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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

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Appellate Case No. 2023-001739

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Richard Young and Jason Greene.....Respondents,

v.

John W. Beasley a/k/a John W. Beasley, Sr.  
and Lillian Beasley in their individual capacities  
and as Trustees or as Successors in trust under  
the Beasley Living Trust dated August 14, 2018,  
and any amendments thereto .....Appellants.

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**RECORD ON APPEAL**  
**VOLUME II (Pages 440-869)**

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**EXHIBIT F – HEARING TRANSCRIPT**

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT  
3 CASE NUMBER 2022-CP-10-03510  
4

5 Richard Young and Jason Greene, )  
6 )  
7 Plaintiff, )  
8 )  
9 vs. ) Motions Hearings  
10 ) held August 8th,  
11 John W. Beasley a/k/a John W. ) 2023  
12 Beasley, Sr., and Lillian Beasley, )  
13 et al, )  
14 )  
15 Defendants. )

16  
17  
18  
19 Hearing before the Honorable Mikell R.  
20 Scarborough, reported by Josie Allen Boehm, Registered  
21 Professional Reporter and Notary Public, at 100 Broad  
22 Street, Courtroom 2A, Charleston, South Carolina,  
23 August 8th, 2023, commencing at 12:13 p.m.  
24  
25

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1 THE COURT: All right. This case is  
2 captioned Richard Young and Jason Greene as plaintiff  
3 versus John W. Beasley, Sr. and Lillian Beasley,  
4 individually and as trustees under the Beasley Living  
5 Trust. Case number is 2022-CP-10-510 I think that  
6 says, and we've got a number of motions that have been  
7 filed. I have done some reading to get to this point.

8 MR. FLOYD: Your Honor, there's a notebook  
9 that tracks the order of motion hearings that you sent  
10 us.

11 THE COURT: That's exactly what I was looking  
12 for.

13 MR. FLOYD: It includes all of their filings  
14 as well as our filings.

15 THE COURT: Good. Thank you. All right. So  
16 I think they're in the order I need to address them.

17 So we've got the Beasley defendant's motion  
18 for recusal, which we need to take up first.

19 Is this done in timeliness, or how is this  
20 scheduled? Because the next one -- I got a motion for  
21 summary judgement. I got a motion to strike  
22 counterclaims. I got a motion for entry of default.  
23 There's a motion for summary judgement on the access  
24 issue. Declaratory judgement. And then Aaron  
25 Beasley's motion to intervene.

1           So let me do this before we start. Let's go  
2 ahead and have appearances for the record, and I'll  
3 start with Mr. McVey.

4           MR. MCVEY: Thank you, Your Honor. Ian McVey  
5 on behalf of the plaintiffs.

6           MR. FLOYD: Joey Floyd on behalf of the  
7 plaintiffs.

8           MR. HASELDEN: Andrew Haselden on behalf of  
9 Aaron Beasley.

10          MS. SHOUN: Cheryl Shoun on behalf of John W.  
11 Beasley, Sr. and Lillian Beasley in their individual  
12 and their other capacities as the trustees.

13          MR. DENNIS: Markley Dennis here for the same  
14 parties.

15          MR. JOHNSTON: John Johnston here, same  
16 parties.

17          THE COURT: Very good. So let's start in  
18 with the motion to recuse. Ms. Shoun?

19          MS. SHOUN: Thank you, Your Honor. If I  
20 might just offer the Court, and I'm sure the Court  
21 recalls, the brief history of this. And please  
22 forgive me for looking at my phone. My notes are  
23 actually on my telephone. I'm not actually TikToking.

24          THE COURT: Unless it rings, I won't hold it  
25 against you.

1 MS. SHOUN: It will not, I promise you.

2 THE COURT: If it does, I will give you the  
3 one reprieve that we should all get.

4 MS. SHOUN: That's more than Judge Dennis  
5 would give when he was on the bench.

6 THE COURT: We had a talk about that  
7 recently.

8 MS. SHOUN: Very respectfully, Your Honor,  
9 this is absolutely nothing personal directed to Your  
10 Honor. This goes to Your Honor's position and to the  
11 position that Your Honor holds as it reflects on  
12 lawyers, on litigants, on laypeople.

13 And that's why this motion to recuse is, we  
14 felt, Your Honor, essential to bring before the Court,  
15 and did it pursuant to Your Honor's instructions,  
16 frankly.

17 Initially, Your Honor, when I got into this  
18 case, it seemed a bit curious to me as to the urgency  
19 to refer the matter to Your Honor, but as Your Honor  
20 also knows, cases captioned as mortgage foreclosures  
21 are not particularly my forte, so I thought perhaps it  
22 wasn't all that unusual.

23 And then if memory serves me, we had a  
24 conference with plaintiffs' counsel on March 27. And  
25 I think at that point, again, if memory serves me,

1 there was a follow-up call where it was disclosed to  
2 us that Your Honor's son may have been made an offer  
3 on behalf of Turner Padget.

4           Shortly after that on April 3rd, we had a  
5 status conference with Your Honor. And as I recall  
6 this, and I looked back to find notes from this. I do  
7 not remember that being discussed with the Court on  
8 that April 3rd status conference.

9           THE COURT: It was.

10          MS. SHOUN: It was?

11          THE COURT: Do you know when the offer was  
12 made?

13          MR. MCVEY: Your Honor, I think it had been  
14 made the week before the status conference, so I found  
15 out about it on the Friday before.

16          MS. SHOUN: He told me about it on Friday,  
17 and next thing I know, we had a hearing on Monday.

18          MS. SHOUN: That was actually the 24th, Your  
19 Honor.

20          THE COURT: I don't know. We're going to  
21 check my records. I been trying to figure out that  
22 day. It came up the first time because everything we  
23 have done so far has been on the web as opposed to in  
24 person.

25          MS. SHOUN: It came up in this courtroom, and

1 that was on the 24th when there was a hearing on the  
2 motion to compel.

3 THE COURT: I thought it was April the 3rd.

4 MS. SHOUN: That was a telephone conference.

5 THE COURT: Okay. April 3rd. My notes  
6 reflect it was April 3rd. Go ahead.

7 MS. SHOUN: We were in this courtroom on the  
8 24th and not before that, and I think I have the WebEx  
9 calendar invite for the 3rd.

10 Be that as it may, it was shortly after the  
11 first mention of it to Mr. Johnston, my co-counsel,  
12 and I. Three days later, we got an e-mail from  
13 plaintiff's counsel saying, hey, do you have an answer  
14 on your position yet? And I said, no, we don't,  
15 because this is something that clearly we had to talk  
16 to our clients about.

17 And then we appeared before Your Honor on  
18 April 24, which was a hearing on plaintiff's motion to  
19 compel. And my recollection -- and I did not get the  
20 transcript. But my recollection is that Your Honor  
21 said it had been just previously that it was disclosed  
22 to you that perhaps your son had taken the position at  
23 Turner Padget and that you had just learned of that  
24 and were disclosing it to the courtroom.

25 It went on to say should any of the parties

1 wish to request Your Honor be recused, that you would  
2 recuse yourself. The case would go back to the Judge  
3 Young.

4 THE COURT: Actually, I asked for a remittal  
5 of disqualification at that time, just the opposite.

6 MS. SHOUN: Okay.

7 THE COURT: I didn't think it was going to be  
8 a problem. That's what my Form 4 order said.

9 MS. SHOUN: Okay.

10 THE COURT: I talked about the discovery  
11 issue. Further, the parties are to provide this Court  
12 with their determination as to any remittal of  
13 disqualification pursuant to Cannon 3F, Rule 501 due  
14 to Judge Scarborough's son's future employment at  
15 Turner Padgett Law Firm. And that's entered April  
16 25th, so that was right after the April 24th hearing.  
17 So it did come up at the 24th hearing.

18 MS. SHOUN: And I recall before then, there  
19 was no indication -- my recollection before then,  
20 there was an offer. But I think that was the first we  
21 knew that there was an agreement as to employment was  
22 when Your Honor disclosed it.

23 And thereafter, we did then submit a letter  
24 to Your Honor on May 31st after conversations with and  
25 consultation with Mr. and Mrs. Beasley, and we

1 followed through with that respectfully asking for the  
2 recusal based, again, not on anything personal as far  
3 as Your Honor is concerned but the esteemed position  
4 held by Your Honor, and that is as to the appearance  
5 of impropriety.

6 Obviously, this is a position that sends  
7 messages to many, many people, including laypeople and  
8 litigants as mentioned at the initial part of my  
9 argument. And it's very difficult to explain to a  
10 layperson how one can remain completely neutral and  
11 yet have one's relative within the degree anticipated  
12 under the Canon employed at one of the opposing  
13 party's law firm. So we do think very respectfully,  
14 Your Honor, this presents a question as to  
15 impartiality.

16 Plaintiffs have indicated in their opposition  
17 to our motion that there has been no prejudice at this  
18 time; that's correct. At this point, there is no  
19 prejudice. However, should we move forward and there  
20 is not a recusal, of course there becomes a heightened  
21 review whether the facts in the record support any  
22 findings of Your Honor once that potential is  
23 established there. I think the review is a little bit  
24 different once we've reached that point.

25 And, again, it was -- candidly, our curiosity

1 is peaked as to why plaintiffs are so adamant in their  
2 objections to Your Honor's recusal. If we rely -- and  
3 they mentioned in -- I can't remember if it's the  
4 memoranda or motion. And I've got the e-mails with  
5 me. Some indication early on that I had said there  
6 was no conflict at that point, and I did say there was  
7 no conflict at that point, because it's my  
8 recollection is that's when the offer was out there,  
9 not confirmation of the acceptance of the offer.

10 Counsel even said if you're going to seek  
11 recusal, perhaps we start looking for a special  
12 referee now. And, again, Your Honor, we very  
13 respectfully request based on the Canons the degree of  
14 relationship with your son taking the position at  
15 Turner Padgett, the necessity that we avoid the  
16 appearance of impropriety, and any question of  
17 impartiality that Your Honor respectfully recuse  
18 himself from this matter.

19 THE COURT: Okay. I got your written motion  
20 after the letter. And just for the record so you  
21 know, I went back through this yesterday for the  
22 timeline because I only recall it coming up after Ross  
23 had accepted the job, and I think I found out about it  
24 on a Friday, and we had the hearing first thing that  
25 Monday morning. So as I came on, I think Mr. McVey

1 and y'all were discussing that.

2 MS. SHOUN: That may have been, Your Honor.  
3 I do remember learning of the acceptance was in this  
4 courtroom.

5 THE COURT: Right. I don't think we were  
6 physically here.

7 MS. SHOUN: We were on the motion to compel.

8 MR. MCVEY: On the motion to compel, we were  
9 here. The April 3rd status conference was via WebEx.  
10 As you directed, I found out about it on Friday, and I  
11 think you found out about it on Friday. And we  
12 decided to hit that head on when we came in that  
13 Monday morning.

14 THE COURT: Okay. Go ahead and let me hear  
15 your response.

16 MR. MCVEY: Your Honor, actually Ms. Shoun  
17 has already pretty much put forward my opinion on  
18 this. First of all, Your Honor, that bias  
19 impartiality, et cetera, if it exists at all, does not  
20 exist until such time as Ross sits down in a chair at  
21 Turner Padgett and starts working for us.

22 While I hope he doesn't do this, it is not  
23 unheard of for candidates to say, you know what, I got  
24 a better offer, and go somewhere else. It's not  
25 unheard of for them to take different jobs.

1           So until he takes a job with us on October  
2 1st, I don't know what's going to happen, except  
3 regardless, it is that that is the triggering event.

4           At that point, Your Honor, if there is -- and  
5 it's not simply enough to say there's an appearance of  
6 bias. There has to be actual evidence of bias in  
7 order for a recusal motion -- for a judge to mandate  
8 they recuse. Otherwise, it's at your discretion.

9           So, Your Honor, at this point, I would  
10 respectfully submit to you there is no reason for you  
11 to recuse yourself. I think our brief lays that out  
12 pretty clearly. I tried to keep it short and sweet.  
13 And I have -- I'm here to answer any questions that  
14 you have, but Your Honor has had a chance to look at  
15 this.

16           I did note that we did -- at the April 24th  
17 hearing that was not reflected in the Form 4 order,  
18 you did ask for a decision to have been made on  
19 remittal of recusal within 10 days. It didn't come  
20 until May 31st.

21           THE COURT: Right.

22           MR. MCVEY: And that was a significant --  
23 this case has been dragging on, Your Honor. It's time  
24 to move it forward. As you well know, even a  
25 contested foreclosure at a year's time, that's a

1 pretty long period of time.

2 So at this point, we're ready to move forward  
3 with the case. We've done discovery. We're trying to  
4 get depositions scheduled, and we're trying to move  
5 forward as quickly as we can. Thank you, Your Honor.

6 THE COURT: Let me say this.

7 MR. DENNIS: May respond briefly, Your Honor?

8 THE COURT: Markley Dennis. Glad to have  
9 you.

10 MR. DENNIS: It's a privilege. I don't  
11 quarrel -- well, I quarrel with it, but it doesn't  
12 make any difference whether Canon 3 is controlled.  
13 Canon 2 is the one that -- really and truly is the one  
14 because I been there, done that, and I understand it.

15 I understand your position, especially when  
16 somebody says this has been dragging on. And we as  
17 judges, you have a duty and an obligation to move it.  
18 Very true.

19 And no question about the fact that -- I  
20 guess the greatest example right now involves the  
21 church that I'm involved. We all heard what happened  
22 with the decision in the episcopal church about  
23 Justice Hearn. Interesting.

24 That didn't -- the Canon says we have to make  
25 that decision. It's up to us. And she made one and

1 said it won't influence me. But look what happened.  
2 And therein lies the issue that I think is so critical  
3 here.

4 I had a similar situation, and I offered just  
5 as you did. And I understand it, and it really and  
6 truly becomes something that you put yourself out of  
7 it. Because as long as you're looking at it, I know  
8 the feeling, I need to get this thing done.

9 But we also have something else where we're  
10 representing something bigger than us, bigger than  
11 you, bigger than me, bigger than Justice Hearn. We're  
12 representing an office.

13 The key in this case is not whether we  
14 believe you will be. The key in this case is the  
15 client says I'm concerned.

16 And the reason I say that -- I don't know  
17 whether you remember Judge Fanning. I do. There was  
18 a case, *Mallet v. Mallet*. He got in a discussion in a  
19 case and got a little heated. And the defendant --  
20 well, it was a female in a domestic matter. Said tell  
21 the lawyer I want him to recuse himself. He wouldn't  
22 do it. Interest in that decision because the Court  
23 heard it and said he made the right decision as a  
24 matter of law, but he should have recused himself.

25 My thought as a judge, as you as a judge,

1 that's the last thing I'd want to have happen. Not  
2 that there's going to be any mistake, you got it  
3 right, but you should have done it for the office.  
4 That's what is important here. And I thank you for  
5 allowing me the privilege of speaking. Thank you.

6 THE COURT: I haven't seen an affidavit or  
7 any statement from the Beasleys. Am I correct in  
8 that? I've gotten the information via letter from  
9 you, Ms. Shoun, and then of course the motion for  
10 recusal.

11 MS. SHOUN: That is correct. In fact, in  
12 disclosure, Judge Dennis and I did talk about that,  
13 whether it should be attached to the affidavit. And  
14 our decision was -- our conclusion to that was we are  
15 legal counsel for the Beasleys and we speak on their  
16 behalf.

17 THE COURT: Anything?

18 MR. MCVEY: Again, Your Honor, as I indicated  
19 kind of all along, including in my June 5th letter,  
20 this is a discretionary matter for you. The  
21 discretion of standard to the extent that conflict is  
22 even going to arise does not prevent you from hearing  
23 things right now.

24 Your Honor has already picked up on the fact  
25 that it is not supported by an affidavit. The rules

1 do require motions to be supported by affidavits, and  
2 I think in this case, it would have been appropriate  
3 for an affidavit to have been submitted.

4 THE COURT: All right. Let me tell you, I  
5 have been reviewing this. It says avoid the  
6 appearance of impropriety and promote public  
7 confidence and integrity and impartiality.

8 And then we start looking at the specific  
9 rules, and so I did some of that yesterday. Because  
10 number one thing I want to do is get the timeline down  
11 as to when this all came up.

12 You know, a contested foreclosure hearing is  
13 not unusual to take a year to move through the  
14 process, it's been my experience. But I had asked in  
15 the April 25 order for determination as to remittal of  
16 disqualification, in other words, we agree when to go  
17 forward. That didn't come in, and it didn't come in  
18 for a while, and it came in by way of letter in late  
19 May.

20 And I believe I got an e-mail, my  
21 recollection, from Mr. McVey saying I'm on vacation,  
22 but I want to respond. And apparently you wrote a  
23 letter on the following Monday, the 5th of June, five  
24 days later. But apparently you didn't send it  
25 directly. Must have come through your secretary.

1 Because I was looking for e-mails from Ian McVey for  
2 about two or three weeks. I didn't see the thing  
3 until the 10th of July, which is five weeks later  
4 unfortunately. But it was brought to my attention by  
5 my law clerk.

6 So by that time, we had set this hearing, and  
7 I think my response was I'll address it at that time.  
8 I think that's how we got to where we are.

9 And then the motion was filed on the 20th of  
10 July, and we got to that point. So I went -- I have  
11 looked at this thing from the perspective of the  
12 Canons.

13 And I, of course, know about Canon 2, which  
14 is the appearance of impartiality. So I looked at  
15 Canon 3 for some guidance. Let me take you through  
16 what my analysis of that has been.

17 Canon 3E, disqualification. A judge shall  
18 disqualify himself or herself in a proceeding in which  
19 the judge's impartiality might reasonably be  
20 questioned, including but not limited to instances  
21 where, Section C, the judge knows that he or she or  
22 the judge's child wherever residing has an economic  
23 interest in the subject matter in controversy or in a  
24 party to the proceeding or has any other more than de  
25 minimis interest that could be substantially affected.

1           And I don't find that he's got an economic  
2 interest, he being my child, or myself an economic  
3 interest of this matter at this time.

4           Section D, the judge or the judge's spouse,  
5 or a person within the third degree of relationship,  
6 which my son Ross would be. He's my child. Is a  
7 person known by the judge to have more than de minimis  
8 interest that could be substantially affected by the  
9 proceeding.

10           And, again, I don't know how he could be  
11 affected by the proceeding if not employed by the  
12 firm. And that led to a discussion with my law clerk  
13 yesterday, what we used to call the Chinese wall, but  
14 I'm sure you can't use that term anymore. I don't  
15 know what you call it now when you block off somebody  
16 from the office. I didn't see where that one applied.

17           And then there's a commentary, and this is  
18 what really caught my interest. The fact that a  
19 lawyer in a proceeding is affiliated with a law firm  
20 with which a relative of the judge is affiliated does  
21 not of itself disqualify the judge. That seemed to be  
22 the answer to the question I was looking for,  
23 commentary E(1)(c).

24           But that doesn't fully answer the question.  
25 Under the appropriate circumstances, the fact that the

1 judge's impartiality might reasonably be questioned or  
2 that the relative is known by the judge to have an  
3 interest in the law firm that could be substantially  
4 affected by the outcome of the proceeding may require  
5 the judge's disqualification.

6 And I think that's where I've come down. My  
7 feeling -- and, Ms. Shoun, you acknowledged that. I  
8 don't know that there's any prejudice at this point in  
9 time. There could be, and I acknowledge that, that it  
10 could be. And I think that's a different question  
11 than what we've got before the Court today. And it's  
12 on that basis that I'm going to deny the motion to  
13 recuse.

14 And, Mr. Dennis, I appreciate you bringing  
15 that. I do remember Judge Don Fanning because he  
16 always had a close-cropped haircut. He was a military  
17 man from Beaufort, family court judge.

18 MR. DENNIS: Very strict military.

19 THE COURT: I appeared in his courtroom a few  
20 times. So let's overcome that hurdle and then let's  
21 get into the merits of it.

22 Mr. Haselden, let's take up your motion.  
23 Your motion would be the next one I would think we  
24 need to spend some time on.

25 MR. HASELDEN: Thank you, Your Honor. I been

1 on this job for about two weeks, and I tell you how I  
2 came about. Aaron Beasley is the son of the primary  
3 defendants. His deposition was noticed and these wise  
4 people here thought Aaron Beasley, who is not a party,  
5 not previously represented by anybody, may need his  
6 own attorney.

7 Ms. Shoun calls me, Mr. Johnston. We have a  
8 conference call and talked to Mr. Aaron Beasley and  
9 agreed to undertake his representation. Immediately  
10 said he's not available on the 1st; I'm not available  
11 on the 1st. We need to push back the deposition. So  
12 that's how we got to where we are.

13 THE COURT: I got some e-mails back and  
14 forth. Just so you know, I don't generally act on  
15 e-mails, but y'all file a motion and I will act on it  
16 because I got to. Okay. If I can avoid the problem  
17 with an e-mail --

18 MR. HASELDEN: And I do recall Your Honor  
19 being on some of those e-mails about scheduling.  
20 Immediately when I looked at -- having talked to Aaron  
21 Beasley, the background is his parents are older.  
22 They have no source of income. Mr. Aaron Beasley and  
23 his family, his wife and children, have actually lived  
24 in the home that's the subject of this for years.  
25 Aaron has paid everything.

1 THE COURT: Are the parents living there or  
2 not?

3 MR. HASELDEN: Yep. They're living there.  
4 Aaron is living there with his family. He's paying  
5 for everything.

6 The settlement amount that's the subject of  
7 the release, Aaron paid. Aaron has paid everything.  
8 What I hear -- I just feel like I don't know -- I  
9 would love to say Your Honor, you absolutely have to  
10 let him intervene. I don't know whether you do or  
11 not, but I feel like if I didn't jump in at this point  
12 and ask, later someone is going to say, well, why  
13 didn't you do something for Aaron here? Because he's  
14 going to lose as much as everybody else if the summary  
15 judgement is granted and they win this and there's  
16 foreclosure.

17 He's been paying for everything for years.  
18 The arguments I hear are it's not timely. I started  
19 this by telling Your Honor I've been in this two  
20 weeks. Aaron didn't have an attorney before then. To  
21 say his interests were properly represented by the  
22 other Beasley attorneys is not quite true.

23 There may be some overlap, but Aaron Beasley  
24 wasn't represented until I got hired. And the first  
25 thing I did was file a motion after I talked to him

1 about depositions. I filed a motion to intervene  
2 under a couple of theories.

3 The second argument that I hear in response  
4 is that he doesn't really have an interest. If that's  
5 the case then every renter would have an interest when  
6 they're property owners, but it's different, because  
7 this isn't just a renter who says, you know, if you  
8 foreclose, I'm going be out on the street. This is  
9 his parents. This is the family home. He has paid  
10 everything. He's paid all the expenses, the upkeep on  
11 the property, for years.

12 It's just a situation where it's better, it's  
13 cleaner, if Aaron is involved at this point because of  
14 his interest in it. He's paid the settlement amount.  
15 He has a direct interest in seeing that his parents  
16 aren't put out of the house. He has a direct interest  
17 in seeing that he and his family aren't put out of the  
18 house.

19 And moreover, he has a direct interest in  
20 this situation because he thought this was resolved  
21 with these two people. He really did. Plaintiffs --  
22 he paid the settlement amount. He has no  
23 understanding of why this case is even in court  
24 because it was settled in his mind.

25 So to say that he has no interest in this

1 matter and it's not timely is just not true. I don't  
2 know if legally I can stand up here and say, Your  
3 Honor, absolutely if you say I can't intervene, I'm  
4 going to win at the next level. I don't know. But I  
5 know I'm not waiving it. I'm coming in here and  
6 asking to be a party in the suit so it's clean.

7 If Your Honor thinks I shouldn't be, I'll sit  
8 back down and not say another word throughout the day.  
9 I can't take the chance of waiving Aaron's interest in  
10 this by not at least making this motion to come to the  
11 Court and say, Your Honor, he needs to be a party to  
12 this action.

13 THE COURT: And your theory for that is what?

14 MR. HASELDEN: That he has an equitable  
15 interest built up by the payment of rent, the payment  
16 of the settlement amount in this case, and the fact  
17 that he resides there. His equitable interest -- I  
18 don't know where it would fall in the hierarchy of  
19 more tangible interests.

20 But like I said, I could not take the risk of  
21 waiving any argument he may have for later and then  
22 come back and say you should have jumped in back then.  
23 I just couldn't do it. It is what it is. His  
24 interest is very much what I said it is at this point.

25 There's nothing secret. He doesn't have a

1 mortgage. He's not a quitclaim recipient. He just  
2 has an interest in this litigation and this property  
3 that I felt like I would not be doing him a service as  
4 an attorney if I didn't at least ask Your Honor to  
5 consider his interests in this case.

6 THE COURT: Do you know how title is  
7 currently held in the property? Is it in the trust or  
8 is it individually?

9 MR. HASELDEN: Your Honor, I don't know. But  
10 I guarantee one of these fine people could answer that  
11 question. I cannot honestly answer that question.

12 THE COURT: Let me hear a response to that.

13 MR. MCVEY: Thank you, Your Honor. To answer  
14 your first question, title is held in the name of  
15 Lillian Beasley and John Beasley, Sr. as trustees.

16 THE COURT: Okay.

17 MR. MCVEY: It was transferred subsequent to  
18 the mortgage to them as trustees for the property.

19 THE COURT: Post mortgage?

20 MR. MCVEY: Post mortgage, post both of the  
21 mortgages.

22 THE COURT: At the time of the mortgage, they  
23 were individual owners of the property?

24 MR. MCVEY: That is correct. Your Honor has  
25 probably already read the brief so you're aware of the

1 four elements you need in order to intervene.

2 You also looked at Rule 19, so I'll just make  
3 a couple points in response to what Mr. Haselden said  
4 and then I will rely on my brief.

5 To say that this is timely intervention, Your  
6 Honor, is just simply not the case. This case has  
7 been pending since August 4th of last year. Service  
8 was accomplished on August 24th of the last year.

9 If Mr. Beasley was living in the house -- and  
10 I would point out, by the way, that motion is also not  
11 supported by an affidavit. All of the facts that have  
12 just been recited are not -- there is no affidavit to  
13 support all that. So I don't know that the Court has  
14 evidence of any equitable interest in front of it  
15 right now.

16 Regardless, if he has been living there since  
17 August 24, he sure knows about this lawsuit. He  
18 showed up in mid January to a mediation with his  
19 mother in which we tried to resolve this prior to,  
20 quite frankly, having to put all of this in your lap,  
21 and he was very involved in it.

22 We are now six and a half months after that  
23 mediation date, and now he's making the determination  
24 that, wait, I may have an equitable interest.

25 Now, addressing, if I can, the other

1 interests. This is a stack of cases right here. I  
2 had my law clerks go find every case they possibly  
3 could on equitable interests, equitable liens, et  
4 cetera.

5 And in every single one of them, there was a  
6 writing. That's how you satisfy the statute of the  
7 frauds. What you really should do is not only have a  
8 writing but record it under the recording statute.  
9 That's the whole point of the recording statute. But  
10 here, all we have is an adult child and his family  
11 living with mom and dad and making sure all the bills  
12 get paid.

13 Mr. Haselden used the example of a tenant  
14 earlier, which I think also is one of my examples in  
15 here as well. A tenant has a better interest than  
16 what Mr. Beasley and his wife and children have right  
17 now because they actually have a possessory interest  
18 granted to them by law by way of a lease in a  
19 leasehold estate.

20 Mr. Aaron Beasley, he doesn't have any of  
21 that. He also -- I didn't hear much on the subject of  
22 his ability to be defended by those that are already  
23 in the litigation and how it would impair his  
24 interests.

25 I understand if a foreclosure takes place,

1 both he and his parents are -- it's going to go to  
2 sale and they're going to have some tough decisions  
3 they have to make. But this case is being vigorously  
4 defended by the Beasley Sr.

5 Beasley Sr. is adequately represented, even  
6 if he has an interest. And he only convinced one of  
7 those four elements on intervention, or if not, it  
8 shouldn't be granted.

9 So, Your Honor, again, I'm going to fall back  
10 on my brief to a certain degree here because I don't  
11 want to take a lot of the Court's time because we have  
12 a lot of hearings.

13 But, Your Honor, I don't think intervention  
14 or joinder at this late stage is appropriate at all  
15 because all it's going to do is add another 120 days  
16 to that.

17 THE COURT: I think you addressed that in  
18 your memo.

19 MR. MCVEY: I did, Your Honor.

20 THE COURT: Which one did you consider? You  
21 went in particular with one of the four as I recall.

22 MR. MCVEY: It was really the timeliness.  
23 The timeliness issue of course is there, and then the  
24 lack of the interest -- lack of the equitable interest  
25 is in there. And also the prejudice to the parties.

1           At this point -- and I didn't mention this.  
2           I should have. We have engaged in written discovery.  
3           The defendants have served none. We have been  
4           attempting to get the depositions taken of Mr. Aaron  
5           Beasley as well as Lillian Beasley. We weren't able  
6           to get that done on August the 1st, despite conferring  
7           with counsel, et cetera.

8           We then offered to pull those deposition  
9           notices down, went back to dates that had been given  
10          to us after this, provided the Court doesn't grant  
11          summary judgement, and still haven't heard anything  
12          from there either.

13          Your Honor, from the plaintiff's perspective,  
14          we can probably try this thing within 30 days if we  
15          need to because we've been moving forward with the  
16          case.

17          I can't help that the defendants aren't doing  
18          the other stuff to move the case along. All I can do  
19          is move my case is long. So, Your Honor, I think at  
20          this point to allow another party and add another 120  
21          days would be extraordinarily prejudicial to my  
22          clients as parties, Your Honor. Thank you.

23          THE COURT: Response?

24          MR. HASELDEN: Yes, Your Honor. Mr. Beasley  
25          attended mediation. But, again, he was never

1 represented until I got hired. Any interest he had  
2 was not the foremost consideration of these fine  
3 attorneys over here.

4 Once I got hired, that was my sole thing is  
5 what does Aaron Beasley need? Timeliness. Let's talk  
6 about discovery. Mr. McVey hit it on the head. No  
7 depositions have been taken. They've exchanged  
8 written discovery. No depositions have been taken.

9 We waive the 120 days. That takes that off  
10 the table. Waive it. We'll try it in 30 days if they  
11 want.

12 THE COURT: How would any interest that he  
13 has -- and I'm not sure he's got one. But how would  
14 it be impaired if he's not in the case?

15 MR. HASELDEN: I don't know. I really don't.  
16 And that's -- again, I don't want to be in a position  
17 where afterward, somebody says Mr. Beasley's interest  
18 should have been represented at that trial because of  
19 all the facts we have already discussed.

20 And I would rather ask now and be told no  
21 than later be told you were wrong for not doing it.

22 THE COURT: You stated that he paid the  
23 \$50,000 judgement?

24 MR. HASELDEN: The settlement in this case.  
25 He paid every cent of that.

1 THE COURT: Right. Paid through his funds or  
2 through the trust funds or how was that paid?

3 MR. HASELDEN: Paid through his funds  
4 himself.

5 Your Honor, another thing I point out. I  
6 have been doing this as long as everybody else in  
7 here. There are a ton of motions that don't require  
8 affidavits.

9 THE COURT: Listen, I like to see the  
10 affidavits. Because one benefit of being here is I  
11 try to run this court like they do across the street.  
12 We just have a lot more volume that we do. So when I  
13 get a motion, I'm always looking for some substance  
14 behind it.

15 MR. HASELDEN: I understand.

16 THE COURT: That's why I ask that question.  
17 Okay? I'm with you.

18 All right. At this point, I'm not inclined  
19 to grant them the motion to join. If he attended the  
20 mediation in January, which there doesn't seem to be  
21 any question about that, and he had an interest to  
22 protect, he should have been in this case long before  
23 he is now.

24 So under the timeliness, it's been a long  
25 time. I don't know what the reason for the delay is

1 other than he didn't pursue it until recently. Action  
2 is moving forward, and you may well want to take his  
3 deposition, and it sounds like you do.

4 And at this point in time, I think it would  
5 just tend to delay the matter to the prejudice of the  
6 plaintiffs. All right?

7 So let's go to some substance. All right.  
8 We've got -- where is our list? You had a summary  
9 judgement motion -- you had a partial summary  
10 judgement and a summary judgement motion.

11 MR. MCVEY: Your Honor, depending on what you  
12 would rather do, I'm prepared to do the partial  
13 summary judgement, which I quite frankly think is a  
14 routine ground ball. All it is is cleaning up title  
15 issue. Even if we're unsuccessful ultimately on the  
16 merits of the case, the curing of the title issue will  
17 be beneficial to the Beasleys who live in the property  
18 if that's --

19 THE COURT: It's an access issue.

20 MR. MCVEY: It's an access issue, Judge.  
21 There's a cul-de-sac that wasn't properly dedicated  
22 under the declaration for this neighborhood, and so  
23 there's a gap basically between the access.

24 There's really two issues. A, there's a bad  
25 survey reference. The survey that's in there now

1 doesn't even show this property. It's somewhere else,  
2 not even -- I don't think it's on James Island.

3 The correct survey -- what a proposed order  
4 in this would do is submit the correct survey  
5 information, would make sure the easement is valid,  
6 and would also dedicate the cul-de-sac to the  
7 homeowners association, all of whom are in default, as  
8 is the person -- the servient estate, and fix that  
9 little gap title issue.

10 The neighborhood has been maintaining it  
11 anyway as far as we can tell. That's all it is, just  
12 cleaning up that one issue. It's a benefit to really  
13 everybody here.

14 THE COURT: Were the Beasleys involved with  
15 the creation of this subdivision, or did it predate  
16 them?

17 MR. MCVEY: I think it predated them. They  
18 bought their property from a guy named Dr. Pruitt.  
19 Anna Pruitt is his daughter I think perhaps. She's  
20 got the lot -- she's the servient estate, Your Honor.

21 THE COURT: All right. Y'all have any  
22 objection to these?

23 MR. DENNIS: I do.

24 THE COURT: Okay.

25 MR. DENNIS: Because I know this when I got

1 reversed on declaratory judgement. Declaratory  
2 judgement, you got to have a justiciable controversy.  
3 They're not a party yet.

4 And the problem is everything he just alluded  
5 to -- I know I did this in my practice. When you're a  
6 junior lien holder and you want a note and there's a  
7 foreclosure, you check the title. You find out what's  
8 there. This has been there since 2003. That's when  
9 the property was bought.

10 So at this stage, I agree with him. May  
11 expedite it. But he doesn't have a right to bring  
12 this action. He really doesn't have any interest in  
13 this. He has a perspective interest, but he has no  
14 interest to be a true party to the justiciable  
15 controversy.

16 THE COURT: As a lien holder.

17 MR. DENNIS: Again, the cart is before the  
18 horse. I think he's got -- don't you think -- my  
19 thought is he's got to actually -- let's assume for  
20 the sake of discussion that you deny all of this and  
21 it goes through, you foreclose it, and then it's sold.  
22 He might, but somebody else might be. So he can't  
23 speak for that perspective purchaser or perspective  
24 owner in my opinion.

25 THE COURT: Do you remember the name of that

1 case you're referring to?

2 MR. DENNIS: I don't remember. It was a case  
3 involving the CPW and going across the marsh to  
4 service some property. I ruled yeah, you could, that  
5 one party didn't have a interest in it.

6 MR. MCVEY: Your Honor, as a lienholder on a  
7 property, I absolutely have an interest in the  
8 property that would allow me to cure this defect. Not  
9 to mention, Your Honor, that the homeowners  
10 association as well as the servient estate are both in  
11 default and have thereby admitted the allegation.

12 So if everybody is going to raise a standing  
13 issue on that, it's got to be them, right? And so  
14 this is something -- you know, you've handled more  
15 foreclosures than I have and the collective knowledge  
16 of property law over on that side of the table is much  
17 larger than mine, but this is something we do all the  
18 time in the foreclosure world. We clean up title  
19 problems and we clean up access problems.

20 The longer you let this access problem sit  
21 out there and fester, the bigger problem it's going to  
22 be.

23 THE COURT: I'm looking for my plat. I'm  
24 trying to remember which one it was. There's one --

25 MR. MCVEY: Your Honor, Exhibit E to the

1 motion. Okay. I wish we had numbered these pages.

2 THE COURT: Hold on. Yep, tab E. Had all  
3 this stuff last night. All right.

4 MR. MCVEY: It's tab 1, Your Honor. Exhibit  
5 E.

6 THE COURT: Here it is. This is the --

7 MR. MCVEY: It is the last exhibit, Your  
8 Honor.

9 THE COURT: So the issue is the  
10 ingress/egress across lot 6; is that it?

11 MR. MCVEY: That's correct, Your Honor.

12 THE COURT: That's your title issue?

13 MR. MCVEY: Yes.

14 THE COURT: And that's owned by Ms. Pruitt?

15 MR. MCVEY: Ms. Pruitt owns new lot 6. New  
16 lot 4 is the ones owned by the defendants. If you can  
17 see, you can see the end of the cul-de-sac sits right  
18 into the property on that property. It just doesn't  
19 have a properly dedicated -- it was clearly the intent  
20 for it to have been dedicated.

21 All of these roads are private in this  
22 neighborhood and are taken care of by the HOA, and  
23 they've been taking care of this one, but there's a  
24 gap. There is a gap between this easement and that  
25 end in this property if you don't find that the

1 cul-de-sac should have been dedicated to the  
2 homeowners association.

3 The other option of course is to say that  
4 this gets straight out and gets all the way to the  
5 property line and ties into Sea Eagle Wash. That's  
6 the other way to do this. And they're pled  
7 alternatively in the complaint.

8 THE COURT: You pled that in the name of  
9 Ms. Davis -- or Ms. Pruitt?

10 MR. MCVEY: Yes, I did. I named Ms. Pruitt  
11 and I named the HOA.

12 THE COURT: And does the legal description to  
13 your mortgage include ingress/egress?

14 MR. MCVEY: Yes, Your Honor, on Exhibit A,  
15 page 14 of 14 of the mortgage. Said lot having such  
16 size, shape, dimensions, and boundaries as will be  
17 reference to said plat more fully appear, together  
18 with that certain 50 foot ingress/egress easement for  
19 the access to the lot conveyed, said easement being  
20 shown. And then it references the plat number, Your  
21 Honor.

22 So I think that expressly gives me a right to  
23 bring that action.

24 THE COURT: This is the DD 586, right?

25 MR. MCVEY: Yes. I know it's got a different

1 number up there. But if you go pull it at the ROD,  
2 it's DD 586. It's nuts.

3 THE COURT: Well, book J 348, that's a deed  
4 reference at the top of the plat.

5 MR. MCVEY: That may very well be the case.  
6 But when you go pull this from the ROD here in  
7 Charleston County, that's what is there.

8 THE COURT: And was this the subdivision plat  
9 creating these three lots?

10 MR. MCVEY: This is the subdivision plat  
11 creating new lot 6 and new lot 4.

12 THE COURT: So resubdivision?

13 MR. MCVEY: That's correct, Your Honor.  
14 There's a whole -- quite frankly, I just don't think  
15 this was done right from start to finish. But the  
16 obvious intent was for that easement to either touch  
17 the road or the cul-de-sac, which is why --

18 THE COURT: To gain access? I'm assuming  
19 it's a dirt road.

20 MR. MCVEY: I haven't gone and trespassed on  
21 it, so I'm not sure. I'll leave that -- John is  
22 shaking his head. It's dirt.

23 THE COURT: Got to be a dirt road in there, I  
24 would think.

25 MR. JOHNSTON: Yes, Your Honor. It's from

1 the cul-de-sac. It's paved now, but the -- I'm  
2 guessing maybe 25 feet or so into what would be that  
3 55 -- probably 20 feet of that. They actually have a  
4 concrete driveway that starts there, and then it goes  
5 into the main driveway into the garage.

6 THE COURT: It's a roadway or driveway or  
7 whatever you want to call it.

8 MR. JOHNSTON: It's finished concrete. Yes,  
9 sir, not just a road. I don't know how to describe  
10 that.

11 THE COURT: Okay. All right. You want to be  
12 heard again?

13 MR. DENNIS: Again, I don't have any problem  
14 with clarifying it. It's a technical matter. I don't  
15 think he has standing to raise this issue. He has a  
16 perspective interest in it, but he's not there yet.

17 THE COURT: Well, he raised it in his  
18 pleadings.

19 MR. DENNIS: He raised it in his pleadings,  
20 which is a foreclosure, correct?

21 THE COURT: No, he's got a cause of action.

22 MR. DENNIS: Well, I understand that, but  
23 that's my point. He doesn't have standing to bring  
24 that action yet. I don't quarrel that it may be an  
25 issue that needs to be resolved but he's not the

1 person to bring it. He doesn't have any interest.  
2 He's not affected by it, so therefore, there's no  
3 declaratory judgement necessary with them at this  
4 point. Might be one day, but not now.

5 THE COURT: Let me read the case I just got  
6 reversed on on standing. I got reversed on the super  
7 beach front lots at Folly Beach, as did my good friend  
8 Roger Young. All about super beach front lots.  
9 Talking about beach front versus super beach front.  
10 Super beach fronts are under water. I guess you  
11 probably know that.

12 It talks about an inherently problematic  
13 development. This case found the City articulated  
14 particularized injuries to its aesthetic, economic,  
15 and property interest that could be redressed by a  
16 favorable decision and that be sufficient to establish  
17 standing, though not required to wait until the owners  
18 began construction of the super beach front lots in  
19 order to have the alleged interest.

20 All right. And it's on that basis, then,  
21 that I'm going to find they can do that. I'm going to  
22 grant you that motion as well. All right? Give you  
23 access. Reform the mortgage to include a clear  
24 access.

25 I think it's in the description of the

1 property. I'm sitting here looking at it. It said  
2 lot having such shapes and dimensions as the plat  
3 appears together with a 50 foot ingress/egress  
4 easement for access to the lot. This is new lot 4  
5 that the Beasleys own. All right?

6 MR. MCVEY: Your Honor, would you like a  
7 proposed order on that?

8 THE COURT: Yep. Be fine. Okay. Next,  
9 y'all got another summary judgement motion, right?

10 MR. FLOYD: Joey Floyd here. I'll handle the  
11 motion for summary judgement. That would be tab B in  
12 your notebook.

13 Just to give you a brief background and  
14 history --

15 THE COURT: Before you go there, I've got  
16 some questions, and I want to make sure we all talk in  
17 the same language. I did this last night. I was here  
18 until about six o'clock last night when I got your  
19 response.

20 All right. I need y'all to make sure these  
21 terms become fairly consistent. And that's debt and  
22 indebtedness would be one term; judgement is another  
23 term; lien is another term; note; mortgage; release;  
24 satisfaction, whether partial or complete; and then  
25 settlement agreement and confession of judgement.

1           These are all the terms that I'm looking at,  
2 looking for to try to comprehend what was going on  
3 here. The first time I got this, my head was  
4 swimming. Okay?

5           MS. SHOUN: Your Honor, may I ask Your Honor  
6 the last term that Your Honor --

7           THE COURT: The very last one I mentioned was  
8 confession of judgement. Prior to that, settlement  
9 agreement.

