

FILE COPY

DO NOT REMOVE

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JOHN SKIDMORE DEVELOPMENT, INC.,
a West Virginia corporation;

Petitioner,

v.

CIVIL ACTION NO. 19-P-23
Circuit Court of Braxton County, West Virginia

SISTERS' ANTIQUE MALL, INC.,
a West Virginia corporation; and
DUNLAP RENTAL, L.L.C., a
West Virginia limited liability company;

Respondents.

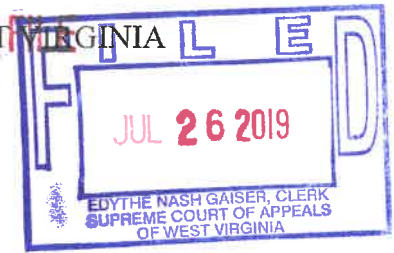
TO: THE HONORABLE CHIEF JUSTICE ELIZABETH D. WALKER

MOTION TO REFER CASE TO BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Petitioner, John Skidmore Development, Inc. ("Petitioner"), by counsel, respectfully requests that the above-styled civil action be referred to the Business Court Division. In support of his Motion, Petitioner states as follows:

NATURE OF CASE

1. Petitioner filed a petition (the "Petition") in the Circuit Court of Braxton County, West Virginia, for declaratory relief pursuant to W. Va. Code § 55-13-2 to declare contractual rights under that certain ground lease agreement ("Ground Lease Agreement") entered into by Petitioner and Sisters' Antique Mall, Inc. ("Sisters' Antique Mall"). The Petition is brought against Sisters' Antique Mall and Dunlap Rental, L.L.C. (collectively, the "Respondents") and seeks declaration of contractual provisions related to the valuation of Respondents' leasehold interest in a building (the "Building") situated on the leased premises. The Building houses numerous antique vendors, each occupying separate and divided portions of the Building. On July



19, 2019, Respondents filed an answer to the Petition, along with a complaint. Both of Respondents' filings illustrate the complex nature of the interpretation of the Ground Lease Agreement.

2. The above-styled civil action requires specialized treatment due to inherent complex issues associated with interpreting commercial leases and the valuation of leasehold interests. Because the principal claims in this matter fall within the jurisdiction of the Business Court Division, referral is proper.

LEGAL STANDARD

3. West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial Court Rules ("TCR") provide that civil actions which constitute "Business Litigation" are eligible for transfer to the West Virginia Business Court Division.

4. "Business Litigation" is defined by TCR 29 as a civil action in which:

(1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and

(2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and

(3) the principal claim or claims do not involve [consumer litigation].

TCR 29.04(a).

5. Under TCR 29, any party or judge may seek a referral of "Business Litigation" to the Business Court Division by filing a Motion to Refer with the Clerk of this Court, after the time to answer the complaint has expired. See TCR 29.06(a)(1). "A copy of the

complaint, answer, docket sheet and any other documents that support referral under Trial Court Rule 29.04(a) shall be attached to the motion.” *Id.*

6. As required by TCR 29.06(a), a true and accurate copy of Petitioner’s Petition for Declaratory Judgment to Declare Rights under Lease Agreement is attached hereto as **Exhibit A**. Second, a true and accurate copy of the Answer and Complaint is attached hereto as **Exhibit B**. Finally, a true and accurate copy of the docket sheet is attached hereto as **Exhibit C**.

ANALYSIS

7. Civil actions that satisfy the definition of “business litigation” may be properly transferred to the Business Court Division. As defined by TCR 29.06, “business litigation” encompasses cases where the principal claims involve matters of significance to the transactions, operations, or governance between business entities.

8. Here, the Petition requests interpretation of a complex commercial lease between business entities – specifically, the interpretation of a purchase option granted to Petitioner and, to the extent Respondents complied with that provision, the valuation of Respondents’ leasehold interest in the Building. In analyzing the Petitioner’s requests for declaration, a court must analyze Respondents’ future revenue streams against Respondents’ future rental obligations owed to Petitioner and discount the same to present value. The relief sought quite clearly involves matters of significance to the interpretation of a complex commercial lease and potential transaction between business entities and, thus, is properly defined as “business litigation.”

9. “Business litigation” is further defined as a dispute that “presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for

specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” The issues likely to arise in the present litigation are complex in nature and require specialized knowledge and expertise in order to reach a fair and reasonable resolution. The Ground Lease Agreement is inherently complex, and requires a firm understanding of financial valuations, including discounting revenue streams to present value, and analyzing divergent appraisal methods. Because disposition of this matter requires specialized knowledge and familiarity, this case is properly defined as “business litigation.”

10. Further, the principal claims in this case do not involve any of the categories of claims excluded from the definition of Business Litigation listed in TCR 29.04(a)(3) – e.g., consumer litigation.


11. Therefore, in light of the commercial nature of this dispute and the need for specialized treatment due to the complex legal issues, the principal claims in this case fall within the jurisdiction of the Business Court Division.

12. As required by TCR 29.06(a)(1), Petitioner states that it is unaware of any pending or future actions related to the parties’ controversy.

WHEREFORE, Petitioner John Skidmore Development, Inc., pursuant to West Virginia Trial Court Rule 29.06, respectfully moves the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

JOHN SKIDMORE DEVELOPMENT, INC.

By counsel,



J. Mark Adkins (WVSB 7414)
Emily R. Lambright (WVSB 11073)
Zachary J. Rosencrance (WVSB 13040)
BOWLES RICE LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325
Telephone: (304) 347-1100
Facsimile: (304) 347-1746



West Virginia E-Filing Notice

CC-04-2019-P-23

Judge: Richard Facemire

To: J. Adkins
madkins@bowlesrice.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF BRAXTON COUNTY, WEST VIRGINIA
John Skidmore Development, Inc. v. Sisters' Antique Mall, Inc.
CC-04-2019-P-23

The following complaint was FILED on 5/23/2019 3:21:58 PM

Notice Date: 5/23/2019 3:21:58 PM

Susan Lemon
CLERK OF THE CIRCUIT
Braxton
300 Main Street, Room 101
SUTTON, WV 26601

(304) 765-2837
susan.lemon@courtsww.gov

EXHIBIT
A

COVER SHEET

E-FILED | 5/23/2019 3:21 PM
CC-04-2019-P-23
Braxton County Circuit Clerk
Susan Lemon

GENERAL INFORMATION

IN THE CIRCUIT COURT OF BRAXTON COUNTY WEST VIRGINIA

John Skidmore Development, Inc. v. Sisters' Antique Mall, Inc.

First Plaintiff:

☒ Business

☐ Individual

☐ Government

☐ Other

First Defendant:

☒ Business

☐ Individual

☐ Government

☐ Other

Judge:

Richard Facemire

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings

Complaint Type: Other

Origin:

☒ Initial Filing

☐ Appeal from Municipal Court

☐ Appeal from Magistrate Court

Jury Trial Requested:

☐ Yes ☒ No

Case will be ready for trial by: _____

Mediation Requested:

☐ Yes ☒ No

Substantial Hardship Requested:

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

☐ Wheelchair accessible hearing room and other facilities

☐ Interpreter or other auxiliary aid for the hearing impaired

☐ Reader or other auxiliary aid for the visually impaired

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: J. Adkins, P.O. Box 1386, Charleston, WV 25325

SERVED PARTIES

Name: Sisters' Antique Mall, Inc.

Address: 1954 Sutton Lane, Sutton WV 26601

Days to Answer: 30

Type of Service: Secretary of State - Certified - Including Copy Fee

Name: Dunlap Rental, L.L.C.

Address: 1954 Sutton Lane, Sutton WV 26601

Days to Answer: 30

Type of Service: Secretary of State - Certified - Including Copy Fee

IN THE CIRCUIT COURT OF

BRAXTON

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)
I. CASE STYLE:

Case No. 19-P-

Plaintiff(s)**Judge:**

John Skidmore Development, Inc.

vs.

Defendant(s)**Days to
Answer****Type of Service**

Sisters' Antique Mall, Inc.

30

Secretary of State

Name

1954 Sutton Lane

Street Address

Sutton, West Virginia 26601

City, State, Zip Code

II. TYPE OF CASE:

- ☐ General Civil
- ☐ Mass Litigation [As defined in T.C.R. 26.04(a)]
- ☐ Asbestos
- ☐ FELA Asbestos
- ☐ Other: _____
- ☐ Habeas Corpus/Other Extraordinary Writ
- ☐ Other: _____

- ☐ Adoption
- ☐ Administrative Agency Appeal
- ☐ Civil Appeal from Magistrate Court
- ☒ Miscellaneous Civil Petition
- ☐ Mental Hygiene
- ☐ Guardianship
- ☐ Medical Malpractice

III. JURY DEMAND: ☐ Yes ☒ No CASE WILL BE READY FOR TRIAL BY (Month/Year): ____ / ____

**IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?**
☐ Yes ☒ No
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Interpreter or other auxiliary aid for the deaf and hard of hearing
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Foreign language interpreter-specify language: _____
- ☐ Other: _____

Attorney Name: J. Mark Adkins (WVSB #7414)

Firm: Bowles Rice LLP

Address: 600 Quarrier Street, Charleston, West Virginia 25301

Telephone: (304) 347-1768

Representing:

- ☒ Plaintiff ☐ Defendant
- ☐ Cross-Defendant ☐ Cross-Complainant
- ☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant

☐ Proceeding Without an Attorney

Original and _____ copies of complaint enclosed/attached.

Dated: 05 / 23 / 2019

Signature: _____

Plaintiff: John Skidmore Development, Inc. , et al **Case Number:** 19-P-
vs.
Defendant: Sisters' Antique Mall, Inc. , et al

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

Dunlap Rental, L.L.C.

Defendant's Name

1954 Sutton Lane

Street Address

Sutton, West Virginia 26601

City, State, Zip Code

Days to Answer: 30

Type of Service: Secretary of State

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer:

Type of Service:

IN THE CIRCUIT COURT OF BRAXTON COUNTY, WEST VIRGINIA

JOHN SKIDMORE DEVELOPMENT, INC.,
a West Virginia corporation;

Petitioner,

v.

CIVIL ACTION NO. 19-P-_____

SISTERS' ANTIQUE MALL, INC.,
a West Virginia corporation; and
DUNLAP RENTAL, L.L.C., a
West Virginia limited liability company;

Respondents.

**PETITION FOR DECLARATORY JUDGMENT
TO DECLARE RIGHTS UNDER LEASE AGREEMENT**

Comes now Petitioner, John Skidmore Development, Inc. ("Skidmore Development"), by and through its counsel, Bowles Rice LLP, and files the instant Petition for Declaratory Judgment to Declare Rights under Lease Agreement (this "Petition") pursuant to West Virginia Code § 55-13-2 and alleges in support thereof as follows:

NATURE OF ACTION

The purpose of this Petition is to seek declaration from this Court that (1) the Respondents have not triggered Section 6(h)(ii) of the Ground Lease Agreement, (2) the Ground Lease Agreement vests free and clear title to the Building in the Petitioner upon its expiration or termination and (3) in the alternative, if the Court determines that Respondents have triggered Section 6(h)(ii) of the Ground Lease Agreement, or will trigger Section 6(h)(ii) in the future, declare that Respondents' interest is limited to the remainder fair market value of the leasehold interest in the Building.

PARTIES

1. Petitioner, Skidmore Development, is a West Virginia corporation, whose principal place of business is in Braxton County, West Virginia.

2. Upon information and belief, Respondent Sisters' Antique Mall, Inc. ("Sisters' Antique Mall"), was a West Virginia corporation, whose principal place of business was in Braxton County, West Virginia. According to the West Virginia Secretary of State's Office, Sisters' Antique Mall voluntarily dissolved on July 20, 2016.

