enforcement of the Mortgage , to Mortgagee (or its designee or nominee) or to another purchaser at foreclosure, or (II) the transfer of the Landlord's interest in the Mortgaged Property, through the delivery of deed in lieu of foreclosure to Mortgagee (or its designee or nominee) (any such transfer described in either of clauses (I) or (II) of this sentence being herein called a "**Foreclosure Transfer**", and any such transferee being herein called "**Successor Landlord**"), the Lease shall continue as a direct lease between Successor Landlord or any subsequent successor as landlord under the Lease (a "**Subsequent Successor Landlord**"), as landlord, and Tenant, as tenant; provided, however, that neither Successor Landlord, nor any Subsequent Successor Landlord, shall be:

(a) liable for any act or omission of the landlord under the Lease that occurred prior to the Foreclosure Transfer (or subject to any claim or counterclaim which Tenant may have against any such landlord based thereon); provided, however, that:

(1) Successor Landlord or any Subsequent Successor Landlord shall be obligated to cure any continuing default by the landlord under the Lease (other than a non-curable default, e.g., a breach of representation) that continues after the Foreclosure Transfer beyond a *reasonable cure period*; it being agreed that, for this purpose, a "*reasonable cure period*", with respect to any such default, shall mean a period equal in length to the period provided under the Lease for the landlord under the Lease to cure such a default, but commencing on the later to occur of (x) the date of the Foreclosure Transfer and (y) the first date that Successor Landlord shall have received notice of such default; and

(2) Successor Landlord and any Subsequent Successor Landlord shall be subject to any rent abatements or offsets to which Tenant is entitled under the Lease based on an act or omission of the landlord under the Lease prior to such Foreclosure Transfer; or

(b) bound by any payments of rent which Tenant may have made prior to the Foreclosure Transfer, if the same were made more than thirty (30) days in advance of the due date therefor under the Lease (the parties hereto acknowledging that operating expense payments and tax payments made

in the manner provided in Article 2 of the Lease shall not, for this purpose, be deemed payments of rent made in advance of their due date); or

(c) required to account for any security deposit other than any security deposit actually delivered to Successor Landlord; or

(d) bound by any modification of the Lease (other than a modification of the Lease which does not affect, to more than a de minimis extent, the economic terms and conditions of the Lease) which is made after the date hereof without Mortgagee's written consent (which consent, Mortgagee agrees shall not be unreasonably withheld or delayed).

A notice or confirmation delivered pursuant to an express provision of the Lease shall not be deemed to be a modification of the Lease to the extent such notice or confirmation does not modify the contractual rights or obligations of Landlord or Tenant under the Lease.

3. Effective upon any Foreclosure Transfer, (i) Tenant shall be bound to Successor Landlord, and Successor Landlord shall be bound to Tenant, under all of the then executory terms, covenants and conditions of the Lease, except as provided elsewhere in this Agreement, (ii) Tenant does hereby attorn to and recognize Successor Landlord as the landlord under the Lease upon such terms, covenants and conditions, and (iii) Successor Landlord does hereby accept such attornment and recognize Tenant as the tenant under the Lease upon such terms, covenants and conditions. The foregoing attornment and recognition shall be effective and self-operative upon any Foreclosure Transfer without the execution of any further instruments, provided, however, that Tenant shall not be obligated to pay any rent to Successor Landlord until Tenant has received notice from Successor Landlord of such Foreclosure Transfer. Each party hereto shall execute and deliver any certificate or other instrument which the other party hereto may reasonably request to confirm such attornment and recognition.

4. If any default by Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate the Lease, Tenant shall not exercise such right until (a) Tenant shall have given Mortgagee written notice of such default, and (b) *a reasonable period of time* (but in no event less than thirty (30) days) shall have elapsed after the giving of such notice to Mortgagee without such default having been cured. For this purpose, a "*reasonable period of time*", with respect to any such default, shall mean a period equal in length to the period provided under the Lease for Landlord to cure such default; provided, however, (i) such period shall commence after the expiration of all cure periods available to the landlord under the Lease with respect to such default and (ii) if such default is of a type which cannot reasonably be cured by Mortgagee without it first obtaining possession of the Mortgaged Property (whether by the appointment of a receiver or otherwise), then such "reasonable period of time" shall be extended for such additional time as may be reasonably necessary for Mortgagee to obtain such possession, but only if (1) Mortgagee, within thirty (30) days after Tenant's notice to it of the default in question, shall have deliver to Tenant a notice indicating that Mortgagee intends to diligently proceed to obtain possession of the Mortgaged Property and thereafter to diligently proceed to cure such default, and (2) Mortgagee shall (A) from and after

such notice, diligently proceed to obtain possession of the Mortgaged Property, and (B) from and after obtaining such possession, diligently proceed to cure such default. Nothing in this Paragraph 4 shall obligate Mortgagee to cure any default by Landlord under the Lease. The notice and cure rights of Mortgagee set forth in this Paragraph 4 shall not apply to either (i) the termination rights of Tenant set forth in Article VI of the Lease, or (ii) the termination rights of Wachovia Bank, National Association (whether or not it is then the Tenant under the Lease) set forth in Article XI of the Lease.

5. Landlord represents to Tenant that, as additional security for the loan made by Mortgagee to Landlord and secured by the Mortgage, Landlord has assigned to Mortgagee the Lease and all rent payable thereunder, subject to a license to Landlord from Mortgagee to collect same unless and until such license is revoked by Mortgagee. If Tenant hereafter receives a notice (a "**Mortgagee Payment Notice**") from Mortgagee that such license has been revoked and directing Tenant to pay to Mortgagee all rent payable after the date that is twenty (20) days after the date of such notice, then, subject to the last sentence of this Paragraph 5, Tenant shall thereafter pay same to Mortgagee, subject to any rights of set-off or any counterclaim or other defense that Tenant may have against Landlord under the Lease or otherwise, until Tenant receives a notice (a "**Mortgagee Payment Revocation Notice**") from Mortgagee directing Tenant to resume payments to Landlord. Landlord agrees that: (i) Tenant shall have the right to rely on any Mortgagee Payment Notice and make payments of rent in accordance therewith; and (ii) any payments made to Mortgagee after the date of a Mortgagee Payment Notice (and, if Tenant thereafter receives a Mortgagee Payment Revocation Notice, prior to the date that is twenty (20) days after Tenant shall receive such notice) shall be deemed received by Landlord. Landlord hereby agrees that (I) Landlord shall indemnify, defend, and hold harmless, Tenant from and against any and all claims, demands, causes of action, fines, penalties, costs, expenses (including attorneys' fees and court costs), liens, or liabilities, if, and to the extent, caused by, or arising out of Tenant's payment of any rent under the Lease to Mortgagee from and after Tenant's receipt of a Mortgagee Payment Notice.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee, this Agreement shall constitute such notice to Tenant with respect to the Mortgage and Mortgagee.

7. This Agreement may not be modified except by an agreement in writing signed by Tenant, Mortgagee and Landlord.

8. Tenant acknowledges that Mortgagee is an "Interest Holder" (as such term is defined in the Lease) and that Mortgagee shall be entitled to all rights and privileges of an Interest Holder, as set forth in Section 7.10 of the Lease.

9. All notices, demands, consents, approvals, advices, waivers or other communications (each, a "notice") which may or are required to be given by either party to the other under this Agreement shall be in writing and, unless otherwise required by law, shall be sent (a) by hand, (b) by United States Mail, certified or registered, postage prepaid, return receipt requested or (c) by a nationally-recognized overnight carrier, in each case addressed to

the party to be notified at the address for such party specified below, or to such other place in the continental United States as the party to be notified may from time to time designate by at least ten (10) days' notice to the notifying party. Each notice shall be deemed to have been given on the date such notice is actually received as evidenced by a written receipt therefor, and in the event of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, as of the date of such failure. The addresses of the parties are as follows:

Mortgagee's notice address(es): _____

with a copy to: _____

Tenant's notice address(es): _____

with a copy to: _____

Landlord's notice address(es): _____

with a copy to: _____

10. Anything herein or in the Lease to the contrary notwithstanding, from and after the occurrence of any Foreclosure Transfer, the provisions of Section 14.10 of the Lease shall apply to Successor Landlord and any Subsequent Successor Landlord.

11. THE PARTIES HERETO EACH HEREBY WAIVE ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR COURTESY ARISING UNDER THIS AGREEMENT.

12. This Agreement shall be governed by the laws of the state in which the Mortgaged Property is located.

13. This Agreement shall bind, and inure to the benefit of, the parties hereto and their respective successors and assigns, which (i) in the case of Mortgagee, shall include any successor to it as the holder the Mortgage, (ii) in the case of Tenant, shall include any successor

to it as tenant under the Lease, and (iii) in the case of Landlord, shall include any successor to it as landlord under the Lease.

14. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which taken together, will deemed to be one and the same instrument.

16. (a) Tenant specifically agrees to look solely to Mortgagee's, any Successor Landlord's, or any Subsequent Successor Landlord's interest in the Mortgaged Property, including its interest in any loan secured by the Mortgaged Property, for the recovery of any monetary judgment against Mortgagee, any Successor Landlord, or any Subsequent Successor Landlord, it being agreed that Mortgagee, any Successor Landlord, and any Subsequent Successor Landlord shall never be personally liable for any such judgment or for any other liability or obligation of Landlord under this Agreement beyond such interest in the Mortgaged Property. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have (i) to obtain injunctive relief (or other equitable relief) against Mortgagee, any Successor Landlord, any Subsequent Successor Landlord, or any other person, (ii) to offset sums due and owing to Tenant against the Rent to the extent permitted hereunder, or (iii) to prosecute any suit or action in connection with enforcement of Tenant's rights hereunder or Mortgagee's, Successor Landlord's, or Subsequent Successor Landlord's obligations hereunder.

(b) Notwithstanding the foregoing, from and after a Foreclosure Transfer, the provisions of Section 16(a) above shall (in the case of Successor Landlord or any Subsequent Successor Landlord) be subject to the provisions of Section 14.10 of the Lease and Section 21 of the Master Agreement (which shall control in the event of a conflict).

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

MORTGAGEE:

By: _____
Name:
Its:

TENANT:

By: _____
Name:
Its:

LANDLORD:

By: _____
Name:
Its:

[Add Acknowledgments]

Exhibit D-1
Schedule 1

Description of the Mortgaged Property

EXHIBIT D-2

Form Of Overlease
Subordination, Non-Disturbance And Attornment Agreement

RECORD AND RETURN TO:

[Insert Name and Address of Tenant's Attorneys]

OVERLEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Overlease Non-Disturbance Agreement ("**Agreement**") made this __ day of _____, ____ by and among _____, having an address of _____, _____, Attention: _____ ("**Overlessor**"), _____, _____, having an office at _____, _____, _____, _____, Attention: _____ ("**Landlord**"), and _____, _____, having an office at _____, _____, _____, _____, Attention: _____ ("**Tenant**").

WITNESSETH:

WHEREAS, Overlessor is the sole owner in fee simple of (x) that certain piece, parcel or tract of land that is lying and being in the County of _____, City of _____ and State of _____, and that is more particularly described in Schedule 1 annexed hereto (the "**Land**" and together with the buildings and other improvements erected thereon, the "**Property**"); and

WHEREAS, Overlessor, as lessor Landlord, as tenant, are parties to a lease dated _____ __, ____ (said lease, as the same may hereafter be amended and/or restated from time to time, is hereinafter referred to as the "**Overlease**"), pursuant to which, Overlessor has leased to Landlord the Property;

WHEREAS, Tenant has entered into a lease ("**Lease**") with Landlord, dated as of _____, 20__ for [a portion or portions of] the Property (the "**Leased Premises**"), and a true, correct and complete copy of the Lease, as executed, has been delivered by Landlord to Overlessor; and

WHEREAS, subject to the provisions hereof Overlessor has agreed to recognize the status of Tenant in the event of a termination of the Overlease and Tenant has agreed to attorn to Overlessor in any such event.

NOW, THEREFORE, in consideration of ten dollars and other good, valuable, sufficient and received consideration and intending to be legally bound hereby, Overlessor and Tenant covenant and agree as follows:

1. Subject to the provisions hereof, the Lease and Tenant's interest thereunder is, and shall at all times continue to be, subject and subordinate in each and every respect to the Overlease. The provisions of this Paragraph 1 shall be self-operative and no further instrument shall be required; however, Tenant, upon request, shall execute and deliver any certificate or other instrument which the Overlessor may reasonably request to confirm said subordination by Tenant.

2. As long as no default then exists under the Lease that has theretofore continued beyond the expiration of any applicable notice and/or grace period, and that would then permit Landlord to terminate the Lease pursuant to its terms, (i) Tenant shall not be named or joined in any action or proceeding brought by Overlessor (or by anyone claiming by, through or under Overlessor) to terminate the Overlease (unless Tenant is a necessary party thereto under applicable law, in which event such naming or joinder of Tenant shall be subject to the provisions of this Agreement, including, without limitation, the provisions of clauses (ii) and (iii) of this sentence), (ii) the Lease shall not be terminated nor shall any of the rights of Tenant under the Lease be diminished or interfered with by Overlessor (or by anyone claiming by, through or under Overlessor), and (iii) Tenant's occupancy of the Leased Premises shall not be disturbed by Overlessor (or by anyone claiming by, through or under Overlessor). Upon any termination of the Overlease in any such action or proceeding brought by Overlessor (or by anyone claiming by, through or under Overlessor), or any other termination of the Overlease (any such termination being herein called an "Overlease Termination", and Overlessor, as the party succeeding to the interest of the landlord under the Lease upon such Overlease Termination, being herein called "Successor Landlord"), the Lease shall continue as a direct lease between Successor Landlord, as landlord, and Tenant, as tenant; provided, however, that Successor Landlord (and any of its successors as landlord under the Lease) shall not be:

(a) liable for any act or omission of the landlord under the Lease that occurred prior to the Overlease Termination (or subject to any claim or counterclaim which Tenant may have against any such landlord based thereon); provided, however, that:

(1) Successor Landlord (and its successors as landlord under the Lease) shall be liable for any such act or omission (and subject to any such claim or counterclaim) if, and to the extent that, (i) such act or omission constitutes a default by the landlord under the Lease (other than a *non-curable* default, *e.g.*, a breach of representation), and (ii) such default continues after the Overlease Termination beyond a *reasonable cure period*; it being agreed that, for this purpose, a "*reasonable cure period*", with respect to any such default, shall mean a period equal in length to the period

provided under the Lease for Landlord to cure such a default, but commencing on the later to occur of (x) the date of the Overlease Termination and (y) the first date that Successor Landlord shall have received notice of such default; and

(2) in all events, Successor Landlord (and its successors as landlord under the Lease) shall be subject to any abatements, offsets or rent credits which shall have accrued to Tenant as of the time of such Overlease Termination, or shall thereafter accrue to Tenant, based on any such act or omission pursuant to one or more provisions of the Lease; or

(b) bound by any payments of rent which Tenant may have made prior to the Overlease Termination, if the same were made more than thirty (30) days in advance of the due date therefor under the Lease (the parties hereto acknowledging that operating expense payments and tax payments made in the manner provided in Article 2 of the Lease shall not, for this purpose, be deemed payments of rent made in advance of their due date); or

(c) required to account for any security deposit other than any security deposit actually delivered to Successor Landlord; or

(d) bound by any modification of the Lease (other than a modification of the Lease which does not affect, to more than a *de minimis* extent, the economic terms and conditions of the Lease) which is made after the date hereof without Overlessor's written consent (which consent, Overlessor agrees shall not be unreasonably withheld or delayed), provided, however, that in no event shall any written instrument executed and/or delivered by either or both of Landlord and/or Tenant under the Lease ever be deemed a modification of the Lease (regardless of the impact on the rights and obligations of Landlord and Tenant) if, and to the extent that, such instrument is required, permitted or contemplated to be executed and/or delivered by such party pursuant to such provisions of the Lease (or such instrument otherwise confirms any then existing provisions of the Lease, and/or any sets forth any determinations of either or both of Landlord and/or Tenant with respect thereto).

3. Effective upon any Overlease Termination, (i) Tenant shall be bound to Successor Landlord, and Successor Landlord shall be bound to Tenant, under all of the then executory terms, covenants and conditions of the Lease, except as provided elsewhere in this Agreement, (ii) Tenant does hereby attorn to and recognize Successor Landlord as the landlord under the Lease upon such terms, covenants and conditions, and (iii) Successor Landlord does hereby accept such attornment and recognize Tenant as the tenant under the Lease upon such terms, covenants and conditions. The foregoing attornment and recognition shall be effective and self-operative upon any Overlease Termination without the execution of any further

instruments, provided, however, that Tenant shall not be obligated to pay any rent to Successor Landlord until Tenant has received notice from Successor Landlord of such Overlease Termination. Each party hereto shall execute and deliver any certificate or other instrument which the other party hereto may reasonably request to confirm such attornment and recognition.

4. If any default by Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate the Lease, Tenant shall not exercise such right until (a) Tenant shall have given Overlessor written notice of such default, and (b) a *reasonable period of time* shall have elapsed after the giving of such notice to Overlessor without such default having been cured. For this purpose, a "*reasonable period of time*", with respect to any such default, shall mean a period equal in length to the period provided under the Lease for Landlord to cure such default; provided, however, if such default is of a type which cannot reasonably be cured by Overlessor without it first obtaining possession of the Property, then such "*reasonable period of time*" shall be extended for such additional time as may be reasonably necessary for Overlessor to obtain such possession, but only if (1) Overlessor, within thirty (30) days after Tenant's notice to it of the default in question, shall have deliver to Tenant a notice indicating that Overlessor intends to diligently proceed to obtain possession of the Property and thereafter to diligently proceed to cure such default, and (2) Overlessor shall (A) from and after such notice, diligently proceed to obtain possession of the Property, and (B) from and after obtaining such possession, diligently proceed to cure such default. Nothing in this Paragraph 4 shall obligate Overlessor to cure any default by Landlord under the Lease; provided, however, that if Overlessor shall elect to deliver the notice referred to in clause (1) of this Paragraph 4, then Overlessor shall act in accordance with its intentions set forth in such notice unless and until Overlessor shall elect to retract such notice by another notice to Tenant, it being agreed that Overlessor may so retract such notice at any time, whereupon, however, the "*reasonable period of time*" shall automatically be deemed to have elapsed. The notice and cure rights of Overlessor set forth in this Paragraph 4 shall not apply to any rights of Tenant (or Wachovia Bank, National Association) to cancel or terminate the Lease (or surrender all or any portion of the Leased Premises) that are expressly set forth in one or more provisions of the Lease (including, without limitation, the termination rights of Wachovia Bank, National Association, that are expressly set forth in Article XI of the Lease).

5. To the extent that the Lease shall entitle Tenant to notice of the existence of any overlease and/or the identity of any overlessor, this Agreement shall constitute such notice to Tenant with respect to the Overlease and Overlessor.

6. This Agreement may not be modified except by an agreement in writing signed by Tenant and Overlessor.

7. Tenant acknowledges that Overlessor is an "Interest Holder" (as such term is defined in the Lease) and that Overlessor shall be entitled to all rights and privileges of an Interest Holder, as set forth in Section 7.10 of the Lease.

8. All notices, demands, consents, approvals, advices, waivers or other communications (each, a "notice") which may or are required to be given by either party to the

other under this Agreement shall be in writing and, unless otherwise required by law, shall be sent (a) by hand, (b) by United States Mail, certified or registered, postage prepaid, return receipt requested or (c) by a nationally-recognized overnight carrier, in each case addressed to the party to be notified at the address for such party specified in the first paragraph of this Agreement, or to such other place in the continental United States as the party to be notified may from time to time designate by at least ten (10) days' notice to the notifying party. Each notice shall be deemed to have been given on the date such notice is actually received as evidenced by a written receipt therefor, and in the event of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, as of the date of such failure.

9. Anything herein or in the Lease to the contrary notwithstanding, from and after the occurrence of any Overlease Termination, the provisions of Section 14.10 of the Lease shall apply to Successor Landlord.

10. TENANT AND OVERLESSOR EACH HEREBY WAIVE ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS AGREEMENT.

11. This Agreement shall be governed by the laws of the state in which the Property is located.

12. This Agreement shall bind, and inure to the benefit of, the parties hereto and their respective successors and assigns, which (i) in the case of Overlessor, shall include any successor to it as the holder the lessor's interest in the Overlease, and (ii) in the case of Tenant, shall include any successor to it as tenant under the Lease.