10          MS. SHOUN: Okay. Thank you.

11          THE COURT: Just so I'm clear. Because it's  
12 factually a very interesting case.

13          MR. FLOYD: Okay. Just to give you a little  
14 bit of background, there are two settlement agreements  
15 in this case, and I think the plaintiffs and  
16 defendants refer to them as the first settlement  
17 agreement, which would be 2017, and then you have the  
18 2020 settlement agreement, which we all refer to as  
19 the second settlement agreement.

20                 But to give you a little background,  
21 Mr. Young and Mr. Greene loaned a substantial amount  
22 of money to Beasley Jr. and his construction company.  
23 He had some financial problems. Beasley Sr. and Mrs.  
24 Lillian Beasley stepped up and signed the note and  
25 mortgage and signed a confession of judgement.

1           The one-year promissory note didn't get paid.  
2           We all agree on how much has been paid. And, in fact,  
3           I found it interesting that Ms. Shoun put in her memo  
4           that the Beasleys agreed that there's no issues of  
5           material fact that exist in this case. I wanted to  
6           touch on that.

7           So you have these things. What's not in  
8           dispute, on your notebook, I have tabbed the request  
9           to admit, their responses to request to admit. I  
10          think this is helpful. The yellow tab on the top.

11          They admit, number one, they signed the note.  
12          Number two, they admit they signed the mortgage.  
13          Number three, they admit the mortgage was recorded.  
14          Number four, they admit it has not been satisfied.  
15          They suggest that it should have been satisfied. They  
16          admit that \$75,000 total has been paid.

17          So our numbers agree. We actually have an  
18          agreement on the accounting. Obviously the things  
19          that I think that we basically disagree on, there's  
20          really two things in dispute. Number one, what's the  
21          purpose of that settlement agreement. Number two, the  
22          nature of the release of judgement. And we'll get  
23          into that, and I'll explain to you how and why and  
24          what that means.

25          Let's go now to the second settlement

1 agreement. And to make it easier, tab G in your  
2 notebook has both settlement agreements. Tab one is  
3 the first settlement agreement; tab two is the 2020.  
4 So both of them are right there, easy access.

5 I just wanted to give you a road map there.  
6 So this gives us both of those agreements. And let's  
7 look real quick at the 2020 agreement. If you flip to  
8 page 2.

9 THE COURT: That would be tab 2?

10 MR. FLOYD: Tab 2 of Exhibit G. As you go  
11 through these whereas clauses, you see starting on the  
12 third one it talks about recording the confession of  
13 judgement, the confession of judgement, the judgements  
14 joint and several.

15 Then we flip down to the bottom of that page,  
16 and we see the settlement sum, which is \$50,000, and  
17 it identifies that. And it says -- this says they  
18 have an obligation to pay \$50,000. We agree they paid  
19 it.

20 Next page, page 3 paragraph 2, this tells us  
21 the obligation of what Young and Greene are supposed  
22 to do. It tells us upon receipt of the sum, they're  
23 to file partial releases of the judgement.

24 Now, the last sentence of this is also  
25 interesting in this paragraph. It shall not release

1 any other judgement debt of the principal balance of  
2 the judgement and it shall not be reduced, and  
3 everything else is going to remain in effect as to the  
4 judgement.

5 So then if we flip over, I'm going to ask you  
6 now to look at Exhibit B in the notebook.

7 THE COURT: B as in boy?

8 MR. MCVEY: B as in boy, and Exhibit 4. It's  
9 got a tab, Exhibit 4, on the side.

10 And this is a release of judgement lien. And  
11 I'll go ahead and touch on two things, or two of these  
12 terms that you mentioned. Release and satisfaction.  
13 Okay? Two different legal meanings, two different  
14 words.

15 In the context of a satisfaction, that would  
16 mean that the debt has been paid and satisfied.

17 THE COURT: Let me stop you. I want to make  
18 sure I'm on the right page. I am on Exhibit B.

19 MR. FLOYD: Exhibit 4 on the side tab.  
20 Exhibit 4, it's in writing. This is the release of  
21 judgement.

22 THE COURT: Okay. Got it. Go ahead.

23 MR. FLOYD: So this style of this is what we  
24 read about, the obligation of Young and Greene in the  
25 2020 agreement that we were just reading. This was

1 the only obligation that you will find of Young and  
2 Greene in that agreement, and that is to file this  
3 release of judgement. It is not a satisfaction of  
4 judgement.

5 If it were a satisfaction of judgement,  
6 arguably, it would discharge the debt. However, it is  
7 a release. And it releases -- it says specifically  
8 that this is a release fee.

9 Now I'm going to ask you if you will now flip  
10 back to Exhibit G, Number 2, the 2020 agreement back  
11 where we were, back at the back of the book.

12 When you go on page 3, that's where we were  
13 just looking at about how it shall not release any  
14 other judgement debtor. It's basically reservation of  
15 rights as to the other judgement debtors.

16 But more importantly, if we flip over to  
17 exhibit -- or in that same exhibit, page 5, paragraph  
18 16, it says this settlement and release shall not  
19 alter or amend the prior settlement and a release  
20 agreement nor the judgement which shall remain in full  
21 force and effect thereof.

22 Now, to look back at the 2017 agreement as  
23 you'll recall, that is the agreement where they signed  
24 the note, the mortgage, and the confession of  
25 judgement.

1           At the time this document was executed, this  
2 settlement agreement was signed. The confession of  
3 judgement had been filed. You see in paragraph 2,  
4 there's the reservation of rights as to the other  
5 judgement debtors. However, in paragraph 16, it tells  
6 us it's not going to amend anything in the prior -- it  
7 shall not alter or amend the prior settlement and  
8 release agreement.

9           Well, the only thing that's left in the prior  
10 settlement agreement is the note and mortgage. You  
11 can read this, and I've read it way too many times.  
12 This entire 2020 agreement, it does not say mortgage.  
13 It does not say note. There is absolutely no  
14 obligation of Young and Greene to satisfy the note nor  
15 satisfy the mortgage.

16           So we have to ask ourselves what was the  
17 purpose of this agreement. And the purpose is to  
18 release that confession of judgement against these  
19 Beasley defendants as to those defendants. That's it.  
20 The mortgage remains filed of record. The promissory  
21 note has not been satisfied. It's the obligation to  
22 pay again. There's nothing else that could have  
23 remained whenever you get to paragraph 16 other than  
24 the note and mortgage.

25           THE COURT: Your note and mortgage are still

1 standing, right?

2 MR. FLOYD: The debt has not been discharged.  
3 The debt remains unsatisfied with the exception of the  
4 payment that we all agree was made.

5 Now, if we go into the memoranda here that we  
6 got this morning, they say there are two reasons -- or  
7 they oppose our motion on two grounds. They say that  
8 somehow First Citizens Bank ordering a foreclosure  
9 somehow extinguishes junior liens. It did go to an  
10 order. This property did not go to sale. That  
11 judgement was actually satisfied. Junior liens  
12 remain.

13 They also try to suggest that the release  
14 acts as a satisfaction. They also said in there  
15 that -- in the foreclosure that in the amended summons  
16 from the First Citizens Bank case that Young and  
17 Greene were only identified by virtue of their  
18 confession of judgement, which in paragraph 35 of that  
19 foreclosure, it identified in the amended summons and  
20 complaint their mortgage that was filed of record. So  
21 it was there.

22 THE COURT: That was in the complaint?

23 MR. FLOYD: That was in the First Citizens  
24 foreclosure. It identified them as having a mortgage.  
25 As you recall, there were several properties that were

1 all being foreclosed on at the same time.

2 Under their theory, if a foreclosure goes to  
3 order but doesn't sell, it does not extinguish the  
4 junior liens.

5 THE COURT: That's when they get wiped out,  
6 right?

7 MR. FLOYD: Only if it goes to sale. Because  
8 the Court's order always -- in this particular  
9 instance, it says in paragraph -- let's see. It's in  
10 the back of your notebook, Your Honor.

11 Paragraph 16 talks about their rights would  
12 be foreclosed and the mortgage premises so sold or any  
13 part thereof.

14 The premises were never so sold, therefore  
15 their interests were not extinguished. It all boils  
16 down, to me, Your Honor, there's this one question.  
17 There is no obligation. Or where is the obligation of  
18 Young and Greene to satisfy the note and mortgage?

19 There are two agreements. There's absolutely  
20 no obligation on their part. We're lucky we have  
21 things in writing.

22 There's no obligation to satisfy the note and  
23 mortgage. In fact, they want you to add that  
24 provision to require Young and Greene to satisfy the  
25 note and satisfy the mortgage, but there is no

1 requirement in the written documents here that we had.

2 For that reason, I'm happy to continue on  
3 drawing on, but I am trying to hit the highlights. We  
4 briefed it very extensively. For these reasons -- and  
5 I'm happy to respond or will respond -- the plaintiffs  
6 are entitled to foreclosure of their mortgage.

7 THE COURT: What do y'all contend to be the  
8 total amount of your debt?

9 MR. FLOYD: There's an affidavit of debt we  
10 submitted, Your Honor, Exhibit 5 and Exhibit B.  
11 851,434.16.

12 THE COURT: And does that credit those  
13 \$75,000 of --

14 MR. FLOYD: It does.

15 THE COURT: And those were made in two  
16 installments, one for 25 and one for 50?

17 MR. FLOYD: The \$25,000 was paid. November  
18 26, 2018 is when the \$25,000 was paid. And the  
19 December 10th, 2020 was when the \$50,000 was paid.

20 THE COURT: Okay. Those applied to interest  
21 or principal?

22 MR. FLOYD: Interest. We started the  
23 interest calculation on the maturity date, which was  
24 November 21st, 2018, I believe. That would be when  
25 interest began to run.

1           And one of those payments -- I have a  
2 spreadsheet. I can get that to you. I can get that  
3 for you, and of course the note and mortgage providing  
4 for attorney's fee and that sort of stuff. We'll  
5 address that later.

6           THE COURT: Okay. Ms. Shoun?

7           MS. SHOUN: May it please the Court. With  
8 which scintilla shall I begin, Your Honor? Very  
9 respectfully, plaintiff's motion for summary judgement  
10 as to the second count against Mr. and Mrs. Beasley  
11 which purports to be on the note and mortgage should  
12 absolutely positively be denied, that motion,  
13 parenthetically, submitted without an affidavit.

14           And thank Your Honor for giving the list of  
15 terms that Your Honor is interested because I, too,  
16 find that those are critical.

17           THE COURT: Like I said, the first time I  
18 read this, my head started spinning and I had to do  
19 exactly what we were doing, comparing one and the  
20 other.

21           Only thing I saw different was the dates.  
22 The signatures didn't change.

23           MS. SHOUN: I agree, Your Honor. But it's  
24 really not that complicated, but at least it took me a  
25 minute, but I am probably a little slow.

1           So Mr. Floyd starts out by asking the Court  
2 to refer to the first settlement agreement, the second  
3 settlement agreement, if Your Honor will indulge us  
4 that way. The first one being the one entered in  
5 2017, and the second being the one entered late in  
6 2020.

7           And, again, it might be that perhaps some of  
8 my documents don't read the same, but the second  
9 settlement agreement that I have executed by all the  
10 parties says, this is in paragraph 5 and it's page 3  
11 of 9. This is the second settlement agreement. It's  
12 nine pages. The first one is 13 for ease of  
13 reference.

14           Paragraph 5 says, and I quote, "This  
15 settlement and release constitutes the entire  
16 agreement and understanding between creditors, the  
17 plaintiffs in this action, and debtors" -- that would  
18 be Mr. Beasley Sr. and Mrs. Beasley, our clients as  
19 defined earlier in that settlement agreement -- "and  
20 it supersedes all prior understandings or agreements  
21 written or oral on the subjects contained herein and  
22 the terms of this settlement and release are  
23 contractual."

24           Now, plaintiff's counsel has acknowledged  
25 receipt of the payment pursuant to this agreement.

1 Plaintiffs have acknowledged upon receipt of that  
2 \$50,000 given under this settlement agreement that  
3 they entered in and filed with the Court a document  
4 entitled release of judgement lien as to a specific  
5 property. Release of judgement lien as to certain  
6 defendants, and despite the fact Mr. Floyd argues  
7 there's no satisfaction, the title of that document  
8 then goes on to say "and partial satisfaction of  
9 judgement."

10 And this document does a couple of things  
11 critical to this Court's decision. This document  
12 acknowledges the payment made by and on behalf of  
13 Mr. and Mrs. Beasley, thereby releasing them. In  
14 fact, defining them in this release of judgement lien  
15 as released defendants.

16 It says that payment toward the reduction of  
17 the previously entered judgement is met with the  
18 receipt of which it's hereby acknowledged a certain  
19 parcel of real property owned by the defendants is  
20 hereby released from the lien of said judgement.

21 It goes on to say again that Mr. and  
22 Mrs. Beasley are personally released from the lien.  
23 It goes on further to say the remaining balance of the  
24 judgement lien shall continue on against the other  
25 individuals who signed the note.

1 THE COURT: Take me right there. Take me  
2 right there. Where is that document? Show me where  
3 that is.

4 MS. SHOUN: It's on the second page, Your  
5 Honor, of the release of judgement lien.

6 THE COURT: Okay.

7 MS. SHOUN: That was entered March 17, 2021.

8 THE COURT: On the release, correct?

9 MS. SHOUN: Yes, sir.

10 THE COURT: All right.

11 MS. SHOUN: Release of judgement and  
12 property.

13 THE COURT: I think that's -- want to make  
14 sure we're looking at the right thing. This is in the  
15 2019 case or where are we?

16 MS. SHOUN: It does have the 2019 case.

17 THE COURT: Okay. All right. Is this the  
18 one with the \$50,000 release fee? I think that's  
19 Exhibit 4 we were referring to just a minute ago. All  
20 right?

21 MS. SHOUN: Probably.

22 THE COURT: Take me to that language so I can  
23 highlight that.

24 MS. SHOUN: Yes, sir. If Your Honor will  
25 look at the second page of that particular document,

1 second paragraph, the remaining balance of said  
2 judgement lien plus accruing post judgement interests  
3 and costs shall continue on record against Beasley Jr.  
4 and Beasley Construction Company, collectively the  
5 remaining defendants, and any and all property of said  
6 remaining defendants. Nothing in this document shall  
7 affect or limit the rights of plaintiffs in their  
8 collective or individual pursuit of collecting  
9 remaining balance in said judgement from any other  
10 property, real, personal, presently owned, or acquired  
11 hereafter from the remaining defendants. These  
12 individuals and their property have been specifically  
13 released from any indebtedness.

14 And let's go to the indebtedness, because  
15 Your Honor asked about that. There's one  
16 indebtedness, Your Honor; that \$647,500. One and only  
17 one indebtedness. That's it.

18 Mr. and Mrs. Beasley, in an effort to help  
19 their son, signed the first settlement agreement, a  
20 confession of judgement, a note and a mortgage. Okay?

21 That first settlement agreement is not at  
22 issue here. The second settlement agreement says by  
23 its terms, it supersedes all prior agreements, which  
24 would include the mortgage.

25 The note was a one-year note. The statute of

1 limitations is gone on that note. Its maturity date  
2 is 2018. So while plaintiffs purport to bring a case  
3 before Your Honor as a suit on the note, that's gone.

4 However, the confession of judgement was  
5 entered. That became the judgement lien. And the  
6 Beasleys were subsequently released from that by their  
7 \$50,000 payment and as evidenced by this particular  
8 document.

9 Mr. Floyd asked what requires the plaintiffs  
10 to satisfy this mortgage? Payment and the law. That  
11 lien is gone as to the Beasleys. It exists as to John  
12 Jr. and as to the construction company because,  
13 actually, there's an order of the federal court  
14 requiring restitution by John Jr. to individuals  
15 including the plaintiffs. So that is out there, but  
16 these individuals are gone.

17 And, again, maybe my documents read a little  
18 differently, but Mr. Floyd says -- he refers Your  
19 Honor to the second settlement agreement, which is I  
20 think Exhibit 3, and he takes Your Honor to paragraph  
21 16 of that particular settlement agreement.

22 And what Mr. Floyd read to the Court is this  
23 settlement and release shall not alter or amend the  
24 prior settlement and release agreement nor the  
25 judgement which shall remain in full force and effect.

1           What Mr. Floyd did not read to the Court is  
2           that sentence starts in this fashion: Except for the  
3           release of the debtors herein, this settlement and  
4           release shall not alter or amend the prior settlement  
5           and release agreement, nor the judgement, which shall  
6           remain in full force and effect.

7           Your Honor, it is critical to carefully  
8           consider all the terms of this second settlement  
9           agreement and all the language of that release of  
10          judgement lien. Because as plaintiff so specifically  
11          indicated in their briefing in support of their motion  
12          for summary judgement, this matter is determined on  
13          the four corners of the documents. These documents  
14          are not ambiguous.

15          That second settlement agreement also reads:  
16          Now therefore in consideration to the payments and  
17          promises recited herein, the creditors -- the  
18          plaintiffs in this action -- fully release and forgo  
19          all legal, equitable, and statutory remedies available  
20          to them as long as defendants fully perform all  
21          obligations hereunder, and for other good and valuable  
22          consideration, the receipt and sufficiency of which is  
23          acknowledged.

24          There was an agreement; it was signed; the  
25          money was paid; they released these individuals; they

1 released these individuals' property; and then they  
2 come before this Court purporting to seek relief not  
3 just on the mortgage, but they purport to seek relief  
4 on the note, which has long-since matured and on the  
5 confession of judgement which they had clearly  
6 released.

7 Their complaint prayed for relief on that.  
8 This is absolutely, positively -- this cannot be a  
9 motion for summary judgement. This cannot prevail on  
10 the merits, Your Honor. Everything is here.

11 THE COURT: Ms. Shoun, I was intrigued that  
12 both of y'all cited to the *Lever v. Lighting Galleries*  
13 case. Tell me how that how you interpret that case  
14 relative to your facts.

15 MS. SHOUN: How I do, Your Honor?

16 THE COURT: Yes.

17 MS. SHOUN: Absolutely. That was an  
18 instance -- if we take all things being comparable to  
19 this case, which I would argue they are not, but if we  
20 take Lever as being comparable to this case, because  
21 there was an agreement entered into, there was  
22 subsequently a note, and then there was ultimately a  
23 mortgage. They got judgement on the note. They were  
24 not able to collect that. And they subsequently  
25 foreclosed the mortgage.

1 I think there were some other contingencies  
2 that affect that pattern, but let's assume there are  
3 not. Let's assume we get to that same place.

4 We have payment. We have payment, and we  
5 have the plaintiff's agreement that this settlement  
6 agreement, if these individuals make this payment,  
7 they forgo all of the remedies.

8 Even if we assume for the sake of argument  
9 they have them, which I don't concede that, but if we  
10 agree for the sake of this argument they have those  
11 remedies or had them, when they took that \$50,000,  
12 those remedies disappeared.

13 And I would submit to the Court, Your Honor,  
14 Your Honor indicated earlier the timing was critical  
15 here. I think the timing is critical here. Because  
16 if Your Honor will look at it very carefully, I rather  
17 suspect that Mr. Greene and Mr. Young anticipated the  
18 property at issue was going to be sold as a result of  
19 the order of foreclosure debt Your Honor entered.

20 And because of COVID and other reasons, the  
21 sale wasn't held that long. But it was only months  
22 after Your Honor's order of foreclosure in favor of  
23 First Citizen's that they reached this agreement and  
24 they took the \$50,000 and they released the property  
25 and they released the individuals. And that, again,

1 is how this differs from Lever. There's a payment;  
2 there's a satisfaction; there's an acknowledgment  
3 here.

4 THE COURT: Okay.

5 MR. MCVEY: Your Honor, if I can, I'm going  
6 to try to go in order.

7 THE COURT: Why don't you start on your  
8 interpretation of Lever.

9 MR. MCVEY: I think Lever is on all fours,  
10 assuming for the purposes of the argument that  
11 Ms. Shoun's argument is --

12 THE COURT: Ms. Wilkerson's father was  
13 involved in this case by the way.

14 MR. MCVEY: Really?

15 THE COURT: So we had a chance to talk about  
16 that yesterday.

17 MR. MCVEY: Well, which side do I need to  
18 argue?

19 THE COURT: I can tell you he lost but only  
20 in the Supreme Court, only when it counted.

21 MR. MCVEY: That's right. Your Honor, for  
22 the purposes of this argument, I'm going to assume  
23 Ms. Shoun's assertion that the note is no longer there  
24 is true. Okay? That the note has merged into the  
25 confession of judgement at the time the judgement was

1 recorded.

2 If that is in fact true, Lever is on all  
3 fours. You have a debt; you have a judgement; you  
4 have a mortgage.

5 You have a judgement which is a separate  
6 obligation and is a separate lien that our courts  
7 recognize as opposed to the mortgage. And so  
8 therefore, we're absolutely -- it's two pieces of  
9 security for the debt. And what Lever very clearly  
10 says, Your Honor, is that if the debt has not been  
11 satisfied in full, you're still entitled to  
12 foreclosure mortgage.

13 Now, raised the issue of statute of  
14 limitations earlier. 20 years on a mortgage, as  
15 you're well aware. It's also three years from the  
16 last day of payment under the note, which arguably  
17 would have been December of 2020.

18 So I don't think really statute of  
19 limitations has anything to do with this here, Your  
20 Honor. But Lever I think is squarely on point in that  
21 by and reducing it to a judgement -- there's no  
22 difference than if the judgement had expired. If it  
23 had expired here, we would still be entitled to  
24 foreclose so long as the judgement had not been paid,  
25 as long as the debt had not been paid. And in this

1 case, the debt has not been paid. And the parties  
2 acknowledge that the debt has not been paid in the  
3 2020 settlement agreement.

4 Now, I don't disagree that the merger clause  
5 says everything subsumed into this. That's what a  
6 merger clause does. And nowhere in this agreement,  
7 all right -- again, the 2020 agreement doesn't  
8 reference the note and the mortgage. It doesn't say  
9 anything we're doing with the note and the mortgage.  
10 All it says is we're going to release you from this  
11 judgement. We're going to release your property from  
12 this judgement, and we're going to lessen the amount  
13 of the debt owed by the amounts paid. But it doesn't  
14 say I'm satisfying the debt. It doesn't say I'm  
15 satisfying the mortgage. It just says I'm releasing  
16 you from it.

17 So we obviously can't go through the Beasley  
18 Sr. into supplemental proceedings because we agreed  
19 that we would not do that. We forgo any remedy that  
20 we have related the confession of judgement and the  
21 judgement only.

22 But if you look at paragraph 5 of the 2020  
23 agreement, this settlement and release constitutes the  
24 entire agreement and understanding between the  
25 creditors and debtors, and it supersedes all prior

1 understandings or agreement written or oral on the  
2 subjects contained herein.

3           You know what's not contained in there? The  
4 mortgage, the note. It also -- and I know they'd like  
5 to read this in a vacuum, but paragraph 16 refers us  
6 back and says nothing else has changed. Nothing has  
7 changed on the 2017 agreement. You can proceed as you  
8 like.

9           If I can draw Your Honor's attention to the  
10 2017 agreement, which is tabbed G-1. All right?  
11 Section 2-F, top of page 4. Upon the satisfaction of  
12 the underlying note and the full performance by the  
13 debtors of all obligations under this settlement and  
14 release, creditors agree to execute and record  
15 satisfactions of mortgages on the above-referenced  
16 properties in the applicable county RMC office.

17           The parties expressly agreed that until it  
18 was paid in full, there was no obligation to satisfy  
19 any of the mortgages. And do recall there were  
20 multiple mortgages.

21           And by the way, referring back to the First  
22 Citizen's mortgage, you know, I don't know whether  
23 that had anything to do with why anybody was choosing  
24 to take money or not take money. What I also know is  
25 there's no affidavit here that says why anybody was

1 doing anything.

2 The responses in the affidavit, our  
3 mortgages, our affidavit, is simply as to the debt  
4 amount. Anything else that was going on quite frankly  
5 would be parole evidence and doesn't really matter  
6 here. The parties agree there's no genuine issue of  
7 material fact. This is to be decided on the  
8 documents.

9 The only other thing I would draw the Court's  
10 attention to is go back and look at the language if  
11 you would, please, of the release of the judgement  
12 lien. It's pretty specific as to what's happening.  
13 We're releasing the judgement lien. We acknowledge we  
14 did that. That was something we agreed to do. We  
15 acknowledge we were going to partially satisfy the  
16 debt down to \$50,000, and we also agreed that we were  
17 going to take the lien off that real estate. That's  
18 what we agreed to do.

19 We never agreed to do the mortgage. Why  
20 would we? Why would we take \$50,000 to satisfy a  
21 \$700,000 debt? It makes absolutely no sense  
22 whatsoever. Thank you, Your Honor.

23 THE COURT: Well, the release, even in the  
24 heading -- and I'm looking at Exhibit 4. The  
25 judgement lien itself was released of record, correct?

1 MR. MCVEY: Correct, Your Honor.

2 THE COURT: And that in and of itself is not  
3 a satisfaction of a mortgage. Those are two separate  
4 entities.

5 MR. MCVEY: Correct, Your Honor.

6 THE COURT: Released of the judgement of  
7 certain defendants, and that would be these Beasleys,  
8 and partial satisfaction of the judgement.

9 Was there another judgement somewhere out  
10 there? We're talking about the same amount of money,  
11 are we not? It was all applied to -- there's one  
12 confession of judgement signed by all of the parties,  
13 Beasley Construction, Beasley Jr. and both Beasley Sr.

14 THE COURT: That's right. I remember that.  
15 Okay.

16 MR. MCVEY: And, again, it's very specific as  
17 to certain defendants, those being Beasley Sr. to that  
18 specific property. But, again, there's no  
19 satisfaction of the mortgage.

20 THE COURT: How do you distinguish the Lever  
21 case, then, if you in fact did receive some payments  
22 on the note and applied towards the judgement?

23 MR. FLOYD: The consideration wasn't to  
24 satisfy the mortgage. It was to release the lien.  
25 Not even satisfy the lien.

1 THE COURT: Release the judgement lien?

2 MR. MCVEY: That's exactly right. That's it.  
3 It's not -- it wasn't a payment on the mortgage. It's  
4 not -- I mean, it's a payment on the debt. It had to  
5 be credited to the debt, but it's not a satisfaction  
6 full as required under the 2017 settlement agreement.

7 THE COURT: Okay. Ms. Shoun?

8 MS. SHOUN: Your Honor does seem interested  
9 in the distinction of Lever, and I thought I might go  
10 back to that briefly. Lever provides: The mortgagee  
11 who has the note in a mortgage to secure a debt has  
12 the option to bring an action on the note or to pursue  
13 a foreclosure action. The bond is not the debt, nor  
14 is the mortgage the debt. The debt is the borrowed  
15 money.

16 In our instance, one of the terms Your Honor  
17 wanted described was debt. The debt is the \$647,000.  
18 That's the debt. The mortgage is one method of  
19 securing that debt. The lien is the other method of  
20 securing that debt.

21 THE COURT: The judgement?

22 MS. SHOUN: Yes, Your Honor. Its progeny, US  
23 Bank Trust Nat. Ass'n v. Bell, which is 385 S.C. 3624,  
24 cites to Lever and says, among other things, a  
25 mortgage and a note are separate securities for the

1 same debt, and a mortgagee who has a note and mortgage  
2 to secure a debt has the option to either bring an  
3 action on the note or to pursue a foreclosure action.

4 They don't get to do this over and over and  
5 over again. They took a total of \$75,000 from these  
6 people, but they took \$50,000. And Mr. McVey said at  
7 the time they entered into the second settlement  
8 agreement, they acknowledged the debt wasn't paid.  
9 Right. But the second settlement agreement pays the  
10 debt on behalf of the Beasleys.

11 And it says distinctly in paragraph 16 except  
12 for the release of these debtors, Mr. Beasley Sr. and  
13 Mrs. Beasley, you can do whatever you want under the  
14 first settlement agreement.

15 You can do whatever you want as to the  
16 remaining defendants under the judgement. But as to  
17 these individuals, you have made your choice. You  
18 took their money. You agreed to forego all other  
19 remedies, you released them, and you released their  
20 property.

21 This is a travesty, Your Honor. Frankly, it  
22 is a travesty what these individuals are trying to do  
23 to these people. I have never seen a clearer case of  
24 this, Your Honor. To present to this Court a  
25 complaint that says sue on the note as well as seeks

1 relief under the confession of judgement, which they  
2 acknowledge these people have -- for which they seek a  
3 relief.

4 THE COURT: I'm not sure they're seeking  
5 relief under the judgement, are they? They've  
6 released you from the judgement.

7 MS. SHOUN: They've released us from the  
8 indebtedness.

9 THE COURT: They've released you from the  
10 judgement. The debt was 675, right? 75 was paid.

11 MS. SHOUN: They took that pursuant to the  
12 settlement agreement and said by this, we forgo all  
13 other remedies. If they still had a right to the  
14 judgement at that point, they gave up that right in  
15 that settlement agreement and then they memorialized  
16 it.

17 The settlement amount was paid, and they  
18 memorialized it in that partial release by releasing  
19 these individuals and their property.

20 THE COURT: From the judgement.

21 MS. SHOUN: But, Your Honor, what was the  
22 \$50,000 paid for?

23 THE COURT: I don't know the answer to that  
24 question.

25 MS. SHOUN: I do. It's in the document. The

1 way I read the confession, it was a partial release,  
2 partial settlement.

3 MS. SHOUN: It is absolutely in the second  
4 settlement agreement as to what that \$50,000 was paid  
5 for, and that was the agreement to forgo all other  
6 remedies, legal or equitable, and other processes that  
7 may be available to them. It says it. And the  
8 plaintiffs indicated --

9 THE COURT: That's paragraph 5?

10 MS. SHOUN: Actually, Your Honor, it's the  
11 "now therefore in consideration." It's the last "now  
12 therefore" before paragraph 1 that begins the  
13 settlement sum.

14 THE COURT: All right. Okay.

15 MS. SHOUN: And just to point out, Your  
16 Honor, if I may, this settlement agreement in the  
17 prefatory paragraph references the debt, which is the  
18 \$647,500. That is the debt. There is no other debt.  
19 That is it. And by this payment pursuant to this  
20 agreement, they have released these individuals from  
21 that.

22 And they go on to -- I mean, it goes on to  
23 say you can pursue against anybody else, against any  
24 non-released judgement debtor and all the other terms  
25 remain in full force and effect except as to

1 Mr. Beasley Sr. and Mrs. Beasley.

2 MR. MCVEY: Your Honor, if I may raise one  
3 issue.

4 THE COURT: Uh-huh.

5 MR. MCVEY: I would just like to direct the  
6 Court's attention to the second to last paragraph of  
7 the Lever opinion.

8 THE COURT: Yeah.

9 MR. MCVEY: It says the creditor shall not  
10 have two satisfactions for the same debt, but there is  
11 no inconsistency with pursuing two remedies. If one  
12 produces satisfaction, that is a bar for the other. A  
13 mortgage is a specific lien, and a judgement is a  
14 general lien. Both may be consistently pursued until  
15 the debt is satisfied.

16 And that's citing to the Satterwhite case,  
17 which is 1849. This is a long standing South Carolina  
18 law, Your Honor.

19 THE COURT: These are old cases.

20 MR. MCVEY: Yes, it is. Though I'm not  
21 accusing your law clerk's father of being old. But if  
22 you have any other questions for me, Your Honor, happy  
23 to answer.

24 THE COURT: What was the case, Ms. Shoun, you  
25 referenced? I tried to write the citation down.

1 MS. SHOUN: US Bank Trust National  
2 Association, formerly known as First Trust National  
3 Association. The cite on that is 385 S.C. 364, 684  
4 S.E.2d 199.

5 It does indicate -- Lever does indicate it  
6 cannot have two satisfactions for the same debt. They  
7 can get satisfaction from other remaining defendants,  
8 but they cannot do that once they release these  
9 individuals.

10 THE COURT: Okay.

11 MR. DENNIS: Let me add, there's certainly  
12 been a lot of reading done by a lot of us. The motion  
13 is for summary judgement.

14 Everything you've talked about is nothing  
15 more than a -- it's a lot more than a scintilla of  
16 evidence. You've denied summary judgement, and we  
17 have a trial. There's a question of fact. We can't  
18 decide these things, and you can't either. That's why  
19 we have trials.

20 MR. MCVEY: Judge, I would note that the  
21 defendant's brief says there are no genuine issues  
22 besides material facts on the --

23 MR. DENNIS: Genuine issue, Your Honor, may  
24 be, but, you know, that's argumentative as well.  
25 There are issues of fact. There are tons of them.

1           THE COURT: That may be, but I think this  
2 issue -- this issue appears to me to be a question of  
3 law.

4           MR. DENNIS: I agree, when we filed summary  
5 judgement.

6           THE COURT: That Lever talks in terms of most  
7 recent -- I looked into that one last night. I found  
8 I guess the most recent one is an unpublished case.

9           The one that got my attention is one of my  
10 high fliers in here, a guy named Johnston Koola. You  
11 don't want to go there.

12           Anyway, they talk about -- they cite to some  
13 North Carolina bankruptcy court. This is Judge Waits  
14 in re Koola, 2018 WL 485 0375. They talk about Lever  
15 and some of the progeny, they say. Describe the case  
16 law in South Carolina in the following manner. This  
17 is the judge in a case called Southbay up in North  
18 Carolina. "Old and dusty as these cases may be, this  
19 Court has found no more recent precedent to contradict  
20 them. They appear to have established a lasting legal  
21 footprint." I just thought that was great law.

22           So here's what I need to do. On this one,  
23 I'm going to take it under advisement. I think I need  
24 to think at it. Y'all have focused in on -- and I  
25 found that out last night when your memoranda came in

1 that you were citing to the same authority. We just  
2 have a difference of opinion. That's why I have to  
3 scratch my head over it.

4 We had a couple other motions that I think we  
5 need to take up. Find out what they are.

6 MR. MCVEY: Your Honor, would you like us to  
7 punt on the motion to strike right now? Because  
8 depending on which way you go, that will either be  
9 necessary or unnecessary.

10 THE COURT: Right. Okay. And then you had  
11 entry of default as to the other -- that's not a real  
12 problem there, is it?

13 MR. MCVEY: No. Like I said, that's a formal  
14 entry of default related to the in default damages.

15 THE COURT: Okay. All right.

16 MR. MCVEY: I'm going to leave the motion out  
17 there but just kind of see what happens. We can  
18 always come back and deal with motion to strike later  
19 depending on what Your Honor decides.

20 THE COURT: I'm assuming y'all will file  
21 motions?

22 MS. SHOUN: Oh, yes, sir.

23 THE COURT: And I think your argument is well  
24 made. Okay.

25 MS. SHOUN: Frankly, Your Honor, candidly, we

1 would have done it well in advance except for the  
2 recusal issue.

3 THE COURT: Sure. I'm with you. Okay. And  
4 that may rear its ugly head again.

5 MS. SHOUN: It may.

6 THE COURT: Okay. So as to the rulings I've  
7 gotten so far, then, I denied the motion for recusal.  
8 I put those terms on the record. Motion for summary  
9 judgement is under advisement. Motion to strike  
10 counterclaims have been punted, and anticipated motion  
11 for summary judgement from defense. Mr. Beasley,  
12 Aaron Beasley's motion is denied. And the plaintiff's  
13 motion on the reformation of the mortgage was granted.  
14 Okay?

15 MR. MCVEY: You indicated you wanted a  
16 proposed order on the reformation cause. Do you want  
17 a proposed order on intervention as well?

18 THE COURT: Go ahead and put those together  
19 for me. Run it by everybody. What was the other one?

20 MR. MCVEY: So that I'm clear, the rulings I  
21 heard on the intervention, you found it not to be  
22 timely. You note there was no reason for a delay and  
23 that it would prejudice the parties at this time.

24 Did you find that there was an equitable  
25 interest or no?

1 THE COURT: No, I did not find that. All  
2 right. I'd like to read the -- anything further  
3 you've got? I've not read the case you cited to, so I  
4 want to take a look at that one. I'm focusing in on  
5 Lever, but seemed to be pretty right on point. How it  
6 gets interpreted here is what is significant to this  
7 Court.

8 MS. SHOUN: Yes, sir. And I think probably  
9 finding the same authority that Your Honor found. I  
10 did -- I do have Quarter Pointe Venture, LLC, that  
11 particular action, versus Lineberger.

12 It's one that -- again, that's another  
13 progeny of Lever.

14 THE COURT: That's the one? Yeah.

15 MS. SHOUN: Exactly. And, Your Honor, we  
16 staunchly take the position that if the supports our  
17 position.

18 THE COURT: I understand that.

19 MS. SHOUN: Exactly.

20 THE COURT: Got it. Okay. Anything further?  
21 Not for today? All right. Thank you.

22 (Off the record at 1:48 p.m. on August 8th,  
23 2023.)

COURT REPORTER'S CERTIFICATE

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I DO HEREBY CERTIFY THAT THE TESTIMONY  
CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO  
WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A  
COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A  
TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE  
TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED  
BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR  
ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF  
EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY  
IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,  
ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS THE 21st DAY OF AUGUST 2023.

*Josie Boehm*  
-----  
JOSIE ALLEN BOEHM

My Commission Expires 10/18/32

**EXHIBIT G – PROMISSORY NOTE**

EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROMISSORY NOTE

\$647,500.00

November 20, 2017

WHEREAS, on or about September 25, 2017, JOHN W. BEASLEY, JR. ("John Jr.") borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from JASON GREENE ("Greene"), which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from RICHARD YOUNG ("Young"), which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from Greene and Young (collectively hereunder, the "Creditors"), which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. ("John Sr."), LILLIAN BEASLEY ("Lillian"), and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company (the "Company", John Jr., John Sr., Lillian, and the Company collectively hereunder, the "Debtors") have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof;

WHEREAS, the Creditors have incurred Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) in costs in expenses in the resolution of this matter and the drafting of documents, which Debtors have agreed to capitalize into this Promissory Note;

WHEREAS, the Creditors and Debtors have by separate document executed memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth therein in order to avoid the costs and frustrations attenuated with litigation (the "Settlement and Release"); and

NOW THEREFORE, for and in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations under the Settlement and Release, the

  
John Jr. Initials

  
John Sr. Initials

  
Lillian Initials

  
Company Initials

unconditional and irrevocable of John Sr., Lillian, and the Company to join John Jr. as co-Debtors, with joint and several liability for the repayment of all sums owed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

FOR VALUE RECEIVED, the undersigned, JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Ave, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company"; John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors"), joint and several, promise to pay to the order of RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene", Young and Greene collectively hereunder the "Creditors"), by wire transfer and in lawful money of the United States of America, the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), without interest thereon for so long as this Promissory Note is not in default. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Failure to fully remit the principal balance of this Promissory Note prior to the Maturity Date shall be an event of default of this Promissory Note. In the event of default, the unpaid balance shall bear interest at the rate of Twelve Percent (12%) per annum (the "Default Interest Rate").

The above recitals comprise material provisions to this promissory and are incorporated herein as if restated verbatim.

**THIS PROMISSORY NOTE MAY BE PREPAID AT ANYTIME WITHOUT PENALTY.**

If this Promissory Note is not payable on demand, then upon the occurrence of any of the following events this Promissory Note and all other liabilities at the Lender's option, shall become due and payable immediately, by acceleration, without notice or demand:

- (a) default by the Debtors in the payment of any principal of, or interest on, this Promissory Note when and as same shall become due and payable, whether at maturity, by acceleration, or otherwise; or,
- (b) any representation or warranty made or any financial statement or other information furnished by the Debtors, or any one of them, in connection with the execution and delivery of this Promissory Note or any Security Document, a defined below; or,
- (c) any certificate furnished pursuant hereto shall prove to be false at any time in any material respect; or,

  
John Jr. Initials

  
John Sr. Initials

  
Lillian Initials

  
Company Initials

(d) default by the Debtors, or any one of them, in the due performance of any term, provision or agreement to be performed by them (other than for the payment of principal or interest), contained herein or in any Security Document, as that term is defined below; or,

(e) the Debtors, or any one of them, as co-makers and guarantors with respect to this Promissory Note, shall become involved in financial difficulties as evidenced by: (i) making an assignment for the benefit of creditors or the commencement of any similar Debtors' relief proceeding, whether judicial or otherwise; (ii) consent to or application for the appointment of a trustee, interim trustee, custodian or receiver for all or a major portion of any property of the Debtors; (iii) the commencement of any action or proceeding under any other federal or state bankruptcy, insolvency, composition, Debtors' relief, reorganization or other similar law, or have such a proceeding commenced against any of them and either have an order of insolvency or reorganization entered against any of them or have the proceeding remain undismissed or unstayed for 60 days; (iv) entry of a final judgment for the payment of money against any of them and the same shall not be discharged within 30 days of its entry, or an appeal or proceeding for such appeal shall not be obtained; or (v) death, dissolution or suspension of the corporate charter or of the partnership, insolvency or failure or suspension of the usual business of any of them; or (vi) the issuance of any attachment, garnishment, execution, federal tax levy, or other process or seizure against any of their property.

The Debtors hereby waive presentment, demand for payment, protest, notice of protest, and notice of nonpayment, and further agree and consent that, without notice and without affecting their liability hereon, the holder(s) hereof at any time or times is/are authorized to: (a) correct patent errors and fill blanks herein; and/or (b) cause or permit the signature of one or more additional makers, co-makers, sureties, guarantors and/or endorsers to be added hereto.

If this Promissory Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage(s) securing this Promissory Note, then, all cost of collection, including a reasonable sum for attorney fee, which shall be deemed to be not less than Fifteen Percent (15%) of the outstanding balance due, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

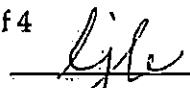
The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note, or any change or changes by way of release or surrender of any collateral held as security for this Promissory Note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

  
John Jr. Initials

  
John Sr. Initials

Page 3 of 4

  
Lillian Initials

  
Company Initials

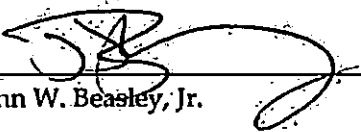
The undersigned Debtors further acknowledge and intend that this Promissory Note shall be binding upon their heirs, successors, and assigns, as the case may be.


No delay by the Creditors in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

This Promissory Note is secured by mortgages of even date herewith, given by Debtors in favor of Creditors hereunder, and to be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, regarding, pledging, and encumbering certain real property (a "Security Document").

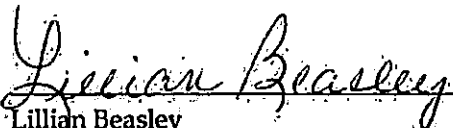
This Promissory Note is made and to be interpreted under the laws of the State of South Carolina. Venue for any dispute regarding the rights, duties, and obligations under this Promissory Note is proper in any court of competent jurisdiction for Charleston County, South Carolina.

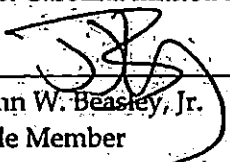
DEBTORS:

  
John W. Beasley, Jr.

  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
Lillian Beasley

  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PROMISSORY NOTE.]

