

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

ERT 163<sup>rd</sup> STREET MALL, LLC,

Plaintiff,

v.

CASE NO.: 2013-CA-10209

NOEL ENTERPRISES, L.L.C.,  
LINDA NOEL AND MERCY NOEL,

Defendants.

---

**PLAINTIFF'S MOTION FOR AWARD OF  
ATTORNEY FEES AND COSTS AND ENTRY OF FINAL JUDGMENT**

Plaintiff, ERT 163<sup>rd</sup> Street Mall, LLC ("Landlord"), moves the Court for entry of an order determining the amount of the award of attorneys' fees and costs awarded by this Court and entry of final judgment against Defendants, Noel Enterprises, LLC and Linda Noel, and states:

1. On or about July 23, 2013, this Court entered Summary Judgment in favor of Landlord, a true and correct copy of which is attached hereto as **Exhibit A** (the "Summary Judgment"), finding that Defendants, Noel Enterprises, LLC and Linda Noel were liable to Landlord as follow:

- A. From Defendant Noel Enterprises, LLC, the sum of One Hundred One Thousand Five Hundred Ninety and 35/100 Dollars (\$101,590.35).
- B. From Defendant Linda Noel, the sum of Fifty-six Thousand Nine Hundred Thirty-six and 46/100 Dollars (\$56,936.46)

2. In the Summary Judgment, the Court ruled that the Landlord is entitled to recover its attorneys' fees and costs pursuant to the contracts at issue.

3. Pursuant to the Affidavit as to Attorney Fees and Costs, attached hereto as **Exhibit B**, Landlord has incurred the total sum of \$9,952.25, in attorneys' fees and costs in this action.

4. Pursuant to the Affidavit of Disinterested Attorney as to Attorneys' Fees and Costs, attached hereto as **Exhibit C**, the attorneys' fees and costs incurred are fair and reasonable and accurately reflect the attorney fees and costs incurred by Landlord in this action.

5. Accordingly, Landlord is entitled to a judgment in the amount of \$9,952.25 against Defendants Noel Enterprises, LLC and Linda Noel, jointly and severally.

WHEREFORE, Plaintiff, ERT 163<sup>rd</sup> Street Mall, LLC, moves the Court for entry of an Order granting this Motion, finding that Defendants Noel Enterprises, LLC and Linda Noel, jointly and severally, are liable to the Plaintiff for its attorneys' fees and costs in the amount of \$9,952.25, entering Final Judgment against Defendant Noel Enterprises, LLC in the amount of \$111,542.6 and against Defendant Linda Noel in the amount of \$66,888.71, and for all other relief to which Plaintiff are entitled at law or in equity.

Dated: August 21, 2013

**SHUMAKER, LOOP & KENDRICK, LLP**

By: \_\_\_\_\_

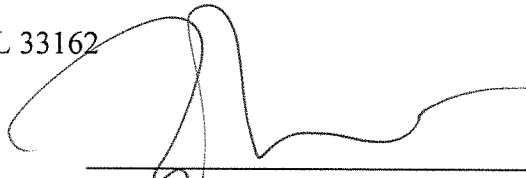
JAI ME AUSTRICH  
Florida Bar No. 084565  
BRIAN C. WILLIS  
Florida Bar No. 42930  
101 E. Kennedy Blvd., Suite 2800  
Tampa, Florida 33602  
Telephone: (813) 229-7600  
Facsimile: (813) 229-1660  
[jaustrich@slk-law.com](mailto:jaustrich@slk-law.com) (primary email)  
[bwillis@slk-law.com](mailto:bwillis@slk-law.com) (secondary email)  
[mwright@slk-law.com](mailto:mwright@slk-law.com) (secondary email)  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 21, 2013, I served a true and correct copy of the foregoing, via U.S. Mail, to:

**NOEL ENTERPRISES, LLC**  
275 NW 157th Street  
Miami, FL 33169

**LINDA NOEL**  
1303 NE 163rd Street  
North Miami Beach, FL 33162

---

Attorney

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

ERT 163<sup>rd</sup> STREET MALL, LLC,

Plaintiff,

v.