13. If any provisions of this Agreement or the application thereof to any party hereto or circumstances shall, to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such provisions to any other party hereto or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and all the provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which taken together, will deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

OVERLESSOR:

By: _____
Name:
Its:

TENANT:

By: _____
Name:
Its:

[Add Acknowledgments]

Exhibit D-2
Schedule 1

Description of the Property

EXHIBIT D-3

Form Of Subtenant
Subordination, Non-Disturbance And Attornment Agreement

RECORD AND RETURN TO:

[Insert Name and Address of Subtenant's Attorneys]

SUBTENANT SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subtenant Non-Disturbance and Attornment Agreement ("**Agreement**") made this __ day of _____, ____ by and between _____, having an address of _____, _____, Attention: _____ ("**Landlord**") and _____, _____, having an office at _____, _____, _____, _____, Attention: _____ ("**Subtenant**").

WITNESSETH:

WHEREAS, Landlord is the landlord under that certain Lease, dated _____, made by Landlord and _____, as tenant ("**Tenant**") (said lease, as the same may hereafter be renewed, amended, modified, supplemented, extended, replaced and/or restated from time to time, is hereinafter referred to as the "**Lease**"), which Lease covers certain space (the "**Premises**") in the building located at _____ (the "**Property**") and more particularly described on Schedule 1 annexed hereto; and

WHEREAS, Tenant, as sublandlord and Subtenant have entered into a certain agreement of sublease, dated as of _____, as amended by _____ (none if left blank) (the "**Sublease**") initially covering [a portion of] the Premises (the "**Subleased Premises**").

NOW, THEREFORE, in consideration of ten dollars and other good, valuable, sufficient and received consideration and intending to be legally bound hereby, Landlord and Subtenant covenant and agree as follows:

1. Subject to the provisions hereof, the Sublease and Subtenant's interest thereunder is, and shall at all times continue to be, subject and subordinate to the Lease in each and every respect to the terms, covenants, provisions and conditions of the Lease. The provisions of this Paragraph 1 shall be self-operative and no further instrument shall be required; however, Subtenant, upon request, shall execute and deliver any certificate or other instrument which the Landlord may reasonably request to confirm said subordination by Subtenant.

2. As long as no default then exists under the Sublease that has theretofore continued beyond the expiration of any applicable notice and/or grace period, and that would then permit Tenant to terminate the Sublease pursuant to its terms, (i) Subtenant shall not be named or joined in any action or proceeding brought by Landlord (or by anyone claiming by, through or under Landlord) to terminate the Lease (unless Subtenant is a necessary party thereto under applicable law, in which event such naming or joinder of Subtenant shall be subject to the provisions of this Agreement, including, without limitation, the provisions of clauses (ii) and (iii) of this sentence), (ii) the Sublease shall not be terminated nor shall any of the rights of Subtenant under the Sublease be diminished or interfered with by Landlord (or by anyone claiming by, through or under Landlord), and (iii) Subtenant's occupancy of the Subleased Premises shall not be disturbed by Landlord (or by anyone claiming by, through or under Landlord); provided, however, that the foregoing provisions of this sentence are not intended to apply in the event of (x) any termination of the Lease by Tenant (or Wachovia Bank, National Association) pursuant to an express right granted to it under the Lease, (y) any termination of the Lease by Landlord pursuant to an express right granted to it under the Lease (other than any right of termination granted to Landlord under Article 7 of the Lease or otherwise based upon a default by Tenant under the Lease), or (z) any automatic termination of the Lease occurring pursuant to an express provision of the Lease providing therefor (other than any automatic termination of the Lease provided for under any provision contained in Article 7 of the Lease or otherwise triggered by a default by Tenant under the Lease), (any termination described in any of clauses (x), (y) or (z) being herein called a "Non-Recognition Lease Termination"). Upon any termination of the Lease (other than a Non-Recognition Lease Termination), the Sublease shall continue as a direct lease between Landlord, as landlord (Landlord, as the party succeeding to the interest of Tenant, as landlord under the Sublease, being herein called "Successor Landlord") and Subtenant, as tenant; provided, however, that Successor Landlord (and its successors as landlord under the Sublease) shall not be:

(a) liable for any act or omission of the landlord under the Sublease that occurred prior to the termination of the Lease (or subject to any claim or counterclaim which Subtenant may have against any such landlord based thereon); provided, however, that Successor Landlord (and its successors as landlord under the Sublease) shall be liable for any such act or omission (and subject to any such claim or counterclaim) if, and to the extent that, (i) such act or omission constitutes a default by the landlord under the Sublease (other than a *non-curable* default, *e.g.*, a breach of representation), and (ii) such default continues after the termination of the Lease beyond a *reasonable cure period*; it being agreed that, for this purpose, a "*reasonable cure period*", with respect to any such default, shall mean a period equal in length to the period provided under the Lease for Landlord to cure a similar such default, but commencing on the later to occur of (x) the date of the termination of the Lease and (y) the first date that Successor Landlord shall have received notice of such default; or

(b) bound by any payments of rent which Subtenant may have made prior to the termination of the Lease, if the same were made more than thirty (30) days in advance of the due date therefor under the Sublease (the parties hereto acknowledging that operating expense payments and tax payments made in

the manner provided in the Sublease shall not, for this purpose, be deemed payments of rent made in advance of their due date); or

(c) required to account for any security deposit other than any security deposit actually delivered to Successor Landlord; or

(d) bound by any modification of the Sublease (other than a modification of the Lease which does not affect, to more than a *de minimis* extent, the economic terms and conditions of the Sublease) which is made after the date hereof without Landlord's written consent (which consent, Landlord agrees shall not be unreasonably withheld or delayed).

3. Effective upon any termination of the Lease (other than a Non-Recognition Lease Termination), (i) Subtenant shall be bound to Successor Landlord, and Successor Landlord shall be bound to Subtenant, under all of the then executory terms, covenants and conditions of the Lease, except as provided elsewhere in this Agreement, (ii) Subtenant does hereby attorn to and recognize Successor Landlord as the landlord under the Lease upon such terms, covenants and conditions, and (iii) Successor Landlord does hereby accept such attornment and recognize Subtenant as the tenant under the Lease upon such terms, covenants and conditions. The foregoing attornment and recognition shall be effective and self-operative upon any termination of the Lease (other than a Non-Recognition Termination) without the execution of any further instruments, provided, however, that Subtenant shall not be obligated to pay any rent to Successor Landlord until Subtenant has received notice from Successor Landlord of such termination of the Lease and Landlord's acceptance of Subtenant's attornment hereunder. Each party hereto shall execute and deliver any certificate or other instrument which the other party hereto may reasonably request to confirm such attornment and recognition.

4. If any default by Tenant, as sublandlord, would give Subtenant the right, immediately or after lapse of a period of time, to cancel or terminate the Sublease, Subtenant shall not exercise such right until (a) Subtenant shall have given Landlord written notice of such default, and (b) a *reasonable period of time* shall have elapsed after the giving of such notice to Landlord without such default having been cured. For this purpose, a "*reasonable period of time*", with respect to any such default, shall mean a period equal in length to the period provided under the Lease for Landlord to cure a similar such default; provided, however, if such default is of a type which cannot reasonably be cured by Landlord without it first obtaining possession of the Premises, then such "*reasonable period of time*" shall be extended for such additional time as may be reasonably necessary for Landlord to obtain such possession, but only if (1) Landlord, within thirty (30) days after Subtenant's notice to it of the default in question, shall have deliver to Subtenant a notice indicating that Landlord intends to diligently proceed to obtain possession of the Premises and thereafter to diligently proceed to cure such default, and (2) Landlord shall (A) from and after such notice, diligently proceed to obtain possession of the Premises, and (B) from and after obtaining such possession, diligently proceed to cure such default. Nothing in this Paragraph 4 shall obligate Landlord to cure any default by Tenant, as sublandlord, under the Sublease; provided, however, that if Landlord shall elect to deliver the notice referred to in clause (1) of this Paragraph 4, then Landlord shall act in accordance with its intentions set forth in such notice unless and until Landlord shall elect to retract such notice by another notice to Subtenant, it being agreed that Landlord may so retract

such notice at any time, whereupon, however, the "*reasonable period of time*" shall automatically be deemed to have elapsed. The notice and cure rights of Landlord set forth in this Paragraph 4 shall not apply to any rights of Subtenant to cancel or terminate the Sublease (or surrender all or any portion of the Subleased Premises) that are expressly set forth in one or more provisions of the Sublease.

5. (a) As used herein, the following terms shall have the following meanings:

(i) "**Sublease Rent**", for any period, shall mean all rent, additional rent (but excluding all additional rent attributable to overtime or premium services furnished to Subtenant upon request) and other consideration to be paid by the Subtenant to Sublandlord under the Sublease for such period.

(ii) "**Underlying Lease Rent**", for any period, shall mean all Annual Basic Rent and Additional Rent (but excluding all additional rent attributable to overtime or premium services furnished to Sublandlord upon request) which shall accrue under the Lease (or that would have accrued under the Lease but for the termination thereof) with respect to the space demised by the Sublease during such period.

(b) Anything in this Agreement contained to the contrary notwithstanding if, in any case that Landlord shall succeed to the interest of Tenant, as sublandlord, under the Sublease, (i) the net present value of the Underlying Lease Rent for the period from the date of such succession (the "**Succession Date**") until the end of the term of such Sublease (determined without regard to any extension or renewal terms), *exceeds* (ii) the net present value of the Sublease Rent for the period from the Succession Date until the end of the term of such Sublease (determined without regard to any extension or renewal terms), then Subtenant, in lieu of paying the Sublease Rent as and when due under the Sublease for such period, shall pay to Landlord the Underlying Lease Rent for such period. Similarly, if the additional rent payable under the Sublease with respect to overtime or premium services furnished to Subtenant upon request is less than the corresponding rates under the Lease, then the Lease rates for such services shall apply. Upon the Succssion Date, the Sublease shall automatically and without further act of either of the parties hereto be deemed amended to accomplish the foregoing provisions of this Paragraph 5, any contrary provisions in this Agreement notwithstanding.

(c) For purposes of determining: (i) the net present value of the Sublease Rent and Underlying Lease Rent, the applicable discount rate shall equal the Prime Rate (as defined in the Lease) and all amounts shall be discounted from the dates that such amounts are to be paid to the Succession Date; and (ii) any portion of the Sublease Rent and Underlying Lease Rent attributable to operating expenses or real estate taxes on any date, the parties hereto shall assume that real estate taxes and operating expenses will continue to escalate, from and after such date, at the average annual percentage rate that same escalated for the three (3) years immediately preceding such date.

(d) If Subtenant exercises any extension or renewal option contained in the Sublease (as in effect on the Lease Termination Date), then the provisions of Paragraph 5(b) hereof shall apply separately to such extension or renewal term *mutatis mutandis*, and thus, Subtenant shall

pay the greater of the Sublease Rent and the Underlying Lease Rent for such extension or renewal term.

6. This Agreement may not be modified except by an agreement in writing signed by Landlord and Subtenant.

7. All notices, demands, consents, approvals, advices, waivers or other communications (each, a "**notice**") which may or are required to be given by either party to the other under this Agreement shall be in writing and, unless otherwise required by law, shall be sent (a) by hand, (b) by United States Mail, certified or registered, postage prepaid, return receipt requested or (c) by a nationally-recognized overnight carrier, in each case addressed to the party to be notified at the address for such party specified in the opening paragraph of this Agreement, or to such other place in the continental United States as the party to be notified may from time to time designate by at least ten (10) days' notice to the notifying party. Each notice shall be deemed to have been given on the date such notice is actually received as evidenced by a written receipt therefor, and in the event of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, as of the date of such failure.

8. Anything herein or in the Sublease to the contrary notwithstanding, from and after the Succession Date, the provisions of Section 14.10 of the Lease shall be deemed incorporated into the Sublease and shall apply to Successor Landlord.

9. LANDLORD AND SUBTENANT EACH HEREBY WAIVE ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS AGREEMENT.

10. This Agreement shall be governed by the laws of the state in which the Property is located.

11. This Agreement shall bind, and inure to the benefit of, the parties hereto and their respective successors and assigns, which (i) in the case of Landlord, shall include any successor to it as the holder the lessor's interest in the Lease, and (ii) in the case of Subtenant, shall include any successor to it as subtenant under the Sublease.

12. If any provisions of this Agreement or the application thereof to any party hereto or circumstances shall, to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such provisions to any other party hereto or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and all the provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which taken together, will deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

LANDLORD:

By: _____
Name:
Its:

SUBTENANT:

By: _____
Name:
Its:

[Add Acknowledgments]

Exhibit D-3
Schedule 1

Description of the Property

EXHIBIT E-1

Form Of Estoppel (Tenant)

_____
and its successors and/or assigns
_____
_____
Attention: _____

Re: Premises at _____

Ladies and Gentlemen:

The undersigned ("Tenant") is the tenant under that certain lease (the "Original Lease") dated as of _____, 2004 between First States Investors [_____], LLC, as landlord, and Wachovia Bank, National Association, as tenant. Tenant hereby certifies to you that, to the best knowledge and belief of the individual executing this certificate on behalf of Tenant, as of the date hereof:

1. The Original Lease has not been modified or amended except as follows (none if left blank): _____ (the Original Lease, as so amended and modified, the "Lease"). The Lease is in full force and effect and constitutes a complete statement of the agreements, covenants, terms and conditions of the landlord under the Lease ("Landlord") and Tenant with respect to the letting of the premises leased thereunder (the "Leased Premises").

2. The Commencement Date occurred on: _____ and the Expiration Date is currently scheduled to occur on _____.

3. Tenant's current monthly payments on account of Annual Basic Rent and the Monthly Estimated OE Payment and the dates through which each have been paid, are described below.

   Annual Basic Rent (monthly amount): _____ ; Date paid through: _____

   Monthly Estimated OE Payment: _____; Date paid through: _____

4. Except as set forth in the Lease, Tenant is entitled to no allowances, rent abatements, or other concessions.

5. Tenant has [_____] unexercised options to renew the Lease for up to ____ successive periods of _____ years each. Except as expressly set forth in the Lease, Tenant does not have any right to lease additional space, reduce the size of the Leased Premises, extend the term of the Lease, terminate the Lease, purchase the Leased Premises or any other rights or options with respect to the Leased Premises.

6. Tenant has not received any notice of any default by Tenant under the Lease that has not been cured other than (none, if left blank): _____.

7. Tenant has not delivered any notice of any default by Landlord under the Lease that has not been cured other than (none, if left blank): _____.

8. Tenant has no actual knowledge of any event which, with the giving of notice, the passage of time or both, would constitute a material default by Landlord under the Lease other than (none, if left blank): _____.

9. To Tenant's actual knowledge, Tenant has no existing defenses or offsets against the enforcement of the Lease other than (none, if left blank): _____.

10. Tenant has not sublet, transferred or hypothecated its interest under the Lease except as follows: _____ (none if left blank).

11. Tenant has not deposited any monies or instruments to secure any of its agreements and obligations under the Lease and has not paid any Rent more than thirty (30) days in advance of the due date, other than (none, if left blank): _____.

12. The party executing this certificate on behalf of Tenant is fully authorized and empowered to do so, and no consent, vote or approval is required which has not been given or taken.

13. This certificate may not be changed, waived or discharged orally, but only by an instrument in writing.

14. This certificate shall not have the effect of modifying any provision of the Lease.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Lease. The certifications herein made shall be binding upon Tenant, and shall inure to your benefit. Tenant acknowledges that you may rely on this certificate in conjunction with your purchase and/or loan and thereafter ownership and operation of the Property and/or your extension of one or more loans secured by the Property.

Dated: this ___ day of _____, 20__.

Tenant Name:_____

By: _____
Name:
Its:

EXHIBIT E-2

Form Of Estoppel (Landlord)

_____
and its successors and/or assigns
_____
_____
Attention: _____

Re: Premises at _____

Ladies and Gentlemen:

The undersigned ("Landlord") is the landlord under that certain lease (the "Original Lease") dated as of _____, 2004 between First States Investors [_____], LLC, as landlord, and Wachovia Bank, National Association, as tenant. Landlord hereby certifies to you that, to the best knowledge and belief of the individual executing this certificate on behalf of Landlord, as of the date hereof:

1. The Original Lease has not been modified or amended except as follows (none if left blank): _____ (the Original Lease, as so amended and modified, the "Lease"). The Lease is in full force and effect and constitutes a complete statement of the agreements, covenants, terms and conditions of the Landlord and the tenant under the Lease (the "Tenant") with respect to the letting of the premises leased thereunder (the "Leased Premises").

2. The Commencement Date occurred on: _____ and the Expiration Date is currently scheduled to occur on _____.

3. Tenant's current monthly payments on account of Annual Basic Rent and the Monthly Estimated OE Payment and the dates through which each have been paid, are described below.

   Annual Basic Rent (monthly amount): _____ ; Date paid through: _____

   Monthly Estimated OE Payment: _____; Date paid through: _____

4. Tenant has [_____] unexercised options to renew the Lease for up to ____ successive periods of _____ years each.

5. Landlord has not delivered any notice of any default by Tenant that has not been cured other than (none, if left blank): _____.

6. Landlord has not received any notice of any default by Landlord under the Lease that has not been cured other than (none, if left blank): _____.

7. Landlord has no actual knowledge of any event which, with the giving of notice, the passage of time or both, would constitute a material default by Tenant under the Lease other than (none, if left blank): _____.

8. Tenant has not deposited any monies or instruments to secure any of its agreements and obligations under the Lease, other than (none, if left blank): _____.

9. The party executing this certificate on behalf of Landlord is fully authorized and empowered to do so, and no consent, vote or approval is required which has not been given or taken.

10. This certificate may not be changed, waived or discharged orally, but only by an instrument in writing.

11. This certificate shall not have the effect of modifying any provision of the Lease.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Lease. The certifications herein made shall be binding upon Landlord, and shall inure to your benefit.

Dated: this ___ day of _____, 20__.

Landlord Name:_____

By: _____
Name:
Its:

EXHIBIT 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	IN THE 14th JUDICIAL CIRCUIT
Eddie B. Lewis, Jr.,)	Civil Action No. 2018-CP-07-2378
)	
Plaintiff,)	
)	
v.)	**ANSWER**
)	**(Jury Trial Demanded)**
Saul, LLC, and Wells Fargo Bank, National Association)	
)	
Defendants.)	

Defendant Wells Fargo Bank, National Association ("Defendant"), answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted against Defendants and, should therefore be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* and other applicable state laws.

FOR A THIRD DEFENSE

3. Regarding the allegations of Paragraph 1, Defendant does not contest jurisdiction at this time.

4. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 2 of the Complaint.

5. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 3 of the Complaint.

6. Defendant admits the allegations of Paragraph 4 of the Complaint.

7. Upon information and belief, Defendant admits the allegations of Paragraph 5 of the Complaint.

8. Upon information and belief, Defendant admits the allegations of Paragraph 6 of the Complaint.

9. Upon information and belief, Defendant admits the allegations of Paragraph 7 of the Complaint.

10. Defendant denies the allegations of Paragraph 8 of the Complaint.

11. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 9 of the Complaint.

12. Defendant asserts the allegations of Paragraph 10 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 10.

13. Defendant denies the allegations of Paragraph 11 of the Complaint.

14. Defendant asserts the allegations of Paragraph 12 (and its subparts A-L) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 12 and its subparts.

15. Defendant asserts the allegations of Paragraph 13 (and its subparts a-k) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 13 and its subparts.

16. Defendant denies the allegations of Paragraph 14 of the Complaint.

17. Defendant asserts that they are not required to respond to Paragraph 15 of the Complaint, but, to the extent that they are, Defendant reasserts and re-alleges each and every other allegation and Paragraph of its pleadings as if repeated herein verbatim.

18. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 16 of the Complaint.

19. Defendant asserts the allegations of Paragraph 17 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 17.

20. Defendant denies the allegations of Paragraph 18 of the Complaint.

21. Defendant denies the allegations of Paragraph 19 of the Complaint.

22. Defendant denies the allegations of Paragraph 20 of the Complaint.

23. Defendant denies the allegations of Paragraph 21 of the Complaint.

24. Defendant denies Plaintiff is entitled to the relief requested in the Prayer of the Complaint.

FOR A FOURTH DEFENSE

25. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever. Defendants reserve the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A FIFTH DEFENSE

26. Defendant alleges the condition which Plaintiff alleges caused his injury was either open and obvious to Plaintiff at the time of his injury or was otherwise known to Plaintiff at the time of his injury. Furthermore, any danger created by said condition, which Defendant expressly

denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant. Defendant reserves the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A SIXTH DEFENSE

27. Defendant would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

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

a. Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;

b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;

c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendant is improper;

d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and

e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

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

EXHIBIT 3

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed for the costs of defending this action and for such other relief as the Court and jury deem just and proper.