  
John Jr. Initials

  
John Sr. Initials

  
Lillian Initials

  
Company Initials

PAYMENT RIDER TO PROMISSORY NOTE

Debtors: JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC

Creditors: RICHARD YOUNG and JASON GREENE

Date of Promissory Note: November 20, 2017

For so long as RICHARD YOUNG and JASON GREENE, whether together or individually, remain a holder of this Promissory Note, or until otherwise directed by either of them, each and every payment to be made under the Promissory Note shall be made by wire transfer as follows:



For Credit to:

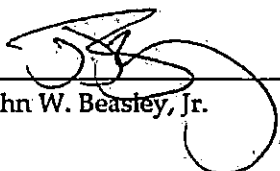


Memo:



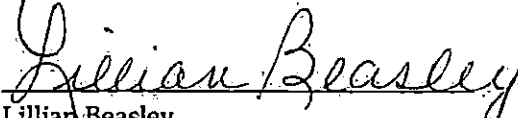
Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

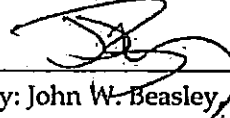
DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PAYMENT RIDER TO PROMISSORY NOTE.]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service,

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FORECLOSURE HEARING AND AWARD OF ATTORNEY'S FEES AND COSTS**

**TO: JOHN C. JOHNSTON, ESQ., CHERYL D. SHOUN, ESQ., MARKLEY DENNIS, ESQ. AND RHETT RICARD, ESQ., ATTORNEYS FOR DEFENDANTS JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY:**

**YOU WILL TAKE NOTICE** that Plaintiffs Richard Young and Jason Greene, by and through their undersigned counsel, hereby respectfully move and request this Honorable Court to schedule a hearing to establish the debt, set a sales date and to enter an Order and Judgment of Foreclosure and Sale pursuant to that certain Order Granting Summary Judgment entered by the Court on August 23, 2023.

**YOU WILL FURTHER TAKE NOTICE** that Plaintiffs will, at said hearing, also move for an award of attorney's fees and costs pursuant to the terms of the Promissory Note and Mortgage which are the subject of this Action.

This motion will be further supported by the pleadings (and other documents) filed in this case, stipulations of fact, discovery responses, documents being filed contemporaneously herewith, documents filed hereafter, supporting memoranda and/or other materials as may be filed before the hearing on this motion and/or presented at the hearing on this motion. In support of this motion, the Plaintiffs expect to use the following exhibits:

- Exhibit 1      Promissory Note
- Exhibit 2      Mortgage
- Exhibit 3      Updated Affidavit of Debt (As of 9/5/23)
- Exhibit 4      Affidavit of Attorneys Fees and Costs (Ian McVey)
- Exhibit 5      Affidavit of Attorneys Fees and Costs (Joey R. Floyd)

WE SO MOVE.

TURNER PADGET GRAHAM & LANEY, P.A.

s/ Ian D. McVey  
Ian D. McVey, SC Bar No. 71196  
Lindsey M. Behnke, SC Bar No. 105719  
PO Box 1473 (29202)  
1901 Main St., Suite 1700  
Columbia, South Carolina 29210  
Tel. 803-227-4267  
Tel. 803-227-4324  
Email: [imcvey@turnerpadget.com](mailto:imcvey@turnerpadget.com)  
Email: [lbehnke@turnerpadget.com](mailto:lbehnke@turnerpadget.com)

BRUNER POWELL WALL & MULLINS, LLC

s/ Joey R. Floyd  
Joey R. Floyd, SC Bar No. 68491  
PO Box 61110  
Columbia, South Carolina 29260  
Tel. (803)252-7693  
Fax (803)254-0629  
Email [jfloyd@brunerpowell.com](mailto:jfloyd@brunerpowell.com)

September 6, 2023

*Attorneys for the Plaintiffs*

# EXHIBIT 1

ELECTRONICALLY FILED - 2023 Sep 07 8:34 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

## PROMISSORY NOTE

\$647,500.00

November 30, 2017

WHEREAS, on or about September 25, 2017, JOHN W. BEASLEY, JR. ("John Jr.") borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from JASON GREENE ("Greene"), which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from RICHARD YOUNG ("Young"), which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from Greene and Young (collectively hereunder, the "Creditors"), which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. ("John Sr."), LILLIAN BEASLEY ("Lillian"), and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company (the "Company", John Jr., John Sr., Lillian, and the Company collectively hereunder, the "Debtors") have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof;

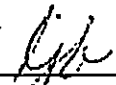
WHEREAS, the Creditors have incurred Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) in costs in expenses in the resolution of this matter and the drafting of documents, which Debtors have agreed to capitalize into this Promissory Note;

WHEREAS, the Creditors and Debtors have by separate document executed memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth therein in order to avoid the costs and frustrations attenuated with litigation (the "Settlement and Release"); and

NOW THEREFORE, for and in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations under the Settlement and Release, the

  
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John Jr. Initials

  
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John Sr. Initials

Page 1 of 4  
  
\_\_\_\_\_  
Lillian Initials

  
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Company Initials

unconditional and irrevocable of John Sr., Lillian, and the Company to join John Jr. as co-Debtors, with joint and several liability for the repayment of all sums owed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

FOR VALUE RECEIVED, the undersigned, JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Ave, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company", John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors"), joint and several, promise to pay to the order of RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene", Young and Greene collectively hereunder the "Creditors"), by wire transfer and in lawful money of the United States of America, the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), without interest thereon for so long as this Promissory Note is not in default. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Failure to fully remit the principal balance of this Promissory Note prior to the Maturity Date shall be an event of default of this Promissory Note. In the event of default, the unpaid balance shall bear interest at the rate of Twelve Percent (12%) per annum (the "Default Interest Rate").

The above recitals comprise material provisions to this promissory and are incorporated herein as if restated verbatim.

**THIS PROMISSORY NOTE MAY BE PREPAID AT ANYTIME WITHOUT PENALTY.**

If this Promissory Note is not payable on demand, then upon the occurrence of any of the following events this Promissory Note and all other liabilities at the Lender's option, shall become due and payable immediately, by acceleration, without notice or demand:

(a) default by the Debtors in the payment of any principal of, or interest on, this Promissory Note when and as same shall become due and payable, whether at maturity, by acceleration, or otherwise; or,

(b) any representation or warranty made or any financial statement or other information furnished by the Debtors, or any one of them, in connection with the execution and delivery of this Promissory Note or any Security Document, a defined below; or,

(c) any certificate furnished pursuant hereto shall prove to be false at any time in any material respect; or,

  
John Jr. Initials

  
John Sr. Initials

Page 2 of 4

  
Lillian Initials

  
Company Initials

(d) default by the Debtors, or any one of them, in the due performance of any term, provision or agreement to be performed by them (other than for the payment of principal or interest), contained herein or in any Security Document, as that term is defined below; or,

(e) the Debtors, or any one of them, as co-makers and guarantors with respect to this Promissory Note, shall become involved in financial difficulties as evidenced by: (i) making an assignment for the benefit of creditors or the commencement of any similar Debtors' relief proceeding, whether judicial or otherwise; (ii) consent to or application for the appointment of a trustee, interim trustee, custodian or receiver for all or a major portion of any property of the Debtors; (iii) the commencement of any action or proceeding under any other federal or state bankruptcy, insolvency, composition, Debtors' relief, reorganization or other similar law, or have such a proceeding commenced against any of them and either have an order of insolvency or reorganization entered against any of them or have the proceeding remain undismissed or unstayed for 60 days; (iv) entry of a final judgment for the payment of money against any of them and the same shall not be discharged within 30 days of its entry, or an appeal or proceeding for such appeal shall not be obtained; or (v) death, dissolution or suspension of the corporate charter or of the partnership, insolvency or failure or suspension of the usual business of any of them; or (vi) the issuance of any attachment, garnishment, execution, federal tax levy, or other process or seizure against any of their property.

The Debtors hereby waive presentment, demand for payment, protest, notice of protest, and notice of nonpayment, and further agree and consent that, without notice and without affecting their liability hereon, the holder(s) hereof at any time or times is/are authorized to: (a) correct patent errors and fill blanks herein; and/or (b) cause or permit the signature of one or more additional makers, co-makers, sureties, guarantors and/or endorsers to be added hereto.

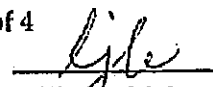
If this Promissory Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage(s) securing this Promissory Note, then, all cost of collection, including a reasonable sum for attorney fee, which shall be deemed to be not less than Fifteen Percent (15%) of the outstanding balance due, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note, or any change or changes by way of release or surrender of any collateral held as security for this Promissory Note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

  
John Jr. Initials

  
John Sr. Initials

Page 3 of 4  
  
Lillian Initials

  
Company Initials

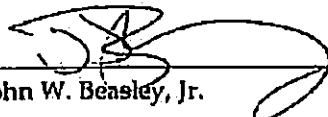
The undersigned Debtors further acknowledge and intend that this Promissory Note shall be binding upon their heirs, successors, and assigns, as the case may be.


No delay by the Creditors in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

This Promissory Note is secured by mortgages of even date herewith, given by Debtors in favor of Creditors hereunder, and to be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, regarding, pledging, and encumbering certain real property (a "Security Document").

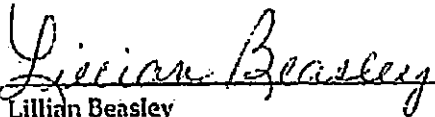
This Promissory Note is made and to be interpreted under the laws of the State of South Carolina. Venue for any dispute regarding the rights, duties, and obligations under this Promissory Note is proper in any court of competent jurisdiction for Charleston County, South Carolina.


DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company


  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PROMISSORY NOTE.]

  
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John Jr. Initials

  
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John Sr. Initials

Page 4 of 4   
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Lillian Initials

  
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Company Initials

**PAYMENT RIDER TO PROMISSORY NOTE**

Debtors: JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC

Creditors: RICHARD YOUNG and JASON GREENE

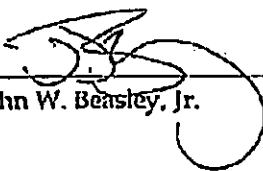
Date of Promissory Note: November 30, 2017

For so long as RICHARD YOUNG and JASON GREENE, whether together or individually, remain a holder of this Promissory Note, or until otherwise directed by either of them, each and every payment to be made under the Promissory Note shall be made by wire transfer as follows:



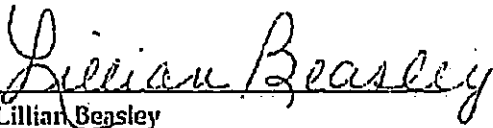
Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.


DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

**[END OF PAYMENT RIDER TO PROMISSORY NOTE.]**

EXHIBIT 2



BP0684902

# PGS:

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PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Justin John Price, Esq.  
478 King Street, Suite 4  
Charleston, South Carolina 29403  
843.368.9173

STATE OF SOUTH CAROLINA )  
 ) MORTGAGE, SECURITY AGREEMENT AND  
 ) FINANCING STATEMENT  
COUNTY OF CHARLESTON )

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made and entered into as of November ~~2<sup>nd</sup>~~ 2017, by JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY A/K/A LILLIAN J. BEASLEY, Individuals residing at 1050 Sea Eagle Watch, Charleston, South Carolina 29412, their heirs, successors, and assigns (collectively, the "Mortgagor"), in favor of RICHARD YOUNG, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, and JASON GREENE, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, their heirs, successors, and assigns (collectively, the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee pursuant to a promissory note of even date herewith in the original principal amount of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), together with any and all extensions, renewals, or modifications thereof, the "Note"; and

WHEREAS, Mortgagor desires to secure its obligations under the Note by granting the Mortgagee a mortgage lien on and security interest in the real property, improvements, fixtures, and personal property described below; and

NOW, THEREFORE, the Mortgagor in consideration of the aforesaid debt, and also in consideration of the further sum of Ten and No/100 Dollars (\$10.00), to them in hand paid by the Mortgagee, receipt whereof is hereby acknowledged, and for the purpose of securing the Obligations (as hereinafter defined) as a mortgage lien, has granted, bargained, sold, and released, and by these presents, does grant, bargain, sell and release unto the Mortgagee, their heirs, successors, and assigns, as security for the Obligations, the real property described on Exhibit "A" attached hereto and incorporated by reference (the "Land") including all improvements (the "Improvements") now existing or hereafter placed on the Land; and

TOGETHER, with all rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, including without limitation all right, title and interest of Mortgagor in and to water, minerals, flowers, shrubs, crops, trees, timber and other emblements

  
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now or hereafter located therein, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection therewith (collectively, together with the Land and the Improvements, the "Mortgaged Property").

TO HAVE AND TO HOLD, all and singular the Mortgaged Property, unto the Mortgagee, their heirs, successors, and assigns forever.

AND the Mortgagor covenants with and to the Mortgagee that the Mortgagor is indefeasibly seized of a good and marketable fee simple title to said Mortgaged Property and has good and lawful authority to mortgage said Mortgaged Property; and

PROVIDED, ALWAYS, that if the Mortgagor shall pay unto the Mortgagee the said Obligations (including any future advances); and if the Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants therein and in this Mortgage, then this Mortgage and all assignments contained herein shall cease and be null and void; otherwise to remain in full force and effect.

THIS MORTGAGE secures (a) the obligations of Mortgagor to Mortgagee under the Note; (b) any and all advances or expenditures made by Mortgagee pursuant to the terms of this Mortgage; (c) attorneys' fees, court costs, and other amounts which may be due under the Note or this Mortgage; (d) any and all other indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, of whatever class or nature, whether or not now contemplated by the parties, including future advances pursuant to S.C. Code Ann. § 29-3-50, 1976, as amended (as set forth more fully below); and (e) any and all extensions, renewals, and modifications of any of the foregoing (all of (a) through (e) being hereinafter referred to the as "Obligations". Extensions, renewals, and modifications of the debt secured hereby, and future advances, may bear interest at a rate or rates higher than the rate borne by the Note.

THIS MORTGAGE shall secure not only existing indebtedness but all future advances (in accordance with S.C. Code Ann. § 29-3-50) readvances, and additional indebtedness hereafter arising or incurred of Mortgagor to Mortgagee, and any notes evidencing the same, whether such advances or indebtedness is obligatory or to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advance or indebtedness was made on the date of the execution of this Mortgage, but the indebtedness secured by this Mortgage shall not exceed at any one time the maximum principal amount of Eight Hundred Thousand and 00/100 Dollars, plus interest thereon, reasonable attorneys' fees and court costs, and plus advancements for taxes, insurance premiums, and repairs made by Mortgagee. All indebtedness incurred after the date hereof by Mortgagor in favor of Mortgagee shall be deemed to be a future advance and entitled to the protection of this provision. Such future indebtedness may bear interest at a rate or rates greater than the rate set forth in the Note. Interest on the Note will be deferred, accrued, or capitalized, but Mortgagee shall not be required to defer, accrue, or capitalize any interest except as provided in the Note.

  
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AND the Mortgagor does hereby expressly covenant and agree as follows:

1. **Assignment of Rents and Profits.** As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, Mortgagor hereby sells, mortgages, transfers and assigns unto Mortgagee and grants Mortgagee a security interest in all the right, title and interest of the Mortgagor in and to the rents, hunting leases, agricultural leases, issues, profits, revenues, royalties, rights and benefits from the above described property, and to that end Mortgagor hereby assigns and sets over unto the said Mortgagee all leases and licenses of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal, and Mortgagor does hereby authorize and empower the Mortgagee to collect said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as they may now be due or shall hereafter become due to the said Mortgagee, upon demand for payment thereof by said Mortgagee; it being understood and agreed, however, that no such demand shall be made unless and until there has occurred an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to collect or continue collecting said rents, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect or continue collecting, as aforesaid, by the Mortgagor shall not operate to permit the collection of any rents more than thirty (30) days in advance of the date same are due under the terms and provisions of said lease or leases.

2. **After Acquired Property.** The Lien of this Mortgage shall automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property or any part thereof, and shall likewise automatically attach to any and all subsequent or additional interests Mortgagor may hereafter acquire in the Mortgaged Property.

3. **Payment of Obligations.** Mortgagor covenants and agrees to pay the Obligations in accordance with their terms promptly as the principal and interest thereon shall become due.

4. **Maintenance of Property.** Mortgagor shall maintain the Mortgaged Property in good condition and repair and shall neither permit nor allow waste thereof. Mortgagor shall promptly repair or restore any portion of the Mortgaged Property which is damaged or destroyed by any cause whatsoever and shall promptly pay when due all costs and expenses of such repair or restoration. Mortgagor shall not remove, demolish, or materially alter any improvement or fixture which is now or hereafter part of the Mortgaged Property and shall cut no timber on the on the Mortgaged Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.

5. **Insurance.** Mortgagor shall maintain with respect to all buildings, improvements, fixtures, and tangible personal property which are now or hereafter part of the Mortgaged

  
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Property, fire and extended coverage insurance, including windstorm and hail, and earthquake insurance, and such other hazard insurance as Lender may require. If any portion of the Mortgaged Property is located in a federally designated flood plain, Mortgagor shall also obtain a flood insurance policy in the maximum amount available under the National Flood Insurance Act of 1968, but not to exceed the replacement value of all buildings and improvements located on the Mortgaged Property that are located in a federally designated flood plain. All such insurance shall be payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and shall not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to the Mortgagee. Mortgagor shall keep the Mortgaged Property continuously insured as herein required and shall deliver to Mortgagee a copy of each policy of insurance required hereby together with a current certificate of insurance. Mortgagor shall pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor shall furnish to Mortgagee at least ten (10) days prior to such expiration or termination a copy of a renewal or replacement policy of insurance meeting the requirements hereof together with a current certificate of insurance. If Mortgagor fails to insure the Mortgaged Property as herein required, Mortgagee may so insure the Mortgaged Property in the name of Mortgagor or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagor and shall be secured by this Mortgage. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Mortgaged Property which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Mortgaged Property at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

6. **Proceeds of Insurance.** Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed Mortgagor upon any policy of insurance insuring any portion of the Mortgaged Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. So long as there has occurred no Event of Default hereunder, or any event which but for the lapse of time or the giving of notice would constitute an Event of Default, any indemnity payment received by Mortgagee from any such policy of insurance shall be applied in a manner reasonably determined by Mortgagee to the replacement, repair or restoration of the portion of the Mortgaged Property damaged or destroyed. Notwithstanding the foregoing, if at the time of payment of the insurance proceeds there has occurred an Event of Default which has not been cured or remedied as permitted hereunder, or if in the reasonable determination of Mortgagee the insurance proceeds, together with funds made available by Mortgagor for such purpose, are insufficient to replace, repair, or restore the Mortgaged Property, then Mortgagor may apply such proceeds to payment of any sum secured by this Mortgage in such order as Mortgagee may determine. No portion of any

  
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indemnity payment which is applied to replacement, repair or restoration of any portion of the Mortgaged Property or which may be released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. Taxes. Mortgagor shall pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property which is superior to the lien of this Mortgage and shall deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount of validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Mortgaged Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with the Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing. Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other Obligations secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.

8. Advances by Mortgagee; Reimbursement. If Mortgagor fails to make payment for restoration or repair of the Mortgaged Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the legal rate of interest as established pursuant to law. Payments made for taxes by Mortgagee shall be a first lien on the Mortgaged Property to the extent of the taxes so paid with interest from the date of payment, regardless of rank or priority of this Mortgage. Mortgagor shall pay to Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

9. Extending Time for Payment. Mortgagee, without notice, and as often as it wishes to, may agree with any party obligated on the Obligations (or any of them), or having an interest in the Mortgaged Property, to renew or extend the time for payment of any part or all of the indebtedness secured hereby, without in any way affecting either the lien hereof or the liability of any other party.

10. Events of Default. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

  
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10.1. The occurrence of a default under and as defined in the Note, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in the Note;

10.2. The occurrence of an Event of Default under and as defined in any loan agreement of even date herewith between Mortgagor and Mortgagee, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in any such loan agreement;

10.3. Failure by the Mortgagor to pay within five (5) days of the scheduled payment date any installment of principal and/or interest on the Obligations or any of them, including but not limited to the Note, or failure to pay taxes or insurance when due, and the continuation of any such failure for five (5) days after written notice thereof is provided thereof by Mortgagor to Mortgagee;

10.4. The sale, conveyance or transfer of all or any portion of the Mortgaged Property;

10.5. Failure by the Mortgagor to duly observe any other covenant, condition or agreement of the Obligations, or of this Mortgage, and the continuation of such failure for a period of thirty (30) days after written notice thereof is provided by Mortgagee to Mortgagor;

10.6. Default in the terms or conditions of any other mortgage which is a lien upon the Mortgaged Property, and the continuation of such default beyond any applicable grace period;

10.7. The discovery of any material amount of Hazardous Substance (as hereinafter defined) on the Mortgaged Property, which Mortgagee reasonably determines has a material, adverse effect on the value of the Mortgaged Property; provided, however, that the foregoing shall not be deemed to include petroleum products and related substances properly stored and used in the ordinary course of business operations on the Mortgaged Property, and shall further not be deemed to include minor spills of petroleum and related products having no material, adverse impact on the value of the Mortgaged Property;

10.8. The damage or destruction of a material portion of the Improvements, which damage or destruction is not promptly repaired or is not fully covered by insurance;

10.9. Mortgagor suffers or permits any lien, encumbrance, or security interest to arise or attach to the Mortgaged Property that is not promptly removed or satisfied, or any judgment is entered against Mortgagor that is not satisfied or appealed and stayed within thirty days; and

10.10. Any lien for labor, material, taxes or otherwise shall be filed against the Mortgaged Property or any part thereof, which lien or liens shall not be discharged or released within thirty (30) days after the filing of such lien, whether by payment in satisfaction of such lien or securing such lien by surety bond.

  
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11. Consequences of Default. If an Event of Default shall occur:

11.1. All of the indebtedness secured hereby shall become and be immediately due and payable at the option of the Mortgagee, without notice or demand, which are hereby expressly waived, and the Mortgagee may proceed to foreclose this Mortgage and sell the Mortgaged Property or otherwise pursue any right or remedy herein or by law provided. At the foreclosure, Mortgagee shall be entitled to bid and purchase the Mortgaged Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Mortgaged Property.

11.2. Irrespective of whether Mortgagee accelerates the maturity of all indebtedness secured hereby, or institutes foreclosure proceedings, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed appropriate to protect the security of this Mortgage. The receiver shall be entitled to a reasonable fee for so managing the Mortgaged Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control and managing the Mortgaged Property and collecting the rents, including but not limited to reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repair to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any liability or obligation of Mortgagor as lessor or Landlord of the Mortgaged Property and then to the sums secured by this Mortgage. Mortgagee and the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Mortgaged Property are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the rents, Mortgagee may at its sole option advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such funds shall be payable on demand by Mortgagee and shall bear interest at the rate provided in the Note. The entering upon and taking and maintaining of control of the Mortgaged Property by the Mortgagee or the receiver and the application of the rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee hereunder.

12. Marshalling of Assets. The Mortgagee shall not be required to marshal any present or future security for (including but not limited to this Mortgage and the Mortgaged Property), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any

  
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particular order; and all of the rights hereunder and in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Mortgagor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Mortgagee's rights under this Mortgage or under any other instrument evidencing any of the Obligations or under which any of the Obligations is secured or guaranteed, and to the extent that it lawfully may the Mortgagor hereby irrevocably waives the benefits of all such laws.

13. **Costs and Expenses.** All reasonable costs and expenses (including attorneys' fees) incurred or paid by the Mortgagee in connection with enforcement of the Obligations or the exercise by the Mortgagee of any of its rights or remedies hereunder, or in retaking, holding, preparing for sale and selling or otherwise realizing upon any of the Mortgaged Property, including, without limitation, the reasonable attorneys' fees and expenses of any attorney to whom this matter is referred (whether or not litigation is commenced), or for representation in proceedings under any bankruptcy or insolvency law, or in case the Mortgagee has become a party either as plaintiff or as defendant in any suit or legal proceeding in relation to the Mortgaged Property or the lien created herein, shall be repaid by the Mortgagor to the Mortgagee upon demand, with interest at the rate provided in the Note. In the event said expenses are not paid by the Mortgagor to the Mortgagee, they shall become part of the Obligations and shall be secured hereby.

14. **Interest.** It is agreed that nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, or to make any payment or to do any act contrary to laws, that if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage or the Note in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

15. **Eminent Domain.** The Mortgagee shall be entitled to receive and recover the entire award made in any eminent domain proceedings to the extent that the same does not exceed the amount necessary to pay in full all sums secured by the lien of this Mortgage.

16. **Transfer of Property.** Mortgagor shall not sell, convey, transfer, mortgage, lease or further encumber, nor suffer or permit the sale, conveyance, transfer, mortgage, lease or encumbrance, whether voluntarily or by operation of law, of any interest in or any part of the Mortgaged Property, the rents and profits therefrom, without the prior written consent of Mortgagee. If any person or entity should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall unless otherwise provided herein be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of the Mortgagee, further assign the rents from the Mortgaged Property nor enter into any agreement or do any act to amend,

  
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modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof which would in each instance or in the aggregate materially affect the collateral or the operation of the Mortgagor or the Mortgaged Property or the ability of the Mortgagor to repay the Note.

17. **Further Assurances.** The Mortgagor shall, at its sole expense, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments, in each case in form and substance, satisfactory to the Mortgagee, relating to the creation, validity, or perfection of the mortgage lien and security interests provided for in this Agreement under the Uniform Commercial Code or other laws of the State of South Carolina or of any other state or states in which Mortgagor is doing business or in which any of the Mortgaged Property is located as the Mortgagee may from time to time reasonably request, and shall take all such other action as the Mortgagee may reasonably require more completely to vest in any and assure to the Mortgagee its rights hereunder or in any of the Mortgaged Property, including without limitation execution and delivery of financing statements which the Mortgagee deems appropriate to perfect and continue the security interest hereby granted; and the Mortgagor hereby irrevocably authorizes the Mortgagee, or its designee, at the Mortgagor's sole expense, to execute and file such financing statements, with or without the Mortgagor's signature, as the Mortgagee may deem appropriate. In the event that any recording or refileing (or the filing of any statement of continuation of any mortgage lien or financing statement) or any repledge, or any other action, is required at any time to protect and preserve such security interests, the Mortgagor shall, at its sole expense, cause the same to be done or taken at such time and in such manner as may be necessary and as may be reasonably requested by the Mortgagee.

18. **Inspections; Easement.** Mortgagor hereby agrees that Mortgagee shall have the right, at any time during the term of this Mortgage, to conduct an environmental investigation of the Mortgaged Property, either itself or by or through designated agents and may exercise such rights from time to time, and in furtherance of such rights, Mortgagor hereby grants to Mortgagee, its successors and assigns, a non-exclusive limited easement over and across the Mortgaged Property, and its subsurface, for access to the Mortgaged Property and for the purpose of conducting an environmental investigation of such Mortgaged Property, provided that any such investigation shall be conducted in such a manner as to not disrupt the Mortgagor's operations on the Mortgaged Property. The satisfaction of, or the release of a portion of the Mortgaged Property, shall evidence a termination of the easement granted herein in full, or as to the Mortgaged Property released, as the case may be. This easement is irrevocable so long as this Mortgage is outstanding.

19. **Additional Assessments.** The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Mortgaged Property which Assessment shall be prepared by an environmental auditor acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than

  
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once every year unless the loan evidenced by the Note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such Assessment more frequently than once a year.

20. **Governing Law.** This instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

21. **No Waiver.** No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

22. **Miscellaneous.** The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

23. **Benefits to Mortgagor.** The undersigned Mortgagor represents to Mortgagee that the Mortgagor is benefitted by the loans evidenced by the Note, whether or not the Mortgagor is the obligor thereon, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.

24. **Security Agreement.** This Mortgage creates a lien on the Mortgaged Property, and to the extent the Mortgaged Property is not real property under applicable law this Mortgage constitutes a security agreement under the South Carolina Uniform Commercial Code and any other applicable law.

25. **No Derogation.** The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of the Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the land or the improvements thereon. If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or

  
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made appurtenant to the real property or used, useful or held for use, in the operation of the Improvements.

26. **Personal Property.** As to any part of the Mortgaged Property constituting personal property, Mortgagee may proceed as to such personal property in accordance with Mortgagee's rights and remedies in respect to such property or sell the personal property separately and without regard to the remainder of the Mortgaged Property in accordance with Mortgagee's rights and remedies provided by the South Carolina Uniform Commercial Code as well as other rights and remedies available at law or in equity.

27. **Financing Statements.** With respect to those items of the property which are or are to become fixtures related to the herein described real estate, this Mortgage shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

28. **Notices.** Whenever this Mortgage requires or permits any notice, request or demand by one party to the other, the notice, request or demand must be in writing and shall be deemed to have been given if it is enclosed in an envelope addressed to the party to be notified at the address stated below (or such other address as may have been designated by written notice) properly stamped, sealed, and deposited in the United States mail as certified or registered mail, return receipt requested. The address of each party for the purposes of this Section are as follows:

If to the Mortgagor: 1050 Sea Eagle Watch, Charleston, South Carolina 29412

If to the Mortgagee: c/o Justin John Price, Esq., Vaux Marscher Berglind, PA, 478 King Street, Suite 4, Charleston, South Carolina 29403

29. **Mortgagor Information.** The Mortgagor shall maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property and shall permit or cause the Mortgagor to permit the Mortgagee and its representatives of examine said books and records and all supporting vouchers and data at any time and from time to time upon reasonable request by the Mortgagee.

30. **Satisfaction and Release of Assignment of Rents.** The release of all or any part of the Mortgaged Property from the lien of this Mortgage shall be deemed a release of such property from the lien of the Assignment of Leases, Rents, and Profits and Security Agreement of even date herewith executed by the Mortgagor in favor of the Mortgagee.

31. **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any

  
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monetary sum, then, Mortgagee may, at its option, declare the indebtedness and all other sums secured hereby immediately due and payable.

32. **Instrument Under Seal.** This Mortgage is intended to be and shall be construed as an instrument under seal.

33. **WAIVER OF STAY.** IN THE EVENT OF THE COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE MORTGAGOR, TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES THE BENEFIT OF THE AUTOMATIC STAY PROVIDED FOR BY 11 U.S.C. § 362 AND/OR ANY STAY, INJUNCTION, OR RESTRAINING ORDER ISSUED PURSUANT TO 11 U.S.C. § 105 OR OTHERWISE. TO THAT END, MORTGAGOR AGREES THAT IT WILL NOT SEEK OR ASSERT ANY SUCH STAY, INJUNCTION, OR RESTRAINING ORDER AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO AND AGREES NOT TO OPPOSE THE MODIFICATION OF ANY SUCH STAY TO ALLOW FOR THE ENFORCEMENT BY MORTGAGEE OF THIS MORTGAGE AND THE FORECLOSURE OR OTHER REALIZATION UPON THE COLLATERAL PROVIDED FOR HEREIN.

34. **WAIVER OF JURY TRIAL AND VENUE STIPULATION.** MORTGAGOR, ANY OTHER OBLIGORS, AND THE MORTGAGEE EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS NOTE, THE OBLIGATIONS, THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR, AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND ANY OBLIGORS. ANY LITIGATION ARISING HEREUNDER OR RELATED HERETO MAY BE TRIED BY THE SOUTH CAROLINA COURTS FOR CHARLESTON COUNTY OR THE FEDERAL COURTS OF SOUTH CAROLINA, MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS.

35. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Mortgaged Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

  
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IN WITNESS WHEREOF, the Mortgagor has hereunto set their Hands and Seals as of the date first written above.

WITNESSES:

(Signature)  
Witness No. 1

(Signature)  
Witness No. 2

MORTGAGEE:

(Signature: John W. Beasley) (Seal)  
John W. Beasley a/k/a John W. Beasley, Sr.

(Signature: Lillian J. Beasley) (Seal)  
Lillian Beasley a/k/a Lillian J. Beasley

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2017, by John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley a/k/a Lillian J. Beasley.

Witness my hand and official seal the 20<sup>th</sup> day of November, 2017

(Signature)  
Notary Public for South Carolina  
My commission expires: 06/27/2025

(Initials)  
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(Initials)  
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EXHIBIT "A"

ALL that certain piece, parcel or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the RMC Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size, shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement for access to the lot conveyed, said easement being shown on the aforementioned plat recorded in Plat Book DD at Page 586.

ALSO,

ALL of my right, title and interest in and to the Marsh located along New Lot 4 referenced above and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of Ocean and Coastal Resource Management, in "critical areas" as defined in § 49-39-10, *et seq.*, 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated thereto.

BEING a portion of the property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the RMC Office for Charleston County in Book H475 at Page 025.

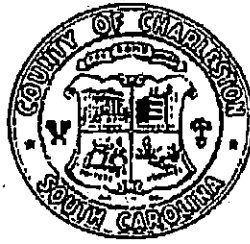
TMS No.: 427-00-00-102

*This Mortgage was prepared without the benefit of title examination by Justin John Price, Esq.,  
478 King Street, Suite 4, Charleston, South Carolina 29403.*

  
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# RECORDER'S PAGE



**NOTE:** This page **MUST** remain with the original document

**Filed By:**

PRICE LAW FIRM  
JUSTIN JOHN PRICE ESQ  
478 KING STREET STE 4  
CHARLESTON SC 29403

| RECORDED  |                  |         |
|---|------------------|---------|
| Date:   | December 8, 2017 |         |
| Time:   | 9:29:32 AM       |         |
| Book  | Page             | DocType |
| 0684  | 902              | Mfg     |
| Elaine H. Bozman, Register<br>Charleston County, SC |                  |         |

**MAKER:**

BEASLEY JOHN W AL

# of Pages: 15  
# of Sats:  # of References:

**RECIPIENT:**

YOUNG RICHARD AL

Note:

|                      |                 |
|----------------------|-----------------|
| Recording Fee        | \$ 10.00        |
| Extra Reference Cost | \$ -            |
| Extra Pages          | \$ 10.00        |
| Postage              | \$ -            |
| Chattel              | \$ -            |
| <b>TOTAL</b>         | <b>\$ 20.00</b> |

**Original Book:**

**Original Page:**

**DRAWER** Drawer 1  
**CLERK** KLH



0684  
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902  
Page



12/08/2017  
Recorded Date



15  
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Original Book



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Recorded Time

# EXHIBIT 3

ELECTRONICALLY FILED - 2023 Sep 07 8:34 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr.  
and Lillian Beasley in their individual  
capacities and as Trustees or as successors in  
trust under the Beasley Living Trust dated  
August 14, 2018 and any amendments thereto,  
Bob Hollow Investments, LLC, Anna Pruitt,  
Seaside Plantation Property Owners  
Association, Inc., South Carolina Department  
of Revenue, and the United States of America  
by and through its agency the Internal Revenue  
Service,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

UPDATED AFFIDAVIT OF DEBT

(As of 9/5/23)

PERSONALLY appeared before me, Richard Young and Jason Greene, the Plaintiffs in the above-captioned action, who, being first duly sworn, deposes and states:

1. We are over the age of 18 and competent to make this affidavit.
2. We are the owners and holders of the Promissory Note and Mortgage which are the subject of this action.
3. As described in detail in the Complaint, Defendant John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley, in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto are in default under the terms of the Note and Mortgage.

4. We are the persons most knowledgeable of the debt owed by the Defendants to the Plaintiffs.

5. The debt, as evidenced by the Note and secured by the Mortgage, has not been paid in full and is still due and owing to the Plaintiffs.

5. As of September 5, 2023, the following amounts are due and owing pursuant to the terms of the Note and Mortgage (as defined in the Complaint):

|  |                     |
|--|---------------------|
| Principal:                                       | \$572,500.00        |
| Interest from 11/21/18 through September 5, 2023 | \$358,597.41        |
| <b>Total Due as of September 5, 2023:</b>        | <b>\$931,097.41</b> |

Together with such additional interest, fees, charges and other costs as may accrue thereon after September 5, 2023.

6. We have taken into account the payments made by, or on behalf of, the Beasley Defendants in the following amounts (and on the following dates):

|             |                           |
|-------------|---------------------------|
| \$25,000.00 | paid on November 26, 2018 |
| \$50,000.00 | paid on December 10, 2020 |

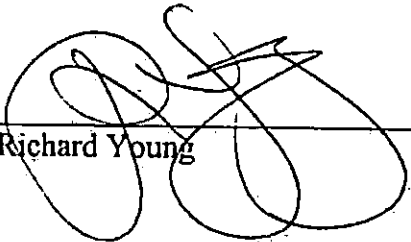
7. Also due and owing on the Note and Mortgage are the costs of collection, including a reasonable attorney's fee of 15%, as provided in the Note and Mortgage.

[SIGNATURE PAGES FOLLOW]

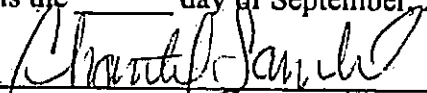
**SIGNATURE PAGE TO AFFIDAVIT OF DEBT**

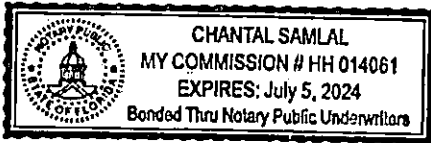
**FURTHER, THE AFFIANT SAYETH NOT.**

State of FLORIDA  
County of PALM BEACH

  
Richard Young

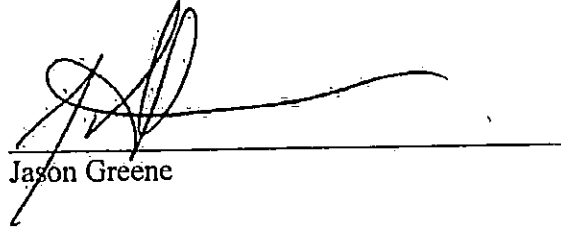
SWORN TO and subscribed before me  
this the 6<sup>th</sup> day of September, 2023.

  
Notary Public for Palm Beach, FL  
Printed Name: Chantal Samlal  
My Commission Expires: 07/05/2024

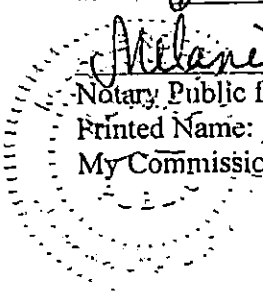


**SIGNATURE PAGE TO AFFIDAVIT OF DEBT**

**FURTHER, THE AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
Jason Greene

SWORN TO and subscribed before me  
this the 6<sup>th</sup> day of September, 2023.

  
Melanie Rogers  
Notary Public for Lauderdale Co, AL  
Printed Name: Melanie Rogers  
My Commission Expires: MY COMMISSION EXPIRES 11/30/2025

ELECTRONICALLY FILED - 2023 Sep 07 8:34 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

# EXHIBIT 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,  
v.

John W. Beasley a/k/a John W. Beasley, Sr.  
and Lillian Beasley in their individual  
capacities and as Trustees or as successors in  
trust under the Beasley Living Trust dated  
August 14, 2018 and any amendments thereto,  
Bob Hollow Investments, LLC, Anna Pruitt,  
Seaside Plantation Property Owners  
Association, Inc., South Carolina Department  
of Revenue, and the United States of America  
by and through its agency the Internal  
Revenue Service,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

**AFFIDAVIT OF ATTORNEYS FEES  
AND COSTS**

PERSONALLY APPEARED BEFORE ME, Ian D. McVey, Esquire, attorney for the above-named Plaintiffs, being first duly sworn, deposes and states as follows:

1. I am an attorney with the law firm of Turner Padgett Graham & Laney, P.A. in Columbia, South Carolina, and this firm represents the Plaintiffs (along with the law firm of Bruner Powell Wall & Mullins, LLC). We were retained by Plaintiffs to pursue the foreclosure of the mortgage that they held on certain real property owned by the Defendants John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto.

2. I was admitted into the practice of law in South Carolina in 2004 and am an active member of the South Carolina Bar Association. I am also admitted to the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals and the United States

Bankruptcy Court for the District of South Carolina. I am a shareholder with Turner Padgett Graham & Laney, P.A. with an emphasis in Commercial Litigation, Banking, Real Estate and Bankruptcy. I am rated "AV" by Martindale-Hubbell, its highest rating, indicating "Very High to Preeminent" legal abilities and "Very High" general ethical standards, as is my firm. I was rated as a Rising Star by the publication Super Lawyers in 2014 and have been repeatedly recognized as one of the Midlands Legal Elite by the Columbia Business Journal. I am further rated in Best Lawyers for the category of Mortgage Banking Foreclosure Law and have served as the President of the Richland County Bar and the South Carolina Bankruptcy Law Associations. I am also a member of J. Bratton Davis Inn of Court.

3. Based upon the fact that the above-captioned matter is a commercial foreclosure action, as well as my as well as my firm's status in the legal community, fees customarily charged for a matter such as this, the complexity of this matter and the plain language of the Promissory Note which calls for no less than fifteen (15%) attorney fees, I think that a reasonable attorney fee for this matter is One Hundred Thirty-Nine Thousand Five Hundred Forty-One and 61/100s (\$139,541.61) dollars.

4. In representing the Plaintiffs in this action, the Plaintiffs have incurred the following costs with my law firm:

|                        |                   |
|------------------------|-------------------|
| Filing Fees:           | \$275.54          |
| Lexis/Nexis:           | \$595.36          |
| Master's Fees:         | \$125.00          |
| Copies:                | \$45.60           |
| Postage:               | \$59.48           |
| Process Service:       | \$403.20          |
| Travel Expense:        | \$10.00           |
| <b>Total Expenses:</b> | <b>\$1,514.18</b> |

5. The Plaintiffs will incur future expense related to the preparation and service of the Order of Judgment of Foreclosure and Sale on the Defendants, obtaining bidding instructions from

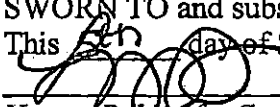
Plaintiffs, representing Plaintiffs at the sale or arranging for such representation, preparing the Master's Report on Sale and Disbursements, if needed, and preparing the Foreclosure Deed and any other documents that may be necessary in this particular action. Further, the Plaintiffs will incur additional costs of publication in connection with the sale of the Property.

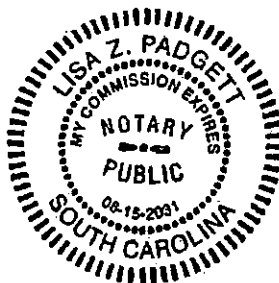
6. I believe that all services performed were reasonable and necessary for the proper representation of the Plaintiffs in this matter.

7. I am requesting that the Court review the file, this Affidavit, and the evidence presented to the Court and grant Plaintiff a reasonable sum of attorneys' fees and costs to date.

**FURTHER AFFIANT SAYETH NOT.**

  
Ian D. McVey  
Attorney for Plaintiff

SWORN TO and subscribed before me  
This 27 day of September, 2023  
 (L.S.)  
Notary Public for South Carolina  
Printed Name: Lisa Z. Padgett  
My Commission Expires: 6 / 15 / 2031



# EXHIBIT 5

ELECTRONICALLY FILED - 2023 Sep 07 8:34 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,  
v.