3. Upon information and belief, Respondent Dunlap Rental, L.L.C. ("Dunlap Rental", together with Sisters' Antique Mall, the "Respondents"), is a West Virginia limited liability company, whose principal place of business is in Braxton County, West Virginia.

JURISDICTION AND VENUE

4. This Court has original and general jurisdiction of this matter pursuant to W.Va. Code §§ 51-2-2 and 55-13-1.

5. Venue is proper with this Court pursuant to W.Va. Code § 56-1-1.

OPERATIVE FACTS

6. On June 24, 1999, Skidmore Development and Sisters' Antique Mall entered into that certain ground lease agreement (the "Ground Lease Agreement") whereby Skidmore Development leased to Sisters' Antique Mall approximately .72 acre of land located near the Flatwoods exit on I-79 in Braxton County, West Virginia, situate adjacent to and on the easterly side of West Virginia Route 4 (the "Leased Premises"). A true and accurate copy of the Ground Lease Agreement is attached hereto as Exhibit A.

7. By consent to assignment of Ground Lease Agreement, dated September 17, 2002, by and between Skidmore Development and Sisters' Antique Mall, Sisters' Antique Mall assigned its interest in the Ground Lease Agreement to Dunlap Rentals, L.L.C. (the "Assignment").

8. The Ground Lease Agreement is for a base term of twenty (20) years (the “Base Term”). The Base Term terminates on August 31, 2019. The Respondents have notified Skidmore Development that the Ground Lease Agreement will not be renewed.

9. In accordance with the Ground Lease Agreement, Sisters’ Antique Mall caused the construction of a building (the “Building”) on the Leased Premises. The Building houses numerous antique vendors, each occupying separate and divided portions of the Building.

10. By amendment to Ground Lease Agreement, dated September 17, 2002, by and between Skidmore Development and Sisters’ Antique Mall (the “Amendment,” together with the Ground Lease Agreement shall constitute the Ground Lease Agreement), the parties modified the Ground Lease Agreement as it relates to (1) the payment of rent and (2) Skidmore Development’s right of first refusal to purchase the Building. A true and accurate copy of the Amendment is attached hereto as Exhibit B.

11. By consent to sublet, dated January 1, 2016, by and between Skidmore Development and Sisters’ Antique Mall (the “Consent”), the parties agreed to sublet the Leased Premises to Sisters Antiques LLC. A true and accurate copy of the Consent is attached hereto as Exhibit C.

12. By e-mail correspondence to Skidmore Development, dated March 26, 2019, Respondents notified Skidmore Development that it would not renew the Ground Lease Agreement. Respondents further indicated that it planned “to abide by the lease amendment for Skidmore Development to purchase our building.” A true and accurate copy of the e-mail correspondence is attached hereto as Exhibit D.

13. The fair market value of Respondents’ remaining interest in the Building is offset by its rental obligation for the Leased Premises.

14. Section 6(g) of the Ground Lease Agreement states, in pertinent part, as follows:

Any and all improvements made by TENANT [Respondents herein] shall be permanent in character and an addition to the Premises [Leased Premises herein], and title thereto shall be and

become vested in the LANDLORD [Skidmore Development herein] upon the expiration or termination of this Lease.

....

Upon expiration or termination of this Lease, title to the building and other improvements on the Premises shall thereupon automatically, and without further act of either party, vest in LANDLORD, and TENANT shall promptly thereafter execute and deliver to LANDLORD such confirmatory deed or bill of sale as LANDLORD may reasonably request, the preparation of such deed or bill of sale to be at LANDLORD's expense.

15. The Amendment amended, by the addition of subparagraph (h) of Section 6, the Ground Lease Agreement, in pertinent part, as follows:

(h) Purchase Option Granted to Landlord.

....

(ii) Absence of Bona Fide Offer to Purchase.

In the event that TENANT desires to sell its interest in the building on the Leased Premises, but has received no bona fide offer to purchase, TENANT shall deliver to LANDLORD written notice of its desire to sell and a written appraisal of the fair market value of TENANT's interest in the building. If LANDLORD disputes the TENANT's opinion of fair market value, LANDLORD may secure an additional appraisal and deliver to TENANT. TENANT and LANDLORD shall divide equally the cost of securing a third appraisal by a neutral appraiser selected by the appraisers chosen by TENANT and LANDLORD. The average of the three appraisals shall be deemed to be the fair market value of the TENANT's interest in the building. The LANDLORD then must exercise this privilege by delivering written notice to the TENANT and by signing a contract to purchase TENANT's interest in the building within thirty (30) days of receiving the deemed fair market value of the building as determined by the average of the three appraisers.

16. As of the date of this Petition, Skidmore Development has not received a written appraisal of the fair market value of Respondents' interest in the Building.

16. Skidmore Development seeks confirmation from this Court that (1) the Respondents have not triggered Section 6(h)(ii) of the Ground Lease Agreement, (2) the Ground Lease Agreement vests free and clear title to the Building in the Petitioner upon its expiration or termination and (3) in the alternative, if the Court determines that Respondents have triggered Section 6(h)(ii) of the Ground Lease Agreement, or will trigger Section 6(h)(ii) in the future, declare that Respondent's interest is limited to the remainder fair market value of its leasehold interest in the Building.

17. Skidmore Development's request for declaration is supported by the following stated reasons:

(a) "A valid written contract instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. Pt. 1, *Cotiga Development Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962).

(b) "A written contract merges all negotiations and representations which occurred before its execution, and in the absence of fraud, mistake, or material misrepresentations extrinsic evidence cannot be used to alter or interpret language in a written contract which is otherwise plain and unambiguous on its face." Syl. Pt. 3, *Toppings v. Rainbow Homes, Inc.*, 200 W. Va. 728, 490 S.E.2d 817 (1997); Syl. Pt. 3, *Iafolla v. Douglas Pocahontas Coal Corp.*, 162 W. Va. 489, 250 S.E.2d 128 (1978); and Syl. Pt. 1, *Warner v. Haught, Inc.*, 174 W. Va. 722, 329 S.E.2d 88 (1985).

(c) The Amendment does not alter or modify, in any way, Section 6(g) of the Ground Lease Agreement. Accordingly, title to the Building automatically vests in Skidmore Development upon the termination of the Lease.

(d) Further, Section 6(h)(ii) provides, in pertinent part, "In the event that TENANT desires to sell its interest in the building on the Leased Premises, but has received no bona fide offer to purchase, TENANT shall deliver to LANDLORD written notice of its desire to sell and a written appraisal of the fair market value of TENANT's interest in the building."

(e) Accordingly, title to the Building vests free and clear in Skidmore Development on August 31, 2019, therefore Respondents have no remaining interest in the Building or Leased Premises thereafter.

COUNT 1 - DECLARATORY JUDGMENT

18. The Petitioner incorporates all previous paragraphs of this Petition as if fully set forth herein.

19. The West Virginia Uniform Declaratory Judgments Act, W.Va. Code § 55-13-1, *et seq.*, grants this Court the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

20. Pursuant to W.Va. Code § 55-13-11, all parties who have an interest which would be affected by a declaration from this Court have been joined in this proceeding.

WHEREFORE, Skidmore Development respectfully requests that this Court:

1. Declare that Section 6(g) of the Ground Lease Agreement vests free and clear title to the Building in Skidmore Development on August 31, 2019.

2. Declare that Respondents have not triggered Section 6(h)(ii) of the Ground Lease Agreement.

3. In the alternative, if the Court determines that Respondents have triggered Section 6(h)(ii) of the Ground Lease Agreement, or will trigger Section 6(h)(ii) in the future, declare that Respondents’ interest is limited to the remainder fair market value of the leasehold interest in the Building, which expires on August 31, 2019, and is offset by Respondents’ rental obligation thereunder.

4. Grant such further relief as this Court deems just and proper.

JOHN SKIDMORE DEVELOPMENT, INC.,

By Counsel

/s/ J. Mark Adkins

J. Mark Adkins (W.Va. Bar No. 7414)

Emily R. Lambright (W.Va. Bar No. 11073)

Zachary J. Rosencrance (W. Va. Bar No. 13040)

BOWLES RICE, LLP

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Charleston, West Virginia 25301

Phone: (304) 347-1100

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madkins@bowlesrice.com

elambright@bowlesrice.com

zrosencrance@bowlesrice.com

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF BRAXTON, TO-wit:

John K. Skidmore, II in his capacity as a President of John Skidmore Development, Inc., a West Virginia corporation, Petitioner of the foregoing and hereto annexed petition, being first duly sworn, deposes and says that the facts and allegations therein contained are true, except insofar as they are therein stated to be upon information, and insofar as they are therein stated to be upon information and belief, he or she believes them to be true.

JOHN SKIDMORE DEVELOPMENT,
INC.

By: John K. Skidmore II

Name: John K. Skidmore, II

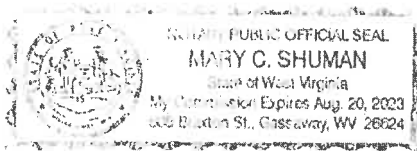
Title: President of John Skidmore
Development, Inc.

Taken and sworn to before me this 23 day of May, 2019.

My commission expires: August 20, 2023

Mary C. Shuman
Notary Public

NOTARIAL SEAL



GROUND LEASE AGREEMENT

By and between:

JOHN SKIDMORE DEVELOPMENT, INC., LANDLORD
I-79, Exit 67
Sutton, WV 26601

a n d

SISTERS' ANTIQUE MALL, INC.

EXHIBIT
A

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GROUND LEASE AGREEMENT

This LEASE AGREEMENT, made this 24 day of June, 1999, by and between JOHN SKIDMORE DEVELOPMENT, INC., a corporation, hereinafter called LANDLORD, having an address at I-79 Exit 67, Sutton, West Virginia 26601, and SISTERS' ANTIQUE MALL, INC., a West Virginia corporation, existing under the laws of the State of West Virginia, and having an office at 441 Center Avenue, Weston, West Virginia 26452, hereinafter called TENANT.

WHEREAS, LANDLORD owns and desires to lease to TENANT a certain unimproved rectangular lot or parcel of land containing approximately .72 acre more or less, having dimensions of 125 ft by 250 ft specifically located as described hereinafter, upon such terms and conditions as are set forth below, and to have TENANT improve the property and conduct an Antique Mall business thereon;

WHEREAS, TENANT desires to lease from LANDLORD the certain unimproved rectangular lot or parcel containing .72 acre more or less, having dimensions of 125 ft by 250 ft as specifically described hereinafter, and thereon to erect an improvement and operate an Antique Mall business upon such terms and conditions as are set forth below.

NOW, THEREFORE, for and in consideration of the rental set forth below, the mutual covenants, representations and warranties, and INTENDING TO BE LEGALLY BOUND, the parties hereto do agree and covenant as follows:

1. Lease of Premises.

LANDLORD hereby leases to TENANT and TENANT hereby leases from LANDLORD, approximately .72 acre of land which is located near the Flatwoods Exit on I-79 in Braxton County, West Virginia, situate adjacent to and on easterly side of West Virginia Route 4 and which is more particularly bounded and described on a certain drawing. Said drawing is attached hereto and incorporated herein as Exhibit "A". Said .72 acre tract may be referred to hereinafter as the "Premises."

2. Terms.

(a) Base Term. TENANT shall have and hold the Premises for a base term of twenty (20) years commencing on the 27 day of June, 1999 and terminating on August 31, 2019.