VERNIS & BOWLING OF COLUMBIA, LLC

/s/Joseph P. Bias

Joseph P. Bias, Bar No. 80367
1401 Main Street, Suite 655
Columbia, South Carolina 29201
(803) 234-5416
jbias@scarolina-law.com

ATTORNEY FOR DEFENDANT

February 11, 2019

EXHIBIT 3

EXHIBIT 4

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT EDDIE B. LEWIS., Plaintiff, vs. SAUL, LLC, and WELLS FARGO BANK NATIONAL ASSOCIATION, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A No: 2018-CP-07-02378 **Defendant Saul, LLC's Memorandum in Reply Opposing Wells Fargo Bank, NA's Memorandum of Law in Support of its Motion for To Set Aside Judgement**

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, hereby submits the following reply to Defendant Wells Fargo, NA's ("Wells Fargo") Memorandum of law in support of its Rule 60, SCRCP, Motion. Saul hereby fully incorporates by reference its Memorandum in Response to Wells Fargo's Motion to Set Aside and also Plaintiff Eddie B. Lewis' ("Plaintiff") Memorandum in Response to Defendant Wells Fargo Bank, NA's Motion to Set Aside Judgment. For the reasons set forth below, and as set forth in the aforementioned pleadings, this Court should deny Wells Fargo's motion.

INTRODUCTION

The sole motion before this Honorable Court is one made pursuant to Rule 60, SCRCP, -- not Rules 56 or 59. Wells Fargo's motion seeks to impugn Saul for obtaining summary judgment by arguing it made misrepresentations to the Court. In doing so, Wells Fargo wants this Court to accept Wells Fargo's revisionist history to justify its request to set aside an Order that was properly entered. Despite Wells Fargo's assertions to the contrary, every document, affidavit, argument, and pleading submitted by Saul to this Court was equally provided to Wells Fargo in advance of the Court hearing the motion for summary judgment. Instead of responding in a timely fashion to

Saul's arguments, or even appearing at the hearing to oppose the motion, Wells Fargo waited until now to accuse Saul of wrongdoing. Wells Fargo wants this Court to ignore Wells Fargo's own culpable conduct. Wells Fargo offers no evidence, explanation, or excuse to justify why it consistently and repeatedly failed to appear, argue, or even articulate their position in this matter when it was appropriate to do so. Even this motion was not properly or timely presented and still fails to present the clear and convincing evidence required by Rule 60, SCRCP, to support their position. As this Court is being asked to review what Saul submitted in this matter, it is critical that this Court scrutinize the relevant and undisputed procedural history of this matter to determine if Wells Fargo is entitled to the equitable relief it seeks. Saul has done nothing improper and Wells Fargo is not entitled to any relief.[1]

RELEVANT PROCEDURAL HISTORY

On December 5, 2018, Plaintiff filed a Complaint against Defendants Saul and Wells Fargo based on theories of negligence and premises liability. Plaintiff then filed an Amended Complaint on January 1, 2019. On January 17, 2019, Saul filed its Answer to the Plaintiff's Amended Complaint. Wells Fargo has never filed any cross-claim against Saul.

Saul moved for summary judgment ("Motion") on January 20, 2020, based on the terms of the Lease. (See Mot. for Summ. J., filed Jan. 20, 2020.) The Motion contained multiple exhibits and fully set forth Saul's argument in the case. Attached to this Motion as an exhibit was a full and complete copy of the Lease. (Id., at Ex. A.).

Fifty-Seven days later, on March 17, 2020, the Honorable Judge Deadra Jefferson heard arguments on the Motion. This was not a consent motion. It was a contested motion. Counsel for

[1] No argument or affidavit is presented suggesting that counsel for Saul did anything improper.

the Plaintiff and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. Wells Fargo's, then counsel, received notice of the hearing. Counsel asked for consent to continue the motion, but the undersigned did not agree. Wells Fargo failed to file a Motion for Continuance.[1]

Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. See Exhibit 9. (Affidavit of Morgan S. Templeton). During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id. As explained in Plaintiff's Memorandum, on March 17, 2020, counsel for Wells Fargo also informed Plaintiff's Counsel that he was not going to attend the hearing on the Motion. (See Pl. Memorandum in Resp. at pg. 2-3.). Additionally, the fact that counsel for Wells Fargo indicated he was not going to attend the hearing was relayed onto this Court. (See Pl. Memorandum in Resp. at pg. 3.). Despite having fifty-seven days' notice of the Motion, Wells Fargo failed to file any responsive Memorandums to Saul's Motion. The Court heard arguments and granted the Motion.

On March 18, 2020, Saul submitted its proposed Order to the Court, which a Notice of Electronic file was sent to all parties of record as instructed by the Court.[2]

---

[1] Counsel for Wells Fargo emailed Saul requesting a continuance of the hearing on March 13, 2021; however, Saul declined to consent on March 13, 202 as mediation was scheduled on April 2, 2020 and the matter was subject to trial after April 15, 2020. See Exhibit 3 (Email from Morgan Templeton on March 13, 2020).

[2] It should be noted that Charles Grant Blackburn filed a Notice of Appearance on March 16, 2020 (See Exhibit 4. NEF of Notice of Appearance) and was served electronically with a copy of the Proposed Order Granting Saul's Motion for Summary Judgment. See Exhibit 5. (NEF of Proposed Order March 18, 2020).

On March 24, 2020, this Court, after careful consideration of the record, granted Saul's Motion as to the claims brought by the Plaintiff. (Order Granting Summ. J., filed Mar. 24, 2020.) Indeed, this Court made multiple changes (a total of approximately 15) to the proposed Order before signing it. (See and compare Exhibits 1 and 2).[3] Neither the Plaintiff nor Wells Fargo filed a Motion to Reconsider. Neither party appealed this Court's Order.

On March 26, 2020, counsel for Wells Fargo, Charles Blackburn, emailed regarding Saul's dismissal from this matter and expressed no concern with Saul's dismissal. See Exhibit 6 (Email from Charles Blackburn on March 26, 2020).

On March 19, 2021, Three-Hundred and Sixty (360) days later, Wells Fargo filed a five paragraph Motion to Set Aside Judgment pursuant to Rule 60, SCRP, which failed to include any supporting documents or cite to any case law, nor any affidavits in support of the motion as contemplated by Rule 6, SCRCP. Not until after Four-Hundred and Sixty-Nine (469) days had passed, on July 6, 2021, did Wells Fargo submit its support for this motion, which is well after the one-year time period for a Rule 60 motion.

SUMMARY OF THE ARGUMENT

[3] A side-by-side review of Saul's Proposed Order and this Court's Order highlights the edits and revisions made by this Honorable Court prior to entering the Order. The Court made a total of fifteen (15) changes/revisions to Saul's Proposed Order. Theses revisions included the following: 1) a Header was added, which included six additional lines; 2) The opening paragraph was completely changed; 3) a Footnote was added; 4) the words "**Applicable Law"** was struck; 5) The **Finding of Facts** section was moved to the front of the Order; 6) The first line of the Find of Facts section of the Proposed Order was struck; 7) the numbering of the paragraphs in the **Findings of Facts** section were struck; 8) throughout the Order the introductory signals were struck by Judge Jefferson; 8) the words "This Court makes the following conclusions of law" were struck; 9) The applicable legal standards sections were moved under the **Conclusions of Law**; 10) the numbering of the paragraphs in the **Conclusions of Law** section was struck; 11) The Summary Judgment Standard was completely revised which consisted of two paragraphs; 12) Additions to the citations under the Premises Liability Standard, which consisted of seven additions of the South Carolina Reporter citations; 13) A clerical edit was made on page 5 of the Order, which consisted in the addition of the word "Further;" 14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and finally 15) the **Order** section was struck by the Court.

Wells Fargo's Motion to Set Aside Judgment should be denied because a) Wells Fargo's failed to preserve and argue their position against Summary Judgment; b) Wells Fargo's Memorandum of Law in Support contains numerous misstatements and incorrect statements which evidence it's lack of candor with the Court; c) the appropriate standard of review is under Rule 60, SCRCP, and not a reargument of the Motion for Summary Judgment; d) Wells Fargo has failed to present any newly discovered evidence to support its Rule 60 Motion; e) there has been no fraud on the part of Saul; and f) Wells Fargo's has not come to court with clean hands and is not entitled to equitable relief under Rule 60 and its actions are designed to create a burden shifting argument all of which are designed to deprive Saul of its due process rights.

i. Wells Fargo's Memorandum of Law is full of errors, misstatements, and incorrect statements.

Despite Wells Fargo's inflammatory accusations that Saul committed "half-truths" and blatant "lack of candor to the Court," Wells Fargo's very own Memorandum of Law is rife with errors and misstatements.

a. Wells Fargo's accusation that the Court was not provided with critical Lease provisions is false as clearly evidenced by the record.

Wells Fargo states "[a]nother critical lease provision, which was not provided to the Court at the summary judgment motion hearing, actually defines the common areas. *See, Exhibit E-Lease Common Areas Definition.*" Saul attached the full and complete lease to its Motion as Exhibit A, **which did include Wells Fargo's Exhibit E.** It is clear from the record that the full lease was provided to the Court. This false accusation made by Wells Fargo, ironically, encapsulates Wells Fargo's lack of candor to the Court.

b. Saul did not mishmash quotes from different sections of the Lease.

Next, Wells Fargo misstates the following:

It must be noted that the "Repairs by Landlord" provision of the lease is actually partially quoted in the proposed subject Order (presented by Saul to the Court). However, closer scrutiny of the language of the Order and a comparison to the lease language reveals the Order is actually confusing mishmash of quotes from different sections of the lease. *See, Exhibit D-Lease, Repairs by Tenant.*

Saul's Proposed Order cites directly to the Lease by stating the following:

> 2. Pursuant to the terms of the lease, Saul "shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings . . . ." See id. at § 5.5(a). With respect to Wells Fargo's repair and maintenance obligations, the lease states:
>
> > Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises . . . .
>
> See id. at § 5.6(a).

The Court's Final Order states as follows:

> Pursuant to the terms of the lease, Saul "shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings . . . ." Id. at § 5.5(a). With respect to Wells Fargo's repair and maintenance obligations, the lease states:
>
> > Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises . . . .
>
> Id. at § 5.6(a).

The Lease, which is Exhibit A to the Motion, states:

> 5.5 Repairs by Landlord
>
> (a) Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings (any such maintenance and/or repairs for which Landlord is responsible being herein collectively called "Landlord Repairs").

. . .

5.6 Repairs by Tenant

(a) Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of the Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").

As can be seen there was no "confusing mishmash of quotes from different sections of the lease." Saul clearly used punctuation marks commonly known as "ellipsis" to indicate that there were intentional omissions of a word, sentence, or section which did not alter the text or original meaning. Just so it is clear Saul, by using an ellipsis, left out the following from Section 5.5 and 5.6 of the Lease which are highlighted in bold:

> "**Landlord** shall keep and maintain, and make all needed repairs to, the **Base Building and the** Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings **(any such maintenance and/or repairs which Landlord is responsible being herein collectively called "Landlord Repairs").**"

> Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises **(any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").**

None of the information which was intentionally omitted from these sections in the lease actually confuse or mishmash different sections of the Lease. Saul directly quoted and cited to the very exhibit which Wells Fargo has now attached as an Exhibit to its Memorandum of Law. Notwithstanding this, the *entire* Lease was made an Exhibit to Saul's Motion, which in total make up One-Hundred and Seventy-Seven pages. Wells Fargo states that Saul has cherry picked or combined different portions of different lease provisions is simply incorrect. Saul intentionally chose the sections of the Lease that were applicable to its argument, and still included the entire

lease as an exhibit to its Motion. It is simply impracticable and downright ridiculous to assert that Saul should have quoted the entire One-Hundred and Seventy-Seven pages of the Lease to the Court, which would have been irrelevant and a complete waste of time. Again, had Wells Fargo felt the Lease was improperly quoted or cited, it could have appeared in court and argued this point. It did not.

c. Wells Fargo's contention that the Plaintiff testified exactly where he fell is a misstatement of the facts

Wells Fargo asserts that Saul ignored the Plaintiff's sworn testimony about the exact location of the fall. Wells Fargo relays onto this Honorable Court that the location of the fall was a sidewalk. Once again, this is a misstatement of the facts that were known at the time of the hearing.[4] After a full and reasonable review of the deposition transcript of the Plaintiff's deposition it is clear that the location of the Plaintiff's fall is nothing but unconfirmed, other than being in the Tenant-Dedicated Parking Area. To be clear the Plaintiff's deposition transcript establishes that the Plaintiff does not know whether he fell on the sidewalk or the asphalt.

The Plaintiff was given a "map" of the subject area and was asked to mark in red pen where he fell. See Exhibit 7. (Dep. of Eddie B. Lewis 28:12-20.) The Plaintiff clearly marks in red pen an "X" which is in the Tenant-Dedicated Parking Area. See Exhibit 8. Next, the Plaintiff went on to assert that he was walking on the sidewalk by the planters while leaving Wells Fargo. Id. at 29:23-25 - 30:1-21. Finally, and most importantly, the Plaintiff went on to state the following:

> 16 Q. For purposes of the transcript, what I think
> 17 you just indicated was that you think you, more than
> 18 likely, fell on the sidewalk area as opposed to the
> 19 asphalt on the parking lot?
> 20 A. I said when I started down, I probably

[4] Since being granted Summary Judgment, Saul has not participated in discovery. Further, Wells Fargo's Memorandum of Law fails to include any supporting documents related to this assertion.

21 fell -- when I went down, I probably hit -- it's
22 hard to say. I don't even remember if there was a
23 car there. **I don't remember that. The only thing I**
24 **remember is I fell down. That's the only thing I**
25 **can tell you.** And I remember putting my hand down

---

1 to stop my fall. It kind of dazed me a minute, and
2 this woman had her hand on my back and told me not
3 to move.

Id. at 85:16-25 - 86:1-3. (emphasis added). As shown by the Plaintiff's very own deposition transcript, Wells Fargo's assertion that the location of the Plaintiff's fall on a sidewalk is confirmed through discovery is a misstatement, misleading, and lacks candor with this Court.

Despite Wells Fargo attempting to mislead this Court by stating it is undisputed where the Plaintiff fell, which as show is clearly incorrect, the sidewalk area is located in an area that was in complete control of Wells Fargo. The Lease states:

> "Parking Areas" shall mean the parking areas and facilities for the Property as indicated on Exhibit A-1 hereto, together with (i) any walkways, driveways and other passageways upon the Land providing ingress and egress between such areas and facilities and the Building and/or between such areas and facilities and the Building...."

See Exhibit A to Motion: page 16. Pursuant to Section 1.2 of the Lease, Saul leased the subject property to Wells Fargo with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. Id. at pg. 23- 24 (emphasis added). Additionally, attached as Exhibit C to the Motion, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that "Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis." See Exhibit C to Motion. Further, the email states that "[t]hese parking areas are not common area under the Lease." Id. Once again, reading the Lease as a whole and in light of Rich

Belthoff's emails, it is clear that the walkways and other passageways in the Tenant-Dedicated Parking Area are included and under the exclusive control of Wells Fargo. Furthermore, the Belthoff emails are an admission by Wells Fargo as to control of the property and, of course, no evidence refuting that statement has been presented to the Court.

Finally, and as explained in Saul's Motion, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises...and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)" See Exhibit A. pg. 72 to Motion. Moreover, Section 5.6(e) of the Lease states that, "[i]n any such event, Tenant shall notify Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request." Id. at pg. 73.

d. Wells Fargo's assertion that Judge Jefferson's Order is not binding on it is a gross misstatement of the law of South Carolina.

Wells Fargo, without any legal citations or support, concludes Judge Jefferson's Order regarding its finding of facts and conclusion of law is not binding on Wells Fargo. "The written order is the trial judge's final order and as such constitutes the final judgment of the court." Ford v. State Ethics Com'n, 344 S.C. 643, 646, 545 S.E.2d 821, 823 (2001). Rule 60 explicitly provides that "[a] motion under this subdivision (b) *does not affect the finality of a judgment or suspend its operation*." S.C.R.C.P. Rule 60(b). (emphasis added). South Carolina Courts have long held that that an Order not appealed from is binding on all parties before the Court and constitutes the law of the case. See Walker v. Hannon, 191 S.C. 14, 3 S.E.2d 243, 245 (1939).

Taking into consideration the assertions made by Wells Fargo that Saul has lacked candor with the Court, it is clearly shown that it is truly Wells Fargo who has misrepresented the facts and law in this case.

ii. The only appropriate standard of review is pursuant to Rule 60, SCRCP

The only matter before this Court is the Motion under Rule 60, SCRCP, and not a Motion for Summary Judgment or Motion to Reconsider. Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Rouvet v. Rouvet, 388 S.C. 301, 696 S.E.2d 204, 208 (Ct. App. 2010). The party requesting relief in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. See BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

a. Wells Fargo's argument regarding misrepresentation does not reach anywhere near the difficult standards under Rule 60, SCRCP

The record unequivocally evidences a complete and utter failure by Wells Fargo to raise any argument at the appropriate time on Saul's Motion. The overwhelming majority of Wells Fargo's arguments in its Memorandum of Law in Support of its Motion rely on information and documents which were available to Wells Fargo at the time of the hearing, without any explanation as to why they were not raised at the time of the hearing. In fact, and most telling, the Wells Fargo memorandum simply states: "...for reasons unknown, Mr. Blackburn, did not attend the hearing on March 17, 2020, and did not file a response to the Order after it was entered." According to Plaintiff's Memorandum in Response, on the day of the hearing for the Motion for Summary Judgment, counsel for Wells Fargo informed Plaintiff's Counsel that he was not going to attend the hearing. (See Pl. Memorandum in Resp. pg. 2-3.) Further, the fact that counsel for Wells Fargo

indicated he was not going to attend the hearing was relayed onto this Court. (Id. at pg. 3.) Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo. See Exhibit 9. (Affidavit of Morgan S. Templeton). The following day, on March 17, 2021, Mr. Blackburn called the undersigned to inquire about the hearing. Id. During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id.

Rule 60(b), SCRCP, provides that a motion pursuant to this rule be made within a reasonable time. As shown above, Wells Fargo waited Three-Hundred and Sixty days since the Court's Order was entered to first raise its Motion pursuant to Rule 60(b), SCRCP. **Nowhere in the record is there any explanation for this delay**. Wells Fargo has not provided a single argument as to why there has been such a delay to the filing of its Motion to Set Aside or Memorandum of Law in Support. Wells Fargo's Memorandum of Law in Support details the following "arguments" regarding information that was known at the time of the hearing, namely:

1. Issues relating to Esther S. Harnett's Affidavit, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

2. Issues relating to the terms of the Lease, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

3. Issues relating to the Deposition of Plaintiff Eddie B. Lewis, which took place on November 14, 2019, and was available to Wells Fargo; and

4. Issues relating to the emails sent by Rich Belthoff, which was made as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020.

A majority of the arguments set forth by Wells Fargo relate entirely to documents and affidavits which were available at the time of the hearing. It is undisputed that despite having counsel of record, Wells Fargo neglected to make even the most basic argument against Saul's Motion. Now, in the context of a Rule 60(b) Motion to Set Aside, Wells Fargo is attempting to take its second bite of the proverbial apple, even though it ignored its first opportunity. The appropriate approach would have been to address these concerns *at the time of the hearing.* To allow Wells Fargo to now bring its arguments regarding a Motion for Summary Judgment that was heard on March 17, 2020, stands for the proposition that litigation has no end, counsel and clients who do nothing in response to a properly failed motion and who later determine they are dissatisfied with the outcome can come back to Court and hit "reset" flies in the face of the notion of time deadlines/limitations. As has been stated by another court, "[i]f procrastination is the thief of time, as the philosophers moralize, it is also the pillager and despoiler of rights, privileges and prerogatives." Gloeckner v. School Dist. of Baldwin, 175 A.2d 73, 76 (Pa. 1961).

Wells Fargo sat on its hands for an unreasonable amount of time and now come to this Court in an improper attempt suggest impropriety on the part of Saul, so as to reargue Summary Judgment because they are now dissatisfied with the result. Wells Fargo's Motion to Set Aside Judgment should be denied.

iii. The record lacks any newly discovered evidence.

A trial court may relieve a party from a final judgment, order, or proceeding if "newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)" is presented to the trial court. Rule 60(b)(2), SCRCP. Trial courts are empowered to grant a new trial if a party establishes the newly discovered evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3)

could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. See Morin v. Innegrity, LLC, 424 S.C. 559, 819 S.E.2d 131 (Ct. App. 2018). Evidence is not "newly discovered" if it is known to the party at trial and in the party's possession. Lanier v. Lanier, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005).