CASE NO.: 2013-CA-10209

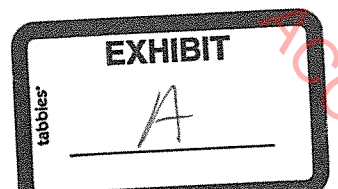
NOEL ENTERPRISES, L.L.C.,  
LINDA NOEL AND MERCY NOEL,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT

This matter came before the Court at hearing on June 6, 2013 on the Motion for Summary Judgment (the "Motion"), filed by the Plaintiff, ERT 163<sup>rd</sup> STREET MALL, LLC. The Court having reviewed the Motion and supporting affidavit, having reviewed the Court file, and being otherwise duly advised in the premises, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.
2. Final Judgment shall be and hereby is entered in favor of the Plaintiff and against NOEL ENTERPRISES, LLC and LINDA NOEL as set forth herein.
3. Plaintiff is the owner of real property in Miami-Dade County, Florida, located at 1421 North East 163<sup>rd</sup> Street, Miami, Florida 33162, and commonly known as the Mall at 163<sup>rd</sup> Street.
4. On or about August 31, 2007, Plaintiff granted Noel Enterprises, LLC the right to use and occupy about 1,163 square feet of commercial space (Store No. 1358) within the Mall at 163<sup>rd</sup> Street Shopping Center (the "Premises") under an Agreement of Lease (the "Lease").



5. On or about August 31, 2007, as a material inducement to Plaintiff executing the Lease, Linda Noel executed a Guaranty (the "Guaranty").

6. Noel Enterprises, LLC was obligated by the Lease, but failed, to pay minimum monthly rent in addition to Noel Enterprises, LLC's proportionate share of the common area expenses, real estate taxes and insurance.

7. As of May 1, 2013, Noel Enterprises, LLC owes to Plaintiff the sum of \$101,590.35.

8. Therefore, in accordance with the laws of the State of Florida, Judgment for Possession is hereby **ENTERED** in favor of Plaintiff and against Noel Enterprises, LLC.

9. The Clerk of this Court shall issue a Writ of Possession commanding the Sheriff to remove all persons from the Premises and place Plaintiff in possession of the Premises.

10. Pursuant to the Guaranty, Linda Noel is liable for 24 months of unpaid Rent and Additional Rent, which, for the 24 months for which the Linda Noel is liable, totals \$56,936.46.

11. Plaintiff, whose address is 420 Lexington Avenue, Seventh Floor, New York, NY 10170, shall recover:

- a. From Defendant Noel Enterprises, LLC, whose last known address is 1421 NW 163<sup>rd</sup> Street, Store Number 1358, Miami, Florida 33169, the sum of One Hundred One Thousand Five Hundred Ninety and 35/100 Dollars (\$101,590.35), which shall bear interest at the prevailing statutory rate pursuant to F.S. §55.03.
- b. From Defendant Linda Noel, whose last known address is 275 NW 157 Street, Miami, Florida 33169, the sum of Fifty-six Thousand Nine Hundred Thirty-six and 46/100 Dollars (\$56,936.46), which shall bear interest at the prevailing statutory rate pursuant to F.S. §55.03.

12. Plaintiff is the prevailing party and is entitled to recover its attorneys' fees and costs in an amount to be determined at a subsequent hearing.

13. Pursuant to Rule 1.560(c), Florida Rules of Civil Procedure, Noel Enterprises, LLC and Linda Noel shall each complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), attached hereto as **Exhibit "A"**, including all required attachments, and serve it on Plaintiff's attorney within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.

14. The Court reserves jurisdiction over this cause to enter further orders that are proper, including an order to compel Defendants to complete Form 1.977, including all required attachments, and serve it on the Landlord's attorney.

**DONE AND ORDERED** in Chambers, at Miami-Dade County, Florida, this \_\_\_\_ Day of \_\_\_\_\_, 2013.

**CONFORMED COPY**

**JUL 23 2013**

**PETER R. LOPEZ  
CIRCUIT COURT JUDGE**

\_\_\_\_\_  
Hon. Peter R. Lopez  
Circuit Court Judge

**Copies furnished to:**  
Attorney for Plaintiff  
Brian C. Willis, Esq.  
101 E. Kennedy Blvd., Suite 2800  
Tampa, FL 33602

Noel Enterprises, LLC  
1421 NW 163<sup>rd</sup> Street, Store Number 1358  
Miami, FL 33169

Linda Noel  
275 NW 157 Street  
Miami, FL 33169

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

ERT 163<sup>rd</sup> STREET MALL, LLC,

Plaintiff,

v.