(b) Extended Terms. Upon the expiration of the Base Term, if this Ground Lease is in full force and effect and TENANT is not in default hereunder, in any way, TENANT shall have the right and option to extend automatically this Lease for up to one (1) consecutive extended term of twenty (20) years (hereinafter

called "Extended Term") unless this Lease shall be sooner terminated pursuant to the terms hereof. If Tenant is not in default hereunder, in any way, the Extended Term shall start automatically on the day after expiration of the preceding term, and shall end on the twentieth anniversary of the first day of such Extended Term. The first extended term shall start on September 1, 2019, and shall expire on August 31, 2039. TENANT need take no action to exercise such option to extend this Lease, and no instrument of renewal need be executed, provided however, if TENANT should choose not to allow the Lease to enter an Extended Term, TENANT must so notify the LANDLORD by giving written notice by certified mail or personally to the LANDLORD at least three hundred sixty-five (365) days prior to the end of the then term of this Lease. The giving of such notice shall cancel the automatic extension option and cause this Lease to terminate at the end of the then Term and TENANT shall have no further option to extend this Lease. No Extended Term shall take effect unless this Lease is in full force and effect immediately prior to the commencement thereof and TENANT is not in default hereunder.

3. Site Condition, Lateral Support and Utilities.

(a) Site Condition and Lateral Support. TENANT agrees that it has inspected and examined the Premises and shall accept the Premises under this Ground Lease in its present condition, as is. TENANT shall maintain the existing slope to provide lateral support and to prevent all slippage at the eastern boundary of the Premises satisfactory to the LANDLORD for the Premises and LANDLORD's adjoining property appurtenant to the eastern boundary of said Premises and the improvements which may, from time to time, be constructed thereon throughout the term and any extension thereof. In the event that TENANT desires to alter, cut or fill the slope in any way, TENANT shall first secure LANDLORD's written permission to such alteration, cut or fill and TENANT shall be required to construct and maintain an adequate retaining wall as approved by LANDLORD. TENANT shall be responsible to install all surface water drainage systems sufficient to avoid all water accumulations and flooding on the Premises and on adjoining parcels.

(b) Utilities. LANDLORD has provided access for utilities to TENANT at the boundary of the Premises, TENANT shall be required to run underground all utility lines from boundary of the Premises to point of service delivery and usage. Access to electricity, water, natural gas and telephone utilities will be provided under this subparagraph 3(b). LANDLORD is not responsi-

ble for and shall not pay the usage or connection charges for any of these utilities, and TENANT shall be responsible to pay for all such connection and usage charges and to install underground utility lines.

4. Rent.

(a) Base Term.

(i) Balance of 1999 and Initial Year Operations

- It is anticipated that the Sisters' Antique Mall, Inc. shall open for business prior to May 1, 2000. It is also anticipated that the construction period will range from two and a half to four months following execution of this Lease. The rental term shall commence at the earlier of the start of business operations or the grand opening celebration of the business, which date shall hereinafter be referred to as "Rental Commencement Date". As an inducement to Tenants, no rental shall be charged or paid for the one year period starting with the Rental Commencement Date and extending to the first anniversary date of the Rental Commencement Date under this Lease. Immediately thereafter, however, rental for the balance of the month wherein the first anniversary of the Rental Commencement Date occurs shall be due and payable at a per diem rate of \$33.33 and thereafter, the Rental Commencement Date shall be adjusted to and considered to

be the first day of the month next following the month in which the year's free rental expired. Such per diem rental amount shall be due for the said balance of the month as of the initial day the per diem rate is used.

(ii) Second and Third Years. Rent for the second and third years of the Base Term (second year = from the first anniversary of the Rental Commencement Date to and ending on April 30, 2002 and third year = second anniversary of the Rental Commencement Date and ending on August 31, 2003 shall be \$12,000.00, paid at the monthly rate of \$1,000. TENANT shall pay said rental to LANDLORD at LANDLORD's address set forth above, or at such other address as LANDLORD from time to time may designate. Monthly rental shall be payable in advance on the first day of each month. For Rental payments received by LANDLORD after the 5th day of any month, the TENANT shall pay a late charge of 1.5% per month of the delinquent rental amount.

(iii) Fourth Year Rent for the fourth year of the base term (May 1, 2003 - April 30, 2004) shall be \$18,000, paid at the monthly rate of \$1,500. TENANT shall pay said rental to LANDLORD at LANDLORD's address, set forth above or at such other address as LANDLORD from time to time may designate. Monthly rental shall be payable in advance on the first day of each month. For rental received by LANDLORD after the fifth day

of any month, TENANT shall pay a late charge of 1.5% per month on the delinquent rental amount.

(iv) Fifth-Twentieth Years. The annual rental for each full year 12 month period of the Lease starting with the fifth year (May 1, 2004 - April 30, 2005) shall be adjusted by application of the Consumer Price Index differential as set forth in subparagraphs (a), (b), (c), (d), (e) and (f) as set forth immediately below. The first annual rental adjustment shall take effect on May 1, 2004. Thereafter, for the duration of the base term, the rental shall be adjusted on May 1st of each said year.

(a) The Rental adjustments for each year following the fourth year of this Lease shall be based upon the "Consumer Price Index for All Items (1993-95 = 100) using the South region as published by the Bureau of Labor Statistics of the United States Department of Labor" (hereinafter called "Index").

(b) The amount of annual rental for the fifth full year of the Lease (May 1, 2004 to April 30, 2005), payable in the twelve equal monthly installments shall be the greater of (a) Eighteen Thousand (\$18,000) Dollars or (b) Eighteen Thousand (\$18,000) Dollars multiplied by a fraction of which the numerator is the average monthly index for the month of March, 2004, and of which the denominator is the average monthly Index for the month of March, 2003.

(c) The amount of annual rental for the sixth full year of the Lease (May 1, 2005 to April 30, 2006) payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the fifth full year of the Lease or (b) the annual rental for the fifth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of March, 2005, and of which the denominator is the average monthly Index for the month of March, 2004.

(d) The amount of annual rental for the seventh full year of the Lease (May 1, 2006 to April 30, 2007) payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the sixth year of the Lease or (b) the annual rental for the sixth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of March, 2006, and of which the denominator is the average monthly Index for the month of March, 2005.

(e) The amount of annual rental for the eighth year of the Lease (May 1, 2007 to April 30, 2008) payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the fifth year of the Lease or (b) the annual rental for the fifth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of March, 2007, and of which the denominator is the average monthly Index for the month of March, 2006.

(f) The annual rental for each of the remaining years of the Base Term of the Lease and for all years of the Extended Terms of the Lease shall be calculated in the same manner as described in subparagraphs (a), (b), (c), (d), and (e) above.

(g) Any dispute in the calculation of the increased annual rental shall be determined by arbitration as described in Paragraph 4(d).

(b) Extended Term.

For each year in each extended term, the annual rental shall be adjusted as determined by application of the Consumer Price Index differential with the annual rental for the previous twelve month period used as the reference year.

For example, the first extended term shall start on May 1, 2020, and the annual rental for it, payable in twelve equal monthly installments, shall be the greater of (a) the annual rental for the last year of the Base Term of the Lease, May 1, 2019 - April 30, 2020, or (b) the annual rental for the last year of the Base Term of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month

of March, 2019, and of which the denominator is the average monthly Index for the month of March, 2018.

The annual rental adjustments shall be computed in like manner for all years of all Extended Terms, as described immediately above and in subparagraphs (a), (b), (c), (d), (e), and (f) of (a) above.

(c) The rental amounts, as above determined, shall be due and payable to the LANDLORD in equal monthly installments commencing with the first month of each new Extension Term of this Lease and if received by LANDLORD after the 5th day of any month, the TENANT shall pay a late charge of 1.5% per month of the delinquent rental amount.

(d) If publication of the Consumer Price Index shall be discontinued, the parties hereto shall thereafter accept comparable statistics on the cost of living for West Virginia or the West Virginia region as such shall be computed and published by an agency of the United States government or by a responsible financial periodical of recognized authority then to be selected by the parties hereto, or, if the parties cannot agree upon a selection, by arbitration pursuant to the terms therefore set forth below. In the event of (1) use of comparable statistics in place of the Consumer Price Index as above mentioned, (2) publication of the Index figure at other than monthly intervals, or (3) a change in the standard reference base period and a

discontinuance of publication of indexes on the 1993-95 = 100 reference base, necessary revisions shall be made in the method of computation to carry out the intent of this Paragraph. Any dispute between the parties about the Rental due in the Base Term or in an Extended Term shall be determined by arbitration. The arbitrators shall be three (3) in number, one being chosen by LANDLORD, one being chosen by TENANT, and the Chairman and third arbitrator being chosen by the two arbitrators chosen by LANDLORD and TENANT. All costs of the arbitration shall be apportioned between the parties by the arbitrators. The decisions of the arbitrators shall be final and not appealable.

5. Use of Premises and Restrictions.

(a) TENANT is locating an antique mall business on the Premises, which will consist of numerous antique vendors, each occupying separate and divided portions of the mall building, and a TENANT run restaurant having seating capacity not in excess of 18 seats, and this business together with the normal facilities connected therewith on said Premises shall continue for all Terms of the Lease. Any change whatsoever in said business shall require the prior written consent of LANDLORD. No building constructed on the Premises shall exceed thirty (30) feet in height. Except as specifically set forth above, TENANT'S operations shall not include operation of a restaurant, eating

establishment, drive in or walk in eating facility, nor shall TENANT sell hamburgers, ground beef products or french fries, or seek a change in operations that would include conversion into or an addition of a Burger King, Wendy's, Jack in the Box, Hardee's, Rax, Rallie's, or Arby's business.

(b) TENANT shall cooperate with and be cordial toward other TENANT'S and the LANDLORD and, TENANT shall use its best efforts to ensure that its employees are cooperative and cordial toward adjoining businesses and the LANDLORD. The normal operations of the TENANT shall not interfere with neighboring businesses in any manner as would constitute a nuisance including, but not limited to the emittance of excessive smoke, fumes or noise.

(c) TENANT shall not sell oil, gasoline or petroleum products.

(d) TENANT shall at all times keep the Premises clean, neat and attractive. TENANT shall not store materials outside of the building or in any manner, except during the construction of the building.

6. Improvements.

(a) Construction Documents. The LANDLORD must approve the plans and specification for the Antique Mall facility which TENANT shall build on the Premises. Such construction must

include appropriate parking areas, driveways to connect the premises to the paved 20 foot wide access road now in existence along the western side of said Premises, landscaping, paving, curbing and lighting and other facilities normally constructed in connection with such antique mall business. TENANT'S plans shall include landscaping the Premises with scrubs, flowers and grass. If appropriate, TENANT may widen the entranceways to West Virginia Route 4 to a maximum width of twenty-five (25) feet each, providing appropriate permits have been secured by Tenant.

(b) Cost and Completion. TENANT shall pay all costs of such construction, and at the time of completion, the Premises and the buildings and related improvements shall be free of all building, mechanic's or materialman's liens.

(c) Insurance and Bonds. TENANT shall secure and provide for the benefit of LANDLORD, Builder's Risk Insurance during the construction of the improvements. TENANT shall promptly provide to LANDLORD evidence of such insurance. TENANT shall require from its general contractor, prior to commencement of construction, a performance bond in an amount equal to the greater of \$300,000.00 or the cost of the building.

(d) Permits. TENANT shall use its best efforts to secure all permits and governmental authorizations necessary to construct the improvements, widen or improve the entrances onto West Virginia Route 4, if appropriate, and to operate and conduct

the antique mall business. If, TENANT is unsuccessful, LANDLORD may assist in securing the necessary permits, and TENANT shall reimburse LANDLORD for the cost of the permits.

(e) Set Back and Height Restrictions. Any improvement which TENANT shall place on the Premises shall be set back at least thirty-five (35) feet from the public right of way and from West Virginia Route 4 as it exists on March, 1999, and shall not exceed thirty (30) feet in height.