Wells Fargo submits its "newly discovered evidence" as affidavits from Ervin H. Weatherly and Gerald Scott Wooten, both employees of Wells Fargo. The overwhelming majority of the information contained in these newly discovered Affidavits concern information relating to issues with the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails, all of which were available to Wells Fargo at the time of the hearing. There is no explanation in either Affidavits, regarding these issues, which explain why this information was not known to the party at the time of the hearing on the Motion in 2020. Further the record supports the fact that the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails were filed on January 20, 2020 and were available to Wells Fargo. As such, the record establishes that the majority of the arguments presented in these Affidavits were known to the parties, i.e. Wells Fargo, at the time of the hearing and were in Wells Fargo's possession as they were filed with the Court.

Nevertheless, Saul will break down the two affidavits in order to show they should not be considered newly discovered evidence:

a. Affidavit of Gerald Scott Wooten is not newly discovered evidence.

Mr. Wooten's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; and b) he has issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, Mr. Wooten's affidavit violates the Parole Evidence Rule. The parole evidence rule states that a valid written contract, which is complete, and the terms of which are not ambiguous,

cannot be contradicted, added to, altered, or varied by extrinsic evidence. Garnett v. WRP Enterprises, Inc., 380 S.C. 206, 669 S.E.2d 591 (2008). The full and unambiguous Lease was provided to this Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Wooten's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease. Indeed, Wells Fargo does not even argue ambiguity.

Second, Mr. Wooten's affidavit concerns issues that were known or should have been known to Wells Fargo prior to the date of the hearing. Despite Wells Fargo obtaining the Affidavit on April 21, 2021, and of course, only presenting it to the Court on July 6, 2021, which is 109 days after filing the instant motion, there remains no evidence or testimony from anyone as to why this was not discovered before. In fact, nowhere in Wells Fargo's Memorandum of Law or supporting Affidavits does it explain why Mr. Wooten's Affidavit was not available prior to the hearing.

Third, Mr. Wooten's affidavit is simply cumulative and impeachment testimony. The Court was presented with the entire lease. Mr. Wooten's Affidavit is simply that he disagrees with Ms. Harnett's affidavit, which was filed on January 20, 2020. This could have been presented in 2020 prior to the hearing. It was not. Nothing in Mr. Wooten's affidavit changes the terms of the lease. Mr. Wooten's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

b. Affidavit of Ervin H. Weatherly is not newly discovered evidence.

Weatherly's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; b) arguments relating to his interpretation regarding an alleged interaction with Esther Harnett on February 22, 2021; and c) issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, and once again, Mr. Weatherly's affidavit violates the Parole Evidence Rule for the same reasons set forth above with Mr. Wooten's affidavit. Any sworn statements by Mr. Weatherly in his Affidavit regarding the lease violates the parole evidence rule. The full and unambiguous Lease has been provided to this Honorable Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Weatherly's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease.

Second, Mr. Weatherly's Affidavit concerns matters that were known or should have been known to Wells Fargo prior to the date of the hearing: i.e. the Belthoff emails. As already explained, these emails were made an exhibit to the Motion at the time of filing and were available to Wells Fargo at the time of the hearing. Any argument that the Belthoff emails were misrepresented by Saul should have been made at the time of the hearing. Additionally, Mr. Weatherly's Affidavit contains a self-serving conclusory assertion that Ms. Harnett was bragging that "she misrepresented the content of the Belthoff letters, the lease provisions, and the facts of her sworn affidavit". Other than the alleged statements that "she was able to use the Belthoff 'nasty letters' against Wells Fargo," the Affidavit fails to explain how/why this statement is a misrepresentation. Indeed, Saul did rely on the Belthoff email and presented it to the Court. The Belthoff emails unequivocally takes the position that the parking area is Wells Fargo's dominion and under its control. Regardless, the Belthoff emails were filed with Saul's Motion on January 20, 2020 and were available to Wells Fargo on March 17, 2020.

Third, Mr. Weatherly's affidavit is simply an effort to create an issue of fact to revisit summary judgment. The Court was presented with the entire lease, the Belthoff emails, and the Affidavit of Esther S. Harnett. Wells Fargo received them as well and did nothing. Mr. Weatherly's Affidavit is simply an attempt to create a material issue of fact under the guise of a

Rule 60(b) Motion. All that is being attempted is an effort to impeach Ms. Harnett. Nothing in Mr. Weatherly's affidavit changes the terms of the lease, nor does it demonstrate that this Court's prior conclusion was incorrect. Mr. Weatherly's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

iv. There has been no fraud on the part of Saul as Wells Fargo failed to appear and argue at the appropriate time and thus has not established their inability to counter the arguments and supporting documents submitted by Saul

A claim of fraud upon the court, as a ground for relief from judgment, requires proof by clear and convincing evidence. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct***. Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004) (emphasis added). A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." See Corley v. Centinnial Const. Co., 247 S.C. 179, 188, 146 S.E.2d 609, 613-14 (1966). The Corley Court stated that:

> 'Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.'

Id. The essential distinction between intrinsic and extrinsic fraud for purposes of relief from judgment is the ability to discover the fraud. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007).

a. Wells Fargo failed to raise the arguments at the time of the hearing and cannot as a matter of law claim extrinsic fraud upon the Court at this time

Wells Fargo's motion fails to identify by clear and convincing evidence of extrinsic fraud upon the Court. Virtually all of the arguments set forth by Wells Fargo relate to arguments made by Saul in its Motion for Summary Judgment, which could have been presented by Wells Fargo then. All of the materials presented by Saul were made available to Wells Fargo prior to the hearing on Saul's Motion for Summary Judgment. Saul did not hide any of its evidence or information. Nowhere in Wells Fargo's Motion to Set Aside or Memorandum of Law in Support is there any reason given as to why Wells Fargo failed to file a responsive memorandum, appear at the hearing, file a motion to reconsider, or appeal this Court's Order.

A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct***. Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004). (emphasis added). Wells Fargo's baseless arguments that a fraud was committed upon the Court is entirely based on information and supporting documents that were available to Wells Fargo at the time of the alleged misconduct. See Id. Wells Fargo's Motion to Set Aside based on arguments related to fraud upon the Court should be denied.

b. There has been no showing of extrinsic fraud in this matter

Wells Fargo asserts that Esther S. Harnett bragged about misrepresenting the contents of the Belthoff emails, the lease provisions, and the facts of her sworn testimony. Saul's Motion for Summary Judgment which was supported by the lease, the Belthoff emails, and the Affidavit of Esther S. Harnett were filed on January 20, 2020. Nowhere has it been explained or even argued that Wells Fargo was unable to discover the alleged fraud that was committed by Saul. As such, there is no extrinsic fraud in this matter. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007). Statements made by Esther S. Harnett regarding Saul's dismissal after the fact based on exhibits

and arguments that were available to Wells Fargo at the time of the hearing is not extrinsic fraud. Wells Fargo has the burden of proof to establish a claim of fraud upon the court, as a ground for relief from judgment, by clear and convincing evidence. See Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). The record is devoid of any argument, documents, or information that explains how or why Wells Fargo could not have discovered the alleged fraud at the time of the hearing. Wells Fargo failed to appear or argue its position at the time of the hearing. Wells Fargo has failed to prove by clear and convincing evidence that extrinsic fraud was committed. See Id.

v. Wells Fargo has not come to Court with clean hands and has attempted to shift the burden of proof in deprivation of Saul's due process rights

Movant seeking relief from judgment has the burden of presenting evidence proving facts essential to entitle relief. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). Wells Fargo filed its Motion on March 19, 2021, which asserts that it will be supported with "sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law...." On July 6, 2021, one-hundred nine (109) days after the filing of its Motion, Wells Fargo filed its affidavits and Memorandum of law. As evidenced by the Plaintiff's Memorandum in response, Saul was left to guess as to what Wells Fargo's allegations and evidence presented was going to be. What has been revealed now, is simply Wells Fargo attempts to reargue a Motion for Summary Judgment in the context of a Rule 60(b) Motion. Pursuant to Rule 60(b), SCRCP, the burden of proof lies entirely on Wells Fargo, not Saul. What cannot be ignored is Wells Fargo's conduct. Relief from judgment is largely an equitable principal. As the maxim goes, "he who seeks equity must do equity". Provident Life & Accident v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). Wells Fargo has not done equity in this instance. It sat on its hands and does not come to Court

with clean hands. See gen. Associate Spring Corp v. Roy F. Wilson, 410 F. Supp. 967, 978 (D.S.C. 1976) (applying SC law and collecting cases noting parties who seek equity must come with clean hands).

Wells Fargo has caused this situation by its failure to appear, oppose a motion, and its decision to make baseless accusations in an effort to avoid the consequences of its own inaction. Wells Fargo's original motion is devoid of articulable information, facts, law, etc. Saul and the Plaintiff have articulated that they were unable to address Wells Fargo's allegations in their original filings. Finally, when Wells Fargo was forced to provide a more meaningful motion (well after the one year requirement), Saul was given three-days to respond. Despite having the affidavits relied upon (dated April 21, 2021), Wells Fargo's did not provide them until this Court set a deadline of July 6, 2021. Despite Wells Fargo bearing the burden of proof, Saul has essentially had to defend itself in the "dark," and has created the impression that Saul has done something improper. Saul continues to maintain its request for a hearing on the matter so as to make a full and complete record of this matter. Wells Fargo has had over a year to provide clear and convincing evidence that Saul acted improperly. It has failed to do so within the one-year time period contemplated by Rule 60. Wells Fargo's Motion to Set Aside should be denied pursuant to Rule 7(b), SCRCP.

CONCLUSION

This Court should deny Wells Fargo's Rule 60 motion as it has failed to meet its burden of proof by clear and convincing evidence. Wells Fargo is improperly trying to apply a Rule 56 or 59 standard. Saul was properly granted summary judgment on March 17, 2020, and that Order remains proper.

[SIGNATURE INTENTIONALLY ON THE FOLLOWING PAGE]

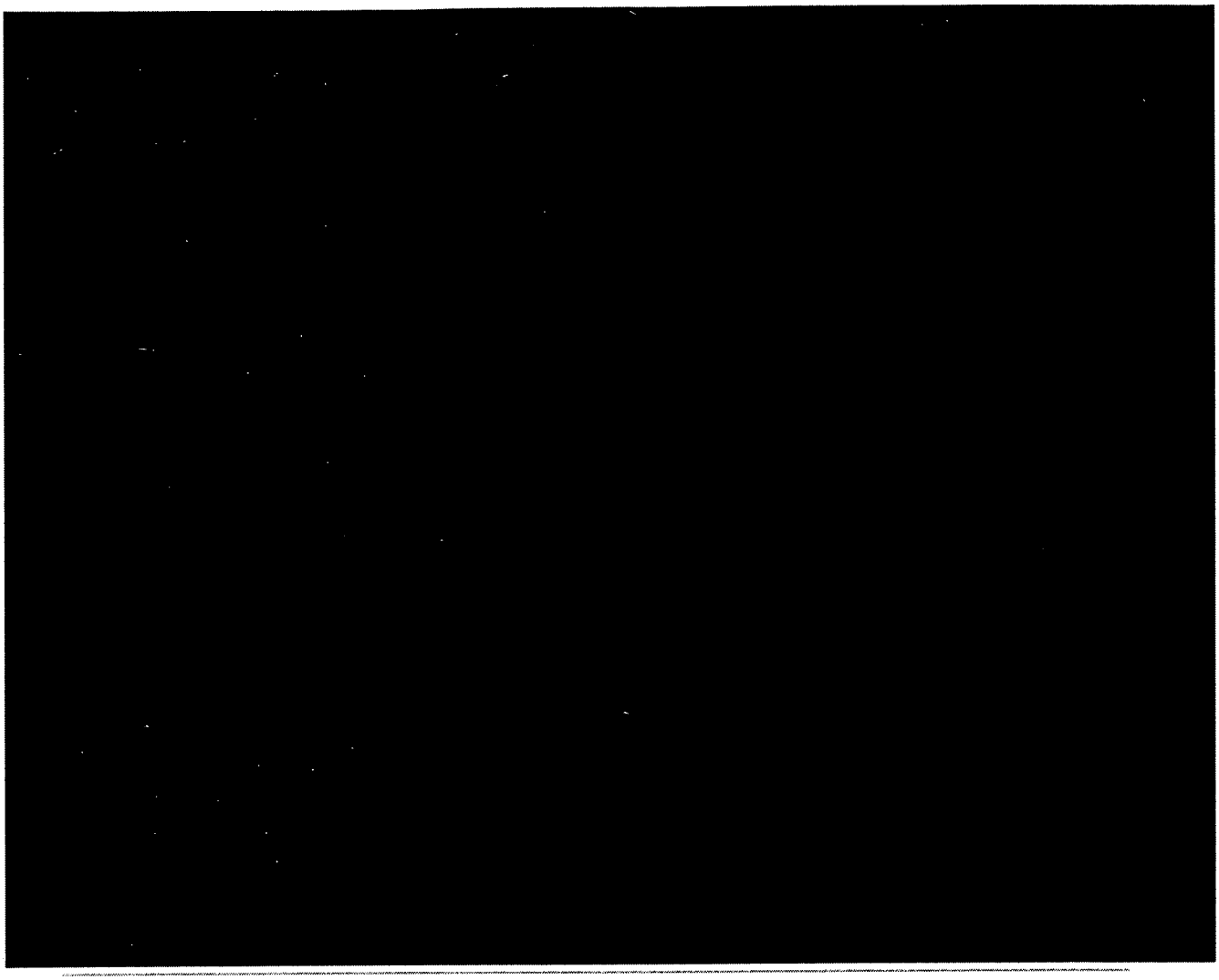
Dated this 9th day of July, 2021.

WALL Ttempleton & HALDRUP, P.A.

s/Morgan S. Templeton

Morgan S. Templeton (SC Bar #15456)
David A. Nasrollahi (SC Bar #103242)
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500
Attorneys for Defendants Saul, LLC

EXHIBIT 4-A



From: Morgan S. Templeton
Sent: Friday, March 13, 2020 2:05 PM
To: Cory Fleming <cory@mossandkuhn.com>; Laura Robinson <lrobinson@scarolina-law.com>
Cc: Charles Blackburn <cblackburn@scarolina-law.com>
Subject: RE: Lewis, Jr., Eddie B. v. Saul, LLC and Wells Fargo Bank, NA:

Laura,

I am sorry as well to hear that. Unfortunately, I am not able to consent to a continuance of the summary judgment motion. The case is scheduled to be mediated with plaintiff on 4/2 and the case is subject to trial after 4/15. As such, I need to have the motion heard.

I wish you well for whatever your next steps take.

Morgan

Morgan S. Templeton
Attorney

EXHIBIT 4-A

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

[redacted]

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

From: Cory Fleming [mailto:cory@mossandkuhn.com]
Sent: Friday, March 13, 2020 1:49 PM
To: Laura Robinson <lrobinson@scarolina-law.com>
Cc: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Charles Blackburn <cblackburn@scarolina-law.com>
Subject: Re: Lewis, Jr., Eddie B. v. Saul, LLC and Wells Fargo Bank, NA:

Laura

Sorry to hear your leaving the case. Wish you well in the future. As to the motion, I would be willing to consent to an Order allowing 30 days to respond to discovery. Obviously we have been waiting for some time now.

Thank you.

Cory Fleming
Cory@mossandkuhn.com
(843)986-6379

Please excuse the auto correct
Sent from my iPhone

On Mar 13, 2020, at 11:55 AM, Laura Robinson <lrobinson@scarolina-law.com> wrote:

EXHIBIT 4-A

Good morning Cory and Morgan,

I am resigning from Vernis & Bowling today and Charles Blackburn (copied here) will be taking over the representation of Wells Fargo. I know there is a motions hearing scheduled for Tuesday, and I am asking on Charles' behalf for your consent to continue the hearing. Charles will get up to speed as quickly as he possibly can, but he will not be prepared by Tuesday. HOPEFULLY, Charles will be able to send Cory the responses that will resolve the motion to compel and that hearing will never be necessary. But for both motions scheduled for Tuesday, will you please do Charles the professional courtesy of giving him a minute to get up to speed on the case before he has to be in front of a judge on it?

I have enjoyed working with both of you and look forward to seeing you again sometime soon!

Thank you,

Laura

Laura W. Robinson
Managing Attorney
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201
Tel: 803-234-5416
Mobile: 803-760-2249
Fax: 803-978-6246
lrobinson@scarolina-law.com
Click Here for my contact info

<image002.jpg>

EXHIBIT 4-A

EXHIBIT 4-B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF MORGAN S. TEMPLETON**
versus	)	
	)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION	)	
	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, Morgan S. Templeton, who being duly sworn, alleges and says as follows:

1. I am over the age of nineteen (19) and am otherwise competent to make this affidavit. I have personal knowledge of the matters set forth herein.

2. I am a member in good standing of the South Carolina bar and have been licensed to practice law since 1998.

3. I am lead counsel of record for Saul, LLC ("Saul") in the above captioned matter.

4. On March 16, 2020, at or around 2:37 p.m., I received a phone call from Charles Blackburn. Mr. Blackburn advised he was appearing on behalf of Wells Fargo Bank. According to the electronic docket, Mr. Blackburn filed a notice of appearance in this case the same day.

5. To the best of my memory and belief, Mr. Blackburn called to inquire about the hearing scheduled for March 17, 2020, regarding Saul's motion for summary judgment. During the call Mr. Blackburn informed me that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on March

17, 2020. He further advised that the pending motion to compel against Wells Fargo brought by Plaintiff had been resolved by consent.

FURTHER DEPONENT SAYETH NOT.

Morgan S. Templeton

SWORN TO before me this 8th day of July, 2021.

(Seal)
Notary Public for South Carolina
My Commission Expires: December 3, 2024

SARAH JANE SCHRODETZKI
Notary Public, South Carolina
My Commission Expires
December 03, 2024

EXHIBIT 4-C

From: efiledonotreply@sccourts.org
To: David Nasrollahi
Subject: Courtesy NEF RE: 2018CP0702378
Date: Monday, March 16, 2020 3:38:31 PM

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP0702378

Official File Stamp:	03-16-2020 03:38:05 PM
Court:	CIRCUIT COURT
	Common Pleas
	Beaufort
Case Caption:	Eddie B Lewis Jr VS Saul Llc , defendant, et al
Event(s):	
	Notice/Notice of Appearance
Filed by or on behalf of:	Charles Grant Blackburn

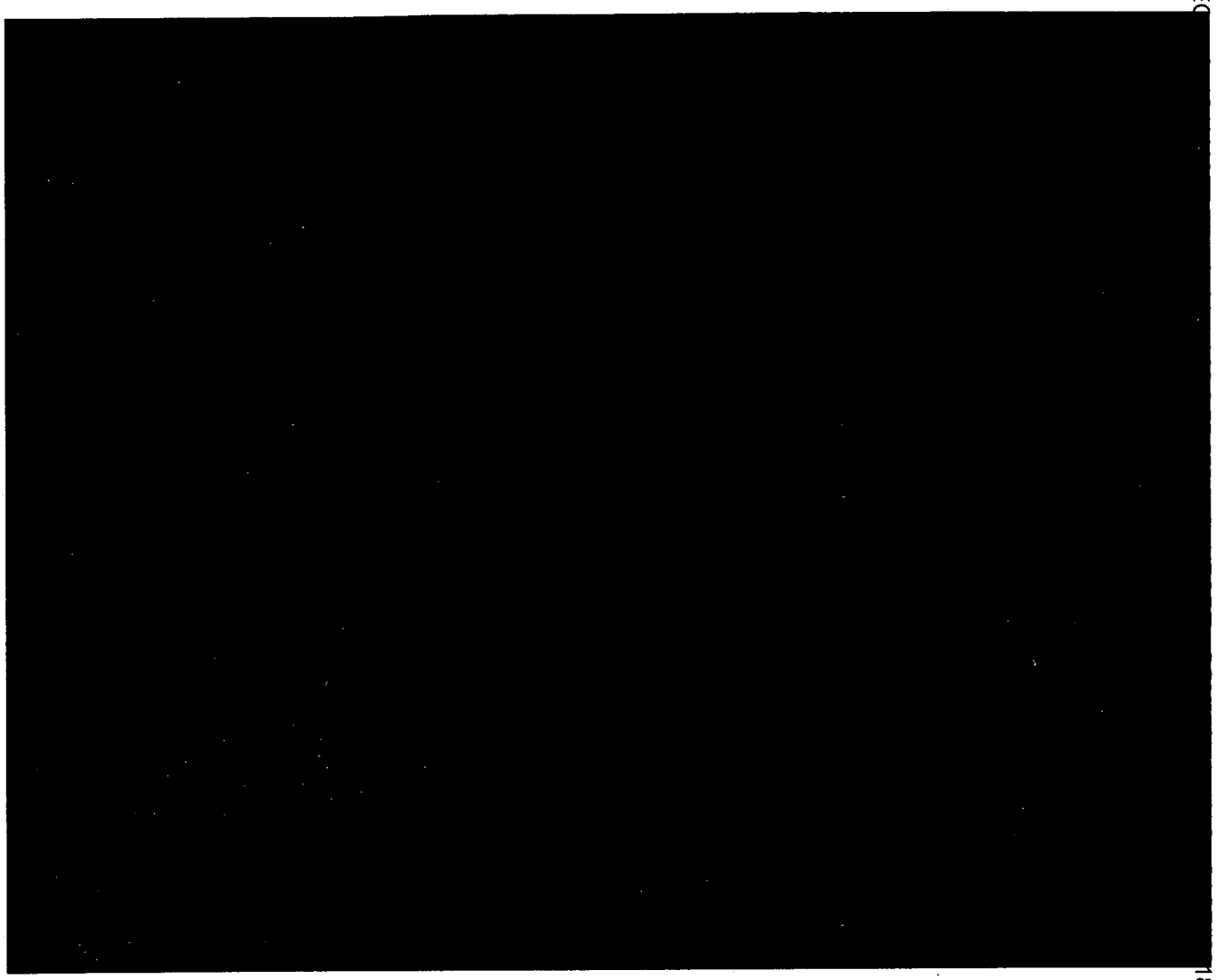
This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Morgan S. Templeton for Saul Llc
David Ali Nasrollahi for Saul Llc, Saul, Llc
Cory Howerton Fleming for Eddie B Lewis, Jr
Laura W Robinson for Wells Fargo Bank National Association, Wells Fargo Bank, National Association

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

EXHIBIT 4-D



From: Charles Blackburn <cblackburn@scarolina-law.com>
Sent: Thursday, March 26, 2020 11:44 AM
To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>
Subject: Re: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Thank you for your email Tanya. I appreciate your consideration given my taking over this case now that Laura Robinson has resigned and Mr. Templeton's client being dismissed from this action. Realistically, a mid to late May mediation would allow me to get this case postured for a mediation and my adjuster time to get ready for a mediation.
With this said, please provide dates to mediate this case from mid May forward.
I appreciate your consideration and look forward to working with you to resolve this claim.
Thank you.
Charles Blackburn

Get Outlook for iOS

From: Tanya King <tanya@mossandkuhn.com>
Sent: Thursday, March 26, 2020 11:28:02 AM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; Charles Blackburn <cblackburn@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Please be advised that the above mediation that you are holding for April 2nd needs to be cancelled. Mr. Templeton will no longer be needing to be at the mediation (Order Granting Defendant's Saul, LLC's Motion for Summary Judgment was signed and filed on 3/24/2020) of this case and Mrs. Robinson is no longer with the firm who represents Wells Fargo. Wells Fargo is now represented by Charles Blackburn who I have cc'ed on this email.