CASE NO.: 2013-CA-10209

NOEL ENTERPRISES, L.L.C.,  
LINDA NOEL AND MERCY NOEL,

Defendants.

AFFIDAVIT AS TO ATTORNEYS' FEES AND COSTS

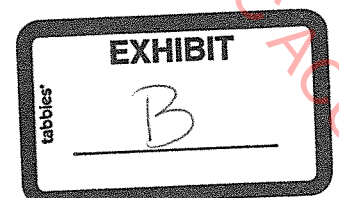
STATE OF FLORIDA                    )  
  )    ss:  
COUNTY OF HILLSBOROUGH        )

**BEFORE ME**, the undersigned authority, personally appeared Brian C. Willis, who being by me first duly sworn, deposes and says:

1. I am an associate in the law firm of Shumaker, Loop & Kendrick, LLP ("SL&K") and the attorney who has had responsibility for representing the Plaintiff, ERT 163<sup>rd</sup> Street Mall, LLC, ("ERT") in this action.

2. This Affidavit is made for the purpose of establishing the amount of attorneys' fees and costs to which Plaintiff ERT is entitled in this action.

3. This Affidavit is based upon my personal knowledge of the facts stated in this Affidavit or those facts as they appear in the business records of SL&K. These records were kept in the ordinary course of business at SL&K, and it was and is the regular practice of this firm to keep such records, specifically including time records kept by attorneys with the firm. A summary of the



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fees and costs is attached hereto as *Exhibit A*. Copies of the actual statements are attached hereto as *Exhibit B*. The statements include all time worked by counsel.

4. SL&K has billed or will bill the total sum of \$9,952.25 for its attorneys' services and expenses in connection with this action. This amount reflects 38.50 hours of attorneys' time and includes the sum of \$888.25 in expenses. These sums are fair and reasonable and accurately reflect the attorneys' fees and costs incurred by Plaintiff in this action.

5. So that the Court may consider the relevant guidelines for an award of attorneys' fees as set forth in *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985), the following information is submitted:

(a) The time and labor required. The hours spent on this matter by SL&K are set forth in the Summary of Attorneys' Fees and Costs Incurred, which has been attached hereto as *Exhibit "A"*.

(b) The skill requisite to perform the legal services properly. The pleadings speak for themselves and should be considered by the Court in connection with this consideration.

(c) Preclusion of other employment by the attorney due to the acceptance of this case. No extraordinary consideration need be given this factor.

(d) The customary fee. The hourly fees charged in this case are regularly charged by the firm to its clients for similar services and do not exceed rates charged for similar work by attorneys in the area.

(e) The amount involved and the results obtained. No extraordinary consideration need be given this matter.

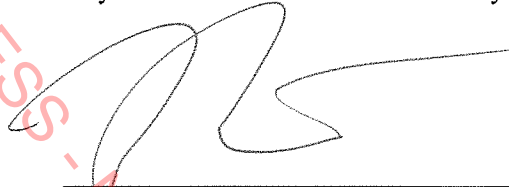
(f) Time limitations by the client or circumstances. No extraordinary consideration need be given this factor.

(g) The nature and length of the professional relationship with the client. SL&K has represented the Plaintiff, ERT in litigation and non-litigation matters since the matter was filed.

(h) The experience, reputation, and ability of attorneys. SL&K is a national law firm with offices in Florida, Ohio and North Carolina. I have been active in the practice of law since 2007, and am presently licensed to practice law in the State of Florida. Jaime Austrich has been active in the practice of law since 1996, and is presently licensed to practice law in the State of Florida. Seth P. Traub has been active in the practice of law since 2006, and is presently licensed to practice law in the State of Florida.

(i) Whether the fee is fixed or contingent. The fee is fixed. However, there appears nothing in this action which would require extraordinary consideration of this factor by this Court.