John W. Beasley a/k/a John W. Beasley, Sr.  
and Lillian Beasley in their individual  
capacities and as Trustees or as successors in  
trust under the Beasley Living Trust dated  
August 14, 2018 and any amendments thereto,  
Bob Hollow Investments, LLC, Anna Pruitt,  
Seaside Plantation Property Owners  
Association, Inc., South Carolina Department  
of Revenue, and the United States of America  
by and through its agency the Internal  
Revenue Service,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

**AFFIDAVIT OF ATTORNEYS FEES  
AND COSTS**

PERSONALLY APPEARED BEFORE ME, Joey R. Floyd, Esquire, attorney for the  
above-named Plaintiffs, being first duly sworn, deposes and states as follows:

1. I am an attorney with the law firm of Bruner Powell Wall & Mullins, LLC in  
Columbia, South Carolina, and this firm represents the Plaintiffs (along with the law firm of Turner  
Padgett Graham & Laney, P.A.). We were retained by Plaintiffs to pursue the foreclosure of the  
mortgage that they held on certain real property owned by the Defendants John W. Beasley a/k/a  
John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as  
successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments  
thereto.

2. I was admitted into the practice of law in South Carolina in 2001 and am an active  
member of the South Carolina Bar Association. I am also admitted to the United States District  
Court for the District of South Carolina, the Fourth Circuit Court of Appeals and the Court of

Federal Claims. I am a member/partner in the law firm of Bruner Powell Wall & Mullins, LLC with an emphasis in Business Litigation and Commercial Litigation. I have been rated by Martindale-Hubbell as Distinguished Attorney, with a "Very High Rating in Both Legal Ability and Ethical Standards." I have also been selected to be included in the 2024 edition of *The Best Lawyers in America*.

3. Based upon the fact that the above-captioned matter is a commercial foreclosure action, as well as my as well as my firm's status in the legal community, fees customarily charged for a matter such as this, the complexity of this matter and the plain language of the Promissory Note which calls for no less than fifteen (15%) attorney fees, I think that a reasonable attorney fee for this matter is One Hundred Thirty-Nine Thousand Five Hundred Forty-One and 61/100s (\$139,541.61) dollars.

4. In representing the Plaintiffs in this action, the Plaintiffs have incurred the following costs with my law firm:

|                        |                   |
|------------------------|-------------------|
| Court Reporting Fees:  | \$337.50          |
| Filing Fees:           | \$95.22           |
| Mileage Reimbursement: | \$471.60          |
| Postage:               | \$167.26          |
| Printing / Copies:     | \$751.80          |
| Process Service:       | \$105.00          |
| Title work:            | \$800.00          |
| Westlaw Research:      | \$245.36          |
| <b>Total Expenses:</b> | <b>\$2,973.74</b> |

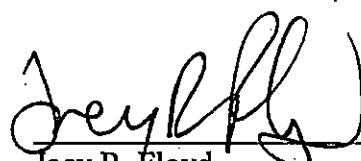
5. The Plaintiffs will incur future expense related to the preparation and service of the Order of Judgment of Foreclosure and Sale on the Defendants, obtaining bidding instructions from Plaintiffs, representing Plaintiffs at the sale or arranging for such representation, preparing the Master's Report on Sale and Disbursements, if needed, and preparing the Foreclosure Deed and

any other documents that may be necessary in this particular action. Further, the Plaintiffs will incur additional costs of publication in connection with the sale of the Property.

6. I believe that all services performed were reasonable and necessary for the proper representation of the Plaintiffs in this matter.

7. I am requesting that the Court review the file, this Affidavit, and the evidence presented to the Court and grant Plaintiff a reasonable sum of attorneys' fees and costs to date.

**FURTHER AFFIANT SAYETH NOT:**

  
\_\_\_\_\_  
Joey R. Floyd  
Attorney for Plaintiff

SWORN TO and subscribed before me  
This 5 day of September, 2023  
Lacy E Segars (L.S.)  
Notary Public for South Carolina  
Printed Name: Lacy E. Segars  
My Commission Expires: 01 / 18 / 28



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Richard Young and Jason Greene,  
  
Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A NO.: 2022-CP-10-03510

**PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO BEASLEY  
DEFENDANTS' MOTION FOR  
RECONSIDERATION**

**TO: DEFENDANTS JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY IN THEIR INDIVIDUAL CAPACITIES AND AS TRUSTEES OR AS SUCCESSORS IN TRUST UNDER THE BEASLEY LIVING TRUST DATED AUGUST 14, 2018 AND ANY AMENDMENTS THERET, AND THEIR ATTORNEYS CHERYL SHOUN, ESQ., MARKLEY DENNIS, ESQ., RHETT RICARD, ESQ. AND JOHN JOHNSTON, ESQ.**

Plaintiffs, Richard Young ("Young") and Jason Greene ("Greene") (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby submit this Memorandum in Opposition to the Beasley Defendants' Motion for Reconsideration. When referenced herein, "the Beasley Defendants," refers to John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto.

## FACTUAL AND PROCEDURAL BACKGROUND

As a preliminary matter, the Plaintiffs would submit that this Court has indeed ruled upon all arguments and all issues raised by the Beasley Defendants. The Beasley Defendants did not submit any Affidavits in opposition to the Plaintiffs' Motion for Summary Judgment and Counsel for the Beasley Defendants acknowledged in their Memorandum in Opposition to Plaintiff's Motion for Summary Judgment that there are no genuine issues of material fact that exist in this case. ("The Beasleys agree that there are no issues of material fact that exist in this case..." See *Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment*, filed August 8, 2023 at 8:39 a.m., Page 7, second sentence of the paragraph just before the Conclusion paragraph of the memorandum.). Therefore, the only evidence in the record are the documents attached to the pleadings on file with the Court as well as the Affidavit of the Plaintiffs submitted with Plaintiffs' Motion for Summary Judgment.

Notwithstanding the fact that the Beasley Defendants' Rule 59 motion is nothing more than a regurgitation, or a repackaging, of all of the Beasley Defendants' prior arguments, the Plaintiffs will address the Beasley Defendants arguments, again, in turn.

A timeline of events provides a good understanding of the underlying events/facts giving rise to this civil action:

- 2017 – Young and Greene extended a series of loans to John W. Beasley Jr. ("Beasley Jr.") totaling a principal amount of \$640,000.00. The loans to Beasley Jr. were intended to be short term loans and/or investment loans to help fund Beasley, Jr.'s construction business.<sup>1</sup> Beasley Jr. did not honor his repayment obligations.

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<sup>1</sup> Beasley Jr. was charged with wire fraud and ultimately pled guilty to one count of wire fraud in May of 2022. Beasley Jr. was sentenced on April 25 to five years' probation, with the first year under home detention. [https://www.postandcourier.com/news/ex-charleston-construction-company-owner-guilty-of-fraud-sentenced-to-home-detention/article\\_067efa94-e3a0-11ed-94c7-](https://www.postandcourier.com/news/ex-charleston-construction-company-owner-guilty-of-fraud-sentenced-to-home-detention/article_067efa94-e3a0-11ed-94c7-)

- November of 2017, John W. Beasley a/k/a John Beasley, Sr., Lillian Beasley, Beasley, Jr. and Beasley Construction Company, LLC entered into a Settlement Agreement with Plaintiffs (hereinafter “First Settlement Agreement”). Under the terms of the First Settlement Agreement, the Beasley Defendants, and others, obligated themselves to repay the debt owed to Plaintiffs. John Beasley, Sr., Lillian Beasley, Beasley Jr. and Beasley Construction executed three separate security instruments: (1) a Promissory Note in the amount of \$647,500.00 (which provided for a one-year maturity date of November 18, 2018); (2) Mortgages on three different properties (one of which is the property at issue in this civil action) and (3) a Confession of Judgment to be held unfiled by Counsel for Plaintiffs unless and until the debt was not paid to the Plaintiffs in accordance with the terms of the First Settlement Agreement.<sup>2</sup> A copy of the First Settlement Agreement, Promissory Note, and Confession of Judgment is attached hereto as **Exhibit A**. The Beasley Defendants failed to honor the terms of payment and the Confession of Judgment was filed on May 30, 2019.
- September 30, 2019, First Citizens Bank & Trust Company (“First Citizens”) filed a foreclosure action styled, *First Citizens Bank & Trust Company v. John W. Beasley, et al.*, C/A No.: 2019-CP-10-4676 (the “First Citizens Foreclosure”), to foreclose on several properties, including the property which is the subject of this Action (“the Subject Property”). The pleadings in the First Citizens Foreclosure notate the various judgments, notes and mortgages that were unpaid (including the Confession of Judgment in favor and Young & Greene and the Mortgage to Young & Greene).

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[4355e94d8127.html#:~:text=John%20Woodrow%20Beasley%20Jr.,to%20the%20U.S.%20Attorney's%20office.](#)

<sup>2</sup> The Beasley Defendants have admitted that these documents were indeed signed by the Beasley Defendants.

- Eventually, First Citizens was made whole through the foreclosure sale of some other property(ies), and First Citizens filed a Satisfaction of its Mortgage on the Property.
- In late November / early December of 2020, the Beasley Defendants and Plaintiffs entered into another Settlement Agreement and Conditional Release of Claims (“Second Settlement Agreement”). The Second Settlement Agreement provided that the Beasley Defendants would pay Richard Young \$25,000.00 and Jason Greene \$25,000.00 (a total of \$50,000.00), in exchange for Plaintiffs filing a Release of the Confession of Judgment, which would release the Property and the Borrowers from the Confession of Judgment. As will be discussed in more detail herein, there is no reference to the Promissory Note or the Mortgage in the Second Settlement Agreement. A copy of the Second Settlement Agreement is attached hereto as **Exhibit B**. A copy of the Release of the Judgment Lien, as filed, is attached hereto as **Exhibit C**.

#### **ISSUE IN DISPUTE**

The Beasley Defendants contend that the Second Settlement Agreement releases the Beasley Defendants from their obligations under the Promissory Note and the Mortgage. Stated another way, the Beasley Defendants are seeking to have this Court interject a term in the Second Settlement Agreement (the Second Settlement Agreement does not have the words “Promissory Note” or “Mortgage” anywhere in the Agreement) to require the Plaintiffs to file a Satisfaction of the Mortgage and to mark the Promissory Note, signed by the Borrowers, as being paid.

The injection of an additional term, as requested by the Beasley Defendants, into the Second Settlement Agreement, would completely change and alter the Second Settlement Agreement. The Beasley Defendants’ arguments lack merit. The plain language of the Second Settlement Agreement is crystal clear – the Second Settlement Agreement does not address, nor

does it have any impact upon, the Promissory Note and Mortgage signed by the Beasley Defendants.

### RELEVANT LAW

The Second Settlement Agreement is, first and foremost, a contract. “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *S.C. Farm Bureau Mut. Ins. Co. v. Oates*, 356 S.C. 378, 381, 588 S.E.2d 643, 645 (Ct. App. 2003) (quoting *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct. App. 1992)). “Where an agreement is clear and capable of legal construction, the court’s only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.” *Koontz v. Thomas*, 333 S.C. 702, 708, 511 S.E.2d 407, 410 (Ct. App. 1999) (quoting *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995)). “It has long been held that to ascertain the intention of an instrument, the court must first look to its language, and if it is perfectly plain and capable of legal construction, then that language alone determines the instrument’s force and effect.” *Id.* at 708-709, 511 S.E.2d at 410 (internal citations omitted).

Further, where a contract contains a merger clause, that merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.” *Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) (internal citations omitted). “The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence or contemporaneous agreements not included in the writing.” *Id.* (internal citations omitted). “The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument.” *Koontz v.*

*Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999) (quoting *Gilliland v. Elmwood Properties*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990)).

In *Lever v. Lighting Galleries, Inc.*, the South Carolina Supreme Court made it clear that a mortgage is a separate security that may be pursued instead of or in addition to other remedies. *See id.*, 374 S.C. 30, 33, 647 S.E.2d 214, 216 (2007). From a factual standpoint, *Lever* is squarely on point and instructive to this case. In *Lever*, a debtor and creditor signed an agreement, a note, and a mortgage by which the debtor agreed to pay the creditor according to the terms of the agreement. *See id.* at 31, 647 S.E.2d at 216. When the debtor did not pay in accordance with the agreement, the creditor chose to bring a suit on the note and obtained a judgment. *See id.* Subsequently, the judgment expired and the debtor maintained that, because the lien of the judgment had elapsed (ten years) the creditor could not pursue a foreclosure action under the mortgage. *See id.* at 32, 647 S.E.2d at 216. The South Carolina Supreme Court disagreed and ruled in favor of the creditor, making clear that the fate of a mortgage is not tied to a judgment, even if both instruments apply to the same debt. *See Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 35, 647 S.E.2d 214, 217 (2007) (quoting *Nichols v. Briggs*, 18 S.C. 473 (1883)) (“Though the debt be barred, the lien may be enforced. The fact that a debt secured by a mortgage is barred by a statute of limitations, does not necessarily, or as a general rule, extinguish the mortgage security or prevent the maintaining an action to enforce it.”)

Arguably, the most relevant language in the *Lever* case is a quote from American Jurisprudence:

**The cases are uniform in holding that until the mortgage debt is actually satisfied, the recovery of a judgment on the obligation secured by a mortgage, without the foreclosure of the mortgage, although merging the debt in the judgment, has no effect upon the mortgage or its lien, does not merge it, and does not preclude its foreclosure in a subsequent suit instituted for that purpose, or**

the exercise of the power of sale contained in the mortgage or deed of trust. (Emphasis by SC Supreme Court) *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 33–34, 647 S.E.2d 214, 216 (2007) quoting 55 Am.Jur.2d *Mortgages* § 524.

### ARGUMENT

In spite of the Beasley Defendants' attempts to twist and contort the plain language of the Second Settlement Agreement and play mental gymnastics with certain words (debt, loan, note, mortgage), the Beasley Defendants cannot change the plain and unambiguous language of the Second Settlement Agreement, nor can they change the existing case law of this State. The Second Settlement Agreement's plain language clearly explains and provides that its sole purpose was to address the previously filed Confession of Judgment. The Second Settlement Agreement does not address or mention the Mortgage or the Promissory Note. Furthermore, the Mortgage is a separate instrument from the Confession of Judgment, neither the Release of Judgment nor the Second Settlement Agreement impacts Plaintiffs' rights under the Mortgage.

As a threshold matter, the Beasley Defendants' Motion to Reconsider demonstrates either a fundamental misunderstanding of the nature of a promissory note and a mortgage or a deliberate attempt to obfuscate the plain language of the Second Settlement Agreement. In their Motion, the Beasley Defendants assert that a "Loan" has the same meaning as "Note" and the same meaning as "Mortgage." This is simply incorrect and is but one example of the mental gymnastics the Beasley Defendants assert in their Motion.

A loan is defined as "delivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it, with or without interest." *Loan*, Black's Law Dictionary (6<sup>th</sup> ed. 1990). A Promissory Note, meanwhile, is "an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds." SC

Code 36-9-102(a)(65). In short, the Promissory Note is the written evidence of the Loan. A Mortgage, on the other hand, is “a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.” SC Code 36-9-102(a)(55). It is the security for the Loan as evidenced by the Promissory Note. Generally speaking, money is loaned, a Promissory Note evidencing that loan is executed and, thereafter, a Mortgage is executed to further secure the promise to pay.

In this case, Young and Greene provided the loan and the Beasley Defendants, along with others, executed a Promissory Note to evidence their unconditional promise to repay the loan. As security for their promise to pay the Loan, the Beasley Defendants executed a mortgage to “secure payment or performance of an obligation.” In other words, the Beasley Defendants provided collateral to Young and Greene in the form of a pledge of the Property at issue in this case to secure the Beasley Defendants’ promise of payment to Young and Greene. The Beasley Defendants, and others, also executed a Confession of Judgment to provide Young and Greene with further assurances that they would be paid back the money that they had extended as loans. The Mortgage and Confession of Judgment are separate instruments of security for the Loan as evidenced by the Note. *See Lever, supra* (“A creditor shall not have two satisfactions for the same debt, but there is no inconsistency in his pursuing two remedies. If one produces satisfaction, that is a bar to the other. A mortgage is a specific lien and a judgment is a general lien. Both may be consistently pursued, until the debt is satisfied.”) (Emphasis supplied)(Citations omitted).

Secondly, the Second Settlement Agreement is perfectly clear and capable of legal construction. *See Koontz v. Thomas*, 333 S.C. at 708, 511 S.E.2d at 410. The Recitals in the Second Settlement Agreement expressly define its scope:

WHEREAS, the terms of the Prior Settlement and Release Agreement provided for the recording of certain confessions of

judgment with the Clerk of Court for Charleston County, South Carolina, and thereafter such other jurisdictions as deemed appropriate by Creditors, should certain sums due thereunder not be timely paid. . .

Second Settlement Agreement, **Exhibit B**, page 2. There is absolutely no mention, or use of the words “Promissory Note” or “Mortgage,” in the Second Settlement Agreement and despite the Beasley Defendants’ assertions, the word “Loan” does not have the same meaning as “Note” and “Mortgage.” The Second Settlement Agreement was executed specifically, and exclusively, to address the previously filed Confession of Judgment – a small sum of money was paid to Young and Greene and, in exchange, Young and Greene filed a *Release of Judgment Lien as to a Specific Property, Release of Judgment Lien as to Certain Defendants and Partial Satisfaction of Judgment*. The Second Settlement Agreement specifically outlines the consideration to be paid and specifically outlines the obligations of the Plaintiffs upon receipt of the consideration. If the parties intended to release the Beasley Defendants from the Mortgage, as advocated by the Beasley Defendants, then the parties would have included a simple provision that stated “Plaintiffs shall file a Satisfaction of Mortgage.” However, there is no such requirement contained in the Second Settlement Agreement. Furthermore, the Second Settlement Agreement does not provide for a release from the debt itself. The \$50,000.00 payment to release the Confession of Judgment pales in comparison to the amounts that the Beasley Defendants agreed to pay Young and Greene. The Second Settlement Agreement is clear and unambiguous; the Beasley Defendants paid the \$50,000.00 and the Plaintiffs honored their obligations in accordance with the Second Settlement Agreement by executing and filing the *Release of Judgment Lien as to a Specific Property, Release of Judgment Lien as to Certain Defendants and Partial Satisfaction of Judgment*.

As noted above, a confession of judgment and a mortgage are two separate instruments (*see Lever supra*); to include an obligation of satisfaction of the Mortgage in the Second Settlement

Agreement would require the introduction of parol evidence to interject an additional term into the Second Settlement Agreement. The parol evidence rule and the merger clause contained in the Second Settlement Agreement bar this result any such evidence would be entirely extrinsic to the document, as the words “Mortgage” and “Promissory Note” do not appear in the Second Settlement Agreement.

The Second Settlement Agreement contains the following merger clause:

This Settlement and Release constitutes the entire agreement and understanding between Creditors and Debtors, and it supersedes all prior understanding or agreement, written or oral, on the subjects contained herein, and the terms of this Settlement and Release are contractual and not mere recitals. (Emphasis Plaintiffs.) **Exhibit B, ¶ 5.**

The only subjects addressed in the Second Settlement Agreement relate to the filing of the Release of Judgment. Therefore, extrinsic evidence should not be used to twist and contort the Agreement’s unambiguous terms nor should the court be required to deploy mental gymnastics to understand the Second Settlement Agreement.

Further, Paragraph 16 of Agreement provides as follows:

Except for the release of the Debtors herein, this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record. **Exhibit B, ¶ 16.** (Emphasis Plaintiffs.)

Based on the plain language of Paragraph 16, the Promissory Note and Mortgage, which are a part of the “Prior Settlement and Release Agreement,” “shall remain in full force and effect and of record.” Again, the plain and unambiguous language of the Second Settlement Agreement expressly states that the prior agreement remains in full force and effect, except as specifically modified in the Second Settlement Agreement.

The Beasley Defendants contend, in summary, that there should some sort of “automatic satisfaction of the mortgage” injected into the Second Settlement Agreement. The Second Settlement Agreement does not automatically satisfy the Mortgage or the Promissory Note, simply because the same underlying debt is involved, nor does it require Plaintiffs to satisfy either instrument. At its core, the Beasley Defendants’ argument is that the Confession of Judgment, the Mortgage, and the Promissory Note should be considered one and the same remedy, such that the execution of an Agreement regarding the Confession of Judgment subsumes the Mortgage and the Promissory Note. This belief on the part of the Beasley Defendants is absolutely incorrect under existing South Carolina law. The Second Settlement Agreement only addresses, and only pertains to, the Confession of Judgment.

The Beasley Defendants also suggest that the release language on contained in the Second Settlement Agreement, which is clearly directed solely to the right of the Plaintiffs to pursue the Beasley Defendants under the Confession of Judgment, bars further recovery. To get to this conclusion, the Beasley Defendants ask that this Court engage in mental gymnastics and read the Second Settlement Agreement in an a la carte fashion, ignoring all other words, sentences, paragraphs and obligations contained therein.

However, as the Court is well aware, that is not the nature of contract interpretation. “A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause.” *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). The Beasley Defendants refuse to acknowledge that the Second Settlement Agreement obligated the Beasley Defendants to pay a sum certain, Fifty Thousand and 00/100s (\$50,000.00) dollars and, in return, the Plaintiffs were required to take specific action: execute and file the *Release of Judgment Lien as to a Specific Property, Release of Judgment Lien as to Certain Defendants and*

*Partial Satisfaction of Judgment* and nothing more. Instead, the Beasley Defendants continue to urge the Court to engage in mental gymnastics by extracting certain phrases and asserting that those certain phrases can be convoluted to require the Plaintiffs to satisfy the Mortgage. As has been repeatedly stated and acknowledged by the Beasley Defendants, the words “Note” and “Mortgage” **are not found anywhere** in the Second Settlement Agreement. There is **no** obligation on the part of the Plaintiffs to file a Satisfaction of the Mortgage despite the lack of that term in the Second Settlement Agreement.

As noted by the court in its Order, *Lever* is squarely on point and provides clear guidance. Just like the creditor in *Lever* could no longer enforce its judgment, the Plaintiffs can no longer leverage the remedies available to them under the Confession of Judgment (i.e. execution, Supplemental Proceedings and the like). However, as in *Lever*, the Plaintiffs in this case may continue to pursue their other remedies under the Mortgage and Promissory Note, in this case foreclosure and sale until such time as the debt is paid in full. *See Lever supra*. As clearly set forth in Plaintiff’s Affidavit and uncontested by way of counter affidavit, the debt evidenced by Promissory Note **has not been paid and therefore, the Mortgage is a valid lien on the Property as contemplated in the Second Settlement Agreement**. As such, the Plaintiffs are free to pursue the remedies available to them under the Promissory Note and Mortgage.

### **CONCLUSION**

For the reasons set forth herein, the Second Settlement Agreement does not impact Plaintiffs’ rights under the Promissory Note or the Mortgage and this Court’s Order Granting Plaintiffs Summary Judgment is in line with the existing case law of this State. The Beasley Defendants’ Motion to Reconsider should be summarily denied.

TURNER PADGET GRAHAM & LANEY, P.A.

*s/Ian D. McVey*

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Lindsey M. Behnke, SC Bar No. 105719  
PO Box 1473 (29202)  
1901 Main St., Suite 1700  
Columbia, South Carolina 29210  
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Email: [lbehnke@turnerpadget.com](mailto:lbehnke@turnerpadget.com)

BRUNER POWELL WALL & MULLINS, LLC

*s/Joey R. Floyd*

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*Attorneys for the Plaintiffs*

Columbia, South Carolina  
September 22, 2023

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

SETTLEMENT AGREEMENT AND  
CONDITIONAL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS ("Settlement and Release") is made by and between RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene"); Young and Greene collectively hereunder the "Creditors"; JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Avenue, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company", John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors") upon the terms and conditions contained herein. Creditors and Debtors are sometimes referred to herein each as a "Party" and collectively as the "Parties" to this Settlement and Release.

WHEREAS, on or about September 13, 2017, John Jr. borrowed the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) from Young, which was to be repaid on or before October 11, 2017, and carry interest such that the repayment amount was to be Eighty Thousand and 00/100 Dollars (\$80,000.00); and

WHEREAS, on or about September 25, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Young, which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from the Creditors; which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, John Sr., Lillian, and the Company have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof; and

WHEREAS, the Creditors and Debtors hereby memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth herein in order to avoid the costs and frustrations attenuated with litigation;

NOW, THEREFORE, in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Creditors and Debtors hereby covenant and agree as follows:

1. Confession of Judgment. Simultaneously with the execution of this Settlement and Release, John Jr., John Sr., Lillian, and the Company have executed separate Confessions of Judgment, the originals of which shall be held in trust by the Creditors' attorneys. Creditors agree that for so long as the Debtors have not defaulted in in the performance of any payment obligation arising hereunder beyond any applicable cure period, the Confessions of Judgment shall not be recorded in any court or jurisdiction. The terms and conditions of the Confessions of Judgment are incorporated herein as material terms of this Settlement and Release. Upon satisfaction by the Debtors of the payment obligations set forth in Paragraph 2 below, the Creditors agree that all amounts alleged to be due to them from the Debtors, including those confessed to be due under the Confessions of Judgment shall be fully and completely satisfied and the Debtors shall be entitled to demand return of the Confessions of Judgment to their attorneys or as otherwise directed in writing to Creditors' attorney.

2. The Settlement Sum. Subject to the terms, conditions, and provisions of this Settlement and Release, the Debtors agree to pay and deliver to and for the benefit of Creditors the total sum of SIX HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$647,500.00) (the "Settlement Sum") in accordance with the following payment terms:

- a. Simultaneously with the execution of this Settlement Agreement, the Debtors have executed a promissory note acknowledging the Settlement Sum as a debt owed to Creditors (the "Promissory Note");

- b. Simultaneously with the execution of this Settlement Agreement and in order to secure the obligations under this Settlement and Release as acknowledged by the Promissory Note, the Debtors have executed mortgages (the "Mortgages") in favor of the Creditors on the following real property owned by one or more of the Debtors (for identification purposes hereof, the real properties are identified by address, brief legal description, and/or Charleston County TMS No.):
  - i. 1050 Sea Eagle Watch, Charleston, South Carolina 29412, Charleston County TMS No.: 427-00-00-102
  - ii. 3493 Plow Ground Road, Johns Island, South Carolina, Charleston County TMS No.: 277-00-00-036; and
  - iii. Lot 8, Lighthouse Point, Lynne Ave, Charleston, South Carolina, Charleston County TMS No.: 452-06-00-068.
- c. All payments required of Debtors hereunder shall be made to payable to "Richard Young and Jason Greene" and delivered, via wire transmittal, to the office of their counsel as follows: Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403 ("Creditors' Counsel"). The wire instructions for the depository account are attached hereto as Appendix "A" and shall be used by Debtors for remittance of any and all payments in reduction of the balance of the Settlement Sum owed unless and until Creditors' Counsel provides Debtors with written instructions to the contrary at the addresses listed in the preamble above;
- d. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Debtors shall have five (5) calendar days following the Maturity Date within which to cure any delinquent payment hereunder (the "Cure Period"). No default under this Agreement shall occur until the Cure Period has lapsed without performance by Debtors of the payment obligations then due. However, Debtors hereby waive notice of any payment delinquency, payment default, or commencement or passing of any right to cure; and
- e. Upon the occurrence of an uncured default by Debtors, Creditors shall, without prior notice, be entitled to record the Confessions of Judgment given by the Debtors and described herein in accordance with the terms set forth in said Confessions of Judgment without invalidating this Settlement and Release Agreement.

- f. Upon the satisfaction of the underlying Note and the full performance by Debtors of all obligations under this Settlement and Release, Creditors agree to execute and record satisfactions of mortgages on the above-referenced properties in the applicable county RMC office.

3. Creditors' Conditional Release of John Jr. In consideration of the mutual promises herein contained, and other good and valuable consideration stated above, Creditors, along with anyone claiming through them or on their behalf, collectively agree to, and hereby conditionally release and discharge John Jr., together with his heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding, provided the Settlement Sum is timely paid in full. Creditors, John Jr., and the co-Debtors expressly agree and acknowledge that any release or discharge hereunder shall only become effective and complete upon the full performance of the Debtors hereunder, and the failure of the Debtors to fully and timely perform hereunder shall immediately revive any and all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown which the Creditors could pursue against John Jr. at the time of the execution of this Settlement and Release. Nothing herein shall operate to prohibit Creditors from recording and enforcing the Confession of Judgment in the event Debtors fails to make the payments required hereunder.

4. Debtors' Unconditional Release of Creditors. In consideration of the mutual promises herein contained, and other good and valuable consideration, Debtors, along with anyone claiming through them or on their behalf, agree to, and hereby do fully and unconditionally release and forever discharge Creditors, together with their heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding.

5. Creditors Agreement to Cooperate. Creditors agree to reasonably cooperate with John Jr. in his attempts to recover the Loan from the actors responsible for the loss of the Loan. Reasonable cooperation shall include, but is not limited to: producing of all documents, communications, and other evidence concerning the transfer of the Loan from John Jr. or either Creditor to any third parties and an agreement to provide a statement of Creditors' knowledge

of the ultimate destination of the Loan to their attorney to be provided to the attorney for or agent of John Jr.

6. Matters Pertaining to Insolvency of John Jr. Should John Jr. file for insolvency or bankruptcy protection prior to the full and timely satisfaction of all of Debtors' obligations hereunder, the Parties expressly agree and acknowledge that Creditors shall and nothing herein shall limit Creditors' rights and ability to object to the discharge of any debt hereunder for John Jr.'s false pretenses and/or false representations in obtaining the Loan from Creditors, to include, but not be limited to, objections to discharge under 11 U.S.C. § 523.

7. Except as stated in Paragraphs 3 and 6 above, Creditors and Debtors each expressly waive and assume the risk of any and all claims for damages that exist as of this date or which may hereafter occur, but which Creditors and/or Debtors do not know or suspect to exist or might occur, whether through ignorance, error or otherwise, and which, if known, would affect their respective decisions to enter into this Settlement and Release.

8. No payments made, release given or other action taken pursuant to this Settlement and Release shall be deemed an admission of liability or wrongdoing by Creditors or Debtors. It is understood and agreed that this Settlement and Release represents the compromise by Creditors and Debtors to resolve a variety of doubtful and disputed claims and counterclaims, and that the amounts paid and received hereunder are made solely for the purpose of ending their disagreements and to buy, sell, and exchange their individual and respective peace of mind and to avoid the significant costs of protracted litigation.

9. This Settlement and Release constitutes the entire agreement and understanding between Creditors and Debtors, and it supersedes all prior understandings or agreements, written or oral, on the subjects contained herein, and the terms of this Settlement and Release are contractual and not mere recitals. No waiver, amendment, deletion, modification or addition of any provision of this Settlement and Release shall be effective unless it is in writing and signed by the undersigned Parties and witnessed.

10. The promises, representations and agreements provided in this Settlement and Release are continuing and shall survive the execution and delivery of this Settlement and Release, as well as the completion of all undertakings required hereunder.

11. This Settlement and Release shall be construed pursuant to the laws of the State of South Carolina.

12. The terms and provisions of this Settlement and Release are severable, and if any part of this Settlement and Release is found to be unenforceable, the remainder will continue to be valid and enforceable without reference to the stricken provision.

13. The Parties further agree that any questions, doubts and ambiguities in connection with the meaning of any term of this Settlement and Release shall be construed as if the Parties jointly drafted the Settlement and Release with the mutual intention that no claim or demand whatsoever should survive the making of this Settlement and Release under any circumstances.

14. The terms, conditions, and payments made pursuant to this agreement shall be STRICTLY CONFIDENTIAL, and neither the Parties hereto, their attorneys, nor any person acting for or on behalf of any party hereto may disclose the contents and terms of this Settlement and Release, nor shall this Settlement and Release, or any of its contents, be made available or otherwise communicated in any form to any person except as may be required by law, or as may be necessary to comply with mandatory disclosure for tax or other governmental regulatory purposes. Nothing herein shall prevent the admission of a copy of this Settlement and Release as an Exhibit in a Court of law in order to seek enforcement of the terms hereof or as needed to enforce the Confession of Judgment given in connection herewith.

15. The undersigned Parties agree that the Settlement Sum includes a sum of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) to reimburse Creditors for expenses they have collectively paid in the preparation of the documents enumerated and made a part of this Settlement and Release.

16. The undersigned each warrant and represent that they are competent to execute this Settlement and Release and that each is duly authorized and has full right and authority to execute this Settlement and Release on behalf of any party for whom a signature is given in representative capacity.

17. This Settlement and Release may be executed in multiple copies and a fully assembled document with copies of the required signatures shall be effective as an originally signed document.

18. By their signatures below, the undersigned Parties represent and warrant that they have relied only upon their own judgment, belief and knowledge of the nature, extent, effect and duration of the damages and liability that could have been raised in the litigation proceedings referenced herein, and that this Settlement and Release is made without reliance upon any statement or representation of any Party or entity signing below, or any of their respective employees, agents, members, shareholders, employees, attorneys, or representatives.

19. By their signatures below, each Party hereto states that he, she, or it has fully read and understood the terms and conditions of this Settlement and Release and knows the contents thereof, and that he, she, or it has had the opportunity to review the same and discuss it with their attorneys, as needed or desired, and that they have voluntarily signed and executed this Settlement and Release of their own free will.

20. Creditors and Debtors acknowledge that they are each fully responsible for the taxes, if any, that may be incurred or owed due to the payments, agreements, and transactions described herein, and neither of them have offered any opinions or made any representations to the other about any tax-related matter.

IN WHEREOF, WITNESS we have hereunto set our hands and seals agreeing to be legally bound.

AGREED TO BY:

[Signature] (L.S.)  
Richard Young

STATE OF TN )  
COUNTY OF DAVIDSON )

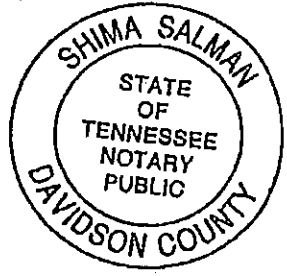
ACKNOWLEDGMENT

I, SHIMA A. SALMAN Notary Public for TN do hereby certify that Richard Young personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me this 20<sup>th</sup> day of November, 2017.

[Signature]  
Notary Public for DAVIDSON CTY

My Commission Expires:  
07/19/19



AGREED TO BY:

[Signature]  
Jason Greene (L.S.)

STATE OF Alabama )  
COUNTY OF Lauderdale )

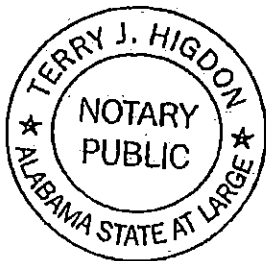
ACKNOWLEDGMENT

I, Terry J. Higdon, Notary Public for Alabama, do hereby certify that Jason Greene personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

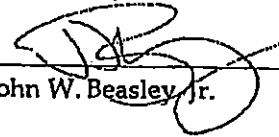
SWORN and subscribed before me  
this 4<sup>th</sup> day of ~~November~~, 2017.  
December

My Commission Expires:  
MY COMMISSION EXPIRES 1/27/2020

[Signature]  
Notary Public for Alabama



AGREED TO BY:


  
\_\_\_\_\_  
John W. Beasley, Jr. (L.S.)

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Bryan Raymond, Notary Public for South Carolina, do hereby certify that John W. Beasley, Jr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.


SWORN and subscribed before me  
this 20 day of November, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires:

06/17/2025

AGREED TO BY:

 (L.S.)  
John W. Beasley a/k/a  
John W. Beasley, Sr.

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Bryan Raymond, Notary Public for South Carolina, do hereby certify that John W. Beasley a/k/a John W. Beasley, Sr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30th day of November, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

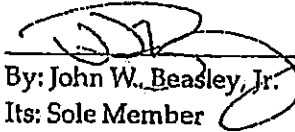
My Commission Expires:

06/17/2025

ELECTRONICALLY FILED SEP 23 2017 10:18 AM HARRISBURG, ON COMMISSIONER'S OFFICE CASE # 2017-003518



AGREED TO BY:  
BEASLEY CONSTRUCTION COMPANY, LLC,  
A South Carolina limited liability company

 (L.S.)  
By: John W. Beasley, Jr.  
Its: Sole Member

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, BRYAN RAYMOND, Notary Public for South Carolina, do hereby certify that Beasley Construction Company, LLC, by John W. Beasley, Jr., its Sole Member, personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 20 day of November, 2017.

  
Notary Public for South Carolina

My Commission Expires:  
06/17/2025

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROMISSORY NOTE

\$647,500.00

November 30, 2017

WHEREAS, on or about September 25, 2017, JOHN W. BEASLEY, JR. ("John Jr.") borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from JASON GREENE ("Greene"), which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from RICHARD YOUNG ("Young"), which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from Greene and Young (collectively hereunder, the "Creditors"), which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. ("John Sr."), LILLIAN BEASLEY ("Lillian"), and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company (the "Company", John Jr., John Sr., Lillian, and the Company collectively hereunder, the "Debtors") have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof;

WHEREAS, the Creditors have incurred Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) in costs in expenses in the resolution of this matter and the drafting of documents, which Debtors have agreed to capitalize into this Promissory Note;

WHEREAS, the Creditors and Debtors have by separate document executed memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth therein in order to avoid the costs and frustrations attenuated with litigation (the "Settlement and Release"); and

NOW THEREFORE, for and in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations under the Settlement and Release, the

  
John Jr. Initials

  
John Sr. Initials

Page 1 of 4

  
Lillian Initials

  
Company Initials

unconditional and irrevocable of John Sr., Lillian, and the Company to join John Jr. as co-Debtors, with joint and several liability for the repayment of all sums owed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

FOR VALUE RECEIVED, the undersigned, JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Ave, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company", John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors"), joint and several, promise to pay to the order of RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene", Young and Greene collectively hereunder the "Creditors"), by wire transfer and in lawful money of the United States of America, the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), without interest thereon for so long as this Promissory Note is not in default. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Failure to fully remit the principal balance of this Promissory Note prior to the Maturity Date shall be an event of default of this Promissory Note. In the event of default, the unpaid balance shall bear interest at the rate of Twelve Percent (12%) per annum (the "Default Interest Rate").

The above recitals comprise material provisions to this promissory and are incorporated herein as if restated verbatim.

THIS PROMISSORY NOTE MAY BE PREPAID AT ANYTIME WITHOUT PENALTY.

If this Promissory Note is not payable on demand, then upon the occurrence of any of the following events this Promissory Note and all other liabilities at the Lender's option, shall become due and payable immediately, by acceleration, without notice or demand:

- (a) default by the Debtors in the payment of any principal of, or interest on, this Promissory Note when and as same shall become due and payable, whether at maturity, by acceleration, or otherwise; or,
- (b) any representation or warranty made or any financial statement or other information furnished by the Debtors, or any one of them, in connection with the execution and delivery of this Promissory Note or any Security Document, as defined below; or,
- (c) any certificate furnished pursuant hereto shall prove to be false at any time in any material respect; or,

  
John Jr. Initials

  
John Sr. Initials

Page 2 of 4

  
Lillian Initials

  
Company Initials

(d) default by the Debtors, or any one of them, in the due performance of any term, provision or agreement to be performed by them (other than for the payment of principal or interest), contained herein or in any Security Document, as that term is defined below; or,

(e) the Debtors, or any one of them, as co-makers and guarantors with respect to this Promissory Note, shall become involved in financial difficulties as evidenced by: (i) making an assignment for the benefit of creditors or the commencement of any similar Debtors' relief proceeding, whether judicial or otherwise; (ii) consent to or application for the appointment of a trustee, interim trustee, custodian or receiver for all or a major portion of any property of the Debtors; (iii) the commencement of any action or proceeding under any other federal or state bankruptcy, insolvency, composition, Debtors' relief, reorganization or other similar law, or have such a proceeding commenced against any of them and either have an order of insolvency or reorganization entered against any of them or have the proceeding remain undismissed or unstayed for 60 days; (iv) entry of a final judgment for the payment of money against any of them and the same shall not be discharged within 30 days of its entry, or an appeal or proceeding for such appeal shall not be obtained; or (v) death, dissolution or suspension of the corporate charter or of the partnership, insolvency or failure or suspension of the usual business of any of them; or (vi) the issuance of any attachment, garnishment, execution, federal tax levy, or other process or seizure against any of their property.

The Debtors hereby waive presentment, demand for payment, protest, notice of protest, and notice of nonpayment, and further agree and consent that, without notice and without affecting their liability hereon, the holder(s) hereof at any time or times is/are authorized to: (a) correct patent errors and fill blanks herein; and/or (b) cause or permit the signature of one or more additional makers, co-makers, sureties, guarantors and/or endorsers to be added hereto.

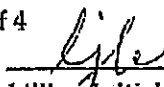
If this Promissory Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage(s) securing this Promissory Note, then, all cost of collection, including a reasonable sum for attorney fee, which shall be deemed to be not less than Fifteen Percent (15%) of the outstanding balance due, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note, or any change or changes by way of release or surrender of any collateral held as security for this Promissory Note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

  
John Jr. Initials

  
John Sr. Initials

Page 3 of 4  
  
Lillian Initials

  
Company Initials

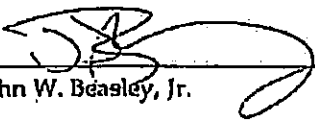
The undersigned Debtors further acknowledge and intend that this Promissory Note shall be binding upon their heirs, successors, and assigns, as the case may be.

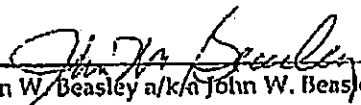
No delay by the Creditors in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

This Promissory Note is secured by mortgages of even date herewith, given by Debtors in favor of Creditors hereunder, and to be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, regarding, pledging, and encumbering certain real property (a "Security Document").

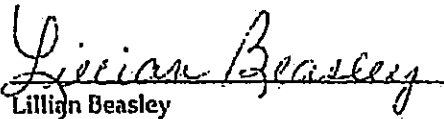
This Promissory Note is made and to be interpreted under the laws of the State of South Carolina. Venue for any dispute regarding the rights, duties, and obligations under this Promissory Note is proper in any court of competent jurisdiction for Charleston County, South Carolina.

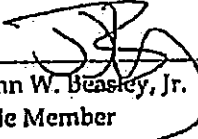
DEBTORS:

  
John W. Beasley, Jr.

  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
Lillian Beasley

  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PROMISSORY NOTE.]

  
John Jr. Initials

  
John Sr. Initials

  
Lillian Initials

  
Company Initials

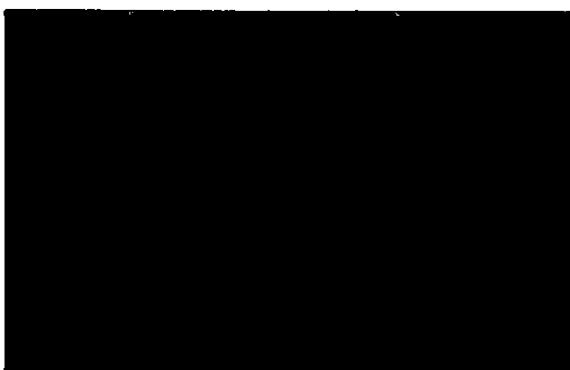
PAYMENT RIDER TO PROMISSORY NOTE

Debtors: JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC

Creditors: RICHARD YOUNG and JASON GREENE

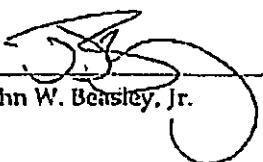
Date of Promissory Note: November 30, 2017

For so long as RICHARD YOUNG and JASON GREENE, whether together or individually, remain a holder of this Promissory Note, or until otherwise directed by either of them, each and every payment to be made under the Promissory Note shall be made by wire transfer as follows:



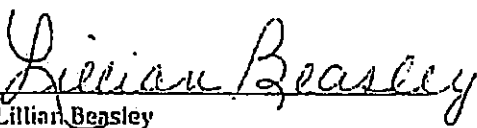
Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.


DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PAYMENT RIDER TO PROMISSORY NOTE.]



BP0684902

# PGS:  
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PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Justin John Price, Esq.  
478 King Street, Suite 4  
Charleston, South Carolina 29403  
843.368.9173

STATE OF SOUTH CAROLINA )  
 ) MORTGAGE, SECURITY AGREEMENT AND  
 ) FINANCING STATEMENT  
COUNTY OF CHARLESTON )

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made and entered into as of November 20th, 2017, by JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY A/K/A LILLIAN J. BEASLEY, Individuals residing at 1050 Sea Eagle Watch, Charleston, South Carolina 29412, their heirs, successors, and assigns (collectively, the "Mortgagor"), in favor of RICHARD YOUNG, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, and JASON GREENE, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, their heirs, successors, and assigns (collectively, the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee pursuant to a promissory note of even date herewith in the original principal amount of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), together with any and all extensions, renewals, or modifications thereof, the "Note"; and

WHEREAS, Mortgagor desires to secure its obligations under the Note by granting the Mortgagee a mortgage lien on and security interest in the real property, improvements, fixtures, and personal property described below; and

NOW, THEREFORE, the Mortgagor in consideration of the aforesaid debt, and also in consideration of the further sum of Ten and No/100 Dollars (\$10.00), to them in hand paid by the Mortgagee, receipt whereof is hereby acknowledged, and for the purpose of securing the Obligations (as hereinafter defined) as a mortgage lien, has granted, bargained, sold, and released, and by these presents, does grant, bargain, sell and release unto the Mortgagee, their heirs, successors, and assigns, as security for the Obligations, the real property described on Exhibit "A" attached hereto and incorporated by reference (the "Land") including all improvements (the "Improvements") now existing or hereafter placed on the Land; and

TOGETHER, with all rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, including without limitation all right, title and interest of Mortgagor in and to water, minerals, flowers, shrubs, crops, trees, timber and other emblements

  
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now or hereafter located therein, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection therewith (collectively, together with the Land and the Improvements, the "Mortgaged Property").

TO HAVE AND TO HOLD, all and singular the Mortgaged Property, unto the Mortgagee, their heirs, successors, and assigns forever.

AND the Mortgagor covenants with and to the Mortgagee that the Mortgagor is indefeasibly seized of a good and marketable fee simple title to said Mortgaged Property and has good and lawful authority to mortgage said Mortgaged Property; and

PROVIDED, ALWAYS, that if the Mortgagor shall pay unto the Mortgagee the said Obligations (including any future advances); and if the Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants therein and in this Mortgage, then this Mortgage and all assignments contained herein shall cease and be null and void; otherwise to remain in full force and effect.

THIS MORTGAGE secures (a) the obligations of Mortgagor to Mortgagee under the Note; (b) any and all advances or expenditures made by Mortgagee pursuant to the terms of this Mortgage; (c) attorneys' fees, court costs, and other amounts which may be due under the Note or this Mortgage; (d) any and all other indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, of whatever class or nature, whether or not now contemplated by the parties, including future advances pursuant to S.C. Code Ann. § 29-3-50, 1976, as amended (as set forth more fully below); and (e) any and all extensions, renewals, and modifications of any of the foregoing (all of (a) through (e) being hereinafter referred to as "Obligations". Extensions, renewals, and modifications of the debt secured hereby, and future advances, may bear interest at a rate or rates higher than the rate borne by the Note.

THIS MORTGAGE shall secure not only existing indebtedness but all future advances (in accordance with S.C. Code Ann. § 29-3-50) readvances, and additional indebtedness hereafter arising or incurred of Mortgagor to Mortgagee, and any notes evidencing the same, whether such advances or indebtedness is obligatory or to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advance or indebtedness was made on the date of the execution of this Mortgage, but the indebtedness secured by this Mortgage shall not exceed at any one time the maximum principal amount of Eight Hundred Thousand and 00/100 Dollars, plus interest thereon, reasonable attorneys' fees and court costs, and plus advancements for taxes, insurance premiums, and repairs made by Mortgagee. All indebtedness incurred after the date hereof by Mortgagor in favor of Mortgagee shall be deemed to be a future advance and entitled to the protection of this provision. Such future indebtedness may bear interest at a rate or rates greater than the rate set forth in the Note. Interest on the Note will be deferred, accrued, or capitalized, but Mortgagee shall not be required to defer, accrue, or capitalize any interest except as provided in the Note.

  
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AND the Mortgagor does hereby expressly covenant and agree as follows:

1. **Assignment of Rents and Profits.** As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, Mortgagor hereby sells, mortgages, transfers and assigns unto Mortgagee and grants Mortgagee a security interest in all the right, title and interest of the Mortgagor in and to the rents, hunting leases, agricultural leases, issues, profits, revenues, royalties, rights and benefits from the above described property, and to that end Mortgagor hereby assigns and sets over unto the said Mortgagee all leases and licenses of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal, and Mortgagor does hereby authorize and empower the Mortgagee to collect said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as they may now be due or shall hereafter become due to the said Mortgagee, upon demand for payment thereof by said Mortgagee; it being understood and agreed, however, that no such demand shall be made unless and until there has occurred an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to collect or continue collecting said rents, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect or continue collecting, as aforesaid, by the Mortgagor shall not operate to permit the collection of any rents more than thirty (30) days in advance of the date same are due under the terms and provisions of said lease or leases.

2. **After Acquired Property.** The Lien of this Mortgage shall automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property or any part thereof, and shall likewise automatically attach to any and all subsequent or additional interests Mortgagor may hereafter acquire in the Mortgaged Property.

3. **Payment of Obligations.** Mortgagor covenants and agrees to pay the Obligations in accordance with their terms promptly as the principal and interest thereon shall become due.

4. **Maintenance of Property.** Mortgagor shall maintain the Mortgaged Property in good condition and repair and shall neither permit nor allow waste thereof. Mortgagor shall promptly repair or restore any portion of the Mortgaged Property which is damaged or destroyed by any cause whatsoever and shall promptly pay when due all costs and expenses of such repair or restoration. Mortgagor shall not remove, demolish, or materially alter any improvement or fixture which is now or hereafter part of the Mortgaged Property and shall cut no timber on the on the Mortgaged Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.

5. **Insurance.** Mortgagor shall maintain with respect to all buildings, improvements, fixtures, and tangible personal property which are now or hereafter part of the Mortgaged

  
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Property, fire and extended coverage insurance, including windstorm and hail, and earthquake insurance, and such other hazard insurance as Lender may require. If any portion of the Mortgaged Property is located in a federally designated flood plain, Mortgagor shall also obtain a flood insurance policy in the maximum amount available under the National Flood Insurance Act of 1968, but not to exceed the replacement value of all buildings and improvements located on the Mortgaged Property that are located in a federally designated flood plain. All such insurance shall be payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and shall not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to the Mortgagee. Mortgagor shall keep the Mortgaged Property continuously insured as herein required and shall deliver to Mortgagee a copy of each policy of insurance required hereby together with a current certificate of insurance. Mortgagor shall pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor shall furnish to Mortgagee at least ten (10) days prior to such expiration or termination a copy of a renewal or replacement policy of insurance meeting the requirements hereof together with a current certificate of insurance. If Mortgagor fails to insure the Mortgaged Property as herein required, Mortgagee may so insure the Mortgaged Property in the name of Mortgagor or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagor and shall be secured by this Mortgage. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Mortgaged Property which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Mortgaged Property at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

6. **Proceeds of Insurance.** Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed Mortgagor upon any policy of insurance insuring any portion of the Mortgaged Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. So long as there has occurred no Event of Default hereunder, or any event which but for the lapse of time or the giving of notice would constitute an Event of Default, any indemnity payment received by Mortgagee from any such policy of insurance shall be applied in a manner reasonably determined by Mortgagee to the replacement, repair or restoration of the portion of the Mortgaged Property damaged or destroyed. Notwithstanding the foregoing, if at the time of payment of the insurance proceeds there has occurred an Event of Default which has not been cured or remedied as permitted hereunder, or if in the reasonable determination of Mortgagee the insurance proceeds, together with funds made available by Mortgagor for such purpose, are insufficient to replace, repair, or restore the Mortgaged Property, then Mortgagor may apply such proceeds to payment of any sum secured by this Mortgage in such order as Mortgagee may determine. No portion of any

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indemnity payment which is applied to replacement, repair or restoration of any portion of the Mortgaged Property or which may be released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. Taxes. Mortgagor shall pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property which is superior to the lien of this Mortgage and shall deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount of validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Mortgaged Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with the Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing. Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other Obligations secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.

8. Advances by Mortgagee; Reimbursement. If Mortgagor fails to make payment for restoration or repair of the Mortgaged Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the legal rate of interest as established pursuant to law. Payments made for taxes by Mortgagee shall be a first lien on the Mortgaged Property to the extent of the taxes so paid with interest from the date of payment, regardless of rank or priority of this Mortgage. Mortgagor shall pay to Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

9. Extending Time for Payment. Mortgagee, without notice, and as often as it wishes to, may agree with any party obligated on the Obligations (or any of them), or having an interest in the Mortgaged Property, to renew or extend the time for payment of any part or all of the indebtedness secured hereby, without in any way affecting either the lien hereof or the liability of any other party.

10. Events of Default. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

  
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10.1. The occurrence of a default under and as defined in the Note, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in the Note;

10.2. The occurrence of an Event of Default under and as defined in any loan agreement of even date herewith between Mortgagor and Mortgagee, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in any such loan agreement;

10.3. Failure by the Mortgagor to pay within five (5) days of the scheduled payment date any installment of principal and/or interest on the Obligations or any of them, including but not limited to the Note, or failure to pay taxes or insurance when due, and the continuation of any such failure for five (5) days after written notice thereof is provided thereof by Mortgagor to Mortgagee;

10.4. The sale, conveyance or transfer of all or any portion of the Mortgaged Property;

10.5. Failure by the Mortgagor to duly observe any other covenant, condition or agreement of the Obligations, or of this Mortgage, and the continuation of such failure for a period of thirty (30) days after written notice thereof is provided by Mortgagee to Mortgagor;

10.6. Default in the terms or conditions of any other mortgage which is a lien upon the Mortgaged Property, and the continuation of such default beyond any applicable grace period;

10.7. The discovery of any material amount of Hazardous Substance (as hereinafter defined) on the Mortgaged Property, which Mortgagee reasonably determines has a material, adverse effect on the value of the Mortgaged Property; provided, however, that the foregoing shall not be deemed to include petroleum products and related substances properly stored and used in the ordinary course of business operations on the Mortgaged Property, and shall further not be deemed to include minor spills of petroleum and related products having no material, adverse impact on the value of the Mortgaged Property;

10.8. The damage or destruction of a material portion of the Improvements, which damage or destruction is not promptly repaired or is not fully covered by insurance;

10.9. Mortgagor suffers or permits any lien, encumbrance, or security interest to arise or attach to the Mortgaged Property that is not promptly removed or satisfied, or any judgment is entered against Mortgagor that is not satisfied or appealed and stayed within thirty days; and

10.10. Any lien for labor, material, taxes or otherwise shall be filed against the Mortgaged Property or any part thereof, which lien or liens shall not be discharged or released within thirty (30) days after the filing of such lien, whether by payment in satisfaction of such lien or securing such lien by surety bond.

  
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11. Consequences of Default. If an Event of Default shall occur:

11.1. All of the indebtedness secured hereby shall become and be immediately due and payable at the option of the Mortgagee, without notice or demand, which are hereby expressly waived, and the Mortgagee may proceed to foreclose this Mortgage and sell the Mortgaged Property or otherwise pursue any right or remedy herein or by law provided. At the foreclosure, Mortgagee shall be entitled to bid and purchase the Mortgaged Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Mortgaged Property.

11.2. Irrespective of whether Mortgagee accelerates the maturity of all indebtedness secured hereby, or institutes foreclosure proceedings, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed appropriate to protect the security of this Mortgage. The receiver shall be entitled to a reasonable fee for so managing the Mortgaged Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control and managing the Mortgaged Property and collecting the rents, including but not limited to reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repair to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any liability or obligation of Mortgagor as lessor or Landlord of the Mortgaged Property and then to the sums secured by this Mortgage. Mortgagee and the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Mortgaged Property are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the rents, Mortgagee may at its sole option advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such funds shall be payable on demand by Mortgagee and shall bear interest at the rate provided in the Note. The entering upon and taking and maintaining of control of the Mortgaged Property by the Mortgagee or the receiver and the application of the rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee hereunder.

12. Marshalling of Assets. The Mortgagee shall not be required to marshal any present or future security for (including but not limited to this Mortgage and the Mortgaged Property), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any

  
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particular order; and all of the rights hereunder and in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Mortgagor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Mortgagee's rights under this Mortgage or under any other instrument evidencing any of the Obligations or under which any of the Obligations is secured or guaranteed, and to the extent that it lawfully may the Mortgagor hereby irrevocably waives the benefits of all such laws.

13. **Costs and Expenses.** All reasonable costs and expenses (including attorneys' fees) incurred or paid by the Mortgagee in connection with enforcement of the Obligations or the exercise by the Mortgagee of any of its rights or remedies hereunder, or in retaking, holding, preparing for sale and selling or otherwise realizing upon any of the Mortgaged Property, including, without limitation, the reasonable attorneys' fees and expenses of any attorney to whom this matter is referred (whether or not litigation is commenced), or for representation in proceedings under any bankruptcy or insolvency law, or in case the Mortgagee has become a party either as plaintiff or as defendant in any suit or legal proceeding in relation to the Mortgaged Property or the lien created herein, shall be repaid by the Mortgagor to the Mortgagee upon demand, with interest at the rate provided in the Note. In the event said expenses are not paid by the Mortgagor to the Mortgagee, they shall become part of the Obligations and shall be secured hereby.

14. **Interest.** It is agreed that nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, or to make any payment or to do any act contrary to laws, that if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage or the Note in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

15. **Eminent Domain.** The Mortgagee shall be entitled to receive and recover the entire award made in any eminent domain proceedings to the extent that the same does not exceed the amount necessary to pay in full all sums secured by the lien of this Mortgage.

16. **Transfer of Property.** Mortgagor shall not sell, convey, transfer, mortgage, lease or further encumber, nor suffer or permit the sale, conveyance, transfer, mortgage, lease or encumbrance, whether voluntarily or by operation of law, of any interest in or any part of the Mortgaged Property, the rents and profits therefrom, without the prior written consent of Mortgagee. If any person or entity should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall unless otherwise provided herein be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of the Mortgagee, further assign the rents from the Mortgaged Property nor enter into any agreement or do any act to amend,

  
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modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof which would in each instance or in the aggregate materially affect the collateral or the operation of the Mortgage or the Mortgaged Property or the ability of the Mortgagor to repay the Note.

17. Further Assurances. The Mortgagor shall, at its sole expense, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments, in each case in form and substance, satisfactory to the Mortgagee, relating to the creation, validity, or perfection of the mortgage lien and security interests provided for in this Agreement under the Uniform Commercial Code or other laws of the State of South Carolina or of any other state or states in which Mortgagor is doing business or in which any of the Mortgaged Property is located as the Mortgagee may from time to time reasonably request, and shall take all such other action as the Mortgagee may reasonably require more completely to vest in any and assure to the Mortgagee its rights hereunder or in any of the Mortgaged Property, including without limitation execution and delivery of financing statements which the Mortgagee deems appropriate to perfect and continue the security interest hereby granted; and the Mortgagor hereby irrevocably authorizes the Mortgagee, or its designee, at the Mortgagor's sole expense, to execute and file such financing statements, with or without the Mortgagor's signature, as the Mortgagee may deem appropriate. In the event that any recording or refiling (or the filing of any statement of continuation of any mortgage lien or financing statement) or any repledge, or any other action, is required at any time to protect and preserve such security interests, the Mortgagor shall, at its sole expense, cause the same to be done or taken at such time and in such manner as may be necessary and as may be reasonably requested by the Mortgagee.

18. Inspections; Easement. Mortgagor hereby agrees that Mortgagee shall have the right, at any time during the term of this Mortgage, to conduct an environmental investigation of the Mortgaged Property, either itself or by or through designated agents and may exercise such rights from time to time, and in furtherance of such rights, Mortgagor hereby grants to Mortgagee, its successors and assigns, a non-exclusive limited easement over and across the Mortgaged Property, and its subsurface, for access to the Mortgaged Property and for the purpose of conducting an environmental investigation of such Mortgaged Property, provided that any such investigation shall be conducted in such a manner as to not disrupt the Mortgagor's operations on the Mortgaged Property. The satisfaction of, or the release of a portion of the Mortgaged Property, shall evidence a termination of the easement granted herein in full, or as to the Mortgaged Property released, as the case may be. This easement is irrevocable so long as this Mortgage is outstanding.

19. Additional Assessments. The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Mortgaged Property which Assessment shall be prepared by an environmental auditor acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than

  
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once every year unless the loan evidenced by the Note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such Assessment more frequently than once a year.

20. **Governing Law.** This instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

21. **No Waiver.** No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

22. **Miscellaneous.** The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

23. **Benefits to Mortgagor.** The undersigned Mortgagor represents to Mortgagee that the Mortgagor is benefitted by the loans evidenced by the Note, whether or not the Mortgagor is the obligor thereon, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.

24. **Security Agreement.** This Mortgage creates a lien on the Mortgaged Property, and to the extent the Mortgaged Property is not real property under applicable law this Mortgage constitutes a security agreement under the South Carolina Uniform Commercial Code and any other applicable law.

25. **No Derogation.** The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of the Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the land or the improvements thereon. If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or

  
Initials

  
Initials

made appurtenant to the real property or used, useful or held for use, in the operation of the Improvements.

26. **Personal Property.** As to any part of the Mortgaged Property constituting personal property, Mortgagee may proceed as to such personal property in accordance with Mortgagee's rights and remedies in respect to such property or sell the personal property separately and without regard to the remainder of the Mortgaged Property in accordance with Mortgagee's rights and remedies provided by the South Carolina Uniform Commercial Code as well as other rights and remedies available at law or in equity.

27. **Financing Statements.** With respect to those items of the property which are or are to become fixtures related to the herein described real estate, this Mortgage shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

28. **Notices.** Whenever this Mortgage requires or permits any notice, request or demand by one party to the other, the notice, request or demand must be in writing and shall be deemed to have been given if it is enclosed in an envelope addressed to the party to be notified at the address stated below (or such other address as may have been designated by written notice) properly stamped, sealed, and deposited in the United States mail as certified or registered mail, return receipt requested. The address of each party for the purposes of this Section are as follows:



If to the Mortgagor: 1050 Sea Eagle Watch, Charleston, South Carolina 29412

If to the Mortgagee: c/o Justin John Price, Esq., Vaux Marscher Berglind, PA, 478 King Street, Suite 4, Charleston, South Carolina 29403

29. **Mortgagor Information.** The Mortgagor shall maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property and shall permit or cause the Mortgagor to permit the Mortgagee and its representatives of examine said books and records and all supporting vouchers and data at any time and from time to time upon reasonable request by the Mortgagee.

30. **Satisfaction and Release of Assignment of Rents.** The release of all or any part of the Mortgaged Property from the lien of this Mortgage shall be deemed a release of such property from the lien of the Assignment of Leases, Rents, and Profits and Security Agreement of even date herewith executed by the Mortgagor in favor of the Mortgagee.

31. **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any

  
Initials        
Initials

monetary sum, then, Mortgagee may, at its option, declare the indebtedness and all other sums secured hereby immediately due and payable.

32. **Instrument Under Seal.** This Mortgage is intended to be and shall be construed as an instrument under seal.

33. **WAIVER OF STAY.** IN THE EVENT OF THE COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE MORTGAGOR, TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES THE BENEFIT OF THE AUTOMATIC STAY PROVIDED FOR BY 11 U.S.C. § 362 AND/OR ANY STAY, INJUNCTION, OR RESTRAINING ORDER ISSUED PURSUANT TO 11 U.S.C. § 105 OR OTHERWISE. TO THAT END, MORTGAGOR AGREES THAT IT WILL NOT SEEK OR ASSERT ANY SUCH STAY, INJUNCTION, OR RESTRAINING ORDER AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO AND AGREES NOT TO OPPOSE THE MODIFICATION OF ANY SUCH STAY TO ALLOW FOR THE ENFORCEMENT BY MORTGAGEE OF THIS MORTGAGE AND THE FORECLOSURE OR OTHER REALIZATION UPON THE COLLATERAL PROVIDED FOR HEREIN.

34. **WAIVER OF JURY TRIAL AND VENUE STIPULATION.** MORTGAGOR, ANY OTHER OBLIGORS, AND THE MORTGAGEE EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS NOTE, THE OBLIGATIONS, THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR, AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND ANY OBLIGORS. ANY LITIGATION ARISING HEREUNDER OR RELATED HERETO MAY BE TRIED BY THE SOUTH CAROLINA COURTS FOR CHARLESTON COUNTY OR THE FEDERAL COURTS OF SOUTH CAROLINA, MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS.

35. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Mortgaged Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. Mortgageor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

  
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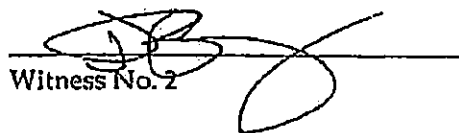
  
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Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Mortgaged Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.** Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below


IN WITNESS WHEREOF, the Mortgagor has hereunto set their Hands and Seals as of the date first written above.

WITNESSES:

  
Witness No. 1

  
Witness No. 2

MORTGAGEE:

 (Seal)  
John W. Beasley a/k/a John W. Beasley, Sr.

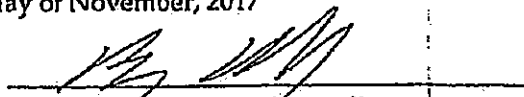
 (Seal)  
Lillian Beasley a/k/a Lillian J. Beasley

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON      )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 20th day of November, 2017, by John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley a/k/a Lillian J. Beasley.

Witness my hand and official seal the 20th day of November, 2017

  
Notary Public for South Carolina  
My commission expires: 06/27/2025

  
Initials        
Initials

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the RMC Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size, shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement for access to the lot conveyed, said easement being shown on the aforementioned plat recorded in Plat Book DD at Page 586.

ALSO,

ALL of my right, title and interest in and to the Marsh located along New Lot 4 referenced above and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of Ocean and Coastal Resource Management, in "critical areas" as defined in § 49-39-10, *et seq.*, 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated thereto.

BEING a portion of the property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the RMC Office for Charleston County in Book H475 at Page 025.

TMS No.: 427-00-00-102

*This Mortgage was prepared without the benefit of title examination by Justin John Price, Esq.,  
478 King Street, Suite 4, Charleston, South Carolina 29403.*

  
Initials

  
Initials

# RECORDER'S PAGE

NOTE: This page MUST remain with the original document



**Filed By:**  
 PRICE LAW FIRM  
 JUSTIN JOHN PRICE ESQ  
 47B KING STREET STE 4  
 CHARLESTON SC 29403

| RECORDED  |                  |                |
|---|------------------|----------------|
| Date:   | December 8, 2017 |                |
| Time:   | 9:29:32 AM       |                |
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| Elaine H. Bozman, Register<br>Charleston County, SC |                  |                |

**MAKER:**  
 BEASLEY JOHN W AL

**RECIPIENT:**  
 YOUNG RICHARD AL

**Original Book:**

**Original Page:**

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Note:

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| Recording Fee        | \$ 10.00        |
| Extra Reference Cost | \$ -            |
| Extra Pages          | \$ 10.00        |
| Postage              | \$ -            |
| Chattel              | \$ -            |
| <b>TOTAL</b>         | <b>\$ 20.00</b> |

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors.

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10-2849

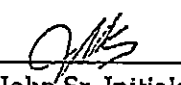
CONFESSION OF JUDGMENT OF  
 JOHN W. BEASLEY, JR.,  
 JOHN W. BEASLEY a/k/a JOHN W. BEASLEY, SR.,  
 LILLIAN BEASLEY, and  
 BEASLEY CONSTRUCTION COMPANY, LLC  
(Covenant Not to Execute Absent Default)

FILED  
 2019 MAY 30 AM 11:57  
 CLERK OF COURT

PERSONALLY APPEARED before me John W. Beasley, Jr. ("John Jr."), John W. Beasley a/k/a John W. Beasley, Sr. ("John Sr."), Lillian Beasley ("Lillian"), and Beasley Construction Company, LLC, a South Carolina limited liability company (the "Company"), having been duly sworn, deposed and stated that:

1. We, John Jr., John Sr., and Lillian are over the age of twenty-one years, and we make this Confession of Judgment (this "Confession") of sound mind and body.
2. That the Company, by this representation and warranty of authority by the undersigned signatory, is duly authorized to make this Confession and the signatory is of sound mind and body.
3. Our addresses, as of the execution of this Confession, are as follows:
  - A. John Jr., 575 Lynne Ave, Charleston, South Carolina 29412;

  
 John Jr. Initials

  
 John Sr. Initials

  
 Lillian Initials

  
 Company Initials

- B. John Sr., 1050 Sea Eagle Watch, Charleston, South Carolina 29412;
- C. Lillian, 1050 Sea Eagle Watch, Charleston, South Carolina 29412; and
- D. Company, c/o John Jr., Sole Member and Registered Agent, 789 Shipwreck Place, Inman, South Carolina 29349.

4. Of even date of the execution hereof, Richard Young ("Young"), Jason Greene ("Greene", Young and Greene collectively hereunder, the "Creditors"), John Jr., John Sr., Lillian, and the Company (John Jr., John Sr., Lillian and the Company collectively hereunder, the "Debtors") did execute a certain Settlement Agreement and Conditional Release of Claims (the "Settlement and Release"), whereby the parties agree to resolve certain possible claims provided certain amounts are timely repaid to Young and Greene, all as more particularly stated in said Settlement and Release.

5. As security for the performance of the Debtors under the Settlement and Release, Debtors have agreed, *inter alia*, to execute this Confession of Judgment in favor of the Creditors for the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00) (the "Debt").

6. The Debtors have agreed to be jointly and severally liable for the repayment of the Debt.

7. We are justly and truly indebted to Creditors for the principal Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), plus any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees (the "Indebtedness"), which Indebtedness arises out of our joint and several obligations under the Settlement and Release.

  
John Jr. Initials

  
John Sr. Initials

  
Lillian Initials

  
Company Initials

8. In the event of default of the terms of the Settlement and Release, we hereby consent to and authorize the entry into the public records of Charleston County, South Carolina this Judgment by Confession for the full sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), plus any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees, and less any sums paid as of the filing hereof with the Clerk of Court for Charleston County, South Carolina.

9. This Judgment by Confession will not be placed on the public records of Charleston County, South Carolina unless we default in our obligations as set forth above and in the Settlement and Release, specifically that the Indebtedness shall be repaid in full on or before the "Maturity Date" but in no case beyond the "Cure Period", as such dates are stated in the Settlement and Release. Upon any default of the Settlement and Release or this Confession, the attorney for Creditors may record this Judgment by Confession by submitting an Affidavit to the Clerk of Court as to default, as to any principal balance paid, and as to the remaining balance to be entered in the Judgment Roll, including any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees. Any recorded Judgment may be transferred thereafter to any county or state in which we own property.

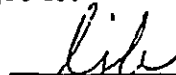
10. We hereby specifically acknowledge that once this Confession has been filed of record in Charleston County, South Carolina, it shall have the full force and effect of an Order of the Court of Common Pleas for the Ninth Judicial Circuit for Charleston County, South Carolina and thereafter may be exported to any jurisdiction within the State of South Carolina and/or any jurisdiction of these United States for purposes of collection of the Indebtedness.

11. Once recorded, the Judgment shall bear interest at the statutory rate for judgments in South Carolina.

Page 3 of 7

  
John Jr. Initials

  
John Sr. Initials

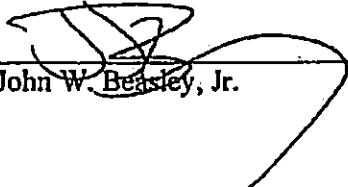
  
Lillian Initials

  
Company Initials


12. Upon compliance with the terms of the Settlement and Release, we shall be forever released and discharged from any liability to Creditors arising out of, or in any manner connected with, this Judgment by Confession or the Settlement and Release. Additionally, upon final payment by us in compliance with the Settlement and Release and this Confession, Creditors shall mark this Confession "satisfied and released" and forward the same to us at:

c/o John Jr., John Sr., and Lillian Beasley and Beasley Construction Company, LLC  
1050 Sea Eagle Watch  
Charleston, South Carolina 29412

The undersigned, under oath, having verified that he has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets his hand before a Notary Public this 20TH day of November, 2017.

  
\_\_\_\_\_  
John W. Beasley, Jr.

SWORN TO before me this 20TH day) of November, 2017.

 (SEAL)  
\_\_\_\_\_  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*Signatures Continue on Following Pages.*

  
\_\_\_\_\_  
John Jr. Initials

  
\_\_\_\_\_  
John Sr. Initials

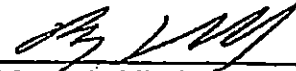
  
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Lillian Initials .

  
\_\_\_\_\_  
Company Initials

The undersigned, under oath, having verified that he has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets his hand before a Notary Public this 20TH day of November, 2017.

  
John W. Beasley a/k/a John W. Beasley, Sr.

SWORN TO before me this 20TH day) .  
of November, 2017. )

  
(SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*Signatures Continue on Following Pages.*

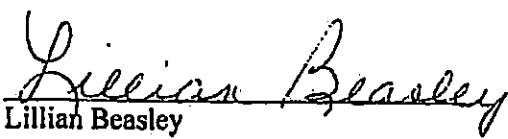
  
John Jr. Initials

  
John Sr. Initials

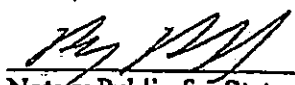
  
Lillian Initials

  
Company Initials

The undersigned, under oath, having verified that she has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets her hand before a Notary Public this 20<sup>th</sup> day of November, 2017.

  
Lillian Beasley

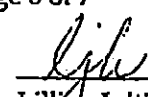
SWORN TO before me this 20<sup>th</sup> day) of November, 2017. )

 (SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*Signatures Continue on Following Pages.*

  
John Jr. Initials

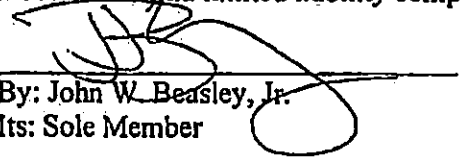
  
John Sr. Initials

Page 6 of 7  
  
Lillian Initials


  
Company Initials

The undersigned, under oath, having verified that it has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets its hand before a Notary Public this 20th day of November, 2017.


BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
By: John W. Beasley, Jr.  
Its: Sole Member

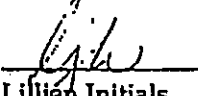
SWORN TO before me this 20th day  
of November, 2017.

  
(SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*End of Confession.*

  
John Jr. Initials

  
John Sr. Initials

Page 7 of 7  
  
Lillian Initials

  
Company Initials

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10-2849

ATTORNEY AFFIDAVIT IN SUPPORT OF  
 CONFESSION OF JUDGMENT

2019 MAY 30 AM 11:57  
 JUDGE J. W. YOUNG  
 CLERK OF COURT

FILED

BEFORE ME, an officer duly authorized to take oaths and administer acknowledgements, appeared Justin John Price, Esq., who after being duly sworn, did depose and state:

1. My name Justin John Price, Esq., and I am an attorney with the law firm of Price Law, LLC licensed to practice law in the State of South Carolina.
2. Price Law, LLC represents the above-captioned Plaintiffs, Richard Young and Jason Greene.
3. I am the attorney at Price Law, LLC tasked with the primary representation of the above-captioned Plaintiffs, Richard Young and Jason Greene, in this matter.
4. On November 20, 2017, Defendant Beasley Construction Company, LLC, through its Sole Member John W. Beasley, Jr. and Defendants John W. Beasley, Jr., John W. Beasley a/k/a John W. Beasley, Sr., and Lillian Beasley, each an Individual, did each execute a Confession of Judgment (the "Confession of Judgment") to secure their joint and several liability

*1/3 [Signature]*

for full performance and obligations under the terms of that certain Settlement Agreement and Conditional Release of Claims (the "Settlement Agreement"), of even date therewith, which said Settlement Agreement is attached hereto as Exhibit "A" and incorporated herein by reference thereto.

5. Calculated pursuant to the Settlement Agreement, the principal amount confirmed and owed by the Defendants, joint and several, to the Plaintiffs was \$647,500.00.

6. Pursuant to the Settlement Agreement, the entire principal balance was due, in full, on or before 2:00 PM ET, November 21, 2018 (the "Maturity Date").

7. By mutual agreement of the Plaintiffs and Defendants, the Maturity Date was extended to 2:00 PM ET, May 21, 2019, upon the timely payment of Defendants to Plaintiffs of the sum of \$25,000.00, said sum to be applied to a reduction in principal (the "Extended Maturity Date").

8. The above-captioned Defendants timely made the one-time payment of \$25,000.00, thereby reducing the principal balance due under the Settlement Agreement to \$622,500.00 and extending the Maturity Date to the Extended Maturity Date.

9. The above-captioned Defendants have failed to timely make any other payments due under the Settlement Agreement.

10. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the remaining principal balance of \$622,500.00 (the "Delinquent Balance") under the Settlement Agreement is now past due and delinquent as of May 21, 2019, any cure period allowed under the Settlement Agreement expired as May 26, 2019 (the "Cure Period"), the Cure Period expired without Defendants making any payment in reduction of the Delinquent Balance, and thereafter said Delinquent Balance began to accrue interest at twelve percent (12%) per annum (the "Default Interest Rate").

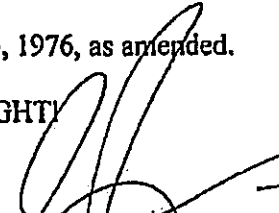
11. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the Delinquent Balance shall accrue interest at the Default Interest Rate until such time as the filing of this judgment, at which point said Delinquent Balance shall accrue post-judgment interest.

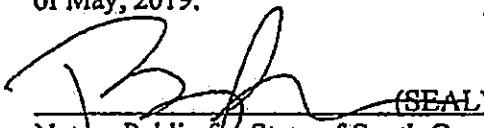
12. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the Delinquent Balance shall include continuing interest, late fees, all costs of collection, including attorney's fees, court costs, and post-judgment interest.

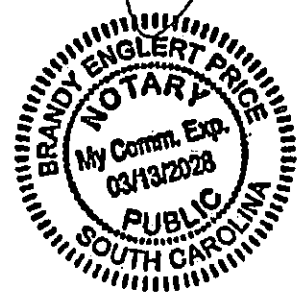
13. This affidavit is offered in support of the Delinquent Balance, including continuing interest, late fees, all costs of collection, including attorney's fees, and court costs accrued under the Settlement Agreement the Confession of Judgment and post-judgment interest from the filing of this judgment, all as confessed by the above-captioned Defendants.

14. Post-judgment interest accrues from the date of the filing of this judgment at the rate pursuant to S.C. Code Ann. § 34-31-20 (B), 1976, as amended.

FURTHER AFFIANT SAYETH NAUGHTY

  
Justin John Price, Esq.

SWORN TO before me this 30th day  
of May, 2019.  
 (SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: March 13, 2028



# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

SETTLEMENT AGREEMENT AND  
 CONDITIONAL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS ("Settlement and Release") is made by and between RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Greene", Young and Greene collectively hereunder the "Creditors"; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."; and LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian", John Sr. and Lillian collectively hereunder the "Debtors") upon the terms and conditions contained herein. Creditors and Debtors are sometimes referred to herein each as a "Party" and collectively as the "Parties" to this Settlement and Release.

WHEREAS, on or about September 13, 2017, John Beasley Jr. borrowed the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) from Young, which was to be repaid on or before October 11, 2017, and carry interest such that the repayment amount was to be Eighty Thousand and 00/100 Dollars (\$80,000.00); and

WHEREAS, on or about September 25, 2017, John Beasley Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Beasley Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Beasley Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Young, which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Beasley Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from the Creditors, which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, John Sr. and Lillian agreed to join John Beasley Jr., along with certain other parties, as co-Debtors for the repayment of the Loan as well as agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof; and

WHEREAS, the Creditors and Debtors previously memorialized a separate settlement and release agreement, executed by John Sr. and Lillian on or about November 20, 2017 (the "Prior Settlement and Release Agreement") to conditionally resolve the Loan dispute between them upon the terms and conditions set forth in said Prior Settlement and Release Agreement and in order to avoid the costs and frustrations attenuated with litigation; and

WHEREAS, the terms of the Prior Settlement and Release Agreement provided for the recording of certain confessions of judgment with the Clerk of Court for Charleston County, South Carolina, and thereafter such other jurisdictions as deemed appropriate by Creditors, should certain sums due thereunder not be timely paid; and

WHEREAS, on May 30, 2019, Creditors filed said confessions of judgment, along with the required supporting affidavits, with the Clerk of Court for Charleston County, South Carolina, as judgment number 2019-CP-10-2849 (the "Judgment"); and

WHEREAS, at the time of filing, the Judgment included a principal balance of \$622,500.00 and attorney's fees and costs of \$8,825.50; and

WHEREAS, the Judgment is joint and several as to all named judgment debtors, which includes the Debtors listed herein, and the principal balance of said Judgment has accrued delinquent interest and post-judgment interest; and

NOW, THEREFORE, in consideration of the payments and promises recited herein, the Creditors fully release and forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Creditors and Debtors hereby covenant and agree as follows:

1. The Settlement Sum. Subject to the terms, conditions, and provisions of this Settlement and Release, the Debtors agree to pay and deliver to and for the benefit of Creditors the total sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) (the "Settlement Sum") in accordance with the following payment terms:

- a. Simultaneously with the execution of this Agreement two (2) lump sum payments will be delivered from the trust account of John C. Johnston, Esq. and shall be payable as follows: (i) to "Richard Young" in the sum total of \$25,000.00; and (ii) to "Jason Greene" in the sum total of \$25,000.00. The Settlement Sum shall be delivered as follows: Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412 ("Creditors' Counsel").

2. Release from Judgment. Within ten (10) days of Creditors' Counsel's receipt for the Settlement Sum, Creditors shall cause to be filed of record appropriate partial releases as to the Judgment to indicate, of record, that Debtors shall be released from the Judgment. The releases hereunder shall not release any other judgment debtor, the principal balance of the judgment shall be reduced by the Settlement Sum hereof, and the Judgment shall remain in full force and effect as to any non-released judgment debtor.

3. Debtors' Unconditional Release of Creditors. In consideration of the mutual promises herein contained, and other good and valuable consideration, Debtors, along with anyone claiming through them or on their behalf, agree to, and hereby do fully and unconditionally release and forever discharge Creditors, together with their heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date of this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding.

4. No payments made, release given or other action taken pursuant to this Settlement and Release shall be deemed an admission of liability or wrongdoing by Creditors or Debtors. It is understood and agreed that this Settlement and Release represents the compromise by Creditors and Debtors to resolve a variety of doubtful and disputed claims and counterclaims, and that the amounts paid and received hereunder are made solely for the purpose of ending their disagreements and to buy, sell, and exchange their individual and respective peace of mind and to avoid the significant costs of protracted litigation.

5. This Settlement and Release constitutes the entire agreement and understanding between Creditors and Debtors, and it supersedes all prior understandings or agreements, written or oral, on the subjects contained herein, and the terms of this Settlement and Release are contractual and not mere recitals. No waiver, amendment, deletion, modification or addition of any provision of this Settlement and Release shall be effective unless it is in writing and signed by the undersigned Parties and witnessed.

6. The promises, representations and agreements provided in this Settlement and Release are continuing and shall survive the execution and delivery of this Settlement and Release, as well as the completion of all undertakings required hereunder.

7. This Settlement and Release shall be construed pursuant to the laws of the State of South Carolina.

8. The terms and provisions of this Settlement and Release are severable, and if any part of this Settlement and Release is found to be unenforceable, the remainder will continue to be valid and enforceable without reference to the stricken provision.

9. The Parties further agree that any questions, doubts and ambiguities in connection with the meaning of any term of this Settlement and Release shall be construed as if the Parties jointly drafted the Settlement and Release with the mutual intention that no claim or demand whatsoever should survive the making of this Settlement and Release under any circumstances.

10. The terms, conditions, and payments made pursuant to this agreement shall be STRICTLY CONFIDENTIAL, and neither the Parties hereto, their attorneys, nor any person acting for or on behalf of any party hereto may disclose the contents and terms of this Settlement and Release, nor shall this Settlement and Release, or any of its contents, be made available or otherwise communicated in any form to any person except as may be required by law, or as may be necessary to comply with mandatory disclosure for tax or other governmental regulatory purposes. Nothing herein shall prevent the admission of a copy of this Settlement and Release as an Exhibit in a Court of law in order to seek enforcement of the terms hereof or as needed to enforce the Confession of Judgment given in connection herewith. Notwithstanding the foregoing, the Parties agree and acknowledge their mutual agreement to keep the provisions hereof confidential is the only consideration exchanged in support of the confidentiality obligations hereof and, specifically, that no monetary consideration has been exchanged in support of this confidentiality provision.

11. The undersigned each warrant and represent that they are competent to execute this Settlement and Release and that each is duly authorized and has full right and authority to execute this Settlement and Release on behalf of any party for whom a signature is given in representative capacity.

12. This Settlement and Release may be executed in multiple copies and a fully assembled document with copies of the required signatures shall be effective as an originally signed document. Moreover, the exchange of signature pages hereof by facsimile or Portable Document Format ("PDF") transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes. Signatures transmitted by facsimile or PDF shall be deemed to be original signatures for all purposes hereunder.

13. By their signatures below, the undersigned Parties represent and warrant that they have relied only upon their own judgment, belief and knowledge of the nature, extent, effect and duration of the damages and liability that could have been raised in the litigation proceedings referenced herein, and that this Settlement and Release is made without reliance upon any statement or representation of any Party or entity signing below, or any of their respective employees, agents, members, shareholders, employees, attorneys, or representatives.

14. By their signatures below, each Party hereto states that he, she, or it has fully read and understood the terms and conditions of this Settlement and Release and knows the contents thereof, and that he, she, or it has had the opportunity to review the same and discuss it with

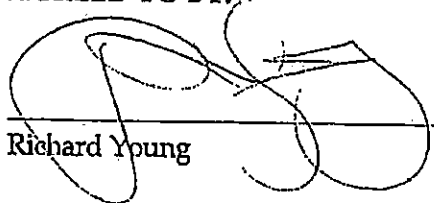
their attorneys, as needed or desired, and that they have voluntarily signed and executed this Settlement and Release of their own free will.