With this being said, can you please possible send us some dates for mediation towards the end of April –first part of May so that Mr. Blackburn and Mr. Fleming's offices can get together on a date?

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

immediately notify us by telephone or by return e-mail, and **destroy** any copies (electronic, paper, or otherwise) that you may have of this communication.

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Monday, March 02, 2020 5:16 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; jreese@scarolina-law.com; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Tanya –

This is to confirm that we are still holding April 2, 2020 for this mediation by Mitch Griffith.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Tanya King <tanya@mossandkuhn.com>
Sent: Monday, March 2, 2020 4:11 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>; jreese@scarolina-law.com
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Please allow this email to confirm mediation for April 2 for the above matter. We are still waiting to confirm this date from Mrs. Robinson but we do not want to lose the date with Mr. Griffith.

Mrs. Robinson, please advise ASAP.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Friday, February 21, 2020 2:56 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

All –

We are holding April 2, 2020 on Mitch Griffith's calendar for this mediation.

EXHIBIT 4-D

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Tanya King <tanya@mossandkuhn.com>
Sent: Friday, February 21, 2020 2:45 PM
To: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Mr. Templeton:

I am waiting to hear on the availability of Mrs. Robinson for April 2, 2020. For all others, April 2, 2020 is good.

Mrs. Robinson,

Please advise is April 2, 2020 is good with your schedule.

Thank you kindly,

Tanya King
Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373

843-379-3381 direct dial
843-379-1322 fax

From: Morgan S. Templeton [mailto:Morgan.Templeton@WallTempleton.com]
Sent: Friday, February 21, 2020 2:28 PM
To: 'Linda Smyth'; 'Mitch Griffith'; Tanya King
Cc: Cory Fleming; 'Laura Robinson'
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Have we been able to confirm this mediation?

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

From: Morgan S. Templeton
Sent: Tuesday, February 18, 2020 1:01 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>;

Tanya King <tanya@mossandkuhn.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Saul has no objection.

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Tuesday, February 18, 2020 12:50 PM
To: Mitch Griffith <Mgriffith@griffithfreeman.com>; Tanya King <tanya@mossandkuhn.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>; Linda Smyth <Lsmyth@griffithfreeman.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

That is correct, April 2, 2020 is available.

Also, our conflict search revealed that Mary Sharp, who has since left our firm, represented a Wells Fargo entity in several cases, and also represented a defendant in a matter in which Wells Fargo Bank, NA was the Plaintiff. However, Mr. Griffith was not involved in any of those matters. The search also revealed that Mr. Griffith was involved in a matter in which a Wells Fargo entity was a Defendant. However, we closed our file on that matter in 2011, which is outside the limit of our retention of file records and therefore we do not have

any further information regarding that case. Mr. Griffith is not currently involved in any matter in which Wells Fargo is a party. This is meant for disclosure purposes only and is not an attempt by Mr. Griffith to avoid serving as your mediator.

We request that each party respond to this email, acknowledging this disclosure and advising if any party has an objection to Mr. Griffith serving as you mediator.

Please let us know if you have any questions.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Mitch Griffith <Mgriffith@griffithfreeman.com>
Sent: Tuesday, February 18, 2020 12:28 PM
To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <Lsmyth@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Unless Linda corrects me I have 4/2 available. Mitch

E. Mitchell Griffith

EXHIBIT 4-D

From: Tanya King <tanya@mossandkuhn.com>
Sent: Tuesday, February 18, 2020 12:17 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>
Cc: Mitch Griffith <Mgriffith@griffithfreeman.com>; Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Good afternoon. Would by chance Mr. Griffith have any of the four dates available for mediation: 3/25, 3/26, 3/30 and 4/2? Please advise as soon as possible.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

EXHIBIT 4-E

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT EDDIE B. LEWIS, JR., Plaintiff, vs. SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION, Defendants.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-07-02378 **ORDER GRANTING DEFENDANT SAUL, LLC'S MOTION FOR SUMMARY JUDGMENT**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant Saul, LLC's Attorney:	John Dodds, Jr., Esq.
Date of Hearing:	March 17, 2020
Court Reporter:	Karen Andersen

This matter came before the Court on March 17, 2020 for a hearing on Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"), filed January 20, 2020. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law and Grants Saul's Motion for Summary Judgment.[1]

FINDINGS OF FACT

Saul is the owner of certain real property and improvements located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto, Defendant Wells Fargo National Association ("Wells Fargo") leased the subject property from Saul pursuant to a written lease agreement (the "lease"). The lease term is September 22, 2004 to September 30, 2024. Lease at § 1.1(a).

[1] Counsel for the Plaintiff was provided with a copy of the proposed Order and had no objection to the relief sought or the verbiage contained herein.

¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically, as it relates to Saul, Plaintiff alleges that Saul had a duty "to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." Amend. Compl. at ¶ 12.

At the hearing, counsel for the Plaintiff stated that the Plaintiff does not disagree with the above facts, and does not disagree with Saul's interpretation of the lease agreement.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id.

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See, e.g., Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231, 237 (2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Platt v. CSX Transp., Inc., 388 S.C. 441, 697 S.E.2d 575, 577 (2010). "Without a duty, there is no actionable negligence." Id. "The existence of a duty owed is a question of law for the courts." Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 651 S.E.2d 305, 309 (2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 211 S.C. 209, 44 S.E.2d 314, 317 (1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). "In the absence of an agreement to the contrary, the lessor surrenders

possession and control of the land to the lessee" and "typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." Id. (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on the Law of Torts § 434 (5th ed. 1984)).

Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term. Further, the Tenant Dedicated Parking Area is not considered a "common area" under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

During Wells Fargo's tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same. Accordingly, Saul cannot be held liable under South Carolina's premises liability laws for property over which Saul had no control.

Accordingly, after careful consideration of the record, the Court finds that no genuine issue of material fact exists as to the question of Saul's liability. By the terms of the parties' lease agreement, Saul had no duty to maintain or inspect the Tenant Dedicated Parking Area, and therefore cannot be liable for the Plaintiff's injuries. Plaintiff does not contest the facts as stated supra or the legal interpretation of the parties' lease agreement. It appearing that further inquiry into the facts of the case is not necessary clarify the application of the law, and that there is no dispute as to evidentiary facts or as to the conclusions or inferences to be drawn from them, Saul's Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

_____
Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

March _____, 2020
Charleston, South Carolina
At Chambers

EXHIBIT 4-E

Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

EXHIBIT 4-F

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.,)	
)	
Plaintiff,)	**ORDER GRANTING DEFENDANT SAUL, LLC'S MOTION FOR SUMMARY JUDGMENT**
)	
vs.)	
)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

THIS MATTER is before the Court upon Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"). A hearing on Saul's motion was held on March 17, 2020 at the Beaufort County Courthouse, at which hearing counsel for Saul and Plaintiff were both present. After due deliberation and consideration of the evidence and arguments of counsel, judgment shall be entered in favor of Saul in accordance with the findings of fact and conclusions of law set forth below.

APPLICABLE LAW

I. Summary Judgment Standard

"Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland Sch. Dist. One, 534 S.E.2d 275, 277 (S.C. 2000); see Rule 56(c), SCRCP. "The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., 499 S.E.2d 822, 824–25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof,

this initial responsibility "may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." Id. at 825.

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). Rather, in cases applying the preponderance of the evidence burden of proof, such as the instant case, the nonmoving party must submit a scintilla of evidence in order to withstand a motion for summary judgment. See Hancock v. Mid-South Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009). "A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." Jackson v. Bermuda Sands, Inc., 677 S.E.2d 612, 616 (S.C. Ct. App. 2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See, e.g., Sabb v. S.C. State Univ., 567 S.E.2d 231, 237 (S.C. 2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Platt v. CSX Transp., Inc., 697 S.E.2d 575, 577 (S.C. 2010). "Without a duty, there is no actionable negligence." Id. "The existence of a duty owed is a

question of law for the courts." Doe v. Greenville Cnty. Sch. Dist., 651 S.E.2d 305, 309 (S.C. 2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. Singleton v. Sherer, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 44 S.E.2d 314, 317 (S.C. 1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." Miller v. City of Camden, 494 S.E.2d 813, 815 (S.C. 1997). "Conversely, one who has no control owes no duty." Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 415 S.E.2d 796, 798 (S.C. 1992). "In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee" and "typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." Id. (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts § 434* (5th ed. 1984)).

FINDINGS OF FACT

Based upon a review of the pleadings and considering the materials submitted in support of the motion for summary judgment, this Court makes the following findings of fact:

1. Saul is the owner of certain real property and improvements thereon located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto,

5. On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank located at the subject property. See Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the "incident"). See id. at ¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically as it relates to Saul, Plaintiff alleges that Saul had a duty "to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." See Amend. Compl. at ¶ 12.

CONCLUSIONS OF LAW

This Court makes the following conclusions of law:

1. Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term.

2. The Tenant Dedicated Parking Area is not considered a "common area" under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

3. During Wells Fargo's tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul.

4. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same.

ORDER

NOW, THEREFORE, it is hereby ORDERED that Defendant Saul, LLC's motion for summary judgment be, and hereby is, GRANTED.

IT IS SO ORDERED.

_____

The Honorable Deadra L. Jefferson
Presiding Judge, Fourteenth Judicial Circuit

Dated this ___ day of _____, 2020.

_____, South Carolina

EXHIBIT 5

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT EDDIE B. LEWIS., Plaintiff, vs. SAUL, LLC, and WELLS FARGO BANK NATIONAL ASSOCIATION, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C/A No: 2018-CP-07-02378 **Defendant Saul, LLC's Memorandum in Reply Opposing Wells Fargo Bank, NA's Memorandum of Law in Support of its Motion for To Set Aside Judgement**

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, hereby submits the following reply to Defendant Wells Fargo, NA's ("Wells Fargo") Memorandum of law in support of its Rule 60, SCRCP, Motion. Saul hereby fully incorporates by reference its Memorandum in Response to Wells Fargo's Motion to Set Aside and also Plaintiff Eddie B. Lewis' ("Plaintiff") Memorandum in Response to Defendant Wells Fargo Bank, NA's Motion to Set Aside Judgment. For the reasons set forth below, and as set forth in the aforementioned pleadings, this Court should deny Wells Fargo's motion.

INTRODUCTION

The sole motion before this Honorable Court is one made pursuant to Rule 60, SCRCP, -- not Rules 56 or 59. Wells Fargo's motion seeks to impugn Saul for obtaining summary judgment by arguing it made misrepresentations to the Court. In doing so, Wells Fargo wants this Court to accept Wells Fargo's revisionist history to justify its request to set aside an Order that was properly entered. Despite Wells Fargo's assertions to the contrary, every document, affidavit, argument, and pleading submitted by Saul to this Court was equally provided to Wells Fargo in advance of the Court hearing the motion for summary judgment. Instead of responding in a timely fashion to

Saul's arguments, or even appearing at the hearing to oppose the motion, Wells Fargo waited until now to accuse Saul of wrongdoing. Wells Fargo wants this Court to ignore Wells Fargo's own culpable conduct. Wells Fargo offers no evidence, explanation, or excuse to justify why it consistently and repeatedly failed to appear, argue, or even articulate their position in this matter when it was appropriate to do so. Even this motion was not properly or timely presented and still fails to present the clear and convincing evidence required by Rule 60, SCRCP, to support their position. As this Court is being asked to review what Saul submitted in this matter, it is critical that this Court scrutinize the relevant and undisputed procedural history of this matter to determine if Wells Fargo is entitled to the equitable relief it seeks. Saul has done nothing improper and Wells Fargo is not entitled to any relief.[1]

RELEVANT PROCEDURAL HISTORY

On December 5, 2018, Plaintiff filed a Complaint against Defendants Saul and Wells Fargo based on theories of negligence and premises liability. Plaintiff then filed an Amended Complaint on January 1, 2019. On January 17, 2019, Saul filed its Answer to the Plaintiff's Amended Complaint. Wells Fargo has never filed any cross-claim against Saul.

Saul moved for summary judgment ("Motion") on January 20, 2020, based on the terms of the Lease. (See Mot. for Summ. J., filed Jan. 20, 2020.) The Motion contained multiple exhibits and fully set forth Saul's argument in the case. Attached to this Motion as an exhibit was a full and complete copy of the Lease. (Id., at Ex. A.).

Fifty-Seven days later, on March 17, 2020, the Honorable Judge Deadra Jefferson heard arguments on the Motion. This was not a consent motion. It was a contested motion. Counsel for

[1] No argument or affidavit is presented suggesting that counsel for Saul did anything improper.

the Plaintiff and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. Wells Fargo's, then counsel, received notice of the hearing. Counsel asked for consent to continue the motion, but the undersigned did not agree. Wells Fargo failed to file a Motion for Continuance.[1]

Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. See Exhibit 9. (Affidavit of Morgan S. Templeton). During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id. As explained in Plaintiff's Memorandum, on March 17, 2020, counsel for Wells Fargo also informed Plaintiff's Counsel that he was not going to attend the hearing on the Motion. (See Pl. Memorandum in Resp. at pg. 2-3.). Additionally, the fact that counsel for Wells Fargo indicated he was not going to attend the hearing was relayed onto this Court. (See Pl. Memorandum in Resp. at pg. 3.). Despite having fifty-seven days' notice of the Motion, Wells Fargo failed to file any responsive Memorandums to Saul's Motion. The Court heard arguments and granted the Motion.

On March 18, 2020, Saul submitted its proposed Order to the Court, which a Notice of Electronic file was sent to all parties of record as instructed by the Court.[2]

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[1] Counsel for Wells Fargo emailed Saul requesting a continuance of the hearing on March 13, 2021; however, Saul declined to consent on March 13, 202 as mediation was scheduled on April 2, 2020 and the matter was subject to trial after April 15, 2020. See Exhibit 3 (Email from Morgan Templeton on March 13, 2020).

[2] It should be noted that Charles Grant Blackburn filed a Notice of Appearance on March 16, 2020 (See Exhibit 4. NEF of Notice of Appearance) and was served electronically with a copy of the Proposed Order Granting Saul's Motion for Summary Judgment. See Exhibit 5. (NEF of Proposed Order March 18, 2020).

On March 24, 2020, this Court, after careful consideration of the record, granted Saul's Motion as to the claims brought by the Plaintiff. (Order Granting Summ. J., filed Mar. 24, 2020.) Indeed, this Court made multiple changes (a total of approximately 15) to the proposed Order before signing it. (See and compare Exhibits 1 and 2).[3] Neither the Plaintiff nor Wells Fargo filed a Motion to Reconsider. Neither party appealed this Court's Order.

On March 26, 2020, counsel for Wells Fargo, Charles Blackburn, emailed regarding Saul's dismissal from this matter and expressed no concern with Saul's dismissal. See Exhibit 6 (Email from Charles Blackburn on March 26, 2020).

On March 19, 2021, Three-Hundred and Sixty (360) days later, Wells Fargo filed a five paragraph Motion to Set Aside Judgment pursuant to Rule 60, SCRP, which failed to include any supporting documents or cite to any case law, nor any affidavits in support of the motion as contemplated by Rule 6, SCRCP. Not until after Four-Hundred and Sixty-Nine (469) days had passed, on July 6, 2021, did Wells Fargo submit its support for this motion, which is well after the one-year time period for a Rule 60 motion.

SUMMARY OF THE ARGUMENT

[3] A side-by-side review of Saul's Proposed Order and this Court's Order highlights the edits and revisions made by this Honorable Court prior to entering the Order. The Court made a total of fifteen (15) changes/revisions to Saul's Proposed Order. Theses revisions included the following: 1) a Header was added, which included six additional lines; 2) The opening paragraph was completely changed; 3) a Footnote was added; 4) the words "**Applicable Law**" was struck; 5) The **Finding of Facts** section was moved to the front of the Order; 6) The first line of the Find of Facts section of the Proposed Order was struck; 7) the numbering of the paragraphs in the **Findings of Facts** section were struck; 8) throughout the Order the introductory signals were struck by Judge Jefferson; 8) the words "This Court makes the following conclusions of law" were struck; 9) The applicable legal standards sections were moved under the **Conclusions of Law**; 10) the numbering of the paragraphs in the **Conclusions of Law** section was struck; 11) The Summary Judgment Standard was completely revised which consisted of two paragraphs; 12) Additions to the citations under the Premises Liability Standard, which consisted of seven additions of the South Carolina Reporter citations; 13) A clerical edit was made on page 5 of the Order, which consisted in the addition of the word "Further;" 14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and finally 15) the **Order** section was struck by the Court.

Wells Fargo's Motion to Set Aside Judgment should be denied because a) Wells Fargo's failed to preserve and argue their position against Summary Judgment; b) Wells Fargo's Memorandum of Law in Support contains numerous misstatements and incorrect statements which evidence it's lack of candor with the Court; c) the appropriate standard of review is under Rule 60, SCRCP, and not a reargument of the Motion for Summary Judgment; d) Wells Fargo has failed to present any newly discovered evidence to support its Rule 60 Motion; e) there has been no fraud on the part of Saul; and f) Wells Fargo's has not come to court with clean hands and is not entitled to equitable relief under Rule 60 and its actions are designed to create a burden shifting argument all of which are designed to deprive Saul of its due process rights.

i. Wells Fargo's Memorandum of Law is full of errors, misstatements, and incorrect statements.

Despite Wells Fargo's inflammatory accusations that Saul committed "half-truths" and blatant "lack of candor to the Court," Wells Fargo's very own Memorandum of Law is rife with errors and misstatements.

a. Wells Fargo's accusation that the Court was not provided with critical Lease provisions is false as clearly evidenced by the record.

Wells Fargo states "[a]nother critical lease provision, which was not provided to the Court at the summary judgment motion hearing, actually defines the common areas. *See, Exhibit E-Lease Common Areas Definition.*" Saul attached the full and complete lease to its Motion as Exhibit A, **which did include Wells Fargo's Exhibit E.** It is clear from the record that the full lease was provided to the Court. This false accusation made by Wells Fargo, ironically, encapsulates Wells Fargo's lack of candor to the Court.

b. Saul did not mishmash quotes from different sections of the Lease.