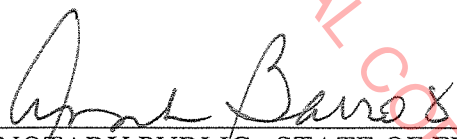
**FURTHER AFFIANT SAYETH NAUGHT.**



\_\_\_\_\_  
BRIAN C. WILLIS

**STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH**

Sworn to and subscribed before me this 16<sup>th</sup> day of August, 2013, by BRIAN C. WILLIS, who [] is personally known to me or [] produced \_\_\_\_\_ as identification and did take an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC - STATE OF FLORIDA  
Name: ANNA M. BARROS  
My Commission Expires: 7/19/14



*ERT 163<sup>rd</sup> Street Maill, LLC v. Noel Enterprises, LLC et al.*

**SUMMARY OF FEES AND COSTS**

**FEES:**

<b>ATTORNEY/PARALEGAL</b>	<b>NO. OF HRS.</b>	<b>RATE</b>	<b>TOTAL</b>
JAIME AUSTRICH	1.10	\$250.00	\$275.00
BRIAN C. WILLIS	36.30	\$235.00	\$8,530.50
SETH P. TRAUB	1.10		\$258.50
		<b>TOTAL FEES</b>	<b>\$9,064.00</b>

**Total Fees: \$5,394.00**

**COSTS:**

<b>EXPENDITURE</b>	<b>AMOUNT</b>
Filing Fees	\$441.00
Service of Process	\$447.25
<b>Total</b>	<b>\$888.25</b>

**Total Costs: \$888.25**

**Total Fees and Costs: \$9,952.25**

**Exhibit A**

# SHUMAKER

Shumaker, Loop & Kendrick, LLP

Bank of America Plaza 813.229.7600  
101 East Kennedy Boulevard 813.229.1660 fax  
Suite 2800  
Tampa, Florida 33602

www.slk-law.com

Brixmor Property Group  
420 Lexington Avenue  
New York, NY 10170

Invoice 340734  
September 21, 2012

Federal Tax ID. 34-4439491

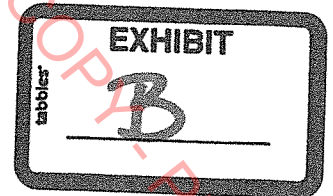
ID: N07715-153838 - JA

RE: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd Street\*\*FLORIDA  
MATTER\*

For Services Rendered Through August 31, 2012

Current Fees	1,198.50	
Total Due for this Bill		<u>\$1,198.50</u>

BILLED FEES AND COSTS  
TO DATE - \$1,198.50



**\*\* PLEASE REMIT THIS PAGE WITH YOUR PAYMENT \*\***

**PAYMENT DUE WITHIN 30 DAYS.**

Invoices remaining unpaid 30 days after date of invoice will be charged a late payment charge of 1.5% per month.

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

September 21, 2012  
Invoice 340734  
Page 2

FOR PROFESSIONAL SERVICES RENDERED

DATE	ATTY	DESCRIPTION OF SERVICES	HOURS
08-03-12	BCW	Receipt and review of potential new matter; communicate with client regarding same.	1.10
08-06-12	BCW	Follow-up with issues re potential new matter.	0.30
08-10-12	SPT	Prepare Default Notice to Tenant.	0.20
08-10-12	BCW	Receipt and review of client documents; preparation of pay or quit letter.	1.90
08-13-12	BCW	Review issues regarding new payment; review and finalize pay or quit notice; telephone call from tenant regarding settlement; preparation of correspondence to tenant.	1.20
08-21-12	SPT	Review and correspondence to client regarding status of Settlement discussions with Tenant.	0.20
08-30-12	SPT	Correspondence with client for update A/R.	0.20
Total Fees for this Matter			\$1,198.50

FEE BILLING RECAP

Seth P. Traub	SPT	0.60 hrs	\$235.00 /hr.	141.00
Brian C. Willis	BCW	4.50 hrs	\$235.00 /hr.	1,057.50
TOTAL FEES				<u>1,198.50</u>

BILLING SUMMARY

TOTAL FEES	1,198.50
TOTAL DUE FOR THIS BILL	<u><u>\$1,198.50</u></u>

# SHUMAKER

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101 East Kennedy Boulevard 813.229.1660 fax  
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Tampa, Florida 33602

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Brixmor Property Group  
420 Lexington Avenue  
New York, NY 10170