15. Creditors and Debtors acknowledge that they are each fully responsible for the taxes, if any, that may be incurred or owed due to the payments, agreements, and transactions described herein, and neither of them have offered any opinions or made any representations to the other about any tax-related matter.

16. Except for the release of Debtors herein, this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record.

IN WHEREOF, WITNESS we have hereunto set our hands and seals agreeing to be legally bound.

AGREED TO BY:

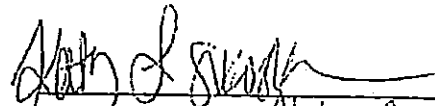
 (L.S.)  
Richard Young

STATE OF Alabama )  
COUNTY OF Baldwin )

ACKNOWLEDGMENT

I, Katy L Sikorski, Notary Public for Alabama, do hereby certify that Richard Young personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30 day of November, 2020.

  
Notary Public for Alabama

My Commission Expires:  
June 19 2024



AGREED TO BY:

[Signature]  
\_\_\_\_\_  
Jason Greene (L.S.)

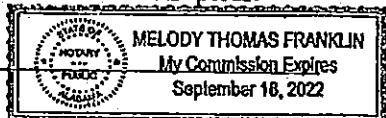
STATE OF Alabama )  
COUNTY OF Lauderdale )

ACKNOWLEDGMENT

I, Melody Thomas Franklin Notary Public for Alabama, do hereby certify that Jason Greene personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 2nd day of November, 2020.  
December

[Signature]  
\_\_\_\_\_  
Notary Public for Alabama

My Commission Expires:  




[Signature]

AGREED TO BY:

John W. Beasley (L.S.)  
John W. Beasley a/k/a  
John W. Beasley, Sr.

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Victoria Kurtz, Notary Public for South Carolina, do hereby certify that John W. Beasley a/k/a John W. Beasley, Sr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30 day of November, 2020.

Victoria Kurtz  
Notary Public for South Carolina

My Commission Expires:  
9.4.22



# EXHIBIT C

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10-2849

RELEASE OF JUDGMENT LIEN AS TO A  
 SPECIFIC PROPERTY, RELEASE OF JUDGMENT  
 LIEN AS TO CERTAIN DEFENDANTS, AND  
PARTIAL SATISFACTION OF JUDGMENT

For and in consideration of the payment of the total sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Release Fee"), paid to Richard Young and Jason Greene, collectively the "Plaintiffs", by only Defendant John W. Beasley, Sr. ("Defendant Beasley Sr.") and Defendant Lillian Beasley ("Defendant Lillian", Defendant Beasley Sr. and Defendant Lillian being collectively referred to herein as the "Released Defendants"), towards the reduction of the previously entered judgment in this matter, the receipt of which is hereby acknowledged, a certain parcel of real property owned by the Released Defendants is hereby released from the lien of said judgment, such parcel of property being described on the attached Description of Property.

Moreover, said Defendant John W. Beasley, Sr. and Defendant Lillian Beasley, the Released Defendants, are hereby personally released from judgment in this matter.

Moreover, the judgment entered in the above-referenced matter is hereby partially satisfied and reduced by the payment of said \$50,000.00 Release Fee, said funds being received by Plaintiffs on December 11, 2020.

The remaining balance of said judgment lien, plus accruing post-judgment interest and costs, shall continue on record against Defendant John W. Beasley, Jr. and Defendant Beasley Construction Company, LLC, collectively, the "Remaining Defendants", and any, and all, other property of said Remaining Defendants. Nothing in this document shall affect or limit the rights of the Plaintiffs in their collective or individual pursuit of collecting the remaining balance of said judgment from any other property, real or personal, presently owned or acquired hereafter from the Remaining Defendants.

Executed this 17th day of March, 2021.

s/ Justin John Price, Esq.  
Justin John Price, Esq.  
S.C Bar No.: 77461  
Price Law LLC  
525 Folly Road, Suite 208  
Charleston, South Carolina 29412  
843.822.4313 (office)  
843.620.1022 (fax)  
justin.price@justinpricelaw.com

March 17, 2021  
Charleston, South Carolina

DESCRIPTION OF PROPERTY

ALL that certain piece, parcel or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the RMC Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size, shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement for access to the lot conveyed, said easement being shown on the aforementioned plat recorded in Plat Book DD at Page 586.

ALSO,

ALL of my right, title and interest in and to the Marsh located along New Lot 4 referenced above and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of Ocean and Coastal Resource Management, in "critical areas" as defined in § 49-39-10, *et seq.*, 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated thereto.

BEING a portion of the property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the RMC Office for Charleston County in Book H475 at Page 025.

TMS No.: 427-00-00-102

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene,

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A NO.: 2022-CP-10-03510

*File Exhibits*

*2727*

ELECTRONICALLY FILED 2023 Sep 25 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

# MOTION HEARINGS (9.27.23)

- A. Beasley Defendants' Motion for Reconsideration *JRF*
- B. Beasley Defendants' Motion for Summary Judgment *IAN*
- C. Plaintiffs Motion for Foreclosure Hearing and Award of Attorneys Fees and Costs *IAN*
- D. Plaintiffs' Amended Motion to Dismiss And/Or Strike Beasley Defendants' Counterclaims and for Summary Judgment on the Beasley Defendants' Counterclaims *Ian*
- E. Plaintiffs Motion for Protective Order *JRF*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene,

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A NO.: 2022-CP-10-03510

**PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO BEASLEY  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

**TO: DEFENDANTS JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY IN THEIR INDIVIDUAL CAPACITIES AND AS TRUSTEES OR AS SUCCESSORS IN TRUST UNDER THE BEASLEY LIVING TRUST DATED AUGUST 14, 2018 AND ANY AMENDMENTS THERET, AND THEIR ATTORNEYS CHERYL SHOUN, ESQ., MARKLEY DENNIS, ESQ., RHETT RICARD, ESQ. AND JOHN JOHNSTON, ESQ.**

Plaintiffs, Richard Young (“Young”) and Jason Greene (“Greene”) (collectively, “Plaintiffs”), by and through their undersigned counsel, hereby submit this Memorandum in Opposition to the Beasley Defendants’ Motion for Summary Judgment. When referenced herein, “the Beasley Defendants,” refers to John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto.

**ARGUMENTS**

- I. The Beasley Defendants’ Motion for Summary Judgment has been rendered Moot and/or has been effectively denied by this Court’s entry of an Order Granting Plaintiff’s Motion for Summary Judgment on August 23, 2023.
- II. The Beasley Defendants’ Motion for Summary Judgment is unsupported by the evidence in the record. Furthermore, the Beasley Defendants have acknowledged that there is no material issue of fact. See *Beasley Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment*, filed August 8, 2023, Page 7.
- III. The Plaintiffs incorporate their previously filed briefs in connection with this civil action, including but not limited to their Memorandum in Support of their Motion for Summary Judgment.

**CONCLUSION**

For the reasons set forth herein, the Plaintiffs respectfully request that the Beasley Defendants’ Motion for Summary Judgment be summarily denied.

TURNER PADGET GRAHAM & LANEY, P.A.

*s/Ian D. McVey*  
Ian D. McVey, SC Bar No. 71196  
Lindsey M. Behnke, SC Bar No. 105719  
PO Box 1473 (29202)  
1901 Main St., Suite 1700  
Columbia, South Carolina 29210  
Tel. 803-227-4267  
Tel. 803-227-4324  
Email: [imcvey@turnerpadget.com](mailto:imcvey@turnerpadget.com)  
Email: [lbehnke@turnerpadget.com](mailto:lbehnke@turnerpadget.com)

BRUNER POWELL WALL & MULLINS, LLC

*s/Joey R. Floyd*

Joey R. Floyd, SC Bar No. 68491

PO Box 61110

Columbia, South Carolina 29260

Tel. (803)252-7693

Fax (803)254-0629

Email [jfloyd@brunerpowell.com](mailto:jfloyd@brunerpowell.com)

*Attorneys for the Plaintiffs*

Columbia, South Carolina  
September 22, 2023

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW  
1735 ST. JULIAN PLACE, SUITE 200 (29204)  
POST OFFICE BOX 61110  
COLUMBIA, SOUTH CAROLINA 29260-1110  
TELEPHONE 803-252-7693  
FAX 803-254-5719  
WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A.\*  
HENRY P. WALL  
E. WADE MULLINS III, P.A.  
WESLEY D. PEEL, P.A.  
JOEY R. FLOYD, P.A.  
BENJAMIN C. BRUNER, P.A.  
CHELSEA J. CLARK, P.A.

JAMES L. BRUNER (1950-2023)

J. COLE HANCOCK  
J. KEANE MOSSMAN\*  
J. WEBSTER HALL

\* ALSO ADMITTED IN DISTRICT OF COLUMBIA

AUTHOR'S E-MAIL: [JFLOYD@BRUNERPOWELL.COM](mailto:JFLOYD@BRUNERPOWELL.COM)

September 25, 2023

**Via Electronic Filing**

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

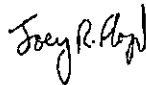
**Re: Ricky Young and Jason Greene v John W. Beasley, et al.**  
**C/A no.: 2022-CP-10-03510**  
**Our File No.: 8-3506.100**

Dear Ms. Armstrong:

This firm represents the Plaintiffs in the above-captioned matter. My firm inadvertently failed to attach three exhibits to the Memorandum in Opposition to the Beasley Defendants' Motion for Reconsideration. I am filing Exhibits A, B & C simultaneously herewith.

With my kindest regards, I am,

Sincerely,



Joey R. Floyd

JRF/hos  
Enclosures

Cc: All Counsel of Record (Via Electronic Filing)

ELECTRONICALLY FILED - 2023 Sep 25 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

SETTLEMENT AGREEMENT AND  
CONDITIONAL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS ("Settlement and Release") is made by and between RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene", Young and Greene collectively hereunder the "Creditors"); JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Avenue, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company", John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors") upon the terms and conditions contained herein. Creditors and Debtors are sometimes referred to herein each as a "Party" and collectively as the "Parties" to this Settlement and Release.

WHEREAS, on or about September 13, 2017, John Jr. borrowed the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) from Young, which was to be repaid on or before October 11, 2017, and carry interest such that the repayment amount was to be Eighty Thousand and 00/100 Dollars (\$80,000.00); and

WHEREAS, on or about September 25, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Young, which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from the Creditors; which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and

WHEREAS, John Sr., Lillian, and the Company have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof; and

WHEREAS, the Creditors and Debtors hereby memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth herein in order to avoid the costs and frustrations attenuated with litigation;

NOW, THEREFORE, in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Creditors and Debtors hereby covenant and agree as follows:

1. Confession of Judgment. Simultaneously with the execution of this Settlement and Release, John Jr., John Sr., Lillian, and the Company have executed separate Confessions of Judgment, the originals of which shall be held in trust by the Creditors' attorneys. Creditors agree that for so long as the Debtors have not defaulted in the performance of any payment obligation arising hereunder beyond any applicable cure period, the Confessions of Judgment shall not be recorded in any court or jurisdiction. The terms and conditions of the Confessions of Judgment are incorporated herein as material terms of this Settlement and Release. Upon satisfaction by the Debtors of the payment obligations set forth in Paragraph 2 below, the Creditors agree that all amounts alleged to be due to them from the Debtors, including those confessed to be due under the Confessions of Judgment shall be fully and completely satisfied and the Debtors shall be entitled to demand return of the Confessions of Judgment to their attorneys or as otherwise directed in writing to Creditors' attorney.

2. The Settlement Sum. Subject to the terms, conditions, and provisions of this Settlement and Release, the Debtors agree to pay and deliver to and for the benefit of Creditors the total sum of SIX HUNDRED FORTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$647,500.00) (the "Settlement Sum") in accordance with the following payment terms:

- a. Simultaneously with the execution of this Settlement Agreement, the Debtors have executed a promissory note acknowledging the Settlement Sum as a debt owed to Creditors (the "Promissory Note");

- b. Simultaneously with the execution of this Settlement Agreement and in order to secure the obligations under this Settlement and Release as acknowledged by the Promissory Note, the Debtors have executed mortgages (the "Mortgages") in favor of the Creditors on the following real property owned by one or more of the Debtors (for identification purposes hereof, the real properties are identified by address, brief legal description, and/or Charleston County TMS No.):
- i. 1050 Sea Eagle Watch, Charleston, South Carolina 29412, Charleston County TMS No.: 427-00-00-102
  - ii. 3493 Plow Ground Road, Johns Island, South Carolina, Charleston County TMS No.: 277-00-00-036; and
  - iii. Lot 8, Lighthouse Point, Lynne Ave, Charleston, South Carolina, Charleston County TMS No.: 452-06-00-068.
- c. All payments required of Debtors hereunder shall be made to payable to "Richard Young and Jason Greene" and delivered, via wire transmittal, to the office of their counsel as follows: Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403 ("Creditors' Counsel"). The wire instructions for the depository account are attached hereto as Appendix "A" and shall be used by Debtors for remittance of any and all payments in reduction of the balance of the Settlement Sum owed unless and until Creditors' Counsel provides Debtors with written instructions to the contrary at the addresses listed in the preamble above;
- d. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Debtors shall have five (5) calendar days following the Maturity Date within which to cure any delinquent payment hereunder (the "Cure Period"). No default under this Agreement shall occur until the Cure Period has lapsed without performance by Debtors of the payment obligations then due. However, Debtors hereby waive notice of any payment delinquency, payment default, or commencement or passing of any right to cure; and
- e. Upon the occurrence of an uncured default by Debtors, Creditors shall, without prior notice, be entitled to record the Confessions of Judgment given by the Debtors and described herein in accordance with the terms set forth in said Confessions of Judgment without invalidating this Settlement and Release Agreement.

- f. Upon the satisfaction of the underlying Note and the full performance by Debtors of all obligations under this Settlement and Release, Creditors agree to execute and record satisfactions of mortgages on the above-referenced properties in the applicable county RMC office.

3. Creditors' Conditional Release of John Jr. In consideration of the mutual promises herein contained, and other good and valuable consideration stated above, Creditors, along with anyone claiming through them or on their behalf, collectively agree to, and hereby conditionally release and discharge John Jr., together with his heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding, provided the Settlement Sum is timely paid in full. Creditors, John Jr., and the co-Debtors expressly agree and acknowledge that any release or discharge hereunder shall only become effective and complete upon the full performance of the Debtors hereunder, and the failure of the Debtors to fully and timely perform hereunder shall immediately revive any and all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown which the Creditors could pursue against John Jr. at the time of the execution of this Settlement and Release. Nothing herein shall operate to prohibit Creditors from recording and enforcing the Confession of Judgment in the event Debtors fails to make the payments required hereunder.

4. Debtors' Unconditional Release of Creditors. In consideration of the mutual promises herein contained, and other good and valuable consideration, Debtors, along with anyone claiming through them or on their behalf, agree to, and hereby do fully and unconditionally release and forever discharge Creditors, together with their heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding.

5. Creditors Agreement to Cooperate. Creditors agree to reasonably cooperate with John Jr. in his attempts to recover the Loan from the actors responsible for the loss of the Loan. Reasonable cooperation shall include, but is not limited to: producing of all documents, communications, and other evidence concerning the transfer of the Loan from John Jr. or either Creditor to any third parties and an agreement to provide a statement of Creditors' knowledge

of the ultimate destination of the Loan to their attorney to be provided to the attorney for or agent of John Jr.

6. Matters Pertaining to Insolvency of John Jr. Should John Jr. file for insolvency or bankruptcy protection prior to the full and timely satisfaction of all of Debtors' obligations hereunder, the Parties expressly agree and acknowledge that Creditors shall and nothing herein shall limit Creditors' rights and ability to object to the discharge of any debt hereunder for John Jr.'s false pretenses and/or false representations in obtaining the Loan from Creditors, to include, but not be limited to, objections to discharge under 11 U.S.C. § 523.

7. Except as stated in Paragraphs 3 and 6 above, Creditors and Debtors each expressly waive and assume the risk of any and all claims for damages that exist as of this date or which may hereafter occur, but which Creditors and/or Debtors do not know or suspect to exist or might occur, whether through ignorance, error or otherwise, and which, if known, would affect their respective decisions to enter into this Settlement and Release.

8. No payments made, release given or other action taken pursuant to this Settlement and Release shall be deemed an admission of liability or wrongdoing by Creditors or Debtors. It is understood and agreed that this Settlement and Release represents the compromise by Creditors and Debtors to resolve a variety of doubtful and disputed claims and counterclaims, and that the amounts paid and received hereunder are made solely for the purpose of ending their disagreements and to buy, sell, and exchange their individual and respective peace of mind and to avoid the significant costs of protracted litigation.

9. This Settlement and Release constitutes the entire agreement and understanding between Creditors and Debtors, and it supersedes all prior understandings or agreements, written or oral, on the subjects contained herein, and the terms of this Settlement and Release are contractual and not mere recitals. No waiver, amendment, deletion, modification or addition of any provision of this Settlement and Release shall be effective unless it is in writing and signed by the undersigned Parties and witnessed.

10. The promises, representations and agreements provided in this Settlement and Release are continuing and shall survive the execution and delivery of this Settlement and Release, as well as the completion of all undertakings required hereunder.

11. This Settlement and Release shall be construed pursuant to the laws of the State of South Carolina.

12. The terms and provisions of this Settlement and Release are severable, and if any part of this Settlement and Release is found to be unenforceable, the remainder will continue to be valid and enforceable without reference to the stricken provision.

13. The Parties further agree that any questions, doubts and ambiguities in connection with the meaning of any term of this Settlement and Release shall be construed as if the Parties jointly drafted the Settlement and Release with the mutual intention that no claim or demand whatsoever should survive the making of this Settlement and Release under any circumstances.

14. The terms, conditions, and payments made pursuant to this agreement shall be **STRICTLY CONFIDENTIAL**, and neither the Parties hereto, their attorneys, nor any person acting for or on behalf of any party hereto may disclose the contents and terms of this Settlement and Release, nor shall this Settlement and Release, or any of its contents, be made available or otherwise communicated in any form to any person except as may be required by law, or as may be necessary to comply with mandatory disclosure for tax or other governmental regulatory purposes. Nothing herein shall prevent the admission of a copy of this Settlement and Release as an Exhibit in a Court of law in order to seek enforcement of the terms hereof or as needed to enforce the Confession of Judgment given in connection herewith.

15. The undersigned Parties agree that the Settlement Sum includes a sum of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) to reimburse Creditors for expenses they have collectively paid in the preparation of the documents enumerated and made a part of this Settlement and Release.

16. The undersigned each warrant and represent that they are competent to execute this Settlement and Release and that each is duly authorized and has full right and authority to execute this Settlement and Release on behalf of any party for whom a signature is given in representative capacity.

17. This Settlement and Release may be executed in multiple copies and a fully assembled document with copies of the required signatures shall be effective as an originally signed document.

18. By their signatures below, the undersigned Parties represent and warrant that they have relied only upon their own judgment, belief and knowledge of the nature, extent, effect and duration of the damages and liability that could have been raised in the litigation proceedings referenced herein, and that this Settlement and Release is made without reliance upon any statement or representation of any Party or entity signing below, or any of their respective employees, agents, members, shareholders, employees, attorneys, or representatives.

19. By their signatures below, each Party hereto states that he, she, or it has fully read and understood the terms and conditions of this Settlement and Release and knows the contents thereof, and that he, she, or it has had the opportunity to review the same and discuss it with their attorneys, as needed or desired, and that they have voluntarily signed and executed this Settlement and Release of their own free will.

20. Creditors and Debtors acknowledge that they are each fully responsible for the taxes, if any, that may be incurred or owed due to the payments, agreements, and transactions described herein, and neither of them have offered any opinions or made any representations to the other about any tax-related matter.

IN WHEREOF, WITNESS we have hereunto set our hands and seals agreeing to be legally bound.

ELECTRENECARBONIAEDY-EDDSS@025 JUL 28 1988 PM 4:01 AM EST ON TROOPNONOPN ELISA SG ASES#202261P1098500

AGREED TO BY:

[Signature] (L.S.)  
Richard Young

STATE OF TN )  
COUNTY OF DAVISON )

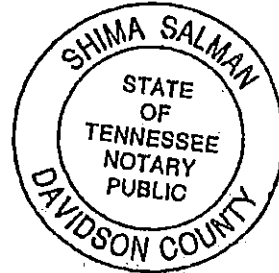
ACKNOWLEDGMENT

I, SHIMA A. SALMAN, Notary Public for TN, do hereby certify that Richard Young personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me this 20<sup>th</sup> day of November, 2017.

[Signature]  
Notary Public for DAVISON CTY

My Commission Expires:  
01/19/19



AGREED TO BY:

[Signature]  
\_\_\_\_\_  
Jason Greene (L.S.)

STATE OF Alabama )  
COUNTY OF Clauderdale )

ACKNOWLEDGMENT

I, Terry J. Higdon, Notary Public for Alabama, do hereby certify that Jason Greene personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

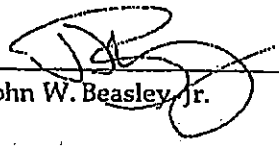
SWORN and subscribed before me  
this 4<sup>th</sup> day of ~~November~~, 2017.  
December

My Commission Expires:  
MY COMMISSION EXPIRES 1/27/2020

[Signature]  
Notary Public for Alabama



AGREED TO BY:

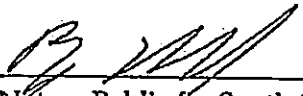
  
\_\_\_\_\_  
John W. Beasley, Jr. (L.S.)

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Bryan Raymon, Notary Public for South Carolina, do hereby certify that John W. Beasley, Jr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 20 day of November, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires:  
06/17/2025

AGREED TO BY:

John W. Beasley (L.S.)  
John W. Beasley a/k/a  
John W. Beasley, Sr.

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON    )

ACKNOWLEDGMENT

I, BRYAN RAYMOND, Notary Public for South Carolina, do hereby certify that John W. Beasley a/k/a John W. Beasley, Sr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 29<sup>th</sup> day of November, 2017.

[Signature]  
Notary Public for South Carolina

My Commission Expires:  
06/17/2025

ELECTRONICALLY FILED SEP 23 01 23 30 PM HARRISTON COUNTY S.C. CASE # 2022 CP 1003518

AGREED TO BY:

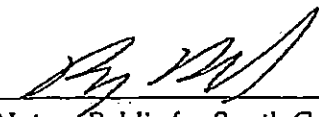
Lillian Beasley (L.S.)  
Lillian Beasley

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, BRYAN RAYMOND, Notary Public for South Carolina, do hereby certify that Lillian Beasley personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

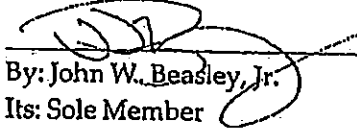
SWORN and subscribed before me  
this 20 day of November, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires:  
06/17/2025

ELECTRONICALLY FILED 2017 NOV 20 11:26 AM PUBLIC ACCESS ONLINE CASE #2022CP1008510

AGREED TO BY:  
BEASLEY CONSTRUCTION COMPANY, LLC,  
A South Carolina limited liability company

 (L.S.)  
By: John W. Beasley, Jr.  
Its: Sole Member

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, BRYAN RAYMOND, Notary Public for South Carolina, do hereby certify that Beasley Construction Company, LLC, by John W. Beasley, Jr., its Sole Member, personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 20 day of November, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires:  
06/17/2025

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROMISSORY NOTE

\$647,500.00

November 30, 2017

WHEREAS, on or about September 25, 2017, JOHN W. BEASLEY, JR. ("John Jr.") borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from JASON GREENE ("Greene"), which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or before October 13, 2017, and carry interest such that the repayment amount was to be Two Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Jr. borrowed the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) from RICHARD YOUNG ("Young"), which was to be repaid on or before October 19, 2017, and carry interest such that the repayment amount was to be Three Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) from Greene and Young (collectively hereunder, the "Creditors"), which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before October 19, 2017 (the "Loan"); and


WHEREAS, JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. ("John Sr."), LILLIAN BEASLEY ("Lillian"), and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company (the "Company", John Jr., John Sr., Lillian, and the Company collectively hereunder, the "Debtors") have agreed to join John Jr. as co-Debtors for the repayment of the Loan as well as have agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof;

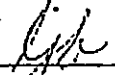
WHEREAS, the Creditors have incurred Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) in costs in expenses in the resolution of this matter and the drafting of documents, which Debtors have agreed to capitalize into this Promissory Note;

WHEREAS, the Creditors and Debtors have by separate document executed memorialize their agreement to conditionally resolve the Loan dispute between them upon the terms and conditions set forth therein in order to avoid the costs and frustrations attenuated with litigation (the "Settlement and Release"); and

NOW THEREFORE, for and in consideration of the payments and promises recited herein, the Creditors conditional agreement to forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations under the Settlement and Release, the

  
John Jr. Initials

  
John Sr. Initials

Page 1 of 4  
  
Lillian Initials

  
Company Initials

unconditional and irrevocable of John Sr., Lillian, and the Company to join John Jr. as co-Debtors, with joint and several liability for the repayment of all sums owed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

FOR VALUE RECEIVED, the undersigned, JOHN W. BEASLEY, JR., an Individual whose current address is 575 Lynne Ave, Charleston, South Carolina 29412 ("John Jr."); JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); LILLIAN BEASLEY, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian"); and BEASLEY CONSTRUCTION COMPANY, LLC, a South Carolina limited liability company whose sole member and registered agent hereunder is John Jr. at the current address of 789 Shipwreck Place, Inman, South Carolina 29349 (the "Company", John Jr., John Sr., Lillian and the Company collectively hereunder the "Debtors"), joint and several, promise to pay to the order of RICHARD YOUNG, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Young"); JASON GREENE, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, justin.price@vmbllawfirm.com ("Greene", Young and Greene collectively hereunder the "Creditors"), by wire transfer and in lawful money of the United States of America, the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), without interest thereon for so long as this Promissory Note is not in default. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Failure to fully remit the principal balance of this Promissory Note prior to the Maturity Date shall be an event of default of this Promissory Note. In the event of default, the unpaid balance shall bear interest at the rate of Twelve Percent (12%) per annum (the "Default Interest Rate").


The above recitals comprise material provisions to this promissory and are incorporated herein as if restated verbatim.

**THIS PROMISSORY NOTE MAY BE PREPAID AT ANYTIME WITHOUT PENALTY.**

If this Promissory Note is not payable on demand, then upon the occurrence of any of the following events this Promissory Note and all other liabilities at the Lender's option, shall become due and payable immediately, by acceleration, without notice or demand:

- (a) default by the Debtors in the payment of any principal of, or interest on, this Promissory Note when and as same shall become due and payable, whether at maturity, by acceleration, or otherwise; or,
- (b) any representation or warranty made or any financial statement or other information furnished by the Debtors, or any one of them, in connection with the execution and delivery of this Promissory Note or any Security Document, a defined below; or,
- (c) any certificate furnished pursuant hereto shall prove to be false at any time in any material respect; or,

  
John Jr. Initials

  
John Sr. Initials

Page 2 of 4  
  
Lillian Initials

  
Company Initials

(d) default by the Debtors, or any one of them, in the due performance of any term, provision or agreement to be performed by them (other than for the payment of principal or interest), contained herein or in any Security Document, as that term is defined below; or,

(e) the Debtors, or any one of them, as co-makers and guarantors with respect to this Promissory Note, shall become involved in financial difficulties as evidenced by: (i) making an assignment for the benefit of creditors or the commencement of any similar Debtors' relief proceeding, whether judicial or otherwise; (ii) consent to or application for the appointment of a trustee, interim trustee, custodian or receiver for all or a major portion of any property of the Debtors; (iii) the commencement of any action or proceeding under any other federal or state bankruptcy, insolvency, composition, Debtors' relief, reorganization or other similar law, or have such a proceeding commenced against any of them and either have an order of insolvency or reorganization entered against any of them or have the proceeding remain undismissed or unstayed for 60 days; (iv) entry of a final judgment for the payment of money against any of them and the same shall not be discharged within 30 days of its entry, or an appeal or proceeding for such appeal shall not be obtained; or (v) death, dissolution or suspension of the corporate charter or of the partnership, insolvency or failure or suspension of the usual business of any of them; or (vi) the issuance of any attachment, garnishment, execution, federal tax levy, or other process or seizure against any of their property.

The Debtors hereby waive presentment, demand for payment, protest, notice of protest, and notice of nonpayment, and further agree and consent that, without notice and without affecting their liability hereon, the holder(s) hereof at any time or times is/are authorized to: (a) correct patent errors and fill blanks herein; and/or (b) cause or permit the signature of one or more additional makers, co-makers, sureties, guarantors and/or endorsers to be added hereto.


If this Promissory Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt courts, or under foreclosure proceedings under the mortgage(s) securing this Promissory Note, then, all cost of collection, including a reasonable sum for attorney fee, which shall be deemed to be not less than Fifteen Percent (15%) of the outstanding balance due, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal and interest provided for by the terms of this Promissory Note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this Promissory Note, or any change or changes by way of release or surrender of any collateral held as security for this Promissory Note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

  
John Jr. Initials

  
John Sr. Initials

Page 3 of 4  
  
Lillian Initials

  
Company Initials

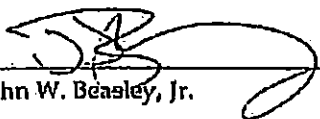
The undersigned Debtors further acknowledge and intend that this Promissory Note shall be binding upon their heirs, successors, and assigns, as the case may be.

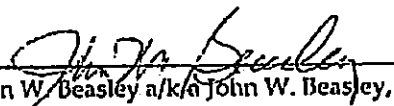
No delay by the Creditors in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

This Promissory Note is secured by mortgages of even date herewith, given by Debtors in favor of Creditors hereunder, and to be recorded in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, regarding, pledging, and encumbering certain real property (a "Security Document").

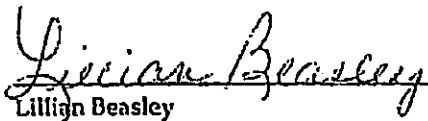
This Promissory Note is made and to be interpreted under the laws of the State of South Carolina. Venue for any dispute regarding the rights, duties, and obligations under this Promissory Note is proper in any court of competent jurisdiction for Charleston County, South Carolina.

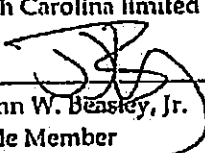
DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

[END OF PROMISSORY NOTE.]

  
\_\_\_\_\_  
John Jr. Initials

  
\_\_\_\_\_  
John Sr. Initials

  
\_\_\_\_\_  
Lillian Initials

  
\_\_\_\_\_  
Company Initials

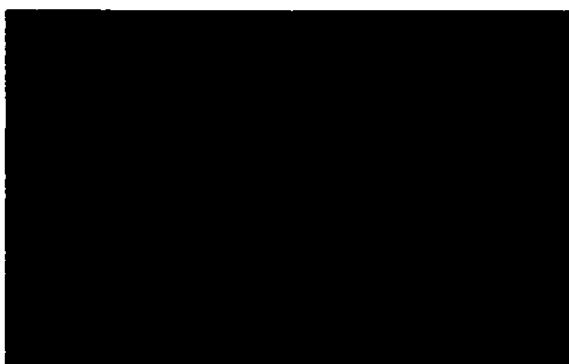
PAYMENT RIDER TO PROMISSORY NOTE

Debtors: JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC

Creditors: RICHARD YOUNG and JASON GREENE

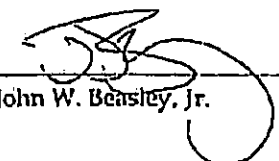
Date of Promissory Note: November 2<sup>nd</sup>, 2017

For so long as RICHARD YOUNG and JASON GREENE, whether together or individually, remain a holder of this Promissory Note, or until otherwise directed by either of them, each and every payment to be made under the Promissory Note shall be made by wire transfer as follows:



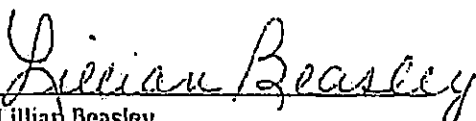
Notwithstanding the foregoing, any holder of this Promissory Note may, in writing to the Debtors, direct and designate such other place or address for payment to be observed by Debtors.

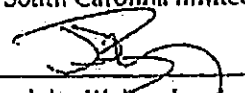
DEBTORS:

  
\_\_\_\_\_  
John W. Beasley, Jr.

  
\_\_\_\_\_  
John W. Beasley a/k/a John W. Beasley, Sr.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
\_\_\_\_\_  
Lillian Beasley

  
\_\_\_\_\_  
By: John W. Beasley, Jr.  
Its: Sole Member

(END OF PAYMENT RIDER TO PROMISSORY NOTE.)



BP0684902

# PGS:

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PREPARED BY AND  
AFTER RECORDING RETURN TO:

Justin John Price, Esq.  
478 King Street, Suite 4  
Charleston, South Carolina 29403  
843.368.9173

STATE OF SOUTH CAROLINA )  
 ) MORTGAGE, SECURITY AGREEMENT AND  
 )  
COUNTY OF CHARLESTON ) FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made and entered into as of November 2<sup>nd</sup>, 2017, by JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR. AND LILLIAN BEASLEY A/K/A LILLIAN J. BEASLEY, Individuals residing at 1050 Sea Eagle Watch, Charleston, South Carolina 29412, their heirs, successors, and assigns (collectively, the "Mortgagor"), in favor of RICHARD YOUNG, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, and JASON GREENE, an Individual whose contact information is c/o Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403, their heirs, successors, and assigns (collectively, the "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee pursuant to a promissory note of even date herewith in the original principal amount of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), together with any and all extensions, renewals, or modifications thereof, the "Note"; and

WHEREAS, Mortgagor desires to secure its obligations under the Note by granting the Mortgagee a mortgage lien on and security interest in the real property, improvements, fixtures, and personal property described below; and

NOW, THEREFORE, the Mortgagor in consideration of the aforesaid debt, and also in consideration of the further sum of Ten and No/100 Dollars (\$10.00), to them in hand paid by the Mortgagee, receipt whereof is hereby acknowledged, and for the purpose of securing the Obligations (as hereinafter defined) as a mortgage lien, has granted, bargained, sold, and released, and by these presents, does grant, bargain, sell and release unto the Mortgagee, their heirs, successors, and assigns, as security for the Obligations, the real property described on Exhibit "A" attached hereto and incorporated by reference (the "Land") including all improvements (the "Improvements") now existing or hereafter placed on the Land; and

TOGETHER, with all rights, privileges, interests, easements, tenements, hereditaments and appurtenances thereto belonging, including without limitation all right, title and interest of Mortgagor in and to water, minerals, flowers, shrubs, crops, trees, timber and other emblements

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now or hereafter located therein, and the rents, issues and profits thereof, and any and all improvements and fixtures now or subsequently attached to or used in connection therewith (collectively, together with the Land and the Improvements, the "Mortgaged Property").

TO HAVE AND TO HOLD, all and singular the Mortgaged Property, unto the Mortgagee, their heirs, successors, and assigns forever.

AND the Mortgagor covenants with and to the Mortgagee that the Mortgagor is indefeasibly seized of a good and marketable fee simple title to said Mortgaged Property and has good and lawful authority to mortgage said Mortgaged Property; and

PROVIDED, ALWAYS, that if the Mortgagor shall pay unto the Mortgagee the said Obligations (including any future advances); and if the Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants therein and in this Mortgage, then this Mortgage and all assignments contained herein shall cease and be null and void; otherwise to remain in full force and effect.

THIS MORTGAGE secures (a) the obligations of Mortgagor to Mortgagee under the Note; (b) any and all advances or expenditures made by Mortgagee pursuant to the terms of this Mortgage; (c) attorneys' fees, court costs, and other amounts which may be due under the Note or this Mortgage; (d) any and all other indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, of whatever class or nature, whether or not now contemplated by the parties, including future advances pursuant to S.C. Code Ann. § 29-3-50, 1976, as amended (as set forth more fully below); and (e) any and all extensions, renewals, and modifications of any of the foregoing (all of (a) through (e) being hereinafter referred to the as "Obligations". Extensions, renewals, and modifications of the debt secured hereby, and future advances, may bear interest at a rate or rates higher than the rate borne by the Note.

THIS MORTGAGE shall secure not only existing indebtedness but all future advances (in accordance with S.C. Code Ann. § 29-3-50) readvances, and additional indebtedness hereafter arising or incurred of Mortgagor to Mortgagee, and any notes evidencing the same, whether such advances or indebtedness is obligatory or to be made at the option of the Mortgagee, or otherwise, to the same extent as if such future advance or indebtedness was made on the date of the execution of this Mortgage, but the indebtedness secured by this Mortgage shall not exceed at any one time the maximum principal amount of Eight Hundred Thousand and 00/100 Dollars, plus interest thereon, reasonable attorneys' fees and court costs, and plus advancements for taxes, insurance premiums, and repairs made by Mortgagee. All indebtedness incurred after the date hereof by Mortgagor in favor of Mortgagee shall be deemed to be a future advance and entitled to the protection of this provision. Such future indebtedness may bear interest at a rate or rates greater than the rate set forth in the Note. Interest on the Note will be deferred, accrued, or capitalized, but Mortgagee shall not be required to defer, accrue, or capitalize any interest except as provided in the Note.

  
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AND the Mortgagor does hereby expressly covenant and agree as follows:

1. **Assignment of Rents and Profits.** As further security for the payment of the Obligations and for the faithful performance of all the covenants, agreements, terms and provisions of this Mortgage, Mortgagor hereby sells, mortgages, transfers and assigns unto Mortgagee and grants Mortgagee a security interest in all the right, title and interest of the Mortgagor in and to the rents, hunting leases, agricultural leases, issues, profits, revenues, royalties, rights and benefits from the above described property, and to that end Mortgagor hereby assigns and sets over unto the said Mortgagee all leases and licenses of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal, and Mortgagor does hereby authorize and empower the Mortgagee to collect said rents, issues, profits, revenues, royalties, rights and benefits, as they shall become due, and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as they may now be due or shall hereafter become due to the said Mortgagee, upon demand for payment thereof by said Mortgagee; it being understood and agreed, however, that no such demand shall be made unless and until there has occurred an Event of Default hereunder; and until such demand is made, Mortgagor is authorized to collect or continue collecting said rents, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect or continue collecting, as aforesaid, by the Mortgagor shall not operate to permit the collection of any rents more than thirty (30) days in advance of the date same are due under the terms and provisions of said lease or leases.
2. **After Acquired Property.** The Lien of this Mortgage shall automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of the Mortgaged Property or any part thereof, and shall likewise automatically attach to any and all subsequent or additional interests Mortgagor may hereafter acquire in the Mortgaged Property.
3. **Payment of Obligations.** Mortgagor covenants and agrees to pay the Obligations in accordance with their terms promptly as the principal and interest thereon shall become due.
4. **Maintenance of Property.** Mortgagor shall maintain the Mortgaged Property in good condition and repair and shall neither permit nor allow waste thereof. Mortgagor shall promptly repair or restore any portion of the Mortgaged Property which is damaged or destroyed by any cause whatsoever and shall promptly pay when due all costs and expenses of such repair or restoration. Mortgagor shall not remove, demolish, or materially alter any improvement or fixture which is now or hereafter part of the Mortgaged Property and shall cut no timber on the on the Mortgaged Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.
5. **Insurance.** Mortgagor shall maintain with respect to all buildings, improvements, fixtures, and tangible personal property which are now or hereafter part of the Mortgaged

  
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Property, fire and extended coverage insurance, including windstorm and hail, and earthquake insurance, and such other hazard insurance as Lender may require. If any portion of the Mortgaged Property is located in a federally designated flood plain, Mortgagor shall also obtain a flood insurance policy in the maximum amount available under the National Flood Insurance Act of 1968, but not to exceed the replacement value of all buildings and improvements located on the Mortgaged Property that are located in a federally designated flood plain. All such insurance shall be payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and shall not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to the Mortgagee. Mortgagor shall keep the Mortgaged Property continuously insured as herein required and shall deliver to Mortgagee a copy of each policy of insurance required hereby together with a current certificate of insurance. Mortgagor shall pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor shall furnish to Mortgagee at least ten (10) days prior to such expiration or termination a copy of a renewal or replacement policy of insurance meeting the requirements hereof together with a current certificate of insurance. If Mortgagor fails to insure the Mortgaged Property as herein required, Mortgagee may so insure the Mortgaged Property in the name of Mortgagor or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagor and shall be secured by this Mortgage. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Mortgaged Property which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Mortgaged Property at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

6. **Proceeds of Insurance.** Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed Mortgagor upon any policy of insurance insuring any portion of the Mortgaged Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. So long as there has occurred no Event of Default hereunder, or any event which but for the lapse of time or the giving of notice would constitute an Event of Default, any indemnity payment received by Mortgagee from any such policy of insurance shall be applied in a manner reasonably determined by Mortgagee to the replacement, repair or restoration of the portion of the Mortgaged Property damaged or destroyed. Notwithstanding the foregoing, if at the time of payment of the insurance proceeds there has occurred an Event of Default which has not been cured or remedied as permitted hereunder, or if in the reasonable determination of Mortgagee the insurance proceeds, together with funds made available by Mortgagor for such purpose, are insufficient to replace, repair, or restore the Mortgaged Property, then Mortgagor may apply such proceeds to payment of any sum secured by this Mortgage in such order as Mortgagee may determine. No portion of any

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indemnity payment which is applied to replacement, repair or restoration of any portion of the Mortgaged Property or which may be released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. Taxes. Mortgagor shall pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Mortgaged Property which is superior to the lien of this Mortgage and shall deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount of validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Mortgaged Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with the Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing. Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other Obligations secured hereby, for so much of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.

8. Advances by Mortgagee; Reimbursement. If Mortgagor fails to make payment for restoration or repair of the Mortgaged Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the legal rate of interest as established pursuant to law. Payments made for taxes by Mortgagee shall be a first lien on the Mortgaged Property to the extent of the taxes so paid with interest from the date of payment, regardless of rank or priority of this Mortgage. Mortgagor shall pay to Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

9. Extending Time for Payment. Mortgagee, without notice, and as often as it wishes to, may agree with any party obligated on the Obligations (or any of them), or having an interest in the Mortgaged Property, to renew or extend the time for payment of any part or all of the indebtedness secured hereby, without in any way affecting either the lien hereof or the liability of any other party.