Next, Wells Fargo misstates the following:

It must be noted that the "Repairs by Landlord" provision of the lease is actually partially quoted in the proposed subject Order (presented by Saul to the Court). However, closer scrutiny of the language of the Order and a comparison to the lease language reveals the Order is actually confusing mishmash of quotes from different sections of the lease. *See, Exhibit D-Lease, Repairs by Tenant.*

Saul's Proposed Order cites directly to the Lease by stating the following:

> 2. Pursuant to the terms of the lease, Saul "shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings . . . ." See id. at § 5.5(a). With respect to Wells Fargo's repair and maintenance obligations, the lease states:
>
> > Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises . . . .
>
> See id. at § 5.6(a).

The Court's Final Order states as follows:

> Pursuant to the terms of the lease, Saul "shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings . . . ." Id. at § 5.5(a). With respect to Wells Fargo's repair and maintenance obligations, the lease states:
>
> > Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises . . . .
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> Id. at § 5.6(a).

The Lease, which is Exhibit A to the Motion, states:

> 5.5 Repairs by Landlord
>
> (a) Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings (any such maintenance and/or repairs for which Landlord is responsible being herein collectively called "Landlord Repairs").

. . .

5.6 Repairs by Tenant

(a) Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of the Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").

As can be seen there was no "confusing mishmash of quotes from different sections of the lease." Saul clearly used punctuation marks commonly known as "ellipsis" to indicate that there were intentional omissions of a word, sentence, or section which did not alter the text or original meaning. Just so it is clear Saul, by using an ellipsis, left out the following from Section 5.5 and 5.6 of the Lease which are highlighted in bold:

> "**Landlord** shall keep and maintain, and make all needed repairs to, the **Base Building and the** Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings **(any such maintenance and/or repairs which Landlord is responsible being herein collectively called "Landlord Repairs").**"

> Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises **(any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").**

None of the information which was intentionally omitted from these sections in the lease actually confuse or mishmash different sections of the Lease. Saul directly quoted and cited to the very exhibit which Wells Fargo has now attached as an Exhibit to its Memorandum of Law. Notwithstanding this, the *entire* Lease was made an Exhibit to Saul's Motion, which in total make up One-Hundred and Seventy-Seven pages. Wells Fargo states that Saul has cherry picked or combined different portions of different lease provisions is simply incorrect. Saul intentionally chose the sections of the Lease that were applicable to its argument, and still included the entire

lease as an exhibit to its Motion. It is simply impracticable and downright ridiculous to assert that Saul should have quoted the entire One-Hundred and Seventy-Seven pages of the Lease to the Court, which would have been irrelevant and a complete waste of time. Again, had Wells Fargo felt the Lease was improperly quoted or cited, it could have appeared in court and argued this point. It did not.

c. Wells Fargo's contention that the Plaintiff testified exactly where he fell is a misstatement of the facts

Wells Fargo asserts that Saul ignored the Plaintiff's sworn testimony about the exact location of the fall. Wells Fargo relays onto this Honorable Court that the location of the fall was a sidewalk. Once again, this is a misstatement of the facts that were known at the time of the hearing.[4] After a full and reasonable review of the deposition transcript of the Plaintiff's deposition it is clear that the location of the Plaintiff's fall is nothing but unconfirmed, other than being in the Tenant-Dedicated Parking Area. To be clear the Plaintiff's deposition transcript establishes that the Plaintiff does not know whether he fell on the sidewalk or the asphalt.

The Plaintiff was given a "map" of the subject area and was asked to mark in red pen where he fell. See Exhibit 7. (Dep. of Eddie B. Lewis 28:12-20.) The Plaintiff clearly marks in red pen an "X" which is in the Tenant-Dedicated Parking Area. See Exhibit 8. Next, the Plaintiff went on to assert that he was walking on the sidewalk by the planters while leaving Wells Fargo. Id. at 29:23-25 - 30:1-21. Finally, and most importantly, the Plaintiff went on to state the following:

> 16 Q. For purposes of the transcript, what I think
> 17 you just indicated was that you think you, more than
> 18 likely, fell on the sidewalk area as opposed to the
> 19 asphalt on the parking lot?
> 20 A. I said when I started down, I probably

[4] Since being granted Summary Judgment, Saul has not participated in discovery. Further, Wells Fargo's Memorandum of Law fails to include any supporting documents related to this assertion.

21 fell -- when I went down, I probably hit -- it's
22 hard to say. I don't even remember if there was a
23 car there. **I don't remember that. The only thing I**
24 **remember is I fell down. That's the only thing I**
25 **can tell you.** And I remember putting my hand down

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1 to stop my fall. It kind of dazed me a minute, and
2 this woman had her hand on my back and told me not
3 to move.

Id. at 85:16-25 - 86:1-3. (emphasis added). As shown by the Plaintiff's very own deposition transcript, Wells Fargo's assertion that the location of the Plaintiff's fall on a sidewalk is confirmed through discovery is a misstatement, misleading, and lacks candor with this Court.

Despite Wells Fargo attempting to mislead this Court by stating it is undisputed where the Plaintiff fell, which as show is clearly incorrect, the sidewalk area is located in an area that was in complete control of Wells Fargo. The Lease states:

> "Parking Areas" shall mean the parking areas and facilities for the Property as indicated on Exhibit A-1 hereto, together with (i) any walkways, driveways and other passageways upon the Land providing ingress and egress between such areas and facilities and the Building and/or between such areas and facilities and the Building...."

See Exhibit A to Motion: page 16. Pursuant to Section 1.2 of the Lease, Saul leased the subject property to Wells Fargo with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. Id. at pg. 23- 24 (emphasis added). Additionally, attached as Exhibit C to the Motion, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that "Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis." See Exhibit C to Motion. Further, the email states that "[t]hese parking areas are not common area under the Lease." Id. Once again, reading the Lease as a whole and in light of Rich

Belthoff's emails, it is clear that the walkways and other passageways in the Tenant-Dedicated Parking Area are included and under the exclusive control of Wells Fargo. Furthermore, the Belthoff emails are an admission by Wells Fargo as to control of the property and, of course, no evidence refuting that statement has been presented to the Court.

Finally, and as explained in Saul's Motion, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises...and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)" See Exhibit A. pg. 72 to Motion. Moreover, Section 5.6(e) of the Lease states that, "[i]n any such event, Tenant shall notify Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request." Id. at pg. 73.

d. Wells Fargo's assertion that Judge Jefferson's Order is not binding on it is a gross misstatement of the law of South Carolina.

Wells Fargo, without any legal citations or support, concludes Judge Jefferson's Order regarding its finding of facts and conclusion of law is not binding on Wells Fargo. "The written order is the trial judge's final order and as such constitutes the final judgment of the court." Ford v. State Ethics Com'n, 344 S.C. 643, 646, 545 S.E.2d 821, 823 (2001). Rule 60 explicitly provides that "[a] motion under this subdivision (b) *does not affect the finality of a judgment or suspend its operation*." S.C.R.C.P. Rule 60(b). (emphasis added). South Carolina Courts have long held that that an Order not appealed from is binding on all parties before the Court and constitutes the law of the case. See Walker v. Hannon, 191 S.C. 14, 3 S.E.2d 243, 245 (1939).

Taking into consideration the assertions made by Wells Fargo that Saul has lacked candor with the Court, it is clearly shown that it is truly Wells Fargo who has misrepresented the facts and law in this case.

ii. The only appropriate standard of review is pursuant to Rule 60, SCRCP

The only matter before this Court is the Motion under Rule 60, SCRCP, and not a Motion for Summary Judgment or Motion to Reconsider. Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Rouvet v. Rouvet, 388 S.C. 301, 696 S.E.2d 204, 208 (Ct. App. 2010). The party requesting relief in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. See BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

a. Wells Fargo's argument regarding misrepresentation does not reach anywhere near the difficult standards under Rule 60, SCRCP

The record unequivocally evidences a complete and utter failure by Wells Fargo to raise any argument at the appropriate time on Saul's Motion. The overwhelming majority of Wells Fargo's arguments in its Memorandum of Law in Support of its Motion rely on information and documents which were available to Wells Fargo at the time of the hearing, without any explanation as to why they were not raised at the time of the hearing. In fact, and most telling, the Wells Fargo memorandum simply states: "...for reasons unknown, Mr. Blackburn, did not attend the hearing on March 17, 2020, and did not file a response to the Order after it was entered." According to Plaintiff's Memorandum in Response, on the day of the hearing for the Motion for Summary Judgment, counsel for Wells Fargo informed Plaintiff's Counsel that he was not going to attend the hearing. (See Pl. Memorandum in Resp. pg. 2-3.) Further, the fact that counsel for Wells Fargo

indicated he was not going to attend the hearing was relayed onto this Court. (Id. at pg. 3.) Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo. See Exhibit 9. (Affidavit of Morgan S. Templeton). The following day, on March 17, 2021, Mr. Blackburn called the undersigned to inquire about the hearing. Id. During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id.

Rule 60(b), SCRCP, provides that a motion pursuant to this rule be made within a reasonable time. As shown above, Wells Fargo waited Three-Hundred and Sixty days since the Court's Order was entered to first raise its Motion pursuant to Rule 60(b), SCRCP. **Nowhere in the record is there any explanation for this delay**. Wells Fargo has not provided a single argument as to why there has been such a delay to the filing of its Motion to Set Aside or Memorandum of Law in Support. Wells Fargo's Memorandum of Law in Support details the following "arguments" regarding information that was known at the time of the hearing, namely:

1. Issues relating to Esther S. Harnett's Affidavit, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

2. Issues relating to the terms of the Lease, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

3. Issues relating to the Deposition of Plaintiff Eddie B. Lewis, which took place on November 14, 2019, and was available to Wells Fargo; and

4. Issues relating to the emails sent by Rich Belthoff, which was made as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020.

A majority of the arguments set forth by Wells Fargo relate entirely to documents and affidavits which were available at the time of the hearing. It is undisputed that despite having counsel of record, Wells Fargo neglected to make even the most basic argument against Saul's Motion. Now, in the context of a Rule 60(b) Motion to Set Aside, Wells Fargo is attempting to take its second bite of the proverbial apple, even though it ignored its first opportunity. The appropriate approach would have been to address these concerns *at the time of the hearing.* To allow Wells Fargo to now bring its arguments regarding a Motion for Summary Judgment that was heard on March 17, 2020, stands for the proposition that litigation has no end, counsel and clients who do nothing in response to a properly failed motion and who later determine they are dissatisfied with the outcome can come back to Court and hit "reset" flies in the face of the notion of time deadlines/limitations. As has been stated by another court, "[i]f procrastination is the thief of time, as the philosophers moralize, it is also the pillager and despoiler of rights, privileges and prerogatives." Gloeckner v. School Dist. of Baldwin, 175 A.2d 73, 76 (Pa. 1961).

Wells Fargo sat on its hands for an unreasonable amount of time and now come to this Court in an improper attempt suggest impropriety on the part of Saul, so as to reargue Summary Judgment because they are now dissatisfied with the result. Wells Fargo's Motion to Set Aside Judgment should be denied.

iii. The record lacks any newly discovered evidence.

A trial court may relieve a party from a final judgment, order, or proceeding if "newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)" is presented to the trial court. Rule 60(b)(2), SCRCP. Trial courts are empowered to grant a new trial if a party establishes the newly discovered evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3)

could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. See Morin v. Innegrity, LLC, 424 S.C. 559, 819 S.E.2d 131 (Ct. App. 2018). Evidence is not "newly discovered" if it is known to the party at trial and in the party's possession. Lanier v. Lanier, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005).

Wells Fargo submits its "newly discovered evidence" as affidavits from Ervin H. Weatherly and Gerald Scott Wooten, both employees of Wells Fargo. The overwhelming majority of the information contained in these newly discovered Affidavits concern information relating to issues with the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails, all of which were available to Wells Fargo at the time of the hearing. There is no explanation in either Affidavits, regarding these issues, which explain why this information was not known to the party at the time of the hearing on the Motion in 2020. Further the record supports the fact that the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails were filed on January 20, 2020 and were available to Wells Fargo. As such, the record establishes that the majority of the arguments presented in these Affidavits were known to the parties, i.e. Wells Fargo, at the time of the hearing and were in Wells Fargo's possession as they were filed with the Court.

Nevertheless, Saul will break down the two affidavits in order to show they should not be considered newly discovered evidence:

a. Affidavit of Gerald Scott Wooten is not newly discovered evidence.

Mr. Wooten's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; and b) he has issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, Mr. Wooten's affidavit violates the Parole Evidence Rule. The parole evidence rule states that a valid written contract, which is complete, and the terms of which are not ambiguous,

cannot be contradicted, added to, altered, or varied by extrinsic evidence. Garnett v. WRP Enterprises, Inc., 380 S.C. 206, 669 S.E.2d 591 (2008). The full and unambiguous Lease was provided to this Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Wooten's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease. Indeed, Wells Fargo does not even argue ambiguity.

Second, Mr. Wooten's affidavit concerns issues that were known or should have been known to Wells Fargo prior to the date of the hearing. Despite Wells Fargo obtaining the Affidavit on April 21, 2021, and of course, only presenting it to the Court on July 6, 2021, which is 109 days after filing the instant motion, there remains no evidence or testimony from anyone as to why this was not discovered before. In fact, nowhere in Wells Fargo's Memorandum of Law or supporting Affidavits does it explain why Mr. Wooten's Affidavit was not available prior to the hearing.

Third, Mr. Wooten's affidavit is simply cumulative and impeachment testimony. The Court was presented with the entire lease. Mr. Wooten's Affidavit is simply that he disagrees with Ms. Harnett's affidavit, which was filed on January 20, 2020. This could have been presented in 2020 prior to the hearing. It was not. Nothing in Mr. Wooten's affidavit changes the terms of the lease. Mr. Wooten's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

b. Affidavit of Ervin H. Weatherly is not newly discovered evidence.

Weatherly's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; b) arguments relating to his interpretation regarding an alleged interaction with Esther Harnett on February 22, 2021; and c) issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, and once again, Mr. Weatherly's affidavit violates the Parole Evidence Rule for the same reasons set forth above with Mr. Wooten's affidavit. Any sworn statements by Mr. Weatherly in his Affidavit regarding the lease violates the parole evidence rule. The full and unambiguous Lease has been provided to this Honorable Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Weatherly's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease.

Second, Mr. Weatherly's Affidavit concerns matters that were known or should have been known to Wells Fargo prior to the date of the hearing: i.e. the Belthoff emails. As already explained, these emails were made an exhibit to the Motion at the time of filing and were available to Wells Fargo at the time of the hearing. Any argument that the Belthoff emails were misrepresented by Saul should have been made at the time of the hearing. Additionally, Mr. Weatherly's Affidavit contains a self-serving conclusory assertion that Ms. Harnett was bragging that "she misrepresented the content of the Belthoff letters, the lease provisions, and the facts of her sworn affidavit". Other than the alleged statements that "she was able to use the Belthoff 'nasty letters' against Wells Fargo," the Affidavit fails to explain how/why this statement is a misrepresentation. Indeed, Saul did rely on the Belthoff email and presented it to the Court. The Belthoff emails unequivocally takes the position that the parking area is Wells Fargo's dominion and under its control. Regardless, the Belthoff emails were filed with Saul's Motion on January 20, 2020 and were available to Wells Fargo on March 17, 2020.

Third, Mr. Weatherly's affidavit is simply an effort to create an issue of fact to revisit summary judgment. The Court was presented with the entire lease, the Belthoff emails, and the Affidavit of Esther S. Harnett. Wells Fargo received them as well and did nothing. Mr. Weatherly's Affidavit is simply an attempt to create a material issue of fact under the guise of a

Rule 60(b) Motion. All that is being attempted is an effort to impeach Ms. Harnett. Nothing in Mr. Weatherly's affidavit changes the terms of the lease, nor does it demonstrate that this Court's prior conclusion was incorrect. Mr. Weatherly's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

iv. There has been no fraud on the part of Saul as Wells Fargo failed to appear and argue at the appropriate time and thus has not established their inability to counter the arguments and supporting documents submitted by Saul

A claim of fraud upon the court, as a ground for relief from judgment, requires proof by clear and convincing evidence. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct.*** Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004) (emphasis added). A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." See Corley v. Centinnial Const. Co., 247 S.C. 179, 188, 146 S.E.2d 609, 613-14 (1966). The Corley Court stated that:

> 'Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.'

Id. The essential distinction between intrinsic and extrinsic fraud for purposes of relief from judgment is the ability to discover the fraud. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007).

a. Wells Fargo failed to raise the arguments at the time of the hearing and cannot as a matter of law claim extrinsic fraud upon the Court at this time

Wells Fargo's motion fails to identify by clear and convincing evidence of extrinsic fraud upon the Court. Virtually all of the arguments set forth by Wells Fargo relate to arguments made by Saul in its Motion for Summary Judgment, which could have been presented by Wells Fargo then. All of the materials presented by Saul were made available to Wells Fargo prior to the hearing on Saul's Motion for Summary Judgment. Saul did not hide any of its evidence or information. Nowhere in Wells Fargo's Motion to Set Aside or Memorandum of Law in Support is there any reason given as to why Wells Fargo failed to file a responsive memorandum, appear at the hearing, file a motion to reconsider, or appeal this Court's Order.

A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct***. Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004). (emphasis added). Wells Fargo's baseless arguments that a fraud was committed upon the Court is entirely based on information and supporting documents that were available to Wells Fargo at the time of the alleged misconduct. See Id. Wells Fargo's Motion to Set Aside based on arguments related to fraud upon the Court should be denied.

b. There has been no showing of extrinsic fraud in this matter

Wells Fargo asserts that Esther S. Harnett bragged about misrepresenting the contents of the Belthoff emails, the lease provisions, and the facts of her sworn testimony. Saul's Motion for Summary Judgment which was supported by the lease, the Belthoff emails, and the Affidavit of Esther S. Harnett were filed on January 20, 2020. Nowhere has it been explained or even argued that Wells Fargo was unable to discover the alleged fraud that was committed by Saul. As such, there is no extrinsic fraud in this matter. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007). Statements made by Esther S. Harnett regarding Saul's dismissal after the fact based on exhibits

and arguments that were available to Wells Fargo at the time of the hearing is not extrinsic fraud. Wells Fargo has the burden of proof to establish a claim of fraud upon the court, as a ground for relief from judgment, by clear and convincing evidence. See Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). The record is devoid of any argument, documents, or information that explains how or why Wells Fargo could not have discovered the alleged fraud at the time of the hearing. Wells Fargo failed to appear or argue its position at the time of the hearing. Wells Fargo has failed to prove by clear and convincing evidence that extrinsic fraud was committed. See Id.

v. Wells Fargo has not come to Court with clean hands and has attempted to shift the burden of proof in deprivation of Saul's due process rights

Movant seeking relief from judgment has the burden of presenting evidence proving facts essential to entitle relief. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). Wells Fargo filed its Motion on March 19, 2021, which asserts that it will be supported with "sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law...." On July 6, 2021, one-hundred nine (109) days after the filing of its Motion, Wells Fargo filed its affidavits and Memorandum of law. As evidenced by the Plaintiff's Memorandum in response, Saul was left to guess as to what Wells Fargo's allegations and evidence presented was going to be. What has been revealed now, is simply Wells Fargo attempts to reargue a Motion for Summary Judgment in the context of a Rule 60(b) Motion. Pursuant to Rule 60(b), SCRCP, the burden of proof lies entirely on Wells Fargo, not Saul. What cannot be ignored is Wells Fargo's conduct. Relief from judgment is largely an equitable principal. As the maxim goes, "he who seeks equity must do equity". Provident Life & Accident v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). Wells Fargo has not done equity in this instance. It sat on its hands and does not come to Court

with clean hands. See gen. Associate Spring Corp v. Roy F. Wilson, 410 F. Supp. 967, 978 (D.S.C. 1976) (applying SC law and collecting cases noting parties who seek equity must come with clean hands).

Wells Fargo has caused this situation by its failure to appear, oppose a motion, and its decision to make baseless accusations in an effort to avoid the consequences of its own inaction. Wells Fargo's original motion is devoid of articulable information, facts, law, etc. Saul and the Plaintiff have articulated that they were unable to address Wells Fargo's allegations in their original filings. Finally, when Wells Fargo was forced to provide a more meaningful motion (well after the one year requirement), Saul was given three-days to respond. Despite having the affidavits relied upon (dated April 21, 2021), Wells Fargo's did not provide them until this Court set a deadline of July 6, 2021. Despite Wells Fargo bearing the burden of proof, Saul has essentially had to defend itself in the "dark," and has created the impression that Saul has done something improper. Saul continues to maintain its request for a hearing on the matter so as to make a full and complete record of this matter. Wells Fargo has had over a year to provide clear and convincing evidence that Saul acted improperly. It has failed to do so within the one-year time period contemplated by Rule 60. Wells Fargo's Motion to Set Aside should be denied pursuant to Rule 7(b), SCRCP.