(f) Signage. LANDLORD's approval shall be required for any high-rise sign which the TENANT may desire to place on the premises.

(g) Title to Improvements. Any and all improvements made by TENANT shall be permanent in character and an addition to the Premises, and title thereto shall be and become vested in LANDLORD upon the expiration or termination of this Lease. If TENANT is not in default upon the expiration or termination of this Lease, any machinery, equipment and trade fixtures placed by TENANT on the Premises, which are not permanently affixed thereto shall remain the property of TENANT who shall have a reasonable time of thirty (30) days to remove said equipment, machinery and trade fixtures from the Premises upon the expiration of the Lease. In the event that TENANT is in default at the expiration or termination of the Lease, TENANT shall not be entitled to

remove any machinery, equipment, trade fixtures or other property from the Premises until the default is cured.

Upon expiration or termination of this Lease, title to the building and other improvements on the Premises shall thereupon automatically, and without further act of either party, vest in LANDLORD, and TENANT shall promptly thereafter execute and deliver to LANDLORD such confirmatory deed or bill of sale as LANDLORD may reasonably request, the preparation of such deed or bill of sale to be at LANDLORD's expense. For purposes of this article, the term "equipment, machinery, and trade fixtures," excludes heating, ventilating, air conditioning, plumbing, electrical, sprinkler, fire detection and illumination fixtures and systems which are deemed to be part of the building. If machinery, equipment and trade fixtures are not removed within the thirty (30) day period, following expiration or termination of the Lease, title to such shall pass by operation of law to LANDLORD.

7. Easements. The LANDLORD or its successors or assigns shall have rights-of-way or easements on or across the Premises for any necessary and lawful reason whatsoever, including, but not limited to, location, maintenance and repair of utility lines

and sewage pipes. LANDLORD currently maintains a right-of-way easement which is blacktopped and approximately twenty (20) feet wide running along the western perimeter of the parcel. TENANT may use the easement for ingress and egress, but shall not park on it or allow any parking on said easement. TENANT shall construct its parking lot and driveways to connect with said easement at a compatible height and width. LANDLORD shall return the Premises to the condition in which it found the Premises should LANDLORD's location, maintenance and repair of the utility and/or sewer lines cause damage to the Premises. In addition, LANDLORD agrees to compensate reasonably the TENANT in an amount equal to the fair value of receipts TENANT can prove it lost for any total stoppage or cessation of business solely caused by LANDLORD's location, maintenance and/or repair of its utility and/or sewer lines.

8. Triple Net Lease. This Lease is a triple net lease and, TENANT shall not be entitled to any abatement, reduction, set-off, counterclaim, defense or deduction with respect to any Rental or other sum payable hereunder. TENANT shall have the right, however, by separate and independent action to pursue any claims it may have against LANDLORD or any assignee or successor of LANDLORD.

9. Taxes and Assessments; Compliance with Law.

(a) Taxes and Assessments. During the term of the Lease, TENANT shall pay:

(i) all real property taxes and charges assessed against the Premises due to any improvements made to the Premises by the TENANT; and all taxes assessed against any personal property or equipment placed upon the Premises by TENANT; and

(ii) all charges for utilities serving the Premises. TENANT shall be entitled to the benefit of any credit which reduces any tax or utility charge required hereunder to be paid by TENANT.

(iii) All payments of items referred to above, shall be prorated, appropriately, for the initial year of the term of this Lease and for the year in which the Lease terminates.

(b) Permitted Contests. At its own expense, TENANT shall be permitted to contest the existence, amount or validity of any similar charge applicable to the Premises or the use thereof.

(c) Compliance with Legal Requirements. TENANT shall comply with and cause the Premises to comply with any law, statute, ordinance, or similar requirement of the United States of America, the State of West Virginia or any subdivision thereof applicable to the Premises or the use thereof and all contracts

(including insurance policies), agreements and restrictions applicable to the Premises.

10. Insurance.

(a) Coverage. TENANT shall maintain comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and parking areas, in an adequate minimum amount of at least Two Million (\$2,000,000) Dollars per occurrence and Two Million (\$2,000,000) Dollars aggregate.

TENANT shall also maintain insurance against loss by fire and lightning in amounts sufficient to rebuild and replace the Improvements and not less than the actual replacement value of the Improvements.

All insurance shall be written by companies of nationally recognized financial standing legally qualified to issue such insurance and shall name as insured parties TENANT and LANDLORD as the respective interest of each may appear.

(b) Limitation on Cancellation. Every policy referred to in Paragraph 10(a) shall provide that it will not be cancelled or materially altered except after providing thirty (30) days written notice of such intended cancellation or alteration to LANDLORD.

(c) Evidence of Insurance. TENANT shall promptly deliver to the LANDLORD either a copy of all policies or certificates of insurance, or a certificate of insurance and a copy of the coverage page of said policy, evidencing the existence of all insurance which is required to be maintained by TENANT hereunder and stating the policy numbers and the inception and expiration dates of all policies.

11. Indemnification. TENANT agrees that it will defend, indemnify and save LANDLORD harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to persons or property on the Premises, arising from the occupation, use, possession, conduct or management of the Sisters' Antique Mall, Inc. TENANT further agrees to defend, indemnify and save LANDLORD harmless from any and all liability arising from any failure by TENANT to perform any of the agreements, terms, covenants or conditions of this Lease on TENANT'S part to be performed.

12. Landscaping, Maintenance and Repair. TENANT shall maintain the Improvements and Premises in good repair and condition, except for ordinary wear and tear. TENANT shall landscape, with shrubs, grass and flowers, and maintain the Premises and keep it reasonably free of accumulated debris, ice, snow and water. No junk, debris, wood or unsightly materials shall be

visible in or around the Premises. The Premises must be maintained in a neat and attractive manner.

13. Assigning and Subletting. TENANT shall not be permitted to sublet or assign this Lease and its interest hereunder without first securing the prior written consent of LANDLORD, which LANDLORD shall not unreasonably withhold.

14. Acceleration of Rent and Events of Default.

(a) Events of Default. Any of the following occurrences or acts shall constitute an event of default under this Lease:

(i) if TENANT shall fail to pay any rental and such failure shall continue for thirty (30) days after the due date of the rental.

(ii) if TENANT shall fail to observe or perform any other provision hereof and such failure shall continue thirty (30) days after notice to TENANT of such failure (provided, that in the case of any such default which cannot be cured by the payment of money and cannot with diligence be cured within such 30-day period, if TENANT shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such default may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence); or

(iii) if a receiver, trustee or liquidator of TENANT or of all or substantially all of the assets of TENANT, or of the Premises or TENANT'S estate therein shall be appointed in any proceeding brought by TENANT, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against TENANT and shall not be discharged within thirty (30) days after such appointment, or if TENANT shall consent to or acquiesce in such appointment; or

(iv) any dispute between the parties about whether or not an event of default under subparagraphs (ii) or (iii) immediately above, has occurred may be determined by arbitration pursuant to Paragraph 4(d) above.

(b) Notice to Terminate. If an event of default shall have happened and be continuing, LANDLORD shall have the obligation to give TENANT notice of LANDLORD'S intention to terminate the term of this Lease and re-enter and repossess the Premises on a date not less than fifteen (15) days after the date of such notice. If the default continues up to and through on the date set forth in such notice, the term of this Lease and the estate hereby granted shall immediately expire and terminate as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Lease, and all rights of TENANT hereunder shall expire and terminate, (but TENANT shall remain liable for all monies due the

LANDLORD under the then current term of the Lease. For purposes of this paragraph, all monies due the LANDLORD shall be calculated based upon the current annual rental then being paid). TENANT can cure the default at any time before such date. In the event that no default remains after TENANT'S cure, the Lease shall continue in full force and effect, unless such termination is decreed by a court of competent jurisdiction.

(c) Acceleration of Rent. If TENANT shall be in default as described in the preceding subparagraphs of this paragraph 14, or if TENANT shall remove or attempt to remove or express or declare an intention to remove any of the goods and chattels from the Premises, then the entire rent for the balance of the said Term or Extended Term shall, at once, become due and payable and payable as if by the terms of this Lease the Rental was all payable in advance. For purposes of this paragraph, the current annual rental shall apply for all remaining years of the current term of the Lease. In case of such default, LANDLORD shall have the right to demand and receive the rent for the balance of the term, which shall be first paid out of the proceeds of any assignment, bankruptcy or receiver's proceedings or sale on legal process, any law, usage or custom to the contrary notwithstanding, all subject to LANDLORD'S duty to mitigate reasonably its damages.

15. Additional Rights of LANDLORD. No right or remedy hereunder shall be exclusive of any other right or remedy, but shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future. Receipt by LANDLORD of any Rental, or other sum payable hereunder with knowledge of the breach of any provision hereof shall not constitute a waiver of such breach and no waiver by LANDLORD of any provision hereof shall be deemed to have been made unless made in writing.

16. Condemnation and Casualty.

(a) Casualty. Any award, compensation or insurance payment to which TENANT may be entitled if the Premises and/or Improvements are damaged or destroyed by fire or other casualty shall be used by the TENANT to restore the Premises and Improvements to its condition immediately prior to the fire or other casualty; PROVIDED, however, TENANT may turn over in full to the LANDLORD the award, compensation or insurance payment; FURTHER PROVIDED, however, that if an event of default shall have occurred hereunder and be continuing, TENANT shall hereby be

deemed to have assigned such award, compensation or insurance payment to the extent of such default to LANDLORD. In the event that the award, compensation or insurance payment is turned over in full to the LANDLORD, this Lease shall cease and terminate and all rental, additional rent and other charges hereunder shall be apportioned as of the date of the casualty.

(b) Condemnation. Any award or compensation to which LANDLORD or TENANT may be entitled if the use, occupancy or title of the Premises or Improvement or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or condemnation shall be apportioned between the parties.

(i) In the event that ten (10) feet or less of the frontage of the Premises along and adjacent to U.S. Route 4 is taken, the LANDLORD shall receive at least 80% of the award or compensation. The remaining 20% ("Remainder") shall be divided between the parties.

(a) The TENANT'S said share is determined by multiplying the Remainder by a fraction of which the numerator is the number of years remaining in the current term and denominator of which is 20.

(b) LANDLORD shall receive the difference between the TENANT'S share and the Remainder.

(ii) In the event that more than ten (10) feet of the frontage of the Premises along or adjacent to U.S. Route 4 is taken, the award or compensation shall be paid and divided as follows:

(a) First, to the extent the award is made for the value of the LANDLORD's interest in the land constituting the Premises, to the LANDLORD.

(b) Second, to the TENANT for the value of its interest in the improvements and under this Lease. Dispute between the parties as to the apportionment of the award or compensation hereunder shall be determined by the arbitration provisions of paragraph 4(d).

In the event that the taking is more than ten (10) feet of the frontage of the Premises along or adjacent to U.S. Route 4, either party may act within thirty (30) days of the notice of taking, to terminate this Lease by giving written notice to the other party. No termination shall be effective unless all events of default are cured and the rental paid in full to date of termination.

17. Current and Subsequent Mortgages. The Premises are currently subject to an encumbrance held by the Bank One, West Virginia, N.A. LANDLORD may mortgage its interest in the Premises, provided that such LANDLORD's mortgage expressly

provides that the rights and interest of the mortgagee thereunder are subject and subordinate to the rights and interest of the TENANT hereunder and any mortgagee under any Leasehold Mortgage or Mortgage, then or thereafter existing.