Invoice 343578  
October 10, 2012

Federal Tax ID. 34-4439491

ID: N07715-153838 - JA

RE: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd Street\*\*FLORIDA  
MATTER\*

For Services Rendered Through September 30, 2012

Current Fees	117.50	
Current Disbursements	13.29	
Total Due for this Bill		<u>\$130.79</u>

TOTAL FEES AND COSTS  
TO DATE - \$1,329.29

**\*\* PLEASE REMIT THIS PAGE WITH YOUR PAYMENT\*\***

**PAYMENT DUE WITHIN 30 DAYS.**

Invoices remaining unpaid 30 days after date of invoice will be charged a late payment charge of 1.5% per month.

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

October 10, 2012  
Invoice 343578  
Page 2

FOR PROFESSIONAL SERVICES RENDERED

DATE	ATTY	DESCRIPTION OF SERVICES	HOURS
09-04-12	SPT	Telephone conference with Linda at Wing Zone regarding default notice and delivery of documents to Brixmor; follow up with client regarding same.	0.20
09-07-12	SPT	Telephone conference with Tenant regarding default notice and Landlord's receipt of documents; telephone conference with A. Misurale regarding direction to stand down pending review.	0.30
Total Fees for this Matter			\$117.50

DISBURSEMENTS

REDACTED

Total Disbursements for this Matter

FEE BILLING RECAP

Seth P. Traub	SPT	0.50 hrs	\$235.00 /hr.	117.50
TOTAL FEES				117.50

BILLING SUMMARY

TOTAL FEES	117.50
TOTAL DISBURSEMENTS	
TOTAL DUE FOR THIS BILL	\$130.79

# SHUMAKER

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Brixmor Property Group  
420 Lexington Avenue  
New York, NY 10170

Invoice 368405  
April 12, 2013

Federal Tax ID. 34-4439491

ID: N07715-153838 - JA

RE: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd Street\*\*FLORIDA  
MATTER\*

For Services Rendered Through March 31, 2013

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Current Fees	1,480.50	
Current Disbursements	501.65	
Total Due for this Bill		<u>\$1,982.15</u>

**\*\* PLEASE REMIT THIS PAGE WITH YOUR PAYMENT \*\***

**PAYMENT DUE WITHIN 30 DAYS.**

Invoices remaining unpaid 30 days after date of invoice will be charged a late payment charge of 1.5% per month.

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

April 12, 2013  
Invoice 368405  
Page 2

FOR PROFESSIONAL SERVICES RENDERED

DATE	ATTY	DESCRIPTION OF SERVICES	HOURS
03-11-13	BCW	Follow-up regarding status of bank foreclosure.	0.30
03-12-13	BCW	Prepared complaint for filing.	1.50
03-14-13	BCW	Review, finalize complaint and exhibits for filing.	1.10
03-21-13	BCW	Prepare complaint; compile exhibits for filing complaint.	2.30
03-23-13	BCW	Conduct follow-up regarding status of service and deadlines for tenant to respond.	0.20
03-25-13	BCW	Telephone conference with tenant; continue to follow-up re service issues.	0.40
03-29-13	BCW	Receipt and review of information from process server stating that guarantor is deceased.	0.20
03-31-13	BCW	Prepare motion for default.	0.30
		Total Fees for this Matter	\$1,480.50

REDACTED

DISBURSEMENTS

Filing Fees; Filing Complaint, Eviction Summons (1) and Summons Fees (3 defendants); Miami - Dade County Clerk	441.00
Total Disbursements for this Matter	<u>501.65</u>

FEE BILLING RECAP

Brian C. Willis	BCW	6.30 hrs	\$235.00 /hr.	1,480.50
TOTAL FEES				<u>1,480.50</u>

BILLING SUMMARY

TOTAL FEES	1,480.50
TOTAL DISBURSEMENTS	501.65

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

April 12, 2013  
Invoice 368405  
Page 3

TOTAL DUE FOR THIS BILL

\$1,982.15

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Suite 2800  
Tampa, Florida 33602

www.slk-law.com

Brixmor Property Group  
420 Lexington Avenue  
New York, NY 10170

Invoice 372029  
May 14, 2013

Federal Tax ID. 34-4439491

ID: N07715-153838 - JA

RE: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd Street\*\*FLORIDA  
MATTER\*

For Services Rendered Through April 30, 2013

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Current Fees	2,826.00	
Current Disbursements	479.09	
Total Due for this Bill		<u>\$3,305.09</u>

**\*\* PLEASE REMIT THIS PAGE WITH YOUR PAYMENT\*\***

**PAYMENT DUE WITHIN 30 DAYS.**

Invoices remaining unpaid 30 days after date of invoice will be charged a late payment charge of 1.5% per month.