CONCLUSION

This Court should deny Wells Fargo's Rule 60 motion as it has failed to meet its burden of proof by clear and convincing evidence. Wells Fargo is improperly trying to apply a Rule 56 or 59 standard. Saul was properly granted summary judgment on March 17, 2020, and that Order remains proper.

[SIGNATURE INTENTIONALLY ON THE FOLLOWING PAGE]

Dated this 9th day of July, 2021.

WALL Ttempleton & HALDRUP, P.A.

s/Morgan S. Templeton

Morgan S. Templeton (SC Bar #15456)
David A. Nasrollahi (SC Bar #103242)
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500
Attorneys for Defendants Saul, LLC

EXHIBIT 5-A

From: efiledonotreply@sccourts.org
To: David Nasrollahi
Subject: Courtesy NEF RE: 2018CP0702378
Date: Wednesday, March 18, 2020 10:45:33 AM

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP0702378

Official File Stamp: 03-18-2020 10:45:00 AM
Court: CIRCUIT COURT
Common Pleas
Beaufort
Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al
Event(s):
Notice/Notice of Appearance
Order/Order Cover Sheet $25.00

Document(s) Submitted: Proposed Order/Summary Judgment
Filed by or on behalf of: John Joseph Dodds, IV

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:
Morgan S. Templeton for Saul Llc
Charles Grant Blackburn for Wells Fargo Bank National Association
David Ali Nasrollahi for Saul Llc, Saul, Llc
Cory Howerton Fleming for Eddie B Lewis, Jr
Laura W Robinson for Wells Fargo Bank National Association, Wells Fargo Bank, National Association

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF BEAUFORT)	Case No. 2018-CP-07-2378
)	
EDDIE B. LEWIS JR,)	
)	
Plaintiff,)	
)	
vs.)	Transcript of Record
)	
SAUL LLC,)	
)	
Defendant.)	DATE: March 17, 2020
)	

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON

A P P E A R A N C E:

CORY HOWERTON FLEMING
PO Drawer 507
Beaufort SC 29901
Attorney for Plaintiff

JOHN JOSEPH DODDS, IV
145 King Street, Suite 300
PO Box 1200
Charleston SC 29402
Attorney for Defendant

Original transcript ordered by:
WALL TEMPLETON

Stenographically recorded and transcribed by:

Karen V. Andersen, RMR, CRR, CSR

THE COURT: Who is appearing on behalf of Saul, LLC?

MR. DODDS: Good morning, Your Honor. John Dodds.

THE COURT: Is there anyone appearing for Wells Fargo?

MR. FLEMING: I was contacted this morning. I will need to give you a little brief summary so you will understand.

On Friday, one of the listed counsel for Wells Fargo, the only lawyer we were dealing with, Laura Robertson, resigned from that law firm. The law firm --

THE COURT: So they need to reassign the file?

MR. FLEMING: They have reassigned it to Charles Blackburn as of yesterday. He contacted -- I believe he talked to Morgan Templeton, lead counsel for Saul. He contacted me, indicated that he could not be here for these motions based on various things. And I told him that I would inform the Court of that.

That is, unfortunately, the underlying problem in the other motion in this file, the motion to compel discovery, which I think may have some bearing potentially on the motion for summary judgment.

THE COURT: So in a roundabout way, are you telling me you can't go forward because Wells Fargo is absent, or they are not necessary for these motions?

MR. FLEMING: I can't speak for Wells Fargo. I

personally believe that it's very important to Wells Fargo, because they will be the sole defendant. They have not filed any kind of indemnity or cross-claim back towards Saul. And as such, I don't know they technically have any direct standing in the motion. So I can't assert to the Court that they are necessary to argue the motion.

THE COURT: Are you seeking some relief against them?

MR. FLEMING: Against Wells Fargo?

THE COURT: Yeah.

MR. FLEMING: They are the primary defendant. Saul is the property owner of the site of the bank where this injury occurred. And the -- I won't speak for Saul except to say Saul's motion for summary judgment is predicated on the terms of the lease. And the terms of the lease tend to support the notion that the landlord, Saul, granted all control of the property, including inspection and/or inspection, discovery and remedy of any dangerous conditions, which is very clearly laid out in their brief.

THE COURT: Sir, are you conceding their motion summary judgment?

MR. FLEMING: Well, here's why it gets complicated. I have an outstanding motion to compel. Wells Fargo has provided me no --

THE COURT: But they are not here. And I can't hear

it ex parte. So either -- that's why I'm asking for clarity. If a lawyer has resigned, and I would assume that was recent --

MR. FLEMING: It was Friday, yes, ma'am.

THE COURT: And Mr. -- I would assume then Mr. Blackburn has not had an opportunity to get up to speed. Why he did not send someone in his stead, I am not clear.

MR. FLEMING: I am not either, Your Honor.

THE COURT: I'm sorry?

MR. FLEMING: I am not either. I don't know why.

THE COURT: But I can't argue a motion in their absence under the circumstances.

MR. FLEMING: I understand. I apologize. We spoke. And they were going to -- they agreed to a consent order on the motion to compel.

THE COURT: Okay. So you are going to submit a consent order?

MR. FLEMING: That's correct. We are going to send a consent order.

THE COURT: Who is going to be responsible for preparing that?

MR. FLEMING: Mr. Blackburn is preparing it. And he is going to -- and they are going to be providing me, hopefully, that discovery. The reason that I bring that up is simply because I do not -- as it regards the motion for

summary judgment --

THE COURT: I am not going to have preclusive arguments on the motion for summary judgment. I'm going to let Mr. Dodds argue his motion and let you respond. My question was very direct, which is, are you conceding his motion based on the previous statements, or do I need to hear the motion?

MR. FLEMING: I think you will need to hear the motion simply so I can tell you what my concern is with the discovery issue.

THE COURT: Mr. Dodds, proceed with your motion.

MR. DODDS: Thank you, Your Honor. May it please the Court. As Mr. Fleming said, this is a premises liability action arising out of a trip and fall in the parking lot of a Wells Fargo. The plaintiff has sued Wells Fargo and also my client, Saul, LLC, which is the landlord for the building.

And the basis for the motion, as Mr. Fleming already stated, is that Saul, LLC has relinquished all control of the specific parking lot where the plaintiff fell to Wells Fargo pursuant to the terms of the lease. And, therefore, Saul, LLC owes no duty to the plaintiff.

There is a written lease, Your Honor. I have a copy if you would like to look at it.

THE COURT: Did you file it?

MR. DODDS: Yes, Your Honor. It's Exhibit A to the

motion.

THE COURT: Then I have it.

MR. DODDS: It's a very long lease. But Section 5.5 of the lease provides that the landlord shall keep and maintain and make all immediate repairs to the common areas. Very standard lease. The obligation of the landlord is to maintain and repair common areas. Those areas dedicated to the exclusive use of the tenant, maintenance and repairs, the tenant's obligation.

The area where the plaintiff fell is known as the tenant-dedicated parking area under the lease. It's a defined term. And it's basically a parking lot which only Wells Fargo can use.

Section 1.2 of the lease states that Wells Fargo is entitled on an exclusive basis to use the tenant-dedicated parking areas.

By definition, an area where tenant is entitled to exclusive use is not a common area. There's no obligation for Saul to maintain and repair.

THE COURT: Why is it appropriate for me to interpret a lease on a summary judgment motion? Are you all telling me the facts are completely uncontroverted?

MR. DODDS: Yes, Your Honor. This is a question of law. Interpretation of a contract is a question of law.

THE COURT: Are you all agreeing to that

interpretation of the law?

MR. DODDS: The plain terms --

THE COURT: That's not my question. My question is, do you all agree to how it should be interpreted? That's the only way summary judgment would be appropriate.

MR. DODDS: I don't believe there's any disagreement.

MR. FLEMING: I do not disagree with their interpretation of this lease.

MR. DODDS: Your Honor, I have a binder. There were some documents produced by Wells Fargo in discovery that are subject to a consent confidentiality order. I would like to hand it up to Your Honor. I did spray it with Lysol this morning.

THE COURT: Tell me what it is again. I'm sorry.

MR. DODDS: There are two documents that I have with me in a binder. They were produced subject to a consent confidentiality order between the parties.

THE COURT: What are they?

MR. DODDS: One of the documents is a property management agreement between Wells Fargo and an independent property manager by the name of CBRE Incorporated.

The second document is a list of work orders submitted by Wells Fargo to its property manager in the year of 2016, which is when this incident occurred.

Looking at the first document -- again, I'm happy to provide to Your Honor if you are inclined.

THE COURT: They need to be filed if you want it considered a part of the record.

MR. DODDS: It's subject to a consent confidentiality --

THE COURT: Then you need to work it out with the clerk how it's to be filed. But if you want it in this record, you want to consider both purposes, you are going to have to file it.

MR. DODDS: Okay. Well, Your Honor, there is a property management agreement where Wells Fargo hired its own independent property manager. There are records of work orders and repairs made to the tenant-dedicated parking area where Wells Fargo scheduled requested repairs, paid for repairs out of their own pockets without any involvement of Saul, LLC. And I just want to bring those documents up, because the lease says what it says. It's very clear that the tenant-dedicated parking area is not a common area.

And, furthermore, Wells Fargo acts in hiring an independent property manager to inspect that very area and make repairs clearly shows that Wells Fargo is in control of this area.

Exhibit C to our motion was an e-mail from Wells Fargo's managing general counsel and executive vice

president. It's attached as Exhibit C to the motion. And it states that Saul, "has no right whatsoever to grant the use of the tenant-dedicated parking area." In that quote, "These parking areas are not common area under the lease."

As Your Honor is well aware, the crux of a premises liability action in South Carolina is whether the entity or person had possession or control over the land. Our Supreme Court held in *Byerly v. Connor* that when land is occupied by a lessee, law of property regards the lease as equivalent to a sale of the premises for the term of the lease. After the lessor surrenders possession and control of the land to the lessee, the lessor is generally not responsible for hazardous conditions which thereafter develop or are created by the lessee.

Here, Saul had no possession and control over that area. Wells Fargo was entitled to exclusive use of the area under the lease. They hired their own independent property manager to receive maintenance. They scheduled maintenance and repairs and paid for that without any involvement by Saul, LLC.

Exhibit D to our motion was an affidavit from Esther Harnett on behalf of Saul, LLC stating the very same things that I just expressed to Your Honor, that they relinquished control, had not been involved in any repairs, that Wells Fargo is entitled to the exclusive use of that property.

And for those reasons, Your Honor, Saul respectfully requests the Court grant its motion for summary judgment.

THE COURT: Would you like to respond?

MR. FLEMING: Yes, ma'am. I do not take issue with anything that counsel said concerning the lease, interpretation of the lease, or any of the documents intended to support his position.

I have not received, nor has, I believe, Saul received any responses to discovery or interrogatories or requests for production that would in any way refute any of Saul's positions.

My only issue that I wanted to bring to the Court is that because -- Wells Fargo did respond, I believe, in total to Saul's interrogatories and requests to produce. They have failed to respond to mine. And there is -- just out of abundance of caution, I am uncomfortable with the notion that 30 days from now, they send something else that would --

THE COURT: Well, you haven't filed anything. And you can't have it both ways. Either you concede the motion or it needs to be continued. But I am not going to straddle that line with you.

MR. FLEMING: I understand. Well, I concede then, Your Honor. I concede that Saul is -- that their position, I believe, is most supported by the law and by the facts as we have gathered throughout this litigation.

THE COURT: Based on that concession, Mr. Dodds, if you will prepare an order for the Court granting the summary judgment. Please make sure all parties are copied on it when you send it to the Court. And you need to E-file it. And you need to make any findings of fact and conclusions of law supported by the record.

MR. DODDS: Thank you, Your Honor.

THE COURT: Y'all stay safe.

MR. DODDS: Any specific timeline?

THE COURT: I would like it within five days. That would be helpful. The sooner the better while it's fresh in my mind.

(Whereupon, the proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

EXHIBIT 7

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	C.A. NO.: 2018-CP-07-02378
)	
EDDIE B. LEWIS, JR.)	
)	
Plaintiff,)	**Plaintiff's Memorandum in Response to Defendant Wells Fargo Bank, NA's Motion to Set Aside Judgment**
)	
versus)	
)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION)	
)	
Defendants.)	

TO: DOUGLAS E. LEADBITTER, ATTORNEY FOR DEFENDANT WELLS FARGO, NA:

The Plaintiff, Eddie B. Lewis, Jr., by and through his undersigned counsel, hereby submits the following Memorandum in response to Defendant Wells Fargo, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCP. The Honorable Judge Deadra Jefferson granted Saul's Motion for Summary Judgment on March 17, 2020.

PROCEDURAL HISTORY

On December 5, 2018, Plaintiff Eddie R. Lewis (Plaintiff) filed a Complaint against Defendants Saul and Wells Fargo based on negligence and premises liability. Plaintiff then filed an Amended Complaint on January 7, 2019. On January 17, 2019, Saul files its Answer to the Plaintiff's Amended Complaint. On February 11, 2019, Wells Fargo files it Answer to the Plaintiff's Amended Complaint, which does not contain any cross claims against Saul.

On June 27, 2019, Plaintiff served both Wells Fargo and Saul with his first set of interrogatories and request for production. Saul provided their responses within 30 days of the request, however Wells Fargo failed to timely respond to this discovery request. On December

11, 2019, counsel for the Plaintiff wrote a Rule 11 letter to Wells Fargo's Attorney at the time, Laura Robinson, requesting that they respond within ten (10) days. On December 11, 2019, Plaintiff served his second set of interrogatories and request for production on Wells Fargo. Wells Fargo failed to timely respond to that set of discovery requests as well.

On January 23, 2020, counsel for the Plaintiff again wrote Laura Robinson a Rule 11 letter requesting responses to both sets of discovery within ten (10) days. The following day, Laura Robinson indicated that discovery responses would be provided on January 27, 2020. However, Wells Fargo failed to comply with that request as well. Therefore, on February 14, 2020, Plaintiff filed a Motion to Compel responses to both sets of discovery, the first set being nearly seven (7) months past due. (See Mot. To Compel, filed Feb. 14, 2020)

During this time, Saul moved for Summary Judgment as to the Plaintiff's Amended Complaint on January 20, 2020, based on the terms of the Lease.

On March 5, 2020, all parties were notified that both the Motion to Compel and the Motion for Summary Judgement were scheduled to be heard on March 17, 2020. Nonetheless, Wells Fargo failed to respond to the outstanding discovery requests.

On March 13, 2020, Laura Robinson contacted counsel for the Plaintiff and informed him that she was leaving the law firm of Vernis and Bowling and that Charles Blackburn would be taking over the case. She then asked if the Plaintiff would consent to continue the Motion to Compel scheduled for the next week. Counsel for the Plaintiff agreed to a Consent Order that would require that Wells Fargo provide responses within thirty (30) days of the Order.

On the morning of March 17, 2020, Charles Blackburn called counsel for the plaintiff and confirmed that a Consent Order would be entered on the Motion to Compel scheduled to be heard at 10:00 a.m. that day. Mr. Blackburn agreed to prepare the Consent Order and submit it for

signature. He then informed counsel for the Plaintiff that he would not be attending the hearing that day.

On March 17, 2020, the Honorable Judge Deadra Jefferson heard arguments on Saul's Motion of Summary Judgment. Counsel for the Plaintiff and Saul were present for this hearing, however, counsel for Wells Fargo failed to appear. Counsel for the Plaintiff informed the Court that the Motion to Compel was resolved on a Consent Order and that Mr. Blackburn indicated that he was not going to attend the hearing.

Notwithstanding the agreement made by Mr. Blackburn, Wells Fargo still failed to respond to the outstanding discovery requests and failed to submit the proposed Consent Order. Therefore, on June 18, 2020, Plaintiff's counsel wrote counsel for Wells Fargo requesting discovery answers. No answers were received prompting Plaintiff's counsel to file a second Motion to Compel Discovery on July 1, 2020. This Motion to Compel hearing took place via Webex on August 6, 2020 and was heard by the Honorable Judge Brooks P. Goldsmith. Present and appearing were Plaintiff's Counsel and Wells Fargo Counsel, Charles Blackburn. Prior to the hearing, the parties notified the Court that they had reached an agreement. The Plaintiff would agree to continue the Motion to Compel, and Wells Fargo would answer outstanding discovery within thirty (30) days of August 6, 2020. Ultimately, Wells Fargo began to provide responses to discovery on August 31, 2020.

PLAINTIFF'S RESPONSE

In this action, it is uncontested that either Saul or Wells Fargo was responsible for the area of the subject property where the Plaintiff was injured. No other person or entity had any ownership or control of this property. No party to this action has ever asserted that any other person

or entity had ownership or control of this property. Therefore, the issue of the control of the property and the resulting duty to business invitees became a disagreement between Saul and Wells Fargo.

When Saul filed the Motion for Summary judgement, it was clear that the motion was made solely on the argument that Wells Fargo was the only entity that had control of the property and a resulting duty to business invitees. Saul did not argue that the property was not unreasonably dangerous. Nor did Saul argue that the condition of the property was not the proximate cause of the Plaintiff's injuries. While procedurally the Motion was directed to the Plaintiff, it was clear that Saul was seeking a ruling that, as a matter of law, it had no control of the property and therefore Wells Fargo had to be the party that had such control and the resulting legal duty.

The Plaintiff had filed two separate sets of discovery requests that were ignored by Wells Fargo. When the motion for Summary Judgement was filed, Wells Fargo had almost two months to produce answers and documents to refute the arguments forwarded by Saul. It would be reasonable to assume that since Wells Fargo did not produce any documents or other evidence to refute Saul's argument, file any responsive memorandum, or even attend the hearing, that Wells Fargo either could not refute the argument or simply acquiesced to it.

The Order on the Summary Judgement Motion issued by the Court reflected the conclusion that because Wells Fargo had exclusive control of the property in question, they had the resulting duties to business invitees. That is the argument that Saul forwarded in their Motion and attached exhibits. Wells Fargo had the opportunity to oppose that argument but simply chose not to.

The Motion to Set Aside Judgement makes assertions concerning Saul's arguments leading up to and during the hearing on their Summary Judgement Motion. The Plaintiff is simply not in a position to respond to the assertions. Furthermore, Wells Fargo has not clearly identified which

arguments constitute misrepresentation, nor have they presented any affidavits or other filings to support the claims. Without more, the Plaintiff is not able to address Wells Fargo's assertions.

RESPECTFULLY SUBMITTED,

/s/ Cory H. Fleming
Cory H. Fleming
Moss, Kuhn & Fleming, P.A.
SC Bar #: 6999
P O Drawer 507
Beaufort, South Carolina 29901
(843) 524-3373 telephone
(843) 524-1302 fax
Attorneys for Eddie B. Lewis, Jr.

Beaufort, South Carolina
July 2, 2021

EXHIBIT 8

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.,)	
)	
Plaintiff,)	**ORDER GRANTING DEFENDANT SAUL, LLC'S MOTION FOR SUMMARY JUDGMENT**
)	
vs.)	
)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant Saul, LLC's Attorney:	John Dodds, Jr., Esq.
Date of Hearing:	March 17, 2020
Court Reporter:	Karen Andersen

This matter came before the Court on March 17, 2020 for a hearing on Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"), filed January 20, 2020. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law and Grants Saul's Motion for Summary Judgment.[1]

FINDINGS OF FACT

Saul is the owner of certain real property and improvements located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto, Defendant Wells Fargo National Association ("Wells Fargo") leased the subject property from Saul pursuant to a written lease agreement (the "lease"). The lease term is September 22, 2004 to September 30, 2024. Lease at § 1.1(a).

[1] Counsel for the Plaintiff was provided with a copy of the proposed Order and had no objection to the relief sought or the verbiage contained herein.

Pursuant to the terms of the lease, Saul "shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings . . . ." Id. at § 5.5(a). With respect to Wells Fargo's repair and maintenance obligations, the lease states:

> Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises . . . .

Id. at § 5.6(a).

The lease also provides that Wells Fargo shall have its own parking area, known under the lease as the "Tenant Dedicated Parking Area." Section 1.2 of the lease states that Wells Fargo shall be entitled to use, "on an exclusive basis," the Tenant Dedicated Parking Area. Id. No other person or entity besides Wells Fargo and its customers is permitted to use the Tenant Dedicated Parking Area. Id.