18. Notices, Demands and Other Instruments. All notices demands and other instruments given pursuant to this Lease shall be in writing and shall be validly given when mailed by prepaid registered or certified mail, (a) if to LANDLORD, addressed in duplicate as follows:

John K. Skidmore, President
John Skidmore Development, Inc.
2000 Sutton Lane
Sutton, WV 26601

Lea E. Anderson, Esquire
Goehring, Rutter & Boehm
1424 Frick Building
Pittsburgh, PA 15219

and (b) if to TENANT, addressed in triplicate to TENANT at each of the following addresses:

Sisters Antique Mall, Inc.

Brynda Dunlap Dillon
3475 Claude Douglas Circle
Forest Lake West
Florence, SC 29501

Dianne Dunlap Bailey
441 Center Avenue
Weston, WV 26452

Gale Carroll, Esquire
P.O. Box 489
Weston, WV 26452

19. Estoppel Certificates. LANDLORD and TENANT will, from time to time, upon thirty (30) days prior written request by the other, cause to be executed, acknowledged and delivered a certificate stating that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect as modified, and setting forth such modifications) and the then amount of Rental and the dates to which Rental, and other sums payable hereunder have been paid, and either stating that to the knowledge of the signer of such certificate no default exists hereunder or specifying each such default of which the signer has knowledge. Any such certificate may be relied upon by any prospective mortgagee or purchaser of the Project, or any part thereof.

20. LANDLORD's Covenants of Nondisturbance.

LANDLORD hereby warrants the quiet enjoyment of TENANT in the Leased Premises. LANDLORD shall obtain from any current or subsequent mortgagee a non-disturbance Agreement on TENANT'S behalf, if requested by TENANT in a form substantially agreeable

to both LANDLORD and TENANT. The preparation of such Agreement shall be at TENANT'S expense.

21. Surrender. Upon the expiration or termination of the term of this Lease, TENANT shall surrender the Premises and Improvements to LANDLORD in a prompt and timely manner and in good repair and condition, except for any ordinary wear and tear.

22. Separability; Binding Effect. If any provision hereof shall to any extent be invalid or unenforceable, the remaining provisions hereof, shall not be affected thereby, and each provision hereof shall be valid and shall be enforceable to the extent permitted by law. In the place of such invalid, illegal or unenforceable term and provision, there shall be substituted a like, but valid term or provision which most nearly accomplishes the original intention of the parties.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by, the respective heirs, successors and assigns of LANDLORD and TENANT to the same extent as if each such heir, successor or assign were named as a party hereto.

This Lease may not be changed, modified or discharged except by a writing signed by LANDLORD and TENANT.

23. LANDLORD'S Rights to Cure TENANT'S Default. If TENANT shall fail to make any payment or perform any act required to be made or performed under this Lease, LANDLORD, after notice to and demand upon TENANT, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of TENANT, and may enter upon the Premises for such purpose and take all such action thereof as, in LANDLORD'S opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of TENANT. All sums so paid by LANDLORD and all costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the lesser of the rate of 12% per annum or the maximum rate permitted by law from the date on which such sums or expenses are paid or incurred by LANDLORD, shall be paid by TENANT to LANDLORD on demand.

24. LANDLORD'S Right to Inspect. TENANT shall permit LANDLORD and its authorized representatives to inspect the Premises during usual business hours. Such inspections shall be reasonable and shall not be calculated to disrupt TENANT'S right to quiet enjoyment of the Premises.

25. Exculpation. LANDLORD's shareholders, directors and officers or partners shall not have any personal liability for any claim arising under or otherwise in connection with this Lease; provided, however, that nothing contained in this Paragraph shall be construed as impairing in any manner the validity of the obligations imposed on the LANDLORD under this Lease.

26. Governing Law. This Lease shall be enforceable and construed in accordance with the laws of the State of West Virginia.

27. Headings. The headings used in this Lease are for convenience reference only and shall not to any extent have the effect of modifying, amending or changing the provisions of this Lease.

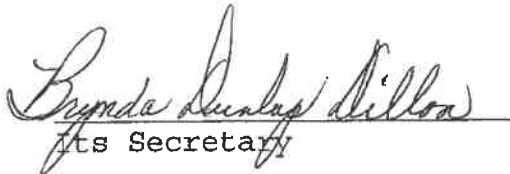
28. Counterparts. This Lease will be executed in duplicate, with each being deemed an original instrument.

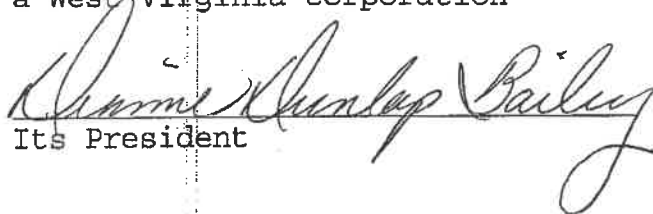
29. Memorandum of Lease. LANDLORD and TENANT shall, promptly upon the request of either, enter into a short form memorandum of this Lease, in form suitable for recording in West Virginia, in which reference to this lease shall be made.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed and sealed as of the date first above written.

ATTEST:

SISTERS' ANTIQUE MALL, INC.,
a West Virginia corporation

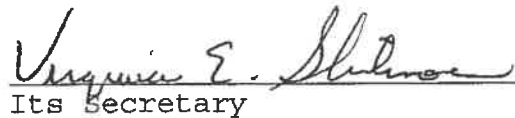

Its Secretary

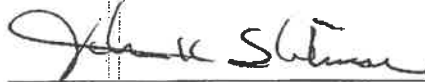

Its President

(CORPORATE SEAL)

ATTEST:

LANDLORD
JOHN SKIDMORE DEVELOPMENT, INC.,
a West Virginia corporation


Its Secretary

By: 
Its President

(CORPORATE SEAL)

THIS LEASE HAS BEEN PREPARED BY LEA E. ANDERSON, ESQUIRE,
GOEHRING, RUTTER & BOEHM, 1424 FRICK BUILDING, PITTSBURGH,
PENNSYLVANIA 15219.

STATE OF WEST VIRGINIA

COUNTY OF

On this 24th day of June, 1999, before me, a

Notary Public in and for the said State and County, personally appeared Dianne Dunlap Bailey who acknowledged herself to be the President of SISTERS' ANTIQUE MALL, INC., a West Virginia corporation, and that she was authorized to execute the foregoing instrument on behalf of said Corporation for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereto set my hand and notarial seal.

Frances J. Thoms

Notary Public

My Commission Expires: Feb. 4, 2007

STATE OF WEST VIRGINIA

COUNTY OF BRAXTON

On this 24th day of June, 1999, before me, a

Notary Public in and for the said State and County, personally appeared John K. Skidmore, who acknowledged himself to be the President of John Skidmore Development, Inc., a West Virginia corporation, and that he was authorized to execute the foregoing instrument on behalf of said Corporation for the purposes therein set forth.

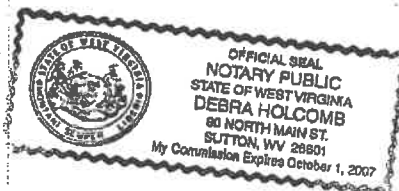
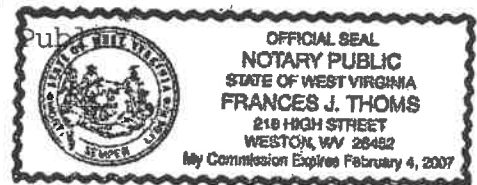
IN WITNESS WHEREOF, I have hereto set my hand and notarial seal.

Debra Holcomb

Notary Public

My Commission Expires:

10-01-07



GUARANTEE AGREEMENT

As an inducement to John Skidmore Development, Inc. ("Landlord") to execute the preceding Ground Lease Agreement, dated as of even date herewith, with Sisters' Antique Mall, Inc., as Tenant, the undersigned jointly and severally hereby agree to be bound by all terms of the Ground Lease Agreement, any amendments and supplements thereto, including all exhibits, and irrevocably, unconditionally and personally guarantee to Landlord, its successors and assigns, that all of Tenant's obligations thereunder will be punctually paid and performed. The undersigned waive notice of acceptance, notice of default, presentment or demand. Upon default by Tenant and receipt of written notice from Landlord, the undersigned will immediately make each payment and perform or cause to be performed each obligation of Lessee under the Ground Lease Agreement. The undersigned waive the defenses of novation, increase in risk, release or compounding of any other guarantor, or any requirement that Landlord first exhaust other remedies, resort to any collateral, or proceed diligently to collect any amounts due from Tenant, this Guarantee Agreement being a primary obligation of the undersigned and a guarantee of payment and performance, not of collection. Upon death of an individual guarantor, the estate of such guarantor will be bound by this Guarantee Agreement with respect to any defaults existing at the time of death. The obligations of the other undersigned guarantors shall be to pay Landlord's costs, including reasonable attorney's fees, incurred to enforce its rights and remedies against Tenant under the Ground Lease Agreement or under this Guarantee Agreement.

Dated: June 24, 1999

Signature Witnesses:

Francis Thomas

Guarantors:

Diane Dunlap Bailey (SEAL)
Diane Dunlap Bailey, Individually

GUARANTEE AGREEMENT

As an inducement to John Skidmore Development, Inc. ("Landlord") to execute the preceding Ground Lease Agreement, dated as of even date herewith, with Sisters' Antique Mall, Inc., as Tenant, the undersigned jointly and severally hereby agree to be bound by all terms of the Ground Lease Agreement, any amendments and supplements thereto, including all exhibits, and irrevocably, unconditionally and personally guarantee to Landlord, its successors and assigns, that all of Tenant's obligations thereunder will be punctually paid and performed. The undersigned waive notice of acceptance, notice of default, presentment or demand. Upon default by Tenant and receipt of written notice from Landlord, the undersigned will immediately make each payment and perform or cause to be performed each obligation of Lessee under the Ground Lease Agreement. The undersigned waive the defenses of novation, increase in risk, release or compounding of any other guarantor, or any requirement that Landlord first exhaust other remedies, resort to any collateral, or proceed diligently to collect any amounts due from Tenant, this Guarantee Agreement being a primary obligation of the undersigned and a guarantee of payment and performance, not of collection. Upon death of an individual guarantor, the estate of such guarantor will be bound by this Guarantee Agreement with respect to any defaults existing at the time of death. The obligations of the other undersigned guarantors shall be to pay Landlord's costs, including reasonable attorney's fees, incurred to enforce its rights and remedies against Tenant under the Ground Lease Agreement or under this Guarantee Agreement.

Dated: June 24, 1999

Signature Witnesses:

Frances Thome

Frances Thome

Guarantors:

Brynda Dunlap Dillon (SEAL)
Brynda Dunlap Dillon, Individually

Donald W. Dillon (SEAL)
Dillon, Individually

AMENDMENT TO GROUND LEASE AGREEMENT

dated June 24, 1999

By and between

JOHN SKIDMORE DEVELOPMENT, INC., LANDLORD
I-79, Exit 67
Sutton, West Virginia 26601

and

SISTERS' ANTIQUE MALL, INC., TENANT
441 Center Avenue
Weston, West Virginia 26452

EXHIBIT
B

AMENDMENT TO GROUND LEASE AGREEMENT

AND NOW, this 17th day of September, 2002, JOHN SKIDMORE DEVELOPMENT, INC., LANDLORD, a West Virginia corporation having an address at I-79, Exit 67, Sutton, West Virginia 26601, hereinafter referred to as "LANDLORD", and SISTERS' ANTIQUE MALL, INC., a West Virginia corporation, existing under the laws of the State of West Virginia, and having an office at 441 Center Avenue, Weston, West Virginia, 26452, hereinafter referred to as TENANT, in that certain Ground Lease Agreement dated June 24, 1999, (hereinafter referred to as "Lease").