Brixmor Property Group  
 I.D. N07715-153838 - JA  
 Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
 Street\*\*FLORIDA MATTER\*

May 14, 2013  
 Invoice 372029  
 Page 2

FOR PROFESSIONAL SERVICES RENDERED

DATE	ATTY	DESCRIPTION OF SERVICES	HOURS
03-14-13	BCW	Begin review and analysis of lease.	0.90
03-15-13	BCW	Finalize review and analysis of lease; review and analysis of Lender documents; Preparation of pay or quit letter; preparation of documents relating to loan for equipment and fixtures.	2.40
04-05-13	BCW	Receipt and review of Answer and affirmative defenses; preparation of correspondence to the court; preparation of Motion and Order for payment of rent into registry.	1.60
04-10-13	JA	Analysis and consideration of tenant's Answer and Affirmative Defenses; correspondence from and to client regarding status of eviction action and denial of validity of Guaranty by defendant.	0.20
04-16-13	BCW	Discuss case strategy with the client.	0.30
04-18-13	BCW	Receipt of Notice regarding motion for default.	0.20
04-19-13	BCW	Preparation of Motion for Summary Judgment and Affidavit for Susan Martinez, review of lease and client documents in support of same.	4.00
04-22-13	BCW	Telephone call with client regarding status and finalizing affidavit in support of motion for summary judgment.	0.90
04-22-13	JA	Telephone conference with client regarding Motion for Summary Judgment and draft affidavit; edit and revise draft Motion for Summary Judgment.	0.20
04-29-13	BCW	Preparation of Fee Affidavit and finalize Motion for Summary Judgment.	1.10
04-30-13	BCW	Receipt and review of Notice of Filing.	0.20
		Total Fees for this Matter	\$2,826.00

REDACTED

DISBURSEMENTS

Service of Process; On Mercy Noel; MercuryServe, Inc.	110.00
Service of Process; On Noel Enterprises; MercuryServe, Inc.	117.25
Service of Process; On Noel Enterprises; MercuryServe, Inc.	110.00
Service of Process; On Linda Noel; MercuryServe, Inc.	110.00

Total Disbursements for this Matter

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

May 14, 2013  
Invoice 372029  
Page 3

FEE BILLING RECAP

Jaime Austrich	JA	0.40 hrs	\$250.00 /hr.	100.00
Brian C. Willis	BCW	11.60 hrs	\$235.00 /hr.	2,726.00
TOTAL FEES				<u>2,826.00</u>

BILLING SUMMARY

TOTAL FEES	2,826.00
TOTAL DISBURSEMENTS	479.09
TOTAL DUE FOR THIS BILL	<u><u>\$3,305.09</u></u>

# SHUMAKER

Shumaker, Loop & Kendrick, LLP

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Tampa, Florida 33602

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Brixmor Property Group  
420 Lexington Avenue  
New York, NY 10170

Invoice 385188  
July 24, 2013

Federal Tax ID. 34-4439491

ID: N07715-153838 - JA

RE: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd Street\*\*FLORIDA  
MATTER\*

For Services Rendered Through June 30, 2013

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Current Fees	1,796.50	
Current Disbursements	119.50	
Total Due for this Bill		<u>\$1,916.00</u>

**\*\* PLEASE REMIT THIS PAGE WITH YOUR PAYMENT\*\***

**PAYMENT DUE WITHIN 30 DAYS.**

Invoices remaining unpaid 30 days after date of invoice will be charged a late payment charge of 1.5% per month.