During the lease term, Wells Fargo exercised control over the Tenant Dedicated Parking Area, hiring a property management company to inspect the area and oversee any necessary maintenance and repairs. Saul was never notified by Wells Fargo of any need for repairs and maintenance to the Tenant Dedicated Parking Area, and Wells Fargo completed any maintenance and repairs without permission or consent from Saul. See Aff. of Harnett at ¶ 7. Saul never undertook any maintenance or repairs to the Tenant Dedicated Parking Area during the lease term. Id. at ¶ 8.

On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank at the subject property. Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the "incident"). Id. at

¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically, as it relates to Saul, Plaintiff alleges that Saul had a duty "to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." Amend. Compl. at ¶ 12.

At the hearing, counsel for the Plaintiff stated that the Plaintiff does not disagree with the above facts, and does not disagree with Saul's interpretation of the lease agreement.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id.

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See, e.g., Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231, 237 (2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Platt v. CSX Transp., Inc., 388 S.C. 441, 697 S.E.2d 575, 577 (2010). "Without a duty, there is no actionable negligence." Id. "The existence of a duty owed is a question of law for the courts." Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 651 S.E.2d 305, 309 (2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 211 S.C. 209, 44 S.E.2d 314, 317 (1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). "In the absence of an agreement to the contrary, the lessor surrenders

possession and control of the land to the lessee" and "typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." Id. (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on the Law of Torts § 434 (5th ed. 1984)).

Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term. Further, the Tenant Dedicated Parking Area is not considered a "common area" under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

During Wells Fargo's tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same. Accordingly, Saul cannot be held liable under South Carolina's premises liability laws for property over which Saul had no control.

Accordingly, after careful consideration of the record, the Court finds that no genuine issue of material fact exists as to the question of Saul's liability. By the terms of the parties' lease agreement, Saul had no duty to maintain or inspect the Tenant Dedicated Parking Area, and therefore cannot be liable for the Plaintiff's injuries. Plaintiff does not contest the facts as stated supra or the legal interpretation of the parties' lease agreement. It appearing that further inquiry into the facts of the case is not necessary clarify the application of the law, and that there is no dispute as to evidentiary facts or as to the conclusions or inferences to be drawn from them, Saul's Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

March _____, 2020
Charleston, South Carolina
At Chambers

EXHIBIT 8

Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

EXHIBIT 8-A

Certificate of Electronic Notification

Recipients

Laura Robinson - Notification transmitted on 03-24-2020 03:56:36 PM.

Morgan Templeton - Notification transmitted on 03-24-2020 03:56:36 PM.

David Nasrollahi - Notification transmitted on 03-24-2020 03:56:36 PM.

John Dodds - Notification transmitted on 03-24-2020 03:56:36 PM.

Cory Fleming - Notification transmitted on 03-24-2020 03:56:36 PM.

Charles Blackburn - Notification transmitted on 03-24-2020 03:56:36 PM.

EXHIBIT 8-A

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP0702378

Official File Stamp:	03-24-2020 03:56:28 PM
Court:	CIRCUIT COURT
	Common Pleas
	Beaufort
Case Caption:	Eddie B Lewis Jr VS Saul Llc , defendant, et al
Document(s) Submitted:	Order Granting Saul LLC Motion for Summary Judgment Order/Summary Judgment
Filed by or on behalf of:	Deadra L. Jefferson

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Morgan S. Templeton for Saul Llc

John Joseph Dodds, IV for Saul Llc

Charles Grant Blackburn for Wells Fargo Bank National Association

David Ali Nasrollahi for Saul Llc, Saul, Llc

Cory Howerton Fleming for Eddie B Lewis, Jr

Laura W Robinson for Wells Fargo Bank National Association, Wells Fargo Bank, National Association

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

EXHIBIT 9

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Eddie B. Lewis, Jr., Plaintiff, vs. Saul, LLC and Wells Fargo Bank, NA, Defendant.	IN THE COURT OF COMMONS PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No. 2018-CP-07-02378 **DEFENDANT WELLS FARGO MOTION TO SET ASIDE JUDGMENT PURSUANT TO RULE 60, SCRCP**

YOU WILL PLEASE TAKE NOTICE that Co-Defendant Wells Fargo Bank, NA ("Wells Fargo"), by and through its undersigned attorney, will move for an Order pursuant to Rule 60, SCRCP seeking relief from a judgment order.

Wells Fargo seeks relief from the Order Granting the Defendant Saul, LLC ("Saul") Summary Judgment which was entered by the Court on March 24, 2020. This motion is made in accordance with the South Carolina Rules of Civil Procedure, and will be supported by sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law In Support.

The Motion is based on the following:

1. Pursuant to Rule 60, SCRCP this motion is timely because it has been filed within one (1) year of the date the Honorable Deadra L. Jefferson entered the Order granting Saul's Motion for Summary Judgment.
2. Wells Fargo submits it is entitled to relief under Rule 60(b)(3), SCRCP because Saul's Summary Judgment Motion argument and supporting Affidavit contained significant misrepresentations as to the contractual relationship of the Parties.
3. Wells Fargo further submits that there were significant misrepresentations by Saul as to the responsibility for the condition and maintenance of the common areas, parking lot, and

landscaped areas of subject leased premises pursuant to the clear and unambiguous terms of the binding Lease agreement entered into between Wells Fargo and Saul.

4. The misrepresentations regarding the terms of the binding Lease are the cornerstone of any potential culpability or responsibility for the claims made by Plaintiff in this matter.

5. Wells Fargo further submits it is entitled to relief under Rule 60(b)(2), SCRCP, based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCP.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter
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ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

EXHIBIT 10

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Eddie B. Lewis, Jr., Plaintiff, v. Saul, LLC and Wells Fargo Bank, National Association, Defendants.	)	IN THE COURT OF COMMON PLEAS IN THE FOURTEENTH CIRCUIT C.A. NO.: 2018-CP-07-02378 **DEFENDANT WELLS FARGO BANK, NATIONAL ASSOCIATION MEMORANDUM OF LAW IN SUPPORT OF RULE 60, SCRCP MOTION**

PROCEDURAL HISTORY

This matter comes before the Court by way of a Motion to Set Aside an Order granting summary judgment pursuant to Rule 60, SCRCP filed by Defendant Wells Fargo Bank, National Association ("Wells Fargo").

Saul, LLC ("Saul") previously was granted summary judgment on March 24, 2020. Laura Robinson contacted opposing counsel on March 13, 2020 and informed them of her immediate resignation from Vernis & Bowling and that Charles Blackburn would be taking over. Laura Robinson asked opposing counsel to consent to a continuance in an email, but that consent was not given. *See, Exhibit A - Emails.*

Charles Blackburn filed a notice of appearance on March 16, 2020 however, for reasons unknown, Mr. Blackburn did not attend the hearing on March 17, 2020 and did not file a response to the Order after it was entered.

FACTUAL BACKGROUND

This is a premises liability case that arose out of an alleged trip and fall by the Plaintiff, Eddie Lewis, at a banking location in Beaufort, South Carolina that was formerly leased by Wells Fargo. Wells Fargo leased the subject premises from Saul, LLC.

Saul, LLC filed a Motion for Summary Judgment asserting that various provisions in the Wells Fargo lease proved that Saul, LLC gave Wells Fargo "complete control" of the parking lot and the "tenant dedicated parking", therefore Saul was not responsible to Plaintiff for his alleged injuries as a matter of law.

STANDARD OF REVIEW

Rule 60, SCRCP gives the Court broad discretion, in the interest of justice to seek relief from a final judgment, order, or proceeding for a fraud upon the Court.

ARGUMENT

I. The factual assertions and legal arguments made by Saul, LLC in the summary judgment motion and affidavit constituted a lack of candor to the Court.

Saul, LLC's owner, Esther Shaver Harnett, made numerous factual claims in an affidavit which was submitted in support of Saul's summary judgment motion. Her sworn statement contained misrepresentations, or at best, half-truths that blatantly lack candor to the Court regarding the lease with Wells Fargo, which constitute a fraud upon the Court. Ms. Harnett stated that she gave Wells Fargo "complete control of the parking lot pursuant to the terms of the lease". *See, Exhibit B - Affidavit of Esther Harnett.*

A Wells Fargo employee, Mr. Gerald Scott Wooten, has provided a sworn affidavit concerning the lease and the control of the leased property that are wholly opposite of Harnett's affidavit. Mr. Wooten's affidavit states that control of the common areas was never given to

Wells Fargo pursuant to the lease or otherwise. *See, Exhibit C - Affidavit of Gerald Scott Wooten.*

To the contrary, very specific lease provisions that Saul had with Wells Fargo (the relevant portions of which have never been edited, altered, or re-negotiated) directly address the responsibility of the landlord to make repairs and maintain the common areas. Another critical lease provision, which was not provided to the Court at the summary judgment motion hearing, actually defines the common areas. *See, Exhibit E - Lease Common Areas Definition.* This lease provision is very specific and clearly identifies the parking lot, sidewalks, and landscaped areas as common areas. The provisions make the landlord solely responsible for all common areas which include the parking lot, sidewalks, and landscaped areas. The lease provisions on page 72 of the lease at Section 5.5 "Repairs By Landlord" in clear and unambiguous language dictates that Saul as the Landlord is responsible to repair and maintain the common areas which include the parking lot, sidewalks, and landscaped areas; *See, Exhibit D - Lease Repairs By Landlord (actual copy); See also, Exhibit C - Affidavit of Gerald Scott Wooten.*

It must be noted that the "Repairs By Landlord" provision of the lease is actually partially quoted in the proposed subject Order (presented by Saul to the Court). However, closer scrutiny of the language of the Order and a comparison to the lease language reveals the Order is actually confusing mishmash of quotes from different sections of the lease. *See, Exhibit D - Lease, Repairs by Tenant.*

As can clearly be seen in the actual copy of the lease, and the provisions quoted in the subject Order are confusing. This "cherry-picking" or combination of portions of different lease provisions is another example of the lack candor to the Court.

As further proof of the lack of candor to the Court, Saul ignored the Plaintiff's sworn testimony about the fall. Plaintiff testified in his deposition exactly where he was traversing, which was on a common area (landscaped area) that the Plaintiff and his counsel has asserted "looked like a sidewalk". The Plaintiff wasn't traversing the parking lot, but was in a common area, as defined in the lease. *See, Exhibit E - Lease Common Areas Definition.*

To be sure, the sidewalk and the landscape surround area where the Plaintiff fell is adjacent to the parking lot. When Plaintiff lost his balance or tripped, he landed *in* an adjacent parking lot space. The parking lot itself was not alleged to have been the source of the hazard. This may seem like a trivial factual distinction, but it is important in the context of candor to the Court. Saul knew where and how Plaintiff testified he fell. Saul's sworn affidavit and the resulting subject Order with findings of fact regarding the parking lot and Plaintiff's fall contradict the facts of this case which have been confirmed through discovery.

In South Carolina, in premises liability cases lessors (landlords) have a duty to maintain common areas that remain under the control of the lessor pursuant to a lease agreement. Conner v. Farmers and Merchants Bank, 243 S.C. 132, 132 S.E.2d 385 (1963) (lease imposed duty on landlord to keep rented premises in repair). Interestingly, there is no mention in the Harnett affidavit of common areas, sidewalks, or landscaping which Saul is *also* clearly responsible for pursuant to the lease.

Saul's presentation of the facts and evidence to support the summary judgment motion focusing on the parking lot were on their face an attempt to do an end-around premises liability law with misrepresentations about the subject lease, the parking lot, and the circumstances of the subject accident, which at best, showed a lack of candor to the Court.

II. After discovered evidence consisting of boastful comments made by Esther Harnett to a Wells Fargo employee months after the Summary Judgment Order are additional proof of the lack of candor to the Court.

Esther Harnett boasted about grant of summary judgment after the fact implying her success in Court was not legitimate as if she had gotten away with something. Wells Fargo was moving out of the leased premises at the end of the lease term months after the grant of summary judgment. Esther Harnett had an in-person meeting with Ervin H. Weatherly, the Wells Fargo Property Portfolio Manager, during this process. In this meeting, Esther Harnett stated to Mr. Weatherly in a mocking tone she was able to use "nasty letters" written by another Wells Fargo employee, Richard Belthoff about the parking lot and parking spaces against Wells Fargo. She further boasted that she got the case dismissed because Wells Fargo is a bunch of idiots. *See, Exhibit F - Affidavit of Ervin H. Weatherly*. Mr. Weatherly was aware of the letters and the issues with the parking lot that Ms. Harnett was referring to and believes that she was bragging about her misrepresentations in her affidavit. *See, Exhibit F - Affidavit of Ervin H. Weatherly*. The boastful comments by Harnett is further proof of the lack of candor to the Court regarding the lease and the "facts" of Harnett's affidavit, which was offered as support for the subject Order.

III. If Wells Fargo is not a party to the subject Order granting summary judgment, then no part of any finding of fact or conclusion of law in favor of Saul, LLC is applicable or binding on Wells Fargo

The subject Order findings of fact and conclusions of law are not binding on Wells Fargo. According to argument B submitted by Saul, LLC in it's Memorandum of Law, Saul asserts that Wells Fargo was not a party to the subject Order granting summary judgment. If that assertion is correct, then none of the Order findings of fact concerning any aspect of the subject lease is binding in any way in this action, or in any other action, on Wells Fargo. Recently, Wells Fargo made a demand for indemnification pursuant to the subject lease after the Order granting

summary judgment was entered. It must be noted that while Saul, LLC has asserted the lack of standing argument to the Court in it's Memorandum of Law, in recent written correspondence to the undersigned in response to Wells Fargo's demand for indemnification, Saul unequivocally stated that the subject Order granting summary judgment was binding on Wells Fargo. *See, Exhibit G - Correspondence from Morgan Templeton.*

We believe, based on the lack of candor to the Court, that the subject Order granting the summary judgment should simply be vacated as argued hereinabove. However, Saul should not be able to assert both positions: (a) that Wells Fargo was not a party to the subject Order granting summary judgment and cannot challenge the finding of fact and conclusions of law, and (b) the subject Order is nevertheless binding on Wells Fargo. If the Court does not vacate the Order in it's entirety, then according to Saul's own argument, the subject Order should not be binding in any way on Wells Fargo since a determination that it is binding would result in a fundamental unfairness to Wells Fargo under the circumstances of this case.

In sum, Saul went to great lengths to include findings of fact in the subject Order granting summary judgment to establish that Saul had purportedly given control of the parking lot to Wells Fargo. First, Saul ignored or told half-truths, and perhaps even misrepresented the binding lease provisions and definitions concerning the common areas, the parking lot, the sidewalks, and the landscaping areas of the leased premises. Second, Saul made confusing factual statements and half-truths about the lease terms and which entity was responsible for or controlled the parking lot; Third, Saul exaggerated trivial and irrelevant past disputes with Wells Fargo over the parking lot (which are entirely irrelevant to this case) to make the bogus assertion that Wells Fargo "controlled" the parking lot. Fourth, Saul ignored the sworn testimony of the Plaintiff about the location of the fall; Fifth Harnett about her Court success implying it was not

legitimate. Considering all of the above, the subject Order holding that Saul has no duty to Plaintiff was based on a combination of twisted facts that wholly lack credibility and a troubling lack of candor to the Court, which constitutes a fraud upon the Court. The result has been a miscarriage of justice against Wells Fargo. In the interest of justice and fairness, the subject Order granting summary judgment should be vacated.

CONCLUSION

For the reasons stated herein, this Court should grant the relief sought by Wells Fargo and vacate the subject Order granting summary judgment; or in the alternative, issue an Order that the findings of fact and conclusions of law in the subject Order granting Summary Judgment are in no way binding on Wells Fargo for any purpose in this action or in any other action.

VERNIS & BOWLING OF COLUMBIA, LLC

s/ Douglas E. Leadbitter
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Attorneys for Defendant Wells Fargo Bank National Association

EXHIBIT 11

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	Case No.: 2018-CP-07-02378
EDDIE B. LEWIS)	
Plaintiff,)	
)	**ORDER ON WELLS FARGO'S MOTION TO SET ASIDE JUDGMENT PURSUANT TO RULE 60, SCRCP**
v.)	
)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION,)	
Defendants.)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant's Attorney, Saul, LLC:	John Dodds, Jr., Esq. and Morgan Templeton, Esq.
Defendant's Attorney, Wells Fargo Bank:	Douglas E. Leadbitter, Esq.
Date of Hearing:	March 17, 2020 & March 23, 2021
Court Reporter:	Karen Andersen

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCP, filed March 19, 2021. Wells Fargo asks the Court to reconsider its Order Granting Saul, LLC's Motion for Summary Judgment, filed March 24, 2020. The Court received a copy of the Motion to Set Aside Judgment on March 23, 2021 via email from the Beaufort County Clerk of Court.[1] Defendant Saul, LLC ("Saul, LLC") filed its response to Wells Fargo's Motion to Set Aside Judgment on March 31, 2021. The Plaintiff filed his response to Wells Fargo's Motion to Set Aside Judgment on July 2, 2021. Wells Fargo filed its Memorandum in Support on July 6, 2021. Saul, LLC filed its Reply on July 9, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the

[1] This Motion was sent to the Court by the Clerk of Court's Office as it perceived it to be in the nature of a Motion for Reconsideration of Judgment. Although this Court did not retain jurisdiction of this matter, it is in the best posture to dispose of the Motion, as this Court heard the underlying Motion for Summary Judgment giving rise to the present Motion to Set Aside Judgment.

ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.[2]

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." Id. at 1:15:00-1:15:15.[3]

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. Id. at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

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[2] This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994) and pursuant to the Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4). However, the Court held two (2) conference calls with counsel to afford the Plaintiff and Defense counsel time to resolve the matter without the necessity of the Court ruling on the merits of the motion. Counsel for Saul, LLC failed to see the wisdom of this option and declined the opportunity.

[3] In conjunction with this motion it was subsequently revealed that Laura Robinson sent an email to Cory Fleming and Morgan Templeton on March 13, 2020, advising that Ms. Robinson was resigning from the firm that represents Wells Fargo, and seeking Mr. Fleming and Mr. Templeton's consent to continue the March 17, 2020 hearing. See Exhibit A to Wells Fargo's Memorandum in Support. Mr. Fleming consented to a continuance of the hearing, and Mr. Templeton did not. Id. At the hearing the Court was never made aware and was not privy to the request by Ms. Robinson or the communication between counsel regarding the issue. If the Court had been aware of Ms. Robinson's request it would have been granted. Subsequently, the Court was advised that Charles Blackburn resigned from the firm shortly after Ms. Robinson's departure.

supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.[4] The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.[5] Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

[4] The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

[5] The Court's staff received the proposed consent order granting summary judgment on March 18, 2020 from Mr. Dodd's staff. Laura Robinson was copied on the email. However, Charles Blackburn was not.

not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." Id. "[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute." Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

"A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge." Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCP permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC's Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC's Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff's injuries. Rather, the findings contained in the Order interpret a lease, determine

culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.[6]

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

[6] While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

623, 631, 813 S.E.2d 686, 690 (2018). However, "[t]he one year limit is a non-discretionary mandate . . .." Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC's Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo's representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC's Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff's cause of action and assigned liability for the Plaintiff's injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.[7] Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC's Motion for Summary Judgment. "This is consistent with South Carolina's policy favoring the disposition

[7] Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

of issues on their merits rather than on technicalities." Mictronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. Appt. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) ("Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial").

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.[8]

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

[8] The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.

EXHIBIT 11

Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Set Aside Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 18 2021
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2021-001170

Eddie B. Lewis. . . . . Plaintiff

v.

Saul, LLC and Wells Fargo Bank National Association, ... Defendants

Of Whom Saul, LLC is the Appellant and Wells Fargo Bank National Association is a Respondent.

PROOF OF SERVICE

I, Morgan S. Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served the Appellant's Memorandum in Support of Its Right to Appeal, by electronic mail on December 9, 2021 addressed as follows to counsel of record:

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Dated this 9th day of December, 2021.

WALL Ttempleton & HALDRUP, P.A.

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December 9, 2021

The Honorable Jerry Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Eddie B. Lewis, Jr v. Saul, LLC, et al*
Case No: 2021-001170
Insured: Saul, LLC
Claim No.: 300-0011686-2019

Dear Mr. Kitchings:

Please find enclosed an original and seven copies of Appellant's Memorandum Return to Respondent Eddie B. Lewis' Motion to Dismiss and Proof of Service in the above referenced matter. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to all counsel of record, I am serving them with the enclosed Appellant's Memorandum Return to Respondent Eddie B. Lewis' Motion to Dismiss and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

David A. Nasrollahi

DAN/sjs
enclosures
cc: H. Fred Kuhn, Jr., Esquire (*w/ encl, via electronic mail only)*
Douglas E. Leadbitter, Esquire (*w/ encl, via electronic mail only*)