WHEREAS, changes and modifications to the said Lease are, pursuant to Article 22 thereof, permitted to be made by a writing signed by the LANDLORD and TENANT;

WHEREAS, LANDLORD and TENANT desire to change the Lease to reflect certain provisions regarding TENANT's payment of rental and LANDLORD's right of first refusal to purchase the TENANT's building;

WHEREAS, TENANT desires to assign the Lease to Dunlap Rental, LLC, and subsequent to the completion of these amendments to the Lease, LANDLORD anticipates that it will consent to the assignment;

NOW THEREFORE, for and in consideration of the rental set forth below, the addition of certain purchase rights to LANDLORD, and clarification of certain responsibilities of

TENANT under this Lease, the mutual covenants, representations and warranties, and intending to be legally bound, the parties hereto do agree and covenant as follows:

A. Article Fourth (4) shall be deleted in its entirety and the following substituted therefor:

4. Rent.

(a) Base Term.

(i) Balance of 1999 and Initial Year Operations

It is anticipated that the Sisters' Antique Mall, Inc. shall open for business prior to May 1, 2000. It is also anticipated that the construction period will range from two and a half to four months following execution of this Lease. The rental term shall commence at the earlier of the start of business operations or the grand opening celebration of the business, which date shall hereinafter be referred to as "Rental Commencement Date". As an inducement to Tenants, no rental shall be charged or paid for the one year period starting with the Rental Commencement Date and extending to the first anniversary date of the Rental Commencement Date under this Lease. Immediately thereafter, however, rental for the balance of the month wherein the first anniversary of the Rental Commencement Date occurs shall be due and payable at a per diem rate of \$33.33 and thereafter, the Rental Commencement Date shall be adjusted to and considered to be the first day of the month next following the month in which the year's free rental

expired. Such per diem rental amount shall be due for the said balance of the month as of the initial day the per diem rate is used.

(ii) Second and Third Years. Rent for the second and third years of the Base Term (second year = from the first anniversary of the Rental Commencement Date to and ending on August 31, 2002 and third year = September 1, 2002, and ending on August 31, 2003 shall be \$18,000.00, paid at the monthly rate of \$1,500. TENANT shall pay said rental to LANDLORD at LANDLORD's address set forth above, or at such other address as LANDLORD from time to time may designate. Monthly rental shall be payable in advance on the first day of each month. For Rental payments received by LANDLORD after the 5th day of any month, the TENANT shall pay a late charge of 1.5% per month of the delinquent rental amount.

(iii) Fourth-Twentieth Years. The annual rental for each full year, 12 month period, of the Lease starting with the fourth year (September 1, 2003 - August 31, 2004) shall be adjusted by application of the Consumer Price Index differential as set forth in subparagraphs (a), (b), (c), (d), (e) and (f) as set immediately below. The first annual rental adjustment shall take effect on September 1, 2003. Thereafter, for the duration of the base term, the rental shall be adjusted on September 1st of each said year.

(a) The Rental adjustments for each year following the third year of this Lease shall be based upon the "Consumer Price Index for All Items (1993-95 = 100) using the South region as published by the Bureau of Labor Statistics of the United States Department of Labor" (hereinafter called "Index").

(b) The amount of annual rental for the fourth full year of the Lease (September 1, 2003 to August 31, 2004), payable in the twelve equal monthly installments shall be the greater of (a) Eighteen Thousand (\$18,000) Dollars or (b) Eighteen Thousand (\$18,000) Dollars multiplied by a fraction of which the numerator is the average monthly index for the month of June, 2003, and of which the denominator is the average monthly Index for the month of June, 2002.

(c) The amount of annual rental for the fifth full year of the Lease (September 1, 2004 to August 31, 2005) payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the fourth full year of the Lease or (b) the annual rental of the fourth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of June, 2004, and of which the denominator is the average monthly Index for the month of June, 2003.

(d) The amount of annual rental for the sixth full year of the Lease (September 1, 2005 to August 31, 2006)

payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the fifth year of the Lease or (b) the annual rental for the fifth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of June, 2005, and of which the denominator is the average monthly Index for the month of June, 2004.

(e) The amount of annual rental for the seventh year of the Lease (September 1, 2006 to August 31, 2007) payable in twelve equal monthly installments shall be the greater of (a) the annual rental for the sixth year of the Lease or (b) the annual rental for the sixth year of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of June, 2006, and of which the denominator is the average monthly Index for the month of June, 2005.

(f) The annual rental for each of the remaining years of the Base Term of the Lease and for all years of the Extended Terms of the Lease shall be calculated in the same manner as described in subparagraphs (a), (b), (c), (d), and (e) above.

(g) Any dispute in the calculation of the increased annual rental shall be determined by arbitration as described in Paragraph 4(d).

(b) Extended Term.

For each year in each extended term, the annual rental shall be adjusted as determined by application of the Consumer Price Index differential with the annual rental for the previous twelve month period used as the reference year.

For example, the first extended term shall start on September 1, 2019, and the annual rental for it, payable in twelve equal monthly installments, shall be the greater of (a) the annual rental for the last year of the Base Term of the Lease, September 1, 2018 - August 31, 2019, or (b) the annual rental for the last year of the Base Term of the Lease multiplied by a fraction of which the numerator is the average monthly Index for the month of June, 2019, and which the denominator is the average monthly Index for the month of June, 2018.

The annual rental adjustments shall be computed in like manner for all years of all Extended Terms, as described immediately above and in subparagraphs (a), (b), (c), (d), (e), and (f) of (a) above.

(c) The rental amounts, as above determined, shall be due and payable to the LANDLORD in equal installments commencing with the first month of each new Extension Term of this Lease and if received by LANDLORD after the 5th day of any month, the TENANT shall pay a late charge of 1.5% per month of the delinquent rental amount.

(d) If publication of the Consumer Price Index shall be discontinued, the parties hereto shall thereafter accept comparable statistics on the cost of living for West Virginia or the West Virginia region as such shall be computed and published by an agency of the United States government or by a responsible financial periodical of recognized authority then to be selected by the parties hereto, or, if the parties cannot agree upon a selection, by arbitration pursuant to the terms therefore set forth below. In the event of (1) use of comparable statistics in place of the Consumer Price Index as above mentioned, (2) publication of the Index figure at other than monthly intervals, or (3) a change in the standard reference base period and a discontinuance of publication of indexes on the 1993-95 = 100 reference base, necessary revisions shall be made in the method of computation to carry out the intent of this Paragraph. Any dispute between the parties about the Rental due in the Base Term or in an Extended Term shall be determined by arbitration. The arbitrators shall be three (3) in number, one being chosen by LANDLORD, one being chosen by TENANT, and the Chairman and third arbitrator being chosen by the two arbitrators chosen by LANDLORD and TENANT. All costs of the arbitration shall be apportioned between the parties by the arbitrators. The decisions of the arbitrators shall be final and not appealable.

B. Article six (6) shall be amended by the addition of subparagraph (h) as set forth below:

(h) Purchase Option Granted to Landlord.

(i) TENANT's Receipt of Bona Fide Offer to Purchase. In the event the TENANT receives a bona fide offer to purchase, the TENANT's interest in the building on the Leased Premises, and if TENANT finds the offer satisfactory, then TENANT shall give the LANDLORD the privilege of purchasing the said building at the price and on the terms of the offer made by the third person. Written notice of the offer must be delivered to the LANDLORD within five (5) days from the date TENANT received the offer. The LANDLORD must exercise this privilege by delivering written notice to the TENANT and by signing a contract of purchase of the improvements within thirty (30) days of receiving notice of the offer. If the LANDLORD fails to exercise this privilege, the TENANT will be free to sell its interest in the building, to the third person making the offer.

(ii) Absence of Bona Fide Offer to Purchase.

In the event that TENANT desires to sell its interest in the building on the Leased Premises, but has received no bona fide offer to purchase, TENANT shall deliver to LANDLORD written notice of its desire to sell and a written appraisal of the fair market value of TENANT's interest in the building. If LANDLORD disputes the TENANT's opinion of fair market value, LANDLORD may secure an additional appraisal and

deliver it to TENANT. TENANT and LANDLORD shall divide equally the cost of securing a third appraisal by a neutral appraiser selected by the appraisers chosen by TENANT and LANDLORD. The average of the three appraisals shall be deemed to be the fair market value of the TENANT's interest in the building. The LANDLORD then must exercise this privilege by delivering written notice to the TENANT and by signing a contract to purchase TENANT's interest in the building within thirty (30) days of receiving the deemed fair market value of the building as determined by the average of the three appraisers.

C. Article Thirteen (13) shall be amended by adding the following provision.

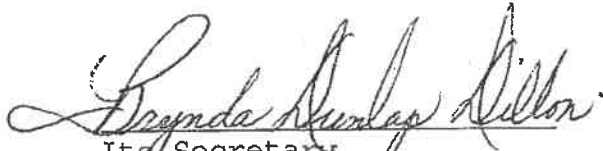
No assignment or subletting shall release TENANT from any of its obligations hereunder. Such continuing liability shall be as a principal and not as a guarantor or surety, to the same extent as though no assignment or transfer had been made. No assignment or subletting shall release any guarantor of its liability to perform TENANT's obligations hereunder or from any of such previous subtenant, assignor or guarantor's obligations under its guaranty.


D. In all other respects, the parties hereto ratify and republish the Ground Lease Agreement dated June 24, 1999, as of the date of this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Ground Lease Agreement to be signed and sealed as of the date first above written. '

ATTEST:

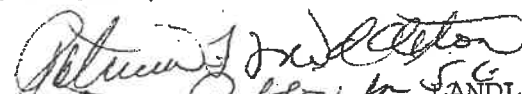
SISTERS' ANTIQUE MALL, INC.,
a West Virginia corporation


Its Secretary
Brynda Dunlap Dillon


Its President
Dianne Dunlap Bailey


(CORPORATE SEAL)

ATTEST:



notary Robert for S.C.
Exp. 11-11-2004

LANDLORD

JOHN SKIDMORE DEVELOPMENT, INC.,
a West Virginia corporation


Its Secretary
Virginia Skidmore

By:


Its President
John K. Skidmore

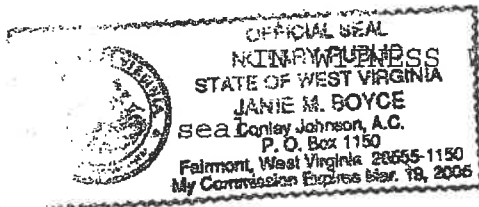
(CORPORATE SEAL)

THIS AMENDMENT TO LEASE HAS BEEN PREPARED BY LEA E. ANDERSON,
ESQUIRE, GOEHRING, RUTTER & BOEHM, 1424 FRICK BUILDING,
PITTSBURGH, PENNSYLVANIA 15219.

STATE OF WEST VIRGINIA
COUNTY OF

) ss:
)

On this 18th day of Sept., 2002, before me, a
Notary Public in and for the said State and County, personally
appeared DIANNE DUNLAP BAILEY, who acknowledged herself to be the
President of SISTERS' ANTIQUE MALL, INC., a West Virginia
corporation, and that she was authorized to execute the foregoing
instrument on behalf of said Corporation for the purposes therein
set forth.



WHEREOF, I have hereto set my hand and notarial

Janie M. Boyce

Notary Public

My Commission Expires: 3-19-06

STATE OF WEST VIRGINIA
COUNTY OF BRAXTON

) ss:
)

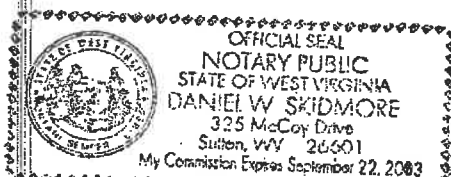
On this 17th day of September, 2002, before me, a
Notary Public in and for the said State and County, personally
appeared John K. Skidmore, who acknowledged himself to be the
President of John Skidmore Development, Inc., a West Virginia
corporation, and that he was authorized to execute the foregoing
instrument on behalf of said Corporation for the purposes therein
set forth.