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

July 24, 2013  
Invoice 385188  
Page 2

FOR PROFESSIONAL SERVICES RENDERED

DATE	ATTY	DESCRIPTION OF SERVICES	HOURS
06-03-13	BCW	Preparation for Summary Judgment Hearing and Preparation of proposed Order for Court.	2.40
06-05-13	BCW	Preparation for Summary Judgment Hearing - review motions, Defendant's answer and case documents.	0.90
06-06-13	BCW	Telephone call with court regarding canceled summary judgment hearing and resetting hearing.	0.40
06-10-13	BCW	Address issues re summary judgment hearing.	0.20
06-10-13	JA	Work on hearing preparation for Motion for Summary Judgment.	0.20
06-12-13	BCW	Address scheduling issues with summary judgment hearing.	0.30
06-17-13	BCW	Preparation for Rescheduled Summary Judgment Hearing.	0.60
06-18-13	JA	Attention to hearing on Motion for Final Summary Judgment and continued failure of court to properly notice and hold hearing on same; follow up on rescheduling of same and strategies for resolution of rent issue.	0.30
06-18-13	BCW	Attendance at summary judgment hearing; telephone call with judicial assistant and follow-up re further scheduling issues.	1.20
06-18-13	BCW	Exchange of emails with client re settlement negotiations.	0.40
06-19-13	JA	Attention to service issues on guarantor and basis for claiming death of one.	0.20
06-19-13	BCW	Confirm with client Mercy Noel is deceased and will drop from suit; telephone call with client re same.	0.50
		Total Fees for this Matter	\$1,796.50

DISBURSEMENTS

REDACTED

Total Disbursements for this Matter

FEE BILLING RECAP

Brixmor Property Group  
I.D. N07715-153838 - JA  
Re: Wing Zone - Lease 1173061 / BU 117301 - Center Name: Mall at 163rd  
Street\*\*FLORIDA MATTER\*

July 24, 2013  
Invoice 385188  
Page 3

Jaime Austrich	JA	0.70 hrs	\$250.00 /hr.	175.00
Brian C. Willis	BCW	6.90 hrs	\$235.00 /hr.	1,621.50
TOTAL FEES				<u>1,796.50</u>

BILLING SUMMARY

TOTAL FEES	1,796.50
TOTAL DISBURSEMENTS	119.50
TOTAL DUE FOR THIS BILL	<u><u>\$1,916.00</u></u>

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**Wing Zone  
Work-in-Product Report  
Matter No: N07715-153838**

<b>Date</b>	<b>Attorney</b>	<b>Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
07/11/13	BCW	Receipt and review of Clerk's Notice regarding filing on Notice of Hearing.	0.20	235.00	47.00
07/11/13	BCW	Exchange of emails with client regarding guarantor deceased and service issues.	0.30	235.00	70.50
07/15.13	BCW	Follow-up with client regarding whether to drop guarantor.	0.20	235.00	47.00
07/18/13	BCW	Preparation for and attendance at Summary Judgment Hearing; Telephone call to and from court regarding issues with court schedule and rescheduling hearing; Preparation of correspondence to court regarding same.	2.80	235.00	658.00
07/23/13	BCW	Attendance at Summary Judgment hearing and follow-up.	1.10	235.00	258.50
07/24/13	BCW	Update client regarding status.	0.20	235.00	47.00
07/30/13	BCW	Receipt of entered Summary Judgment, review Miami-Dade Writ of Possession Requirements, and preparation of correspondence to client regarding next steps.	1.00	235.00	235.00
07/31/13	BCW	Preparation of Writ of Possession and review of Miami Dade procedures for same; receipt and review of correspondence from client with needed information.	0.80	235.00	188.00
08/01/13	BCW	Address problems with Miami-Dade issuing Writ of Possession.	0.40	235.00	94.00
		<b>Total Fees</b>			<b>1,645.00</b>

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

ERT 163<sup>rd</sup> STREET MALL, LLC,

Plaintiff,

v.

CASE NO.: 2013-CA-10209

NOEL ENTERPRISES, L.L.C.,  
LINDA NOEL AND MERCY NOEL,

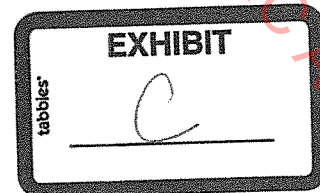
Defendants.