10. Events of Default. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

  
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10.1. The occurrence of a default under and as defined in the Note, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in the Note;

10.2. The occurrence of an Event of Default under and as defined in any loan agreement of even date herewith between Mortgagor and Mortgagee, the giving of any required notice, and the continuation of such default unremedied beyond any applicable grace period set forth in any such loan agreement;

10.3. Failure by the Mortgagor to pay within five (5) days of the scheduled payment date any installment of principal and/or interest on the Obligations or any of them, including but not limited to the Note, or failure to pay taxes or insurance when due, and the continuation of any such failure for five (5) days after written notice thereof is provided thereof by Mortgagor to Mortgagee;

10.4. The sale, conveyance or transfer of all or any portion of the Mortgaged Property;

10.5. Failure by the Mortgagor to duly observe any other covenant, condition or agreement of the Obligations, or of this Mortgage, and the continuation of such failure for a period of thirty (30) days after written notice thereof is provided by Mortgagee to Mortgagor;

10.6. Default in the terms or conditions of any other mortgage which is a lien upon the Mortgaged Property, and the continuation of such default beyond any applicable grace period;

10.7. The discovery of any material amount of Hazardous Substance (as hereinafter defined) on the Mortgaged Property, which Mortgagee reasonably determines has a material, adverse effect on the value of the Mortgaged Property; provided, however, that the foregoing shall not be deemed to include petroleum products and related substances properly stored and used in the ordinary course of business operations on the Mortgaged Property, and shall further not be deemed to include minor spills of petroleum and related products having no material, adverse impact on the value of the Mortgaged Property;

10.8. The damage or destruction of a material portion of the Improvements, which damage or destruction is not promptly repaired or is not fully covered by insurance;

10.9. Mortgagor suffers or permits any lien, encumbrance, or security interest to arise or attach to the Mortgaged Property that is not promptly removed or satisfied, or any judgment is entered against Mortgagor that is not satisfied or appealed and stayed within thirty days; and

10.10. Any lien for labor, material, taxes or otherwise shall be filed against the Mortgaged Property or any part thereof, which lien or liens shall not be discharged or released within thirty (30) days after the filing of such lien, whether by payment in satisfaction of such lien or securing such lien by surety bond.

  
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11. Consequences of Default. If an Event of Default shall occur:

11.1. All of the indebtedness secured hereby shall become and be immediately due and payable at the option of the Mortgagee, without notice or demand, which are hereby expressly waived, and the Mortgagee may proceed to foreclose this Mortgage and sell the Mortgaged Property or otherwise pursue any right or remedy herein or by law provided. At the foreclosure, Mortgagee shall be entitled to bid and purchase the Mortgaged Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Mortgaged Property.

11.2. Irrespective of whether Mortgagee accelerates the maturity of all indebtedness secured hereby, or institutes foreclosure proceedings, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Property, all on such terms as are deemed appropriate to protect the security of this Mortgage. The receiver shall be entitled to a reasonable fee for so managing the Mortgaged Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control and managing the Mortgaged Property and collecting the rents, including but not limited to reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repair to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any liability or obligation of Mortgagor as lessor or Landlord of the Mortgaged Property and then to the sums secured by this Mortgage. Mortgagee and the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Mortgaged Property are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the rents, Mortgagee may at its sole option advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such funds shall be payable on demand by Mortgagee and shall bear interest at the rate provided in the Note. The entering upon and taking and maintaining of control of the Mortgaged Property by the Mortgagee or the receiver and the application of the rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee hereunder.

12. Marshalling of Assets. The Mortgagee shall not be required to marshal any present or future security for (including but not limited to this Mortgage and the Mortgaged Property), or guaranties of, the Obligations or any of them, or to resort to such security or guaranties in any

  
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particular order; and all of the rights hereunder and in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising. To the extent that it lawfully may, the Mortgagor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Mortgagee's rights under this Mortgage or under any other instrument evidencing any of the Obligations or under which any of the Obligations is secured or guaranteed, and to the extent that it lawfully may the Mortgagor hereby irrevocably waives the benefits of all such laws.

13. **Costs and Expenses.** All reasonable costs and expenses (including attorneys' fees) incurred or paid by the Mortgagee in connection with enforcement of the Obligations or the exercise by the Mortgagee of any of its rights or remedies hereunder, or in retaking, holding, preparing for sale and selling or otherwise realizing upon any of the Mortgaged Property, including, without limitation, the reasonable attorneys' fees and expenses of any attorney to whom this matter is referred (whether or not litigation is commenced), or for representation in proceedings under any bankruptcy or insolvency law, or in case the Mortgagee has become a party either as plaintiff or as defendant in any suit or legal proceeding in relation to the Mortgaged Property or the lien created herein, shall be repaid by the Mortgagor to the Mortgagee upon demand, with interest at the rate provided in the Note. In the event said expenses are not paid by the Mortgagor to the Mortgagee, they shall become part of the Obligations and shall be secured hereby.

14. **Interest.** It is agreed that nothing herein contained nor any transaction related thereto shall be construed or so operate as to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, or to make any payment or to do any act contrary to laws, that if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage or the Note in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

15. **Eminent Domain.** The Mortgagee shall be entitled to receive and recover the entire award made in any eminent domain proceedings to the extent that the same does not exceed the amount necessary to pay in full all sums secured by the lien of this Mortgage.

16. **Transfer of Property.** Mortgagor shall not sell, convey, transfer, mortgage, lease or further encumber, nor suffer or permit the sale, conveyance, transfer, mortgage, lease or encumbrance, whether voluntarily or by operation of law, of any interest in or any part of the Mortgaged Property, the rents and profits therefrom, without the prior written consent of Mortgagee. If any person or entity should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall unless otherwise provided herein be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of the Mortgagee, further assign the rents from the Mortgaged Property nor enter into any agreement or do any act to amend,

  
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modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof which would in each instance or in the aggregate materially affect the collateral or the operation of the Mortgage or the Mortgaged Property or the ability of the Mortgagor to repay the Note.

17. **Further Assurances.** The Mortgagor shall, at its sole expense, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments, in each case in form and substance, satisfactory to the Mortgagee, relating to the creation, validity, or perfection of the mortgage lien and security interests provided for in this Agreement under the Uniform Commercial Code or other laws of the State of South Carolina or of any other state or states in which Mortgagor is doing business or in which any of the Mortgaged Property is located as the Mortgagee may from time to time reasonably request, and shall take all such other action as the Mortgagee may reasonably require more completely to vest in any and assure to the Mortgagee its rights hereunder or in any of the Mortgaged Property, including without limitation execution and delivery of financing statements which the Mortgagee deems appropriate to perfect and continue the security interest hereby granted; and the Mortgagor hereby irrevocably authorizes the Mortgagee, or its designee, at the Mortgagor's sole expense, to execute and file such financing statements, with or without the Mortgagor's signature, as the Mortgagee may deem appropriate. In the event that any recording or refiling (or the filing of any statement of continuation of any mortgage lien or financing statement) or any repledge, or any other action, is required at any time to protect and preserve such security interests, the Mortgagor shall, at its sole expense, cause the same to be done or taken at such time and in such manner as may be necessary and as may be reasonably requested by the Mortgagee.

18. **Inspections; Easement.** Mortgagor hereby agrees that Mortgagee shall have the right, at any time during the term of this Mortgage, to conduct an environmental investigation of the Mortgaged Property, either itself or by or through designated agents and may exercise such rights from time to time, and in furtherance of such rights, Mortgagor hereby grants to Mortgagee, its successors and assigns, a non-exclusive limited easement over and across the Mortgaged Property, and its subsurface, for access to the Mortgaged Property and for the purpose of conducting an environmental investigation of such Mortgaged Property, provided that any such investigation shall be conducted in such a manner as to not disrupt the Mortgagor's operations on the Mortgaged Property. The satisfaction of, or the release of a portion of the Mortgaged Property, shall evidence a termination of the easement granted herein in full, or as to the Mortgaged Property released, as the case may be. This easement is irrevocable so long as this Mortgage is outstanding.

19. **Additional Assessments.** The Mortgagor shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Mortgaged Property which Assessment shall be prepared by an environmental auditor acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than

  
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once every year unless the loan evidenced by the Note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such Assessment more frequently than once a year.

20. **Governing Law.** This instrument is to be governed by and construed in accordance with the laws of the State of South Carolina and each of the remedies provided for herein shall be cumulative so that the right of the Mortgagee to exercise one or more of such remedies shall not be construed to limit or preclude the right of the Mortgagee to exercise any other remedy or remedies set forth herein.

21. **No Waiver.** No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

22. **Miscellaneous.** The covenants herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

23. **Benefits to Mortgagor.** The undersigned Mortgagor represents to Mortgagee that the Mortgagor is benefitted by the loans evidenced by the Note, whether or not the Mortgagor is the obligor thereon, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.

24. **Security Agreement.** This Mortgage creates a lien on the Mortgaged Property, and to the extent the Mortgaged Property is not real property under applicable law this Mortgage constitutes a security agreement under the South Carolina Uniform Commercial Code and any other applicable law.

25. **No Derogation.** The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of the Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the land or the improvements thereon. If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all personal property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or

  
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made appurtenant to the real property or used, useful or held for use, in the operation of the Improvements.

26. **Personal Property.** As to any part of the Mortgaged Property constituting personal property, Mortgagee may proceed as to such personal property in accordance with Mortgagee's rights and remedies in respect to such property or sell the personal property separately and without regard to the remainder of the Mortgaged Property in accordance with Mortgagee's rights and remedies provided by the South Carolina Uniform Commercial Code as well as other rights and remedies available at law or in equity.

27. **Financing Statements.** With respect to those items of the property which are or are to become fixtures related to the herein described real estate, this Mortgage shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law.

28. **Notices.** Whenever this Mortgage requires or permits any notice, request or demand by one party to the other, the notice, request or demand must be in writing and shall be deemed to have been given if it is enclosed in an envelope addressed to the party to be notified at the address stated below (or such other address as may have been designated by written notice) properly stamped, sealed, and deposited in the United States mail as certified or registered mail, return receipt requested. The address of each party for the purposes of this Section are as follows:

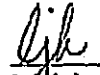

If to the Mortgagor: 1050 Sea Eagle Watch, Charleston, South Carolina 29412

If to the Mortgagee: c/o Justin John Price, Esq., Vaux Marscher Berglind, PA, 478 King Street, Suite 4, Charleston, South Carolina 29403

29. **Mortgagor Information.** The Mortgagor shall maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property and shall permit or cause the Mortgagor to permit the Mortgagee and its representatives of examine said books and records and all supporting vouchers and data at any time and from time to time upon reasonable request by the Mortgagee.

30. **Satisfaction and Release of Assignment of Rents.** The release of all or any part of the Mortgaged Property from the lien of this Mortgage shall be deemed a release of such property from the lien of the Assignment of Leases, Rents, and Profits and Security Agreement of even date herewith executed by the Mortgagor in favor of the Mortgagee.

31. **Severability.** If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any

  
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monetary sum, then, Mortgagee may, at its option, declare the indebtedness and all other sums secured hereby immediately due and payable.

32. **Instrument Under Seal.** This Mortgage is intended to be and shall be construed as an instrument under seal.

33. **WAIVER OF STAY.** IN THE EVENT OF THE COMMENCEMENT OF BANKRUPTCY PROCEEDINGS BY OR AGAINST THE MORTGAGOR, TO THE EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES THE BENEFIT OF THE AUTOMATIC STAY PROVIDED FOR BY 11 U.S.C. § 362 AND/OR ANY STAY, INJUNCTION, OR RESTRAINING ORDER ISSUED PURSUANT TO 11 U.S.C. § 105 OR OTHERWISE. TO THAT END, MORTGAGOR AGREES THAT IT WILL NOT SEEK OR ASSERT ANY SUCH STAY, INJUNCTION, OR RESTRAINING ORDER AND MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO AND AGREES NOT TO OPPOSE THE MODIFICATION OF ANY SUCH STAY TO ALLOW FOR THE ENFORCEMENT BY MORTGAGEE OF THIS MORTGAGE AND THE FORECLOSURE OR OTHER REALIZATION UPON THE COLLATERAL PROVIDED FOR HEREIN.

34. **WAIVER OF JURY TRIAL AND VENUE STIPULATION.** MORTGAGOR, ANY OTHER OBLIGORS, AND THE MORTGAGEE EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS NOTE, THE OBLIGATIONS, THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND MORTGAGOR, AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN MORTGAGEE AND ANY OBLIGORS. ANY LITIGATION ARISING HEREUNDER OR RELATED HERETO MAY BE TRIED BY THE SOUTH CAROLINA COURTS FOR CHARLESTON COUNTY OR THE FEDERAL COURTS OF SOUTH CAROLINA, MORTGAGOR HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS.

35. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Mortgaged Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below.

  
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Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the Mortgaged Property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS, WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.** Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below

IN WITNESS WHEREOF, the Mortgagor has hereunto set their Hands and Seals as of the date first written above.

WITNESSES:

[Signature]  
Witness No. 1

[Signature]  
Witness No. 2

MORTGAGEE:

[Signature] (Seal)  
John W. Beasley a/k/a John W. Beasley, Sr.

[Signature] (Seal)  
Lillian Beasley a/k/a Lillian J. Beasley

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 20th day of November, 2017, by John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley a/k/a Lillian J. Beasley.

Witness my hand and official seal the 20th day of November, 2017

[Signature]  
Notary Public for South Carolina  
My commission expires: 06/27/2025

[Initials]  
Initials

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the RMC Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size, shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement for access to the lot conveyed, said easement being shown on the aforementioned plat recorded in Plat Book DD at Page 586.

ALSO,

ALL of my right, title and interest in and to the Marsh located along New Lot 4 referenced above and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of Ocean and Coastal Resource Management, in "critical areas" as defined in § 49-39-10, *et seq.*, 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated thereto.

BEING a portion of the property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the RMC Office for Charleston County in Book H475 at Page 025.

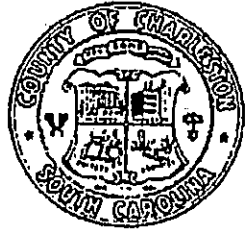
TMS No.: 427-00-00-102

*This Mortgage was prepared without the benefit of title examination by Justin John Price, Esq.,  
478 King Street, Suite 4, Charleston, South Carolina 29403.*

  
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Initials

# RECORDER'S PAGE



**NOTE:** This page **MUST** remain with the original document

**Filed By:**  
PRICE LAW FIRM  
JUSTIN JOHN PRICE ESQ  
47B KING STREET STE 4  
CHARLESTON SC 29403

| RECORDED  |                  |         |
|---|------------------|---------|
| Date:   | December 8, 2017 |         |
| Time:   | 9:29:32 AM       |         |
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| 0684  | 902              | Mtg     |
| Elaine H. Bozman, Register<br>Charleston County, SC |                  |         |

**MAKER:**  
BEASLEY JOHN W AL

**RECIPIENT:**  
YOUNG RICHARD AL

**Original Book:**  
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# of Pages: 15  
# of Sats: [ ] # of References: [ ]

Note: [ ]

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| Recording Fee        | \$ 10.00        |
| Extra Reference Cost | \$ -            |
| Extra Pages          | \$ 10.00        |
| Postage              | \$ -            |
| Chattel              | \$ -            |
| <b>TOTAL</b>         | <b>\$ 20.00</b> |

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10-2849

CONFESSION OF JUDGMENT OF  
 JOHN W. BEASLEY, JR.,  
 JOHN W. BEASLEY a/k/a JOHN W. BEASLEY, SR.,  
 LILLIAN BEASLEY, and  
 BEASLEY CONSTRUCTION COMPANY, LLC  
(Covenant Not to Execute Absent Default)

FILED  
 19 MAY 30 AM 11:57  
 CLERK OF COURT

PERSONALLY APPEARED before me John W. Beasley, Jr. ("John Jr."), John W. Beasley a/k/a John W. Beasley, Sr. ("John Sr."), Lillian Beasley ("Lillian"), and Beasley Construction Company, LLC, a South Carolina limited liability company (the "Company"), having been duly sworn, deposed and stated that:

1. We, John Jr., John Sr., and Lillian are over the age of twenty-one years, and we make this Confession of Judgment (this "Confession") of sound mind and body.
2. That the Company, by this representation and warranty of authority by the undersigned signatory, is duly authorized to make this Confession and the signatory is of sound mind and body.
3. Our addresses, as of the execution of this Confession, are as follows:
  - A. John Jr., 575 Lynne Ave, Charleston, South Carolina 29412;

  
 John Jr. Initials

  
 John Sr. Initials

  
 Lillian Initials

  
 Company Initials

- B. John Sr., 1050 Sea Eagle Watch, Charleston, South Carolina 29412;
- C. Lillian, 1050 Sea Eagle Watch, Charleston, South Carolina 29412; and
- D. Company, c/o John Jr., Sole Member and Registered Agent, 789 Shipwreck Place, Inman, South Carolina 29349.

4. Of even date of the execution hereof, Richard Young ("Young"), Jason Greene ("Greene", Young and Greene collectively hereunder, the "Creditors"), John Jr., John Sr., Lillian, and the Company (John Jr., John Sr., Lillian and the Company collectively hereunder, the "Debtors") did execute a certain Settlement Agreement and Conditional Release of Claims (the "Settlement and Release"), whereby the parties agree to resolve certain possible claims provided certain amounts are timely repaid to Young and Greene, all as more particularly stated in said Settlement and Release.

5. As security for the performance of the Debtors under the Settlement and Release, Debtors have agreed, *inter alia*, to execute this Confession of Judgment in favor of the Creditors for the principal sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00) (the "Debt").

6. The Debtors have agreed to be jointly and severally liable for the repayment of the Debt.

7. We are justly and truly indebted to Creditors for the principal Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), plus any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees (the "Indebtedness"), which Indebtedness arises out of our joint and several obligations under the Settlement and Release.

  
 \_\_\_\_\_  
 John Jr. Initials

  
 \_\_\_\_\_  
 John Sr. Initials

  
 \_\_\_\_\_  
 Lillian Initials

  
 \_\_\_\_\_  
 Company Initials

8. In the event of default of the terms of the Settlement and Release, we hereby consent to and authorize the entry into the public records of Charleston County, South Carolina this Judgment by Confession for the full sum of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars (\$647,500.00), plus any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees, and less any sums paid as of the filing hereof with the Clerk of Court for Charleston County, South Carolina.

9. This Judgment by Confession will not be placed on the public records of Charleston County, South Carolina unless we default in our obligations as set forth above and in the Settlement and Release, specifically that the Indebtedness shall be repaid in full on or before the "Maturity Date" but in no case beyond the "Cure Period", as such dates are stated in the Settlement and Release. Upon any default of the Settlement and Release or this Confession, the attorney for Creditors may record this Judgment by Confession by submitting an Affidavit to the Clerk of Court as to default, as to any principal balance paid, and as to the remaining balance to be entered in the Judgment Roll, including any accrued and continuing interest, late fees, costs of collection, and/or court costs and attorneys' fees. Any recorded Judgment may be transferred thereafter to any county or state in which we own property.

10. We hereby specifically acknowledge that once this Confession has been filed of record in Charleston County, South Carolina, it shall have the full force and effect of an Order of the Court of Common Pleas for the Ninth Judicial Circuit for Charleston County, South Carolina and thereafter may be exported to any jurisdiction within the State of South Carolina and/or any jurisdiction of these United States for purposes of collection of the Indebtedness.

11. Once recorded, the Judgment shall bear interest at the statutory rate for judgments in South Carolina.

  
John Jr. Initials

  
John Sr. Initials

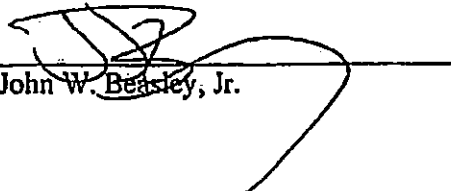
  
Lillian Initials

  
Company Initials


12. Upon compliance with the terms of the Settlement and Release, we shall be forever released and discharged from any liability to Creditors arising out of, or in any manner connected with, this Judgment by Confession or the Settlement and Release. Additionally, upon final payment by us in compliance with the Settlement and Release and this Confession, Creditors shall mark this Confession "satisfied and released" and forward the same to us at:

c/o John Jr., John Sr., and Lillian Beasley and Beasley Construction Company, LLC  
1050 Sea Eagle Watch  
Charleston, South Carolina 29412

The undersigned, under oath, having verified that he has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets his hand before a Notary Public this 20TH day of November, 2017.

  
John W. Beasley, Jr.

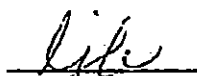
SWORN TO before me this 20TH day) of November, 2017.

 (SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*Signatures Continue on Following Pages.*


  
John Jr. Initials

  
John Sr. Initials

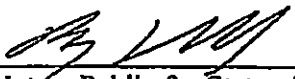
Page 4 of 7  
  
Lillian Initials .

  
Company Initials

The undersigned, under oath, having verified that he has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets his hand before a Notary Public this 20TH day of November, 2017.

  
John W. Beasley a/k/a John W. Beasley, Sr.


SWORN TO before me this 20TH day) of November, 2017.

 (SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2025

*Signatures Continue on Following Pages.*

  
John Jr. Initials

  
John Sr. Initials

Page 5 of 7  
  
Lillian Initials

  
Company Initials

The undersigned, under oath, having verified that she has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets her hand before a Notary Public this 20<sup>th</sup> day of November, 2017.

Lillian Beasley  
Lillian Beasley

SWORN TO before me this 20<sup>th</sup> day) of November, 2017.

[Signature] (SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2023

*Signatures Continue on Following Pages.*

[Signature]  
John Jr. Initials

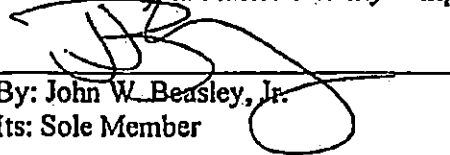
[Signature]  
John Sr. Initials

[Signature]  
Lillian Initials

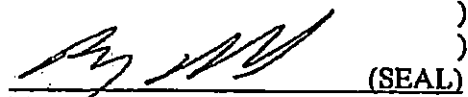
[Signature]  
Company Initials

The undersigned, under oath, having verified that it has read the above Judgment by Confession and that the information contained therein is true and accurate, hereby sets its hand before a Notary Public this 20<sup>th</sup> day of November, 2017.

BEASLEY CONSTRUCTION COMPANY, LLC,  
a South Carolina limited liability company

  
By: John W. Beasley, Jr.  
Its: Sole Member

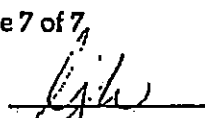
SWORN TO before me this 20<sup>th</sup> day) of November, 2017.

  
(SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: 06/17/2023

*End of Confession.*

  
John Jr. Initials

  
John Sr. Initials

Page 7 of 7  
  
Lillian Initials

  
Company Initials

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10- 2849

ATTORNEY AFFIDAVIT IN SUPPORT OF  
 CONFESSION OF JUDGMENT

FILED  
 2019 MAY 30 AM 11:57  
 CLERK OF COURT

BEFORE ME, an officer duly authorized to take oaths and administer acknowledgements, appeared Justin John Price, Esq., who after being duly sworn, did depose and state:

1. My name Justin John Price, Esq., and I am an attorney with the law firm of Price Law, LLC licensed to practice law in the State of South Carolina.
2. Price Law, LLC represents the above-captioned Plaintiffs, Richard Young and Jason Greene.
3. I am the attorney at Price Law, LLC tasked with the primary representation of the above-captioned Plaintiffs, Richard Young and Jason Greene, in this matter.
4. On November 20, 2017, Defendant Beasley Construction Company, LLC, through its Sole Member John W. Beasley, Jr. and Defendants John W. Beasley, Jr., John W. Beasley a/k/a John W. Beasley, Sr., and Lillian Beasley, each an Individual, did each execute a Confession of Judgment (the "Confession of Judgment") to secure their joint and several liability

*1/30/17*

for full performance and obligations under the terms of that certain Settlement Agreement and Conditional Release of Claims (the "Settlement Agreement"), of even date therewith, which said Settlement Agreement is attached hereto as Exhibit "A" and incorporated herein by reference thereto.

5. Calculated pursuant to the Settlement Agreement, the principal amount confirmed and owed by the Defendants, joint and several, to the Plaintiffs was \$647,500.00.

6. Pursuant to the Settlement Agreement, the entire principal balance was due, in full, on or before 2:00 PM ET, November 21, 2018 (the "Maturity Date").

7. By mutual agreement of the Plaintiffs and Defendants, the Maturity Date was extended to 2:00 PM ET, May 21, 2019, upon the timely payment of Defendants to Plaintiffs of the sum of \$25,000.00, said sum to be applied to a reduction in principal (the "Extended Maturity Date").

8. The above-captioned Defendants timely made the one-time payment of \$25,000.00, thereby reducing the principal balance due under the Settlement Agreement to \$622,500.00 and extending the Maturity Date to the Extended Maturity Date.

9. The above-captioned Defendants have failed to timely make any other payments due under the Settlement Agreement.

10. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the remaining principal balance of \$622,500.00 (the "Delinquent Balance") under the Settlement Agreement is now past due and delinquent as of May 21, 2019, any cure period allowed under the Settlement Agreement expired as May 26, 2019 (the "Cure Period"), the Cure Period expired without Defendants making any payment in reduction of the Delinquent Balance, and thereafter said Delinquent Balance began to accrue interest at twelve percent (12%) per annum (the "Default Interest Rate").

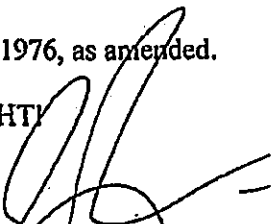
11. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the Delinquent Balance shall accrue interest at the Default Interest Rate until such time as the filing of this judgment, at which point said Delinquent Balance shall accrue post-judgment interest.

12. Calculated pursuant to the Settlement Agreement and the Confession of Judgment, the Delinquent Balance shall include continuing interest, late fees, all costs of collection, including attorney's fees, court costs, and post-judgment interest.

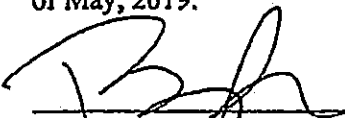
13. This affidavit is offered in support of the Delinquent Balance, including continuing interest, late fees, all costs of collection, including attorney's fees, and court costs accrued under the Settlement Agreement the Confession of Judgment and post-judgment interest from the filing of this judgment, all as confessed by the above-captioned Defendants.

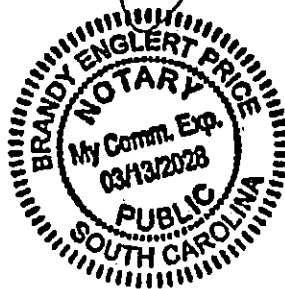
14. Post-judgment interest accrues from the date of the filing of this judgment at the rate pursuant to S.C. Code Ann. § 34-31-20 (B), 1976, as amended.

FURTHER AFFIANT SAYETH NAUGHTY

  
Justin John Price, Esq.

SWORN TO before me this 30th day) of May, 2019.

  
(SEAL)  
Notary Public for State of South Carolina  
My Commission Expires: March 13, 2028



# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )      **SETTLEMENT AGREEMENT AND  
 CONDITIONAL RELEASE OF CLAIMS**

**THIS SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS**  
 ("Settlement and Release") is made by and between RICHARD YOUNG, an Individual whose  
 address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road, Suite 208,  
 Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Young"); JASON GREENE,  
 an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road,  
 Suite 208, Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Greene", Young  
 and Greene collectively hereunder the "Creditors"); JOHN W. BEASLEY A/K/A JOHN W.  
 BEASLEY, SR., an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South  
 Carolina 29412 ("John Sr."); and LILLIAN BEASLEY, an Individual whose current address is 1050  
 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian", John Sr. and Lillian collectively  
 hereunder the "Debtors") upon the terms and conditions contained herein. Creditors and Debtors  
 are sometimes referred to herein each as a "Party" and collectively as the "Parties" to this  
 Settlement and Release.

WHEREAS, on or about September 13, 2017, John Beasley Jr. borrowed the sum of Forty  
 Thousand and 00/100 Dollars (\$40,000.00) from Young, which was to be repaid on or before  
 October 11, 2017, and carry interest such that the repayment amount was to be Eighty Thousand  
 and 00/100 Dollars (\$80,000.00); and

WHEREAS, on or about September 25, 2017, John Beasley Jr. borrowed the sum of Two  
 Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or  
 before October 13, 2017, and carry interest such that the repayment amount was to be Two  
 Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 4, 2017, John Beasley Jr. borrowed the sum of Two  
 Hundred Thousand and 00/100 Dollars (\$200,000.00) from Greene, which was to be repaid on or  
 before October 13, 2017, and carry interest such that the repayment amount was to be Two  
 Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$232,500.00); and

WHEREAS, on or about October 12, 2017, John Beasley Jr. borrowed the sum of Two  
 Hundred Thousand and 00/100 Dollars (\$200,000.00) from Young, which was to be repaid on or  
 before October 19, 2017, and carry interest such that the repayment amount was to be Three  
 Hundred Thousand and 00/100 Dollars (\$300,000.00); and

WHEREAS, in summation, John Beasley Jr. borrowed the principal sum of Six Hundred  
 Forty Thousand and 00/100 Dollars (\$640,000.00) from the Creditors, which said sum was to be  
 solely used for the improvement of certain real estate and to be repaid in full, which with interest  
 totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars (\$765,000.00), on or before  
 October 19, 2017 (the "Loan"); and

WHEREAS, John Sr. and Lillian agreed to join John Beasley Jr., along with certain other parties, as co-Debtors for the repayment of the Loan as well as agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof; and

WHEREAS, the Creditors and Debtors previously memorialized a separate settlement and release agreement, executed by John Sr. and Lillian on or about November 20, 2017 (the "Prior Settlement and Release Agreement") to conditionally resolve the Loan dispute between them upon the terms and conditions set forth in said Prior Settlement and Release Agreement and in order to avoid the costs and frustrations attenuated with litigation; and

WHEREAS, the terms of the Prior Settlement and Release Agreement provided for the recording of certain confessions of judgment with the Clerk of Court for Charleston County, South Carolina, and thereafter such other jurisdictions as deemed appropriate by Creditors, should certain sums due thereunder not be timely paid; and

WHEREAS, on May 30, 2019, Creditors filed said confessions of judgment, along with the required supporting affidavits, with the Clerk of Court for Charleston County, South Carolina, as judgment number 2019-CP-10-2849 (the "Judgment"); and

WHEREAS, at the time of filing, the Judgment included a principal balance of \$622,500.00 and attorney's fees and costs of \$8,825.50; and

WHEREAS, the Judgment is joint and several as to all named judgment debtors, which includes the Debtors listed herein, and the principal balance of said Judgment has accrued delinquent interest and post-judgment interest; and

NOW, THEREFORE, in consideration of the payments and promises recited herein, the Creditors fully release and forego all legal, equitable, and statutory remedies and processes available to them so long as the Debtors fully perform all obligations hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Creditors and Debtors hereby covenant and agree as follows:

1. The Settlement Sum. Subject to the terms, conditions, and provisions of this Settlement and Release, the Debtors agree to pay and deliver to and for the benefit of Creditors the total sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) (the "Settlement Sum") in accordance with the following payment terms:

- a. Simultaneously with the execution of this Agreement two (2) lump sum payments will be delivered from the trust account of John C. Johnston, Esq. and shall be payable as follows: (i) to "Richard Young" in the sum total of \$25,000.00; and (ii) to "Jason Greene" in the sum total of \$25,000.00. The Settlement Sum shall be delivered as follows: Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412 ("Creditors' Counsel").

2. Release from Judgment. Within ten (10) days of Creditors' Counsel's receipt for the Settlement Sum, Creditors shall cause to be filed of record appropriate partial releases as to the Judgment to indicate, of record, that Debtors shall be released from the Judgment. The releases hereunder shall not release any other judgment debtor, the principal balance of the judgment shall be reduced by the Settlement Sum hereof, and the Judgment shall remain in full force and effect as to any non-released judgment debtor.

3. Debtors' Unconditional Release of Creditors. In consideration of the mutual promises herein contained, and other good and valuable consideration, Debtors, along with anyone claiming through them or on their behalf, agree to, and hereby do fully and unconditionally release and forever discharge Creditors, together with their heirs, successors, and assigns, of and from all claims, demands, actions, causes of action, damages, liquidated damages, punitive damages, equitable relief, costs, expenses and attorneys' fees, of any nature whatsoever, known or unknown, which shall or may have accrued on or prior to the date of this Settlement and Release is executed, including, without limitation, those claims arising from or related in any manner whatsoever to Parties' disputes, the Loan, and/or matters alleged, or which could have been alleged, in any lawsuit, claim, action, complaint, or other formal legal proceeding.

4. No payments made, release given or other action taken pursuant to this Settlement and Release shall be deemed an admission of liability or wrongdoing by Creditors or Debtors. It is understood and agreed that this Settlement and Release represents the compromise by Creditors and Debtors to resolve a variety of doubtful and disputed claims and counterclaims, and that the amounts paid and received hereunder are made solely for the purpose of ending their disagreements and to buy, sell, and exchange their individual and respective peace of mind and to avoid the significant costs of protracted litigation.

5. This Settlement and Release constitutes the entire agreement and understanding between Creditors and Debtors, and it supersedes all prior understandings or agreements, written or oral, on the subjects contained herein, and the terms of this Settlement and Release are contractual and not mere recitals. No waiver, amendment, deletion, modification or addition of any provision of this Settlement and Release shall be effective unless it is in writing and signed by the undersigned Parties and witnessed.

6. The promises, representations and agreements provided in this Settlement and Release are continuing and shall survive the execution and delivery of this Settlement and Release, as well as the completion of all undertakings required hereunder.

7. This Settlement and Release shall be construed pursuant to the laws of the State of South Carolina.

8. The terms and provisions of this Settlement and Release are severable, and if any part of this Settlement and Release is found to be unenforceable, the remainder will continue to be valid and enforceable without reference to the stricken provision.

9. The Parties further agree that any questions, doubts and ambiguities in connection with the meaning of any term of this Settlement and Release shall be construed as if the Parties jointly drafted the Settlement and Release with the mutual intention that no claim or demand whatsoever should survive the making of this Settlement and Release under any circumstances.

10. The terms, conditions, and payments made pursuant to this agreement shall be STRICTLY CONFIDENTIAL, and neither the Parties hereto, their attorneys, nor any person acting for or on behalf of any party hereto may disclose the contents and terms of this Settlement and Release, nor shall this Settlement and Release, or any of its contents, be made available or otherwise communicated in any form to any person except as may be required by law, or as may be necessary to comply with mandatory disclosure for tax or other governmental regulatory purposes. Nothing herein shall prevent the admission of a copy of this Settlement and Release as an Exhibit in a Court of law in order to seek enforcement of the terms hereof or as needed to enforce the Confession of Judgment given in connection herewith. Notwithstanding the foregoing, the Parties agree and acknowledge their mutual agreement to keep the provisions hereof confidential is the only consideration exchanged in support of the confidentiality obligations hereof and, specifically, that no monetary consideration has been exchanged in support of this confidentiality provision.

11. The undersigned each warrant and represent that they are competent to execute this Settlement and Release and that each is duly authorized and has full right and authority to execute this Settlement and Release on behalf of any party for whom a signature is given in representative capacity.

12. This Settlement and Release may be executed in multiple copies and a fully assembled document with copies of the required signatures shall be effective as an originally signed document. Moreover, the exchange of signature pages hereof by facsimile or Portable Document Format ("PDF") transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes. Signatures transmitted by facsimile or PDF shall be deemed to be original signatures for all purposes hereunder.

13. By their signatures below, the undersigned Parties represent and warrant that they have relied only upon their own judgment, belief and knowledge of the nature, extent, effect and duration of the damages and liability that could have been raised in the litigation proceedings referenced herein, and that this Settlement and Release is made without reliance upon any statement or representation of any Party or entity signing below, or any of their respective employees, agents, members, shareholders, employees, attorneys, or representatives.

14. By their signatures below, each Party hereto states that he, she, or it has fully read and understood the terms and conditions of this Settlement and Release and knows the contents thereof, and that he, she, or it has had the opportunity to review the same and discuss it with

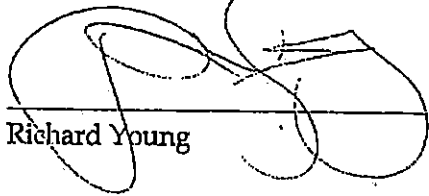
their attorneys, as needed or desired, and that they have voluntarily signed and executed this Settlement and Release of their own free will.

15. Creditors and Debtors acknowledge that they are each fully responsible for the taxes, if any, that may be incurred or owed due to the payments, agreements, and transactions described herein, and neither of them have offered any opinions or made any representations to the other about any tax-related matter.

16. Except for the release of Debtors herein, this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record.

IN WHEREOF, WITNESS we have hereunto set our hands and seals agreeing to be legally bound.

AGREED TO BY:


 (L.S.)  
Richard Young

STATE OF Alabama )  
COUNTY OF Baldwin )

ACKNOWLEDGMENT

I, Katy L Sikorski, Notary Public for Alabama, do hereby certify that Richard Young personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30 day of November, 2020.

  
Notary Public for Alabama

My Commission Expires:  
June 19 2024



AGREED TO BY:

[Signature]  
\_\_\_\_\_  
Jason Greene (L.S.)

STATE OF Alabama )  
COUNTY OF Lauderdale )

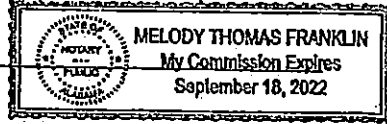
ACKNOWLEDGMENT

I, Melody Thomas Franklin Notary Public for Alabama do hereby certify that Jason Greene personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 2nd day of November, 2020.  
December

Melody Thomas Franklin  
Notary Public for Alabama

My Commission Expires:



[Signature]

AGREED TO BY:

John W. Beasley (L.S.)  
John W. Beasley a/k/a  
John W. Beasley, Sr.

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, Victoria Kurtz, Notary Public for South Carolina, do hereby certify that John W. Beasley a/k/a John W. Beasley, Sr. personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30 day of November, 2020.

Victoria Kurtz  
Notary Public for South Carolina

My Commission Expires:  
9-4-22

AGREED TO BY:

Lillian Beasley (L.S.)  
Lillian Beasley

STATE OF SOUTH CAROLINA    )  
   )  
COUNTY OF CHARLESTON    )

ACKNOWLEDGMENT

I, Victoria Kurtz, Notary Public for South Carolina, do hereby certify that Lillian Beasley personally appeared before me this day duly executed the foregoing instrument and acknowledged that he fully understood its contents and that he executed the same as his free act and deed.

SWORN and subscribed before me  
this 30 day of November, 2020.

Victoria Kurtz  
Notary Public for South Carolina

My Commission Expires:  
9.4.22

# EXHIBIT C

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RICHARD YOUNG and JASON )  
 GREENE, )  
 )  
 Plaintiffs/Creditors )  
 )  
 vs. )  
 )  
 JOHN W. BEASLEY, JR.; JOHN W. )  
 BEASLEY A/K/A JOHN W. )  
 BEASLEY, SR.; LILLIAN )  
 BEASLEY; and BEASLEY )  
 CONSTRUCTION COMPANY, )  
 LLC, )  
 )  
 Defendants/Debtors. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 C/A NO.: 2019-CP-10-2849

RELEASE OF JUDGMENT LIEN AS TO A  
 SPECIFIC PROPERTY, RELEASE OF JUDGMENT  
 LIEN AS TO CERTAIN DEFENDANTS, AND  
PARTIAL SATISFACTION OF JUDGMENT

For and in consideration of the payment of the total sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Release Fee"), paid to Richard Young and Jason Greene, collectively the "Plaintiffs", by only Defendant John W. Beasley, Sr. ("Defendant Beasley Sr.") and Defendant Lillian Beasley ("Defendant Lillian", Defendant Beasley Sr. and Defendant Lillian being collectively referred to herein as the "Released Defendants"), towards the reduction of the previously entered judgment in this matter, the receipt of which is hereby acknowledged, a certain parcel of real property owned by the Released Defendants is hereby released from the lien of said judgment, such parcel of property being described on the attached Description of Property.

Moreover, said Defendant John W. Beasley, Sr. and Defendant Lillian Beasley, the Released Defendants, are hereby personally released from judgment in this matter.

Moreover, the judgment entered in the above-referenced matter is hereby partially satisfied and reduced by the payment of said \$50,000.00 Release Fee, said funds being received by Plaintiffs on December 11, 2020.

The remaining balance of said judgment lien, plus accruing post-judgment interest and costs, shall continue on record against Defendant John W. Beasley, Jr. and Defendant Beasley Construction Company, LLC, collectively, the "Remaining Defendants", and any, and all, other property of said Remaining Defendants. Nothing in this document shall affect or limit the rights of the Plaintiffs in their collective or individual pursuit of collecting the remaining balance of said judgment from any other property, real or personal, presently owned or acquired hereafter from the Remaining Defendants.

Executed this 17th day of March, 2021.

s/ Justin John Price, Esq.  
Justin John Price, Esq.  
S.C Bar No.: 77461  
Price Law LLC  
525 Folly Road, Suite 208  
Charleston, South Carolina 29412  
843.822.4313 (office)  
843.620.1022 (fax)  
justin.price@justinpricelaw.com

March 17, 2021  
Charleston, South Carolina

DESCRIPTION OF PROPERTY

ALL that certain piece, parcel or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the RMC Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size, shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement for access to the lot conveyed, said easement being shown on the aforementioned plat recorded in Plat Book DD at Page 586.

ALSO,

ALL of my right, title and interest in and to the Marsh located along New Lot 4 referenced above and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of Ocean and Coastal Resource Management, in "critical areas" as defined in § 49-39-10, *et seq.*, 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated thereto.

BEING a portion of the property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the RMC Office for Charleston County in Book H475 at Page 025.

TMS No.: 427-00-00-102

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene,

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A NO.: 2022-CP-10-03510

*File Exh. b. 1-5*

*227 L. 267*

ELECTRONICALLY FILED 2023 Sep 25 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510

# MOTION HEARINGS (9.27.23)

- A. Beasley Defendants' Motion for Reconsideration *JRF*
- B. Beasley Defendants' Motion for Summary Judgment *IAN*
- C. Plaintiffs Motion for Foreclosure Hearing and Award of Attorneys Fees and Costs *IAN*
- D. Plaintiffs' Amended Motion to Dismiss And/Or Strike Beasley Defendants' Counterclaims and for Summary Judgment on the Beasley Defendants' Counterclaims *Ian*
- E. Plaintiffs Motion for Protective Order *JRF*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Richard Young and Jason Greene,  
Plaintiffs,

vs.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No. 2022-CP-10-3510

**BEASLEY DEFENDANTS' MOTION  
TO RECONSIDER**

**INTRODUCTION & BACKGROUND**

This Court’s Order and Judgment of Foreclosure and Sale of October 6, 2023 (“**Order**”), commits an error that must be reconsidered and corrected in order to avoid manifest injustice. On September 7, 2023, Plaintiffs filed a Notice of Motion and Motion for Foreclosure Hearing and Award of Attorney’s Fees and Costs (“**Motion**”). In that Motion, Plaintiffs requested the Court “to schedule a hearing to establish the debt [and] set a sales date.” (Motion, p. 1.) A hearing on Plaintiffs’ Motion—alongside other motions, including a Motion to Reconsider the Court’s Order Granting Summary Judgment to Plaintiffs, filed by John W. Beasley a/k/a John W. Beasley Sr. and Lillian Beasley, in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 (the “**Beasley Defendants**”)—was conducted on September 27, 2023. Rather than conducting a hearing on the Motion and scheduling a hearing to establish the debt for a later date, the Court immediately proceeded to conducting a hearing to

establish the debt. (Exhibit A, Hearing Tr., p. 61, l. 5 – p. 67, l. 16.) At the hearing, the Court found the total debt to be \$1,079,637.16 with a per diem of \$205.01 per day based upon the principal amount plus the interest of 12 percent. (Exhibit A, Hearing Tr., p. 65, ll. 11–16.) The Beasley Defendants presented argument as to the existence of an order of restitution against John W. Beasley, Jr. (“**Restitution Order**”), who was a co-debtor with the Beasley Defendants, until the Beasley Defendants were released due to the settlement agreement dated November 30, 2020. This Restitution Order is attached hereto as **Exhibit B**. Pursuant to the Restitution Order, John W. Beasley, Jr., is ordered to provide restitution to Plaintiffs in the amount of \$590,000. The Court did not take into consideration the Restitution Order or the restitution amount in its determination of the debt. For the reasons set forth below, the Beasley Defendants, by and through their undersigned counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby submit this Motion for Reconsideration of the Court’s Order (1) for immediately proceeding to conducting a hearing to establish the debt, without providing for an opportunity for the Beasley Defendants to prepare a case in defense, and (2) for failing to consider the Restitution Order and restitution amount in its determination of the debt.