IN WITNESS WHEREOF, I have hereto set my hand and notarial
seal.

Daniel W. Skidmore

Notary Public

My Commission Expires: Sept 22, 2003



January 16, 2016

JOHN SKIDMORE DEVELOPMENT, INC.
350 DAYS DRIVE
SUTTON, WV 26601

RE: SISTERS' ANTIQUE MALL, INC., SUTTON, WV 26601

Reference is made to that certain Ground Lease dated 24 June, 1999 and Amendment to Ground Lease dated 17 September, 2002 (which lease and all subsequent modifications and agreements now in effect are herein referred to as the "Lease"), by and between John Skidmore Development Inc. ("Landlord") and Sister's Antique Mall, Inc. ("Tenant") in the Lease of approximately 0.72 acres of land more or less located at 3766 Sutton Lane, Sutton, WV 26601 and as defined in the Lease (the "Premises").

CONSENT TO SUBLET

This consent to Sublet (The Consent) is made and entered into on January 1, 2016 (the Effective Date) by and between John Skidmore Development Inc. (the Landlord) and Sisters Antique Mall Inc. (the Tenant) and *Sisters Antiques LLC* (the Subtenant). The Landlord, Tenant, and Subtenant can be referred to individually as a Party or together as Parties.

RECITALS

WHEREAS, the Landlord is the landlord at the premises located at 3766 Sutton Lane, Sutton, WV 26601 (the Premises)

WHEREAS, the Landlord and Tenant entered into a written lease agreement for the Premises dated 24 June 1999, and the Amendment to the Lease dated 17 Sept 2002 a copy of which together herein is referred to as (the "Lease") is attached as Exhibit A.

WHEREAS, the Tenant wishes to sublet its rights and obligations under the Lease to "Assign or Subletting" and the Subtenant wishes to accept the terms and conditions of the sublease agreement (the "Sublease") which is attached as Exhibit B.

WHEREAS, the Landlord is willing to consent to the Sublease on the terms and conditions set forth in this Consent.

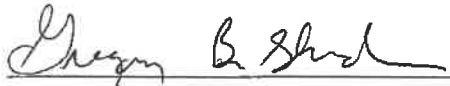
NOW THEREFORE, in consideration of the above recitals and mutual promises and benefits contained herein, the Parties agree to the following terms:

**EXHIBIT
C**

1. **CONSENT TO SUBLET:** The Landlord consents to the terms and conditions set forth in the Sublet. The Landlord's consent to the Sublet will not constitute consent to any additional subsequent subletting or assignments of the Premises. The Tenant will provide the Landlord with a fully-executed copy of the Sublet to be included and made part of the Lease promptly after execution of such.
2. **USE OF PREMISES:** Except as otherwise provided in this Consent, the Subtenant will only use the Premises for a purpose consistent with the permitted use in the Lease. Additionally, the Subtenant agrees to comply with all other applicable provisions of the Lease, and will not do anything that would constitute a violation of any part or condition of the Lease.
3. **CONTINUING LIABILITY:** The Tenant acknowledges that (a) The Tenant will remain primarily liable for, and will not be released from the performance of any or all of the items and conditions of the Lease, notwithstanding the existence of, and Landlord's consent to, the Sublet, or any breach committed by the Subtenant; and (b) the Landlord will be entitled to pursue remedies available in the event of the Tenant's breach of the Lease, without regard to the performance or non-performance of the terms of the Sublet by the Subtenant.

Except as herein modified, all other terms, conditions and covenants of the Lease remain in full force and effect. If the foregoing adequately represents the mutual understanding of the parties, kindly sign the enclosed duplicate original and return it to me. Each party warrants to the other that the person executing this agreement on behalf of such party has the full legal authority to enter into this agreement and that each party will indemnify and hold harmless the other party for any breach of this warranty.

Accepted and Agreed this Jan 1, 2016



Gregory B. Skidmore, Secretary/Treasurer
John Skidmore Development Inc.

Sisters Antique Mall, Inc.

By: 

Title: 
co-owner

Sisters Antique Mall, Inc.

By: 

Title: 
co-owner

From: Brynda Fleming <bryndafleming@gmail.com>
Sent: Tuesday, March 26, 2019 7:04 AM
To: Emily Lambright
Cc: Greg Skidmore; john2@flatwoods.com; ladydiphi55@yahoo.com
Subject: Lease Sisters Antique Mall

Consider this our formal written intent. We will not renew our 20 year lease and plan to abide by the lease amendment for Skidmore Development to purchase our building. Please let us know if you have read the amendment.
Sent from my iP



West Virginia E-Filing Notice

CC-04-2019-P-23

Judge: Richard Facemire

To: J. Mark Adkins
madkins@bowlesrice.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF BRAXTON COUNTY, WEST VIRGINIA
John Skidmore Development, Inc. v. Sisters' Antique Mall, Inc.
CC-04-2019-P-23

The following supporting documents was FILED on 7/23/2019 9:23:15 AM

Notice Date: 7/23/2019 9:23:15 AM

Susan Lemon
CLERK OF THE CIRCUIT
Braxton
300 Main Street, Room 101
SUTTON, WV 26601

(304) 765-2837
susan.lemon@courtsww.gov

EXHIBIT
B

IN THE CIRCUIT COURT OF BRAXTON COUNTY, WEST VIRGINIA

JOHN SKIDMORE DEVELOPMENT, INC.
a West Virginia corporation,

Petitioner,

v.

Case No. 19-P-23

SISTERS' ANTIQUE MALL, INC.
a West Virginia corporation; and
DUNLAP RENTAL, LLC, a
West Virginia limited liability company,

Respondents.

**ANSWER OF RESPONDENTS, SISTERS' ANTIQUE MALL, INC., AND DUNLAP
RENTAL, LLC, TO PETITIONER'S PETITION FOR DECLARATORY JUDGMENT
TO DECLARE RIGHTS UNDER LEASE AGREEMENT AND VERIFIED
COMPLAINT OF RESPONDENTS, SISTERS' ANTIQUE MALL, INC. AND DUNLAPP
RENTAL, LLC AGAINST PETITIONER, JOHN SKIDMORE DEVELOPMENT, INC.**

Now comes Respondents, Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, by counsel, O.
Gay Elmore, Jr., and in answer to the Petition states as follows:

FIRST DEFENSE

1. In answer to Paragraph 1 of the Petition, Respondents Sisters' Antique Mall, Inc., and
Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 1 of the Petition.

2. In answer to Paragraph 1 of the Petition, Respondents Sisters' Antique Mall, Inc., and
Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 1 of the Petition.

3. In answer to Paragraph 3 of the Petition, Respondents Sisters' Antique Mall, Inc., and
Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 3 of the Petition.

4. Paragraph 4 is a jurisdictional paragraph to which no response is required. To the extent that a response is deemed necessary, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, concur with the jurisdiction of this Court.

5. Paragraph 5 is a venue paragraph to which no response is required. To the extent that a response is deemed necessary, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, concur that venue is proper.

6. In answer to Paragraph 6 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 6 of the Petition.

7. In answer to Paragraph 7 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 7 of the Petition.

8. In answer to Paragraph 8 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 8 of the Petition.

9. In answer to Paragraph 9 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 9 of the Petition.

10. In answer to Paragraph 10 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 10 of the Petition.

11. In answer to Paragraph 11 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 11 of the Petition.

12. In answer to Paragraph 12 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 12 of the Petition.

13. In answer to Paragraph 13 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, denies each and every allegation set forth in Paragraph 13 of the Petition.

14. In answer to Paragraph 14 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 14 of the Petition.

15. In answer to Paragraph 15 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 15 of the Petition.

16. In answer to Paragraph 16 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, deny each and every allegation set forth in Paragraph 16 of the Petition.

17. The second incorrectly numbered Paragraph 16 is a paragraph to which no response is required. To the extent that a response is deemed necessary, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, deny each and every allegation set forth in Paragraph 16 of the Petition.

18. Paragraph 17 (a) and (b) require no response as they are merely recitations of caselaw. To the extent that a response is deemed necessary, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, deny that said citations support Plaintiff's position given the facts of this case. Respondents deny (c). (d) requires no response but to the extent that a response is deemed necessary, Respondents admit that it is an accurate representation of parts of Section 6 (h)(ii). Respondents deny the (e).

19. Paragraph 18 is an incorporation paragraph to which no response is required. To the extent that a response is deemed necessary, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, incorporate by reference as if set forth at length herein their responses to each of the above paragraphs.

20. Paragraph 19 is a paragraph to which no response is required. To the extent that a response is deemed necessary, Respondents admit that it is an accurate statement of law.

21. In answer to Paragraph 20 of the Petition, Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, admits each and every allegation set forth in Paragraph 15 of the Petition.

NATURE OF RESPONSE

Respondents seek declaration from this Court that (1) the original Ground Lease Agreement dated June 24, 1999 (hereinafter “the original Ground Lease Agreement”) contains mistakes in material terms which were contrary to the terms originally negotiated and agreed upon by the parties, namely John Skidmore, Sr. and Brynda Fleming, respectively. The two primary examples are the rent amount contained in Paragraph 4(a)(ii) and the Title to Improvements section contained in 6(g); (2) that the Amendment to Ground Lease Agreement entered into and executed between the parties on September 17, 2002 (hereinafter “the Amendment”) modified, altered and corrected the original Ground Lease Agreement; (3) that Respondents have triggered the Purchase Option granted to Landlord pursuant to Paragraph 4(h) and its subsections contained in the Amendment; and (4) the provisions of the original Ground Lease Agreement which vests free and clear title to the building in the Petitioner, upon expiration or termination (a) is an erroneous provision contrary to the original agreement negotiated between John Skidmore, Sr. and Brynda Fleming and (b) was abrogated by the Amendment thereto and (c) was never the intent of the parties to limit the value of the Building to the “leasehold value.”

The first mistake contained in the Ground Lease Agreement is paragraph 4(a)(ii) “...shall be \$12,000.00 paid at the monthly rate of \$1,000.00...”; it is undeniable that this figure was erroneously drafted and did not accurately represent the agreed upon amount. The agreed upon figure was in fact One Thousand Five Hundred Dollars (\$1,500.00) monthly beginning with the first required payment. It should be noted that despite the erroneous figure being stated, Respondents initially tendered and continued to pay the agreed upon figure of One Thousand Five Hundred Dollars (\$1,500.00).

Similarly, the provision vesting title to Petitioner upon expiration/termination was not an accurate recitation of the Agreement between the parties; said mistakes were the catalyst for the Amendment. The Amendment was the parties attempt to correct these errors and conform to the original negotiated Agreement. The Amendment provided for the Petitioner's option to purchase "Tenant's interest in the building"; never was it the intent nor agreement of the parties to limit "Tenant's interest" in the building which Tenant constructed to a "leasehold" interest. In fact, Petitioner, in its Petition, repeatedly refers to "the remainder fair market value of the leasehold interest in the Building." However, upon examination of the Ground Lease Agreement and the Amendment thereto, nowhere does the term "leasehold interest" appear. The vague reference of "Tenant's interest" in the property is ambiguous, at best, and contrary to the terms agreed upon by the parties.