AFFIDAVIT OF DISINTERESTED ATTORNEY  
AS TO ATTORNEY FEES AND COSTS

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared Jeffrey P. Lieser, who being by me first duly sworn, deposes and says:

1. I am over 18 years of age.
2. I am an attorney licensed to practice law in the State of Florida. I am authorized to practice before this Court and I have practiced law handling various litigation matters, including commercial litigation, in Tampa, Florida since 2006.
3. I make this Affidavit to establish the reasonable amount of attorney fees and costs to which Plaintiff, ERT 163<sup>rd</sup> Street Mall, LLC ("ERT") is entitled in this action.
4. I have reviewed the pleadings and correspondence in this action, have reviewed the time records for ERT's counsel in this action, and have conferred with ERT's counsel regarding services rendered in this action.



5. I am fully familiar with the fees customarily charged by attorneys in Tampa, Florida for such services.

6. Shumaker, Loop & Kendrick, LLP (“SLK”), has incurred attorney fees and costs of \$9,952.25 for its representation of ERT in this action, which includes costs of \$888.25. These sums are fair and reasonable and accurately reflect the attorneys’ fees and costs incurred by ERT in this action.

7. Based upon the above, it is my opinion that \$,9952.25 is a reasonable and appropriate total for ERT’s counsel’s attorney fees and expenses for services rendered.


8. I have considered the relevant guidelines for an award of attorney fees, as set forth in Florida Patient’s Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), as follows:

- (a) The time and labor required. The services rendered in connection with this action by Shumaker, are set forth in the detailed time records attached as **Exhibit “A”** to the Affidavit of Brian C. Willis as to ERT’s damages. The time records provide a description of the legal services rendered and the expenses incurred in connection with this action.
- (b) The skill requisite to perform the legal services properly. The pleadings show that this action is an action to enforce a settlement agreement based on prior litigation relating to breach of a lease agreement. The pleadings speak for themselves as to the skill requisite to perform the legal services properly and should be considered by the Court in connection with this factor.

- (c) Preclusion of other employment by the attorney due to the acceptance of this case. No extraordinary consideration need be given this factor.
- (d) The customary fee. I understand that the hourly fee rates charged in this case are regularly charged by SLK, to their clients for similar services, such hourly fee rates are comparable to the rates charged by other law firms in Tampa and Orlando, Florida, and do not exceed fees charged for similar work by other attorneys in Tampa and Orlando, Florida.
- (e) The amount involved and the results obtained. This action involves ERT's claim for damages of \$158,526.81 plus attorneys' fees resulting from Defendants' failure to pay rent due under a Lease Agreement. It appears that ERT's counsel attempted to minimize the time spent on this matter while still achieving a favorable result for ERT.
- (f) Time limitations by the client or circumstances. No extraordinary consideration need be given this factor.
- (g) The nature and length of the professional relationship with the client. I understand that SLK has represented ERT in litigation and matters since the matter was filed. There appears to be nothing in this action that would require extraordinary consideration of this factor by the Court.

- (h) The experience, reputation, and ability of attorneys. SLK is a national law firm with offices in Florida, Ohio and North Carolina. Brian C. Willis has been active in the practice of law since 2007, and is presently licensed to practice law in the State of Florida. Jaime Austrich has been active in the practice of law since 1996, and is presently licensed to practice law in the state of Florida. These factors are reflected in the rates charged by SLK in this matter.
- (i) Whether the fee is fixed or contingent. The fee is fixed based upon hourly rates. However, there appears nothing in this action which would require extraordinary consideration of this factor by the Court.
- (j) Awards in similar cases. In cases of similar nature, the Courts award at a minimum the amounts actually charged by attorneys to their clients.

FURTHER AFFIANT SAYETH NAUGHT.


  
 \_\_\_\_\_  
 Jeffrey P. Lieser

STATE OF FLORIDA  
 COUNTY OF HILLSBOROUGH

Sworn to and subscribed before me this 21<sup>st</sup> day of August 2013, by JEFFREY P. LIESER who [ ] presented a Florida Driver's License as identification or [x] is personally known to me and did take an oath.



MATT ESCUE  
 MY COMMISSION # EE 012483  
 EXPIRES: July 28, 2014  
 Bonded Thru Budget Notary Services

  
 \_\_\_\_\_  
 Notary Public – State of Florida  
 Printed Name: Matt Escue  
 My Commission Expires: 7/28/14