### **LEGAL STANDARD**

Rule 59(e) of the South Carolina Rules of Civil Procedure governs motions for reconsideration. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) (noting “it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments,” and that a “motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule”).

The South Carolina Supreme Court has recognized “two basic situations in which a party should consider filing a Rule 59(e)[, SCRC,] motion.” *Id.* at 24, 602 S.E.2d at 780. Under the rule, “[a] party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* But, “[a] party **must** file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis added). The Supreme Court of South Carolina has also recognized that “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Id.* at 22, 602 S.E.2d at 779. Rather, “[i]t is **inherently unfair** to disallow such an opportunity.” *Id.* (emphasis added).

### ARGUMENT

The Court’s Order presents a clear error, because it did not consider the Restitution Order in this case. Restitution is designed to “compensate the victim[s] for any pecuniary damages.” *See* S.C. Code § 17-25-322(A). Additionally, restitution orders can be “enforced as a civil judgment” if a defendant is found to be in default. S.C. Code § 17-25-323(D). Judgment liens can then be attached. S.C. Code §§ 17-25-323(B), (E). Importantly, offsets must be considered when evaluating debts where both restitution orders and civil judgments exist. In the case of *United States v. Cluck*, 143 F.3d 174 (5th Cir. 1998), the Fifth Circuit Court of Appeals found that these remedies **must** be construed as additional enforcement measures, and **not** as independent, additional obligations. *Id.* at n. 9. Thus, the Fifth Circuit Court of Appeals held that “[a]ny payment [the defendant] made on the [civil] order must be credited towards fulfillment of [the] restitution

obligation, and vice versa.” *Id.* Based on the foregoing, courts must consider restitution orders and civil judgments in tandem in order to determine whether offsetting applies.

The Court in this case did not inquire at all into how much restitution has been provided to Plaintiffs by John W. Beasley, Jr. The Court’s failure to do so demonstrates it failed to consider the principles of offsetting and the prevention of a double recovery. A scheduled hearing would have assisted the Court in coming to this determination, but the Court failed to schedule a hearing at a later date and, instead, chose to proceed immediately to making a determination on the debt.

### CONCLUSION

The Beasley Defendants respectfully submit the Court improperly ignored the Restitution Order and the effect any restitution amount may have in offsetting the debt amount. However, it is not too late for this Court to reexamine its Order, to reconsider and revise its initial Order, and to prevent a manifest injustice from occurring. Both the facts and the law favor the Beasley Defendants. Based on the foregoing, the Court should reconsider its Order, schedule a hearing to determine how much restitution has been provided to Plaintiffs, and offset that amount from the Court’s established debt.

Respectfully submitted on October 16, 2023.

**Maynard Nexsen, PC**

/s/ Cheryl D. Shoun

Cheryl D. Shoun

SC Bar No. 5092

Maynard Nexsen PC

205 King Street, Suite 400

Charleston, SC 29401

(843) 720-1752

[cshoun@maynardnexsen.com](mailto:cshoun@maynardnexsen.com)

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/s/ Markley Dennis Jr.  
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**Johnston Law Firm, LLC**

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/s/ Victoria W. Kurtz  
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(843) 535-9560  
[victoria@johnstonlawsc.com](mailto:victoria@johnstonlawsc.com)

*Attorneys for the Defendants John W.  
Beasley a/k/a John W. Beasley Sr.  
and Lillian Beasley*



**Cheryl D. Shoun**  
Shareholder  
Admitted in SC

October 17, 2023

Julie J. Armstrong, Clerk of Court  
Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

**Re: *Richard Young and Jason Greene v. John W. Beasley, et al.***  
***Civil Action No. 2022-10-CP-03510***

Dear Ms. Armstrong:

This firm represents Defendants John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley ("Defendants") in the above-referenced matter. It has come to our attention that Exhibits A and B were not attached to Defendants' Motion to Reconsider, filed October 16, 2023. Please find attached Exhibits A and B to the Motion to Reconsider.

We apologize for this oversight.

Very truly yours,

A handwritten signature in black ink that reads "Cheryl D. Shoun". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Cheryl D. Shoun

CDS/lop

Enclosures

205 King Street  
Suite 400 (29401)  
PO Box 486  
Charleston, SC 29402  
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**T** (843) 720-1762  
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**E** CShoun@maynardnexsen.com  
Maynard Nexsen PC  
**Attorneys and Counselors at Law**

# EXHIBIT A

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT  
3 Case No. 2022-CP-10-510

4  
5 Richard Young and Jason Greene, )  
6 )  
7 Plaintiffs, )  
8 ) Motions  
9 vs. ) Hearing  
10 )  
11 John W. Beasley a/k/a John W. ) September  
12 Beasley, Sr. and Lillian Beasley, et ) 27th, 2023  
13 al, )  
14 Defendants. )

15  
16  
17  
18 Hearing before the Honorable Mikell R.  
19 Scarborough, reported by Josie Allen Boehm, Registered  
20 Professional Reporter and Notary Public, at 100 Broad  
21 Street, Courtroom 2A, Charleston, South Carolina,  
22 September 27th, 2023, commencing at 2:09 p.m.  
23  
24  
25

## 1 APPEARANCES

2  
3 For the Plaintiffs:4 Ian Douglas McVey, Attorney at Law  
5 Turner Padget Graham & Laney, P.A.  
6 PO Box 1473  
Columbia, SC 29202  
imcvey@turnerpadget.com  
(803) 227-42677 Joey Randell Floyd, Attorney at Law  
8 Bruner Powell Wall & Mullins, LLC  
PO Box 61110  
Columbia, SC 29260  
9 jfloyd@brunerpowell.com  
(803) 252-7693  
1011  
12 For the Defendants:13 R. Markley Dennis, Jr., Attorney at Law  
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15 (843) 579-781816 Cheryl D. Shoun, Attorney at Law  
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1920 Rhett D. Ricard, Attorney at Law  
Maynard Nexsen, PC  
21 PO Box 486  
Charleston, SC 29402  
22 rricard@maynardnexsen.com  
(843) 720-1762  
23  
24  
25

1           THE COURT: We are here in the case 2022-CP-  
2 10-3510. Nice book presented by I assume the  
3 plaintiffs.

4           MR. FLOYD: Yes, Your Honor.

5           THE COURT: All right. I want to thank  
6 everybody for the presentations that they have  
7 submitted. I have had a chance to review them, and  
8 that's what I was doing again right before I came out  
9 here.

10           So y'all listed them in a certain order. I  
11 think that's probably the best order to take them in  
12 and start with the defendants' motion to reconsider.

13           All right. Counsel?

14           MR. RICARD: Thank you, Your Honor. Good  
15 afternoon. I haven't had the opportunity to appear or  
16 argue in front of you before, but my name is Rhett  
17 Ricard with the law firm of Maynard Nexsen.

18           I'm new to this case, Your Honor. A couple  
19 of weeks ago, this team here asked me to take a fresh  
20 look at this case and respectfully, Your Honor, we're  
21 asking you to do the same here with this motion to  
22 reconsider.

23           I'm going to start with a timeline. And in  
24 order to do so, I've got a demonstrative that I would  
25 like to present to the Court for the Court's

1 consideration.

2 THE COURT: Okay.

3 MR. RICARD: Permission to approach, Your  
4 Honor?

5 THE COURT: Yes, sir.

6 MR. RICARD: Like I said, Your Honor, before  
7 I turn to the argument, I'm going to cover this  
8 timeline fairly briefly.

9 But we've just presented you with a one-page  
10 demonstrative that we believe is going to aide you in  
11 coming to a determination on this motion to  
12 reconsider.

13 And I'm going to cover some of the important  
14 definitions and implications of what a mortgage is,  
15 what a debt is, what a judgement is, et cetera, when I  
16 go through this.

17 THE COURT: We covered that last time.

18 MR. RICARD: Understood, Your Honor. But  
19 just to be on the safe side --

20 THE COURT: That doesn't have anything to do  
21 with the timeline. If you tell me about the timeline,  
22 I'm interested.

23 MR. RICARD: Yes, Your Honor. So in  
24 September and October of 2017, John Beasley Jr.  
25 borrowed \$640,000 from the plaintiffs and he agreed to

1 pay it back in October.

2 The Black's Law Dictionary says that a debt  
3 is a specific sum of money due by agreement. And so  
4 that's what we have here. We have a debt that is  
5 created when Junior made the agreement and borrowed  
6 the money.

7 THE COURT: He's the original obligor on the  
8 debt, right?

9 MR. RICARD: Yes, sir. Junior does not pay  
10 that debt off. The following month in November of  
11 2017, plaintiffs approach Senior and his wife,  
12 Lillian, the parents.

13 And so in our motion to reconsider, when  
14 we're referring to the Beasley defendants, that's who  
15 we're referring to. We're not including Junior or  
16 Beasley Construction, which I will refer to as the  
17 company.

18 Your Honor, you may be aware of some of the  
19 trouble that Junior has found himself in. His mom and  
20 dad, Senior and Lillian, they obviously love their  
21 son, but for the purposes of this motion, they're in a  
22 completely different position than their son and the  
23 company.

24 And so we're asking this Court to recognize  
25 that distinction between the parents on one side,

1 Senior and Lillian on one side, and Junior and the  
2 company on the other. And I will touch more on that  
3 later.

4 So the plaintiffs approached Senior and  
5 Lillian in November of 2017. They informed them that  
6 they haven't been paid by Junior, their son, and that  
7 they are going to the FBI to report allegations  
8 against Junior unless Senior and Lillian put up  
9 collateral to secure the debt that was incurred by  
10 Junior.

11 So in other words, Your Honor, Senior and  
12 Lillian are put under the gun. They either make a  
13 deal with plaintiffs or they have to leave their son  
14 out to dry.

15 MR. FLOYD: Judge, I have to object to this  
16 recitation of facts. I don't think there's any of  
17 this in the record that he's spouting off about  
18 approaching them, threatening them to go to the FBI  
19 and all this sort of stuff. We quite honestly  
20 disagree with his version of the facts.

21 THE COURT: First I've heard of it. I know  
22 that he went to the Court and the federal court  
23 system. And I don't know if he ever went to jail, but  
24 he got sentenced over there is my recollection.

25 MR. RICARD: Yes, Your Honor.

1 THE COURT: And I handled a 2019 foreclosure,  
2 so I knew about that.

3 MR. RICARD: Right, Your Honor.

4 THE COURT: And I think probably talking  
5 about worth 5 million bucks. That's going to be one  
6 of my questions that I have for y'all. Why would they  
7 agree to settle this case for 50,000 if they have  
8 \$5,000,000 of security out there? That's one of the  
9 questions I've got.

10 MR. RICARD: Yes, Your Honor. I promise you  
11 I'm going to answer that question. I think going  
12 through this timeline is going to help answer that  
13 question.

14 We believe, Your Honor, that the allegations  
15 that we have just raised are in the record. But to  
16 the extent they're not, there's obviously a dispute  
17 about that, and that's going to be sufficient to  
18 defeat summary judgement in this particular case. So  
19 we would ask --

20 THE COURT: As long as they're genuine issues  
21 of material fact.

22 MR. RICARD: Yes, Your Honor. And we would  
23 ask that to the extent the Court is concerned that  
24 those facts aren't yet in evidence, we would ask for  
25 further discovery.

1 THE COURT: Can't do it at this hearing, but  
2 that's another story. Go ahead.

3 MR. RICARD: Understood. In the  
4 reconsideration process, that's what we would ask for.

5 THE COURT: I'm with you.

6 MR. RICARD: So moving forward, Your Honor,  
7 this contract that's formed, this settlement agreement  
8 that's formed between Senior and Lillian on one side  
9 and plaintiffs on the other, that's formed under  
10 coercion. Okay. And we think at the very  
11 beginning --

12 MR. FLOYD: Judge, I have to object again.

13 THE COURT: I'm going to grant that  
14 objection.

15 Let's talk about -- you want to talk about  
16 the timeline? Let's talk about the timeline.

17 I fully understand parents stepping in trying  
18 to help their kids. The kid is threatened going to  
19 jail. Why they went somewhere else, why they signed  
20 this, I don't know. One of the principals of  
21 economics: Don't be signing something you shouldn't  
22 be signing. Okay?

23 MR. RICARD: Yes, Your Honor. And we  
24 certainly understand the Court's ruling.

25 THE COURT: That's in the Bible.

1 MR. RICARD: We just want to make that we  
2 preserve this argument for the record.

3 THE COURT: About to make the same mistake  
4 myself. Go ahead.

5 MR. RICARD: Our position is this contract  
6 was formed under coercion and to the extent that  
7 plaintiffs dispute that, again, that's another genuine  
8 issue of material fact.

9 THE COURT: To the extent you're raising that  
10 for the first time in a motion to reconsider, it's not  
11 profitable. That's my ruling.

12 MR. RICARD: Understood, Your Honor. So at  
13 the time when they're approached by plaintiffs, a few  
14 things happened. Senior and Lillian, they put up  
15 collateral to secure the one and only debt that was  
16 created by Junior.

17 And plaintiffs agree that there's only one  
18 debt. If you look at page 3 of their memoranda in  
19 opposition, they quite clearly state the debt multiple  
20 times. So there's not multiple debts. There's just  
21 one debt, the debt.

22 And they end up signing the second settlement  
23 agreement which is Exhibit B to our motion to  
24 reconsider. Simultaneous with that -- excuse me, they  
25 sign the first settlement agreement.

1 THE COURT: 2017, right?

2 MR. RICARD: Yes, Your Honor. Simultaneous  
3 with that first settlement agreement, there are three  
4 things created.

5 First, there's a note that's created.  
6 Black's Law Dictionary says a written promise by one  
7 party to pay another party is the definition of a  
8 note. It's just an acknowledgment of the debt that  
9 was created.

10 THE COURT: Right.

11 MR. RICARD: Second, there is a mortgage.  
12 The mortgage secures the debt created by the note. A  
13 mortgage, according to Black's Law Dictionary, is a  
14 lien against property that is granted to secure an  
15 obligation such as a debt that is extinguished upon  
16 payment or performance according to stipulated terms.  
17 That's the quoted definition from Black's Law  
18 Dictionary.

19 So what's clear from the definition is that a  
20 mortgage is not a debt. It's simply a link. It's the  
21 avenue that connects the debt.

22 THE COURT: A mortgage is a security  
23 instrument. I've closed hundreds of real estate  
24 loans. I've had the borrower sign the note to the  
25 lender, notes the evidence of the debt. Mortgage is

1 the security that you give in your home. Without it  
2 is described as if you don't pay, you don't stay.  
3 Okay? It's a security agreement.

4 MR. RICARD: Yes, Your Honor. And the  
5 security, the collateral here in the case, what we  
6 refer to as the property in our motion, that's the  
7 family home of Senior and Lillian.

8 THE COURT: I'm with you.

9 MR. RICARD: It's been in the family for  
10 decades and that is what is the collateral.

11 THE COURT: Nice piece of property they've  
12 got up there.

13 MR. RICARD: Yes, Your Honor. The third item  
14 that's created is a confession of a judgement. It's  
15 executed at this particular point in time but it's not  
16 filed.

17 Black's Law Dictionary defines a confession  
18 of judgement as a person agreeing to the entry of  
19 judgement upon the occurrence or non occurrence of an  
20 event such as making a payment.

21 And so as this Court knows, all a confession  
22 of judgement does is bypass a trial if it is indeed  
23 eventually filed.

24 And so in the event of a default, you go  
25 straight to collection on the judgement. You bypass

1 the trial. Okay?

2 This confession of judgement is based on the  
3 same debt that we have been talking about with all  
4 these other items. And so there's four documents that  
5 are created, but still only one debt. And there's  
6 four parties that are responsible for this debt.  
7 Okay?

8 And there's four parties, again, Senior and  
9 Lillian on one side and then Junior and the company on  
10 the other. So then we fast forward --

11 THE COURT: By the time they get to this  
12 settlement, even the first settlement, is the debt  
13 still 640 or does it become 756? When did it convert  
14 from 640 to 756; do you know? I think the son's debt  
15 was 640.

16 MS. SHOUN: It was -- if I may, Your Honor.

17 THE COURT: He bought short-term monies as I  
18 recall for like 640.

19 MS. SHOUN: The note was never in the amount  
20 to exceed the 647. There was a recitation that it was  
21 a principal amount and that it was anticipated that it  
22 would reach the seven-plus amount as it accrued.

23 THE COURT: Okay. Over time. Short term,  
24 though. Okay.

25 MR. RICARD: Fast forward a year and a half

1 in May of 2019, there is a default that occurs. And  
2 so that is when the confession of judgement is filed,  
3 and that's Exhibit C to our motion to reconsider.

4 Something else important happens at this  
5 point in time, Your Honor. And this is going to  
6 answer your question as to why plaintiffs would have  
7 accepted 50,000 when there was in excess of 600,000 on  
8 the debt.

9 The mortgage is foreclosed upon by First  
10 Citizens Bank. And this is important because  
11 plaintiffs at this point, they realize that their one  
12 and only debt that they have collateral to, it's  
13 secured only by that property and they may get nothing  
14 because First Citizens is foreclosing on the property  
15 and First Citizens is in a higher priority to collect  
16 on that foreclosure than they are.

17 THE COURT: They're the priority creditor?

18 MR. RICARD: Exactly, Your Honor. And so  
19 they're facing the very real possibility that they're  
20 going to get nothing out of this debt.

21 So they get worried. And in order to avoid  
22 that and in order to get something rather than  
23 nothing, plaintiffs say they are going to be willing  
24 to accept much less than what the debt was owed. But,  
25 again, only from Senior and Lillian. Okay? And I

1 will touch more on that in a second.

2 But a second settlement agreement is then  
3 entered into between Senior and Lillian, and just  
4 Senior and Lillian, and the plaintiffs in this  
5 particular case.

6 And, Your Honor, at this point, I would like  
7 to present to you our binder with the motion to  
8 reconsider with exhibits. We just ask you --

9 THE COURT: Is this the same thing you handed  
10 me?

11 MR. RICARD: I'm not sure.

12 MR. FLOYD: Exhibits A through C?

13 MR. RICARD: I believe it's A through G. And  
14 Your Honor, if I may, I ask that you follow along  
15 here. Because what I would like to do is compare  
16 Exhibit B.

17 If you look at pages 10 through 13 of Exhibit  
18 B, you see there that John Junior has signed on to  
19 this first settlement agreement. You also see Senior  
20 signs on page 11 --

21 MR. FLOYD: Can we see this binder, Judge?  
22 Do you have one for us?

23 THE COURT: Exhibit B is the 2017 settlement  
24 agreement. Make sure y'all got that.

25 MR. MCVEY: We're just trying to make sure

1 our exhibits match up with theirs.

2 THE COURT: Do you know which exhibit --

3 MR. FLOYD: It should be Number 1.

4 MR. MCVEY: Your Honor, I have Exhibit A  
5 being the court order, Exhibit B being the first  
6 settlement agreement. Hang on. Exhibit C is the  
7 confession of judgement. Exhibit D is the second  
8 settlement agreement.

9 THE COURT: All right. Stop right there.  
10 You already lost me. What I've got in your book, at  
11 least the one that was up here when I got here, was an  
12 A, B, whatever.

13 MR. FLOYD: Tab number 1 that you're looking  
14 at?

15 THE COURT: When I go to tab number 1, I get  
16 motion to reconsider and what looks like some of the  
17 documents that we're referring to here. Hold on.  
18 Number 2 looks to be my order. After my order is  
19 Exhibit A. This has got to be the 2020 settlement  
20 agreement. It is not. It's the 2017 settlement  
21 agreement.

22 MR. FLOYD: First settlement agreement.

23 THE COURT: That's the one that he's  
24 referring to.

25 MR. FLOYD: Exhibit B?

1 THE COURT: I think it's your exhibit --

2 MR. RICARD: It's Exhibit B to the motion and  
3 also tab B in our binder.

4 THE COURT: Okay. All right. And it's your  
5 Exhibit A I believe.

6 MR. FLOYD: Tab 1. Yeah, that's right.

7 THE COURT: Under tab 1.

8 MR. FLOYD: Yes, sir. Okay. Let's make sure  
9 we're all talking about the same thing. All right.  
10 Got it. See if we can't cross reference that. Okay.  
11 All right.

12 MR. RICARD: Thank you, Your Honor. So,  
13 again, going back to Tab B in our binder, that is the  
14 first settlement agreement. Just to be clear, page 10  
15 is where Junior signs on to it and page 11 is where  
16 Senior signs on.

17 THE COURT: Okay.

18 MR. RICARD: Page 12 is where Lillian signs  
19 on, and page 13 is where John Junior signs on behalf  
20 of the company. So quite clearly, those are the four  
21 parties that are subject to the first settlement  
22 agreement.

23 THE COURT: Got it.

24 MR. RICARD: So if we compare those pages to  
25 Exhibit D -- this is tab D as well in our binder.

1 THE COURT: Talking about your tab D? That's  
2 the second settlement agreement.

3 MR. RICARD: Correct, Your Honor. So let me  
4 stop and make sure I figure out which one is  
5 plaintiffs' second settlement agreement, which would  
6 appear to be Exhibit D under your tab 1.

7 MR. RICARD: Exhibit B is the first --

8 MR. MCVEY: Exhibit D is the second  
9 settlement agreement Your Honor. I believe.

10 MR. FLOYD: It's under tab 1. It's D as in  
11 dog.

12 MR. RICARD: And, again this is the second  
13 settlement agreement. If you turn to page 6, that's  
14 where the signatories are. So you see the plaintiffs  
15 on page 6 and 7.

16 THE COURT: Mr. Young and Mr. Greene.

17 MR. RICARD: And then on page 8 and 9, you  
18 see Senior and you see Lillian and that's the end of  
19 the second settlement agreement.

20 THE COURT: Okay.

21 MR. RICARD: So it's very clear. Second  
22 settlement agreement does not incur any obligations by  
23 the son, Junior, or the company. It's only with  
24 Senior and Lillian.

25 THE COURT: Okay.

1 MR. RICARD: So plaintiffs accept \$50,000  
2 from Senior and Lillian in exchange for a release, and  
3 that's when the fifth document is created, a release  
4 form is created. And it releases two of the four  
5 parties that were to the original first settlement  
6 agreement. There's four there.

7 THE COURT: Where in that document does it  
8 say that they're getting a release? Where is the  
9 release?

10 MR. RICARD: Yes, Your Honor. And I will get  
11 to that.

12 THE COURT: Release of what --

13 MR. RICARD: Right.

14 THE COURT: -- is my question. That would be  
15 significant.

16 MR. RICARD: It would be from everything,  
17 Your Honor. It's \$50,000 in exchange for the release  
18 of note, mortgage, confession of judgement,  
19 everything.

20 THE COURT: And where in the document does it  
21 release that note and the mortgage and satisfy the  
22 note and mortgage?

23 MR. RICARD: Yes, Your Honor. So I'm going  
24 to ask you to -- we're going to go through that --

25 THE COURT: No, you need to answer that

1 question. Let's just go right there. Okay?

2 MR. RICARD: Sure, Your Honor.

3 THE COURT: Dancing around on the head of a  
4 pin, and I can't find it. And I read your memoranda  
5 more than once, and it says it was clearly referenced  
6 in there.

7 I looked for it a second time, and I didn't  
8 find it. And then I read the response to your memo in  
9 reconsideration and I couldn't find it.

10 And then I found -- actually, I found it the  
11 first time I read it. But I did agree with y'all to  
12 some degree, and that would be in the language found  
13 on page 8.

14 I think this is Ms. Shoun's memoranda.  
15 Reference to Exhibit G, pages 1 through 4. We're  
16 talking about the settlement agreement. To be sure,  
17 if you search for the word "note" in the second  
18 settlement agreement, that word is not found.

19 MR. RICARD: Yes, Your Honor.

20 THE COURT: I am in total agreement with  
21 that.

22 MR. RICARD: Yes, Your Honor.

23 THE COURT: And that is your statement of  
24 fact?

25 MR. RICARD: Absolutely.

1           THE COURT: Flip over to page 9. Again, a  
2           perfunctory search for the word "mortgage" in the  
3           second settlement agreement will be unavailing in  
4           determining whether the second settlement agreement  
5           actually references the mortgage, and I agree with  
6           that statement of fact. I can't find it in there  
7           anywhere.

8           You find it for me, I might change my mind.  
9           But unless you can do that, I'm not going to change my  
10          mind.

11          MR. RICARD: Understood. So if you look at  
12          Tab D, that's Exhibit D, delta, to our motion, this is  
13          the second settlement agreement. Page 1, very bottom  
14          of the page, that provision, that last whereas clause  
15          on the first page.

16          THE COURT: All right. Well, what document  
17          are we in again?

18          MR. RICARD: Second settlement agreement, Tab  
19          D in the binder.

20          THE COURT: All right. You highlighted it,  
21          right?

22          MR. RICARD: Yes, Your Honor. So that  
23          highlighted provision, it says: In summation, John  
24          Beasley Jr. borrowed the principal sum of 640,000 from  
25          the creditors, which that sum was to be solely used

1 for the improvement of certain real estate and to be  
2 repaid in full with, which interest, totaled \$765,000  
3 on or before October 19, 2017. And then in  
4 parentheses, the, quote, "loan." That, Your Honor, is  
5 a reference to the note.

6 THE COURT: No, it's not.

7 MR. RICARD: Respectively, Your Honor, we  
8 disagree.

9 THE COURT: All right.

10 MR. RICARD: That debt, that debt right  
11 there, is synonymous.

12 THE COURT: It's the loan. It's the money,  
13 right? What they borrowed is the money.

14 MR. RICARD: And the note is simply  
15 acknowledgment of the loan.

16 THE COURT: Well, it is that. I agree. I  
17 agree it's acknowledgment of that. But it's separate  
18 and distinct from the note.

19 The loan and the note are not the same thing.  
20 The note is a representation of the loan.

21 MR. RICARD: Respectfully, Your Honor, we  
22 disagree. The note is simply an acknowledgment of the  
23 loan that is in existence. It's an acknowledgment of  
24 the debt.

25 THE COURT: It's a representation of the

1 loan, yes, and it sets forth the terms of whatever the  
2 terms of the note are. I agree with that.

3 MR. RICARD: Yes, Your Honor. And so this  
4 whereas clause -- the note and the loan are  
5 synonymous'. And if you look at plaintiffs' memoranda  
6 in opposition, they actually agree with that. The  
7 promissory note is the loan in question.

8 And so by referencing the loan here, by  
9 referencing the debt, by referencing this in the last  
10 whereas clause, that's a reference to the note and it  
11 implicates what is being released in the second  
12 settlement agreement.

13 THE COURT: Okay. Go ahead.

14 MR. RICARD: If you turn to the next page,  
15 page 2 of Exhibit D, Your Honor, it states: Whereas  
16 John Senior and Lillian agree to join John Beasley  
17 Junior along with certain other parties as co debtors  
18 for the repayment of the loan as well as agree to  
19 pledge certain collateral to secure the repayment of  
20 the loan under the terms hereof.

21 Again, it's a reference not only to the note  
22 but it's also a reference to the mortgage because it  
23 refers to the pledging certain collateral. There is  
24 only one collateral on this entire case, Your Honor.  
25 That's the property. That's the family home.

1           Okay. And so these two provisions, these two  
2       whereas clauses are express representatives -- they  
3       may not use the term note or mortgage but that is what  
4       a mortgage is is a collateral to secure a debt.

5           THE COURT: These are in the whereas clauses?

6           MR. RICARD: Yes, your Honor. And according  
7       to South Carolina law, those whereas clauses have to  
8       be construed in the interpretation of what the  
9       contract is doing. And I'll cite you a case here,  
10      Your Honor.

11          THE COURT: This is just background  
12      information, isn't it?

13          MR. RICARD: No, Your Honor. Respectfully,  
14      we disagree. According to *M M Group, Incorporated v.*  
15      *Holmes*, this is case 379 S.C. 468, Court of Appeals  
16      case from 2008. And what that case holds is that the  
17      intention of an instrument is determined by the  
18      language of the document including the language in the  
19      whereas clauses.

20          So these are not just mere recitals, Your  
21      Honor. These are important to understand the  
22      implications of what a contract is doing.

23          And so because this second settlement  
24      agreement references the note and the mortgage, the  
25      release language is releasing the note and mortgage as

1 well.

2 And I wanted to point something else out,  
3 Your Honor. Because if you look at -- go to your  
4 order in this case, Your Honor, it's Tab A. It's  
5 Exhibit A to our motion and Tab A in our binder.

6 Okay. If you turn to page 4, we have  
7 highlighted it for you. In your order, you say:  
8 Accordingly, after a discussion of the note and  
9 mortgage, those subjects were not included in the  
10 second agreement. In addition, paragraph 16 makes it  
11 clear that the terms of the first agreement which  
12 included the note and mortgage remained in effect.

13 And so you have acknowledged that the first  
14 settlement agreement does reference the note and  
15 mortgage. And I'm going to ask you to compare the  
16 language in the first settlement agreement with the  
17 language that we just saw in the second settlement  
18 agreement.

19 So if you turn to page 2 of Exhibit B,  
20 Exhibit B has the same exact whereas clauses as the  
21 second settlement agreement. And those are  
22 highlighted at the top of page 2 of Tab B, Exhibit B.

23 THE COURT: Okay.

24 MR. RICARD: It would be inconsistent to hold  
25 that the first settlement agreement references the

1 note and the mortgage and the second settlement  
2 agreement does not when the identical language in  
3 those two whereas clauses are represented in both,  
4 Your Honor.

5 THE COURT: All right.

6 MR. RICARD: So, Your Honor, again, our  
7 position is now that we have established that the note  
8 and mortgage are referenced in the second settlement  
9 agreement, what's the implication? The implication is  
10 that Senior and Lillian have been released and only  
11 they have been released because they're the only  
12 debtors, co-debtors, that are party to the second  
13 settlement agreement.

14 So if we look to page 2 of Exhibit D, you can  
15 see the release language. It starts with the  
16 therefore clause. This is page 2 of Exhibit D. It  
17 should also be highlighted.

18 But it's in consideration of the payments and  
19 promises recited herein that creditors fully release  
20 and forego all legal, equitable, and statutory  
21 remedies and processes to them so long as the debtors  
22 fully perform all obligations here under.

23 And there is no dispute that they have paid  
24 the \$50,000 that is subject to this second settlement  
25 agreement. So Senior and Lillian have met their

1 obligations under this second settlement agreement.

2 So the benefit they obtained from that is a  
3 release. And if you look -- so that's the  
4 consideration that's paid.

5 THE COURT: No, that's the preamble. All  
6 right? Now therefore we agree as follows.

7 MR. RICARD: Understood, Your Honor. But,  
8 again, we're going to continue here, but that's a  
9 recognition of the consideration that's being obtained  
10 by Senior and Lillian.

11 If you turn to page 3, paragraph 4 of the  
12 second settlement agreement, it says: It is  
13 understood and agreed that this settlement and release  
14 represents the compromise by plaintiffs and the  
15 Beasley defendants to resolve a variety of doubtful  
16 and disputed claims and counterclaims and that the  
17 amounts paid and received here under are made solely  
18 for the purposes of ending their disagreements,  
19 plural, and to buy, sell, and exchange their  
20 individual and respective peace of mind and to avoid  
21 the significant cost of protracted litigation.

22 And so paragraph 4 raises two clear points,  
23 Your Honor, and then it also raises two questions that  
24 plaintiffs can't answer. The first is it's clear that  
25 the intent of the parties is to provide a full release

1 for not only the plaintiffs' peace of mind but Senior  
2 and his wife's peace of mind as well.

3 So this begs the question if only the  
4 confession of judgement were being resolved by the  
5 second settlement agreement, how would any of the  
6 parties have obtained peace of mind as to the debt if  
7 the note and the mortgage were still left unsatisfied?  
8 They are obtaining peace of mind because this is a  
9 global release, Your Honor.

10 The second point is the intent of the full  
11 release was to avoid significant costs of protracted  
12 litigation. Protracted litigation is in the release.  
13 That's the purpose of what this release is doing.

14 And it begs a similar question. If only the  
15 confession of the judgement were being resolved -- and  
16 that does not require protracted litigation. A  
17 confession of judgement does not require protracted  
18 litigation.

19 If that's the only thing that's being  
20 resolved, what protracted litigation is being  
21 contemplated here? What protracted litigation is  
22 being avoided here if the note and the mortgage are  
23 still outstanding?

24 Plaintiffs can't answer that question, Your  
25 Honor. It's the clear intent of these parties to

1 avoid that protracted litigation. And that is, again,  
2 implicating the note and mortgage as having been  
3 satisfied once Senior and Lillian fulfill their  
4 obligations under the second settlement agreement.

5 So there's only one interpretation that can  
6 be reached here and that's that the release is  
7 designed to distinguish the note, the mortgage, and  
8 the confession of judgement, all of it.

9 Paragraph 5 further supports it, Your Honor,  
10 and I highlighted that as well. But it states: The  
11 settlement and release constitutes the entire  
12 agreement and understanding between plaintiffs and  
13 Senior and Lillian and it supercedes all prior  
14 understandings or agreements written or oral on the  
15 subjects contained herein and the terms of the  
16 settlement and release are contractual and not mere  
17 recitals.

18 Again, it's further evidence that the release  
19 and settlement was global in nature.

20 THE COURT: That's your position that the  
21 subject contained herein is more than just a  
22 confession of judgement?

23 MR. RICARD: Yes, Your Honor. Absolutely.

24 THE COURT: All right. I understand.

25 MR. RICARD: I understand that the Court also

1 had some concerns about the partial nature of the  
2 release. I believe you mentioned that in your order,  
3 Your Honor. I think that came out of the title of the  
4 document, didn't it?

5 MR. RICARD: Yes, Your Honor. So if we turn  
6 to --

7 THE COURT: Wouldn't that show the intent of  
8 the parties?

9 MR. RICARD: Yes, Your Honor. But if you  
10 look at the release, the release is Exhibit E. The  
11 title of the document makes clear why it's partial in  
12 nature because it's only a release as to certain  
13 defendants.

14 THE COURT: Right.

15 MR. RICARD: And so plaintiffs --

16 THE COURT: Beasley Senior defendants? Your  
17 clients, right?

18 MR. RICARD: Yes, Your Honor. So Junior and  
19 the company are still on the hook for this debt.  
20 Plaintiffs, at this point in time, they can go after  
21 Junior and the company for this debt, which is another  
22 reason why they probably accepted 50,000 from Senior  
23 and Lillian because they have this opportunity to go  
24 after Junior and the company.

25 If you look at the last paragraph of the

1 release, Your Honor, it's on page 2 of Tab E, it  
2 further reflects the point that I've just made, Your  
3 Honor. It said the remaining balance of said  
4 judgement lien plus accruing post judgement interests  
5 and costs shall continue on record against defendant  
6 John W. Beasley Jr. and defendant Beasley Construction  
7 Company, LLC, collectively, the remaining defendants,  
8 and any and all other property.

9 "Other property" I want to highlight there,  
10 Your Honor. Because, again, the property in question  
11 in this particular case has been -- that mortgage has  
12 been extinguished. There is no security on the basis  
13 of that property, Your Honor.

14 They can go after any other property that may  
15 be out there, but not this property, and it can't go  
16 after these defendants. They can only go after the  
17 remaining defendants.

18 THE COURT: Doesn't the first clause in that  
19 paragraph address what it's talking about?

20 MR. RICARD: The remaining balance, Your  
21 Honor?

22 THE COURT: Of said judgement lien.

23 MR. RICARD: Absolutely. So, again, they can  
24 go after Junior and the company for the remainder of  
25 the debt. They cannot go after Senior and Lillian for

1 the remainder of this debt.

2 THE COURT: On the judgement.

3 MR. RICARD: Respectfully, we disagree.

4 THE COURT: Okay. Well, we disagree.

5 MR. RICARD: The last sentence provides  
6 further proof for our position. Nothing in this  
7 document shall affect or limit the rights of the  
8 plaintiffs in their collective or individual pursuit  
9 of collecting the remaining balance of said judgement  
10 from any other property, real or personal, presently  
11 owned or acquired hereafter from the remaining  
12 defendants.

13 Again, it's a recognition that Lillian and  
14 Senior have been released but they can go after Junior  
15 and the company.

16 Your Honor, I believe you also had some  
17 concerns in your order regarding the case law, and we  
18 believe that you did cite to Lever v. lighting  
19 Galleries, Inc. as authority, and we think that's  
20 proper authority.

21 However, when you run through the analysis  
22 that we have just run through, Lever supports our  
23 position not plaintiffs and here are the reasons why.  
24 In Lever, it's very clear that the debtor in that  
25 case, Mr. Lever, he conceded that he had not paid the

1 debt.

2 I will read the quotes from Lever decision,  
3 Your Honor. The Court in that case held it is also  
4 undisputed that Lever has not paid the debt to date.  
5 And another quote says Lever concedes that he has not  
6 paid the debt.

7 Because of that, the Court found that the  
8 creditors could satisfy the debt through either an  
9 action on the note or foreclosing on the mortgage.  
10 But that's not the case here, Your Honor. Senior and  
11 Lillian have satisfied the debt. That debt has been  
12 paid as to them.

13 Again, it's a partial satisfaction only  
14 because Junior and the company are still on the hook.

15 THE COURT: You acknowledge that the debt  
16 itself has not been paid, correct?

17 MR. RICARD: It has been paid by Senior and  
18 Lillian.

19 THE COURT: That's not what I asked you. The  
20 debt itself has not been paid in full?

21 MR. RICARD: It has been paid by Senior and  
22 Lillian, Your Honor.

23 THE COURT: I'm going to ask you one more  
24 time. The \$640,000 that's turned into \$765,000 within  
25 about a month has not yet been paid?

1 MR. RICARD: It has not been paid by Junior  
2 or the company as far as we know. But we actually  
3 don't know how much money has been paid on that debt,  
4 Your Honor.

5 There's an order of restitution out in the  
6 figure of 590 or 595,000 against Junior.

7 THE COURT: Okay.

8 MR. RICARD: There's arguments there, Your  
9 Honor, that that debt has been satisfied by Junior as  
10 well because there's an order of restitution in that  
11 case.

12 THE COURT: Does that pay it? Does that pay  
13 the judgement?

14 MR. RICARD: It may not be paid off, Your  
15 Honor, but it is an order. And so that debt has been  
16 effectively enforced against Junior and Junior only.

17 THE COURT: All right. Anything further?

18 MR. RICARD: Yes, Your Honor. So plaintiffs  
19 could have sought the full amount from Senior and  
20 Lillian but they chose not to. Instead, they accepted  
21 what they could get and they released Senior and  
22 Lillian.

23 As the Court knows -- we could go down the  
24 street and talk to any mechanic shop. If a customer  
25 makes a down payment of five grand to do some repair

1 work on a car and then comes to find out that it costs  
2 \$7,000 in total to make the repairs, the mechanic  
3 still has \$2,000 that he's going to want from that  
4 customer.

5 That customer may not have the means or  
6 ability to pay the \$2,000. And so the customer may  
7 say, well, I'll give you 500. And the mechanic,  
8 instead of going through protracted litigation to get  
9 that full 2,000, that mechanic may say, okay, I'll  
10 release from you the rest of the 2,000 if you give me  
11 500 right now. And they make a deal. And that  
12 happens all the time.

13 And that's what happened in this particular  
14 case, Your Honor. Plaintiffs accepted a lesser amount  
15 from Senior and Lillian. And the only issue is,  
16 unlike the analogy I just gave you, is that they still  
17 have the opportunity -- that mechanic can go somewhere  
18 else and get the money just like plaintiffs can at  
19 this point if there's somebody else on the hook. And  
20 there is in this particular case. It's Junior and the  
21 company.

22 THE COURT: Well, if they intended to release  
23 them from the note and the mortgage, why didn't they  
24 put that explicitly in the agreement they signed?

25 MR. RICARD: We believe it is explicit.

1 Those whereas clauses --

2 THE COURT: Your understanding is that y'all  
3 agreed that for \$50,000 that y'all were going to be  
4 relieved of any obligation on the 765,000?

5 MR. RICARD: Absolutely, Your Honor.

6 THE COURT: That was after entering into the  
7 confession of judgement, after entering into a note  
8 for that amount of money, and after signing a  
9 mortgage?

10 MR. RICARD: Yes, Your Honor. Absolutely.

11 THE COURT: All right.

12 MR. RICARD: And to be clear, plaintiffs felt  
13 the same way and they understood --

14 THE COURT: I'm going to let them tell me  
15 feel. You've been telling me how they feel and what  
16 they interpreted. I don't know that they agree with  
17 that, and I'm not sure I agree with that. I'm going  
18 to let them tell me how they feel.

19 MR. RICARD: Understood, Your Honor. But to  
20 the extent there's a dispute about that, Your Honor,  
21 it's a genuine issue of material fact that's created  
22 and that's sufficient to defeat there being granted a  
23 summary judgement on this particular case.

24 THE COURT: I'm not sure intent -- or  
25 feelings. Let's say that. I'm not sure feelings

1 create genuine issues of material fact. I think  
2 documents might.

3 MR. RICARD: Well, if that case is true, Your  
4 Honor, there simply hasn't been a meeting of the minds  
5 on this contract. So that contract is void of any  
6 consideration whatsoever.

7 So, again, that creates a genuine issue of  
8 material fact. And so we would ask respectfully that  
9 the Court consider the ramifications of this  
10 particular order. Because if a party attempts  
11 settlement in a case like this and tries to satisfy a  
12 debt globally but then come to find out they can still  
13 get pursued via other avenues, why would any party  
14 want to settle a case?

15 It would clog the Courts. There would be no  
16 reason to because the purported release would have no  
17 benefit. This is a bargain for exchange and both  
18 parties benefited.

19 If Senior and Lillian are not fully  
20 released, they have received no benefit under the  
21 contract, Your Honor, under the second settlement  
22 agreement.

23 And so, again, there's a lack of  
24 consideration, a lack of meeting of the minds. And  
25 the contract should be voided because of it.

1           No settlement would be ever be sacrosanct in  
2 such a situation and courts would be flooded with  
3 cases because no one would ever feel comfortable  
4 enough to settle.

5           And if you look at paragraph 9 in Exhibit D,  
6 it talks about all the plaintiffs' claims have been  
7 extinguished. That is set forth in the second  
8 settlement agreement, and we highlighted that for you.  
9 Paragraph 9 of Tab D, the second settlement agreement.