"Generally, when a disputed written agreement is deemed "ambiguous" it is interpreted by a judge or jury, usually with the aid of extrinsic evidence and enforced in accordance with the parties' intent." (See Energy Dev. Corp. v. Moss, 591 S.E.2d 135, 144 (W.Va. 2003). Further, "when extrinsic or parole evidence contradicts an ambiguous writing, questions of fact are raised and should be submitted to a jury." (See Stewart v. Blackwood Elec. Steel Corp., 130 W.Va. 447, 449 (W.Va. 1925). Additionally, important to the current analysis is the precedent that "[w]here a provision of a (contract) is ambiguous, it is construed against the drafter..." (Payne v. Weston 195 W.Va. 502, 507, 466 S.E. 2d 161, 166 (1995) citing syl. .ct 1, West Virginia Ins. Co. v. Lambert, 193 W.Va. 681, 458, S.E. 2d 774 (1995)).

WHEREFORE, Respondents Sisters' Antique Mall, Inc., and Dunlap Rentals, LLC pray that the Court:

-
- (a) Declare that material mistakes were made in the drafting of the original Ground Lease Agreement contrary to the terms negotiated and agreed upon between the parties; and
 - (b) Declare that the original Ground Lease Agreement was altered and modified by the Amendment thereto; and
 - (c) Declare that the Respondents interest in the building, which it constructed, is the entire value of the building; and
 - (d) Grant such further relief as this Court deems just and proper.

VERIFIED COMPLAINT

FRAUD AND MISREPRESENTATION

22. The Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC reallege, re-aver and incorporate paragraphs 1 through 21 as if fully set forth herein.

23. In the year 1999, Brynda Fleming, on behalf of Respondents, and John Skidmore, Sr., on behalf of Petitioner, negotiated a transaction which matured into the original Ground Lease Agreement.

24. Pursuant to those negotiations, Respondents agreed to prepare the subject property at a cost of Eight Thousand Dollars (\$8,000.00), construct a building thereon, and enter into a long-term lease.

25. At all times herein, both during the negotiation of terms and even after execution of the original Ground Lease Agreement, it was Brynda Fleming's understanding that the building, which Respondents constructed, was to be owned and controlled by Respondents.

26. On June 24, 1999, Petitioner and Respondent Sisters Antique Mall, Inc. entered into the original Ground Lease Agreement prepared by Petitioner's Attorney.

27. The Ground Lease Agreement contained material terms contrary to those that had been agreed upon.

28. The material terms contrary to those agreed to were:

- (a) paragraph 4(a)(ii) "...shall be \$12,000.00 paid at the monthly rate of \$1,000.00..."
- (b) paragraph 6(g) "...any and all improvements made by Tenants shall...become vested in Landlord upon the expiration or termination of this Lease."

29. Due to the inclusion of those erroneous terms in the Ground Lease Agreement, an Amendment to Ground Lease Agreement was entered into on September 17, 2002.

30. The Amendment to Ground Lease Agreement, paragraph H, states in pertinent part:

(ii) Absence of Nona Fide Offer to Purchase.

In the event that TENANT desires to sell its interest in the building on the Leased Premises, but has received no bona fide offer to purchase, TENANT shall deliver to LANDLORD written notice of its desire to sell and a written appraisal of the fair market value of TENANT'S interest in the building. If LANDLORD disputes the TENANT'S opinion of the fair market value, LANDLORD may secure an additional appraisal and deliver to TENANT. TENANT and LANDLORD shall divide equally the cost of securing a third appraisal by a neutral appraiser selected by the appraisers chosen by TENANT and LANDLORD. The average of the three appraisals shall be deemed to be the fair market value of the TENANT'S interest in the building. The LANDLORD then must exercise this privilege by delivering written notice to the TENANT and by signing a contract to purchase TENANT'S interest in the building within thirty (30) days of receiving the deemed fair market value of the building as determined by the average of the three appraisers. (emphasis added).

31. On or about March 26, 2019, Respondents expressed their interest, via email correspondence, in selling the building/development to Petitioner.

32. Pursuant to the terms of the Amendment as understood by Respondents, Respondents caused its building/development to be appraised by Joshua R. Thornton, Certified General Appraiser, Cert No. 325, in an effort to determine the fair market value of the building.

33. The appraisal reported a "fair market value" of approximately Two Hundred Thousand Dollars (\$200,000.00). Upon receipt of said appraisal, Respondent provided the same to Petitioner.

34. Upon receipt of the appraisal for the fair market value, Petitioner rejected the same due to the fact that the appraisal was for the fair market value and not Respondent's "leasehold" interest.

35. Petitioner, in its Petition, repeatedly refers to "the remainder fair market value of the leasehold interest in the Building." However, upon examination of the Ground Lease Agreement and the Amendment thereto, nowhere does the term "leasehold interests" appear.

36. The vague reference of "Tenant's interest" in the property is ambiguous, at best, and contrary to the terms agreed upon by the parties.

37. Petitioner, a sophisticated business man, had a duty of good faith and fair dealing in negotiating with Respondents, a laymen and business novice.

38. John Skidmore, Sr., on behalf of Petitioner, specifically induced Respondents into entering into the Ground Lease Agreement, expending Eight Thousand Dollars (\$8,000.00) and building a building upon the Subject Property by representing that the building would be owned and controlled by Respondents at the termination of the Lease.

39. Petitioner's misrepresentation was unlawful, unfair, unconscionable, deceptive, reckless, and fraudulent which harmed the Respondents causing monetary loss and economic damages, consequential and incidental damages, actual and compensatory damages, emotional and mental distress, aggravation, anxiety, annoyance and inconvenience.

40. Pursuant to W.Va. Code § 31D-6-622(b), John Skidmore, Sr. is personally liable to the Respondents by reason of his own acts or conduct.

WHEREFORE, Respondents demand judgment against Petitioner and John Skidmore, Sr. in such an amount as is proved at trial for consequential and incidental damages, actual and compensatory damages, emotional and mental distress, aggravation, anxiety, annoyance and inconvenience, punitive damages, the costs of this action, attorney's fees, and for any and all relief as this Court deems proper.

RESPONDENTS DEMANDS A TRIAL BY JURY.

Sisters' Antique Mall, Inc.,
and Dunlap Rentals, LLC
By counsel.



O. Gay Elmore, Jr., Esquire (*WV State Bar #5487*)
Elmore Law Office
122 Summers Street
Charleston, West Virginia 25301
Phone: (304) 344-2232

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

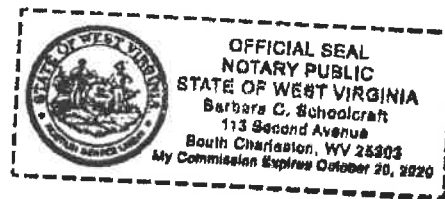
On this 19 day of July, 2019, Brynda Fleming, on behalf of Respondents, personally appeared before the undersigned Notary Public in and for the County and State aforesaid, and after being first duly sworn, upon his oath, stated that she has read the Verified Complaint, and that the declarations and allegations contained therein are true and correct to the best of her knowledge and belief.


Brynda Fleming

Taking, subscribed and sworn to before me, Barbara Schoolcraft, a notary public for the State of West Virginia, County of Kanawha, this 19 day of July 2019.

My Commission expires October 20, 2020


Notary Public



IN THE CIRCUIT COURT OF BRAXTON COUNTY, WEST VIRGINIA

JOHN SKIDMORE DEVELOPMENT, INC.
a West Virginia corporation,

Petitioner,

v.

Case No. 19-P-23

SISTERS' ANTIQUE MALL, INC.
a West Virginia corporation; and
DUNLAP RENTAL, LLC, a
West Virginia limited liability company,

Respondents.

CERTIFICATE OF SERVICE

I, O. Gay Elmore, Jr., counsel for Respondents, Sisters' Antique Mall, Inc. and Dunlap Rental, LLC, does hereby certify that service of the foregoing *"Answer of Respondents Sisters' Antique Mall, Inc., and Dunlap Rental, LLC, to Petitioner's Petition for Declaratory Judgment to Declare Rights Under Lease Agreement and Verified Complaint of Respondent, Sisters' Antique Mall, Inc. and Dunlap Rental, LLC, against Petitioner, John Skidmore Development, Inc"* was made upon the following by mailing a true and exact copy thereof to:

J. Mark Adkins
Emily R. Lambright
Zachary J. Rosencrance
BOWLES RICE, LLP
600 Quarrier Street
Charleston, WV 25301

in a properly stamped and addressed envelope, postage prepaid, and deposited in the United States mail this 19th day of July, 2019.


O. Gay Elmore, Jr.

Court: Circuit
 Judge: Richard Facemire
 Case Type: Miscellaneous Proceedings
 Style: John Skidmore Development, Inc. v. Sisters' Antique Mall, Inc.

County: 04 - Braxton
 Created Date: 5/23/2019
 Case Sub-Type: Other

Case Number: CC-04-2019-P-23
 Status: Open
 Security Level: Public

Created Date	Event	Ref. Code	Description
1 5/23/2019 3:22:03 PM	E-Filed		Petition for Miscellaneous Proceedings
2 5/23/2019 3:22:03 PM	Judge Assigned	J-51003	Richard Facemire
3 5/23/2019 3:22:03 PM	Party Added	P-001	John Skidmore Development, Inc.
4 5/23/2019 3:22:03 PM	Party Added	D-001	Sisters' Antique Mall, Inc.
5 5/23/2019 3:22:03 PM	Party Added	D-002	Dunlap Rental, L.L.C.
6 5/23/2019 3:22:03 PM	Attorney Listed	P-001	A-7414 - J. Mark Adkins
7 5/23/2019 3:22:03 PM	Service Requested	D-001	Secretary of State - Certified - Including Copy Fee
8 5/23/2019 3:22:03 PM	Service Requested	D-002	Secretary of State - Certified - Including Copy Fee
9 5/29/2019 11:37:07 AM	E-Filed		Notice of Judge Reassignment
0 5/29/2019 11:37:07 AM	Judge Assigned	J-51001	Jack Alsop
1 5/30/2019 3:06:55 PM	E-Filed		Supporting Documents - Summons Returned for Dunlap Rental, LLC Showing Service Accepted by Secretary of State
2 5/30/2019 3:08:30 PM	E-Filed		Supporting Documents - Summons Returned for Sisters' Antique Mall, Inc. Showing Service Accepted by Secretary of State
3 7/23/2019 9:23:16 AM	E-Filed		Supporting Documents - ANSWER OF RESPONDENTS, SISTERS ANTIQUE MALL

EXHIBIT
C

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JOHN SKIDMORE DEVELOPMENT, INC.,
a West Virginia corporation;

Petitioner,

Braxton County Circuit Court
Civil Action No. 19-P-23

v.

SISTERS' ANTIQUE MALL, INC.,
a West Virginia corporation;
BRYNDA DUNLAP FLEMING, a
West Virginia resident; and
RETA DIANE BAILEY PHILLIPS,
a West Virginia resident;

Respondents.

CERTIFICATE OF SERVICE

I, Zachary J. Rosencrance, do hereby certify that I have caused a copy of the hereto
attached **Motion to Refer Case to the Business Court Division** to be served upon:

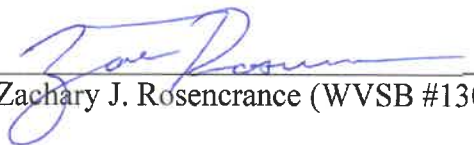
Gay Elmore
121 Summers Street
Charleston, West Virginia 25301

Susan Lemon, Clerk
Circuit Court of Braxton County
Braxton County Courthouse
300 Main Street
Sutton, West Virginia 26601

Jack Alsop, Judge
Circuit Court of Braxton County
Braxton County Courthouse
300 Main Street
Sutton, West Virginia 26601

Lorri Stotler, Administrative Assistant
Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, West Virginia 25401

by placing the same in the regular United States Mail, postage prepaid, on this 25th day of July
2019.


Zachary J. Rosencrance (WVSB #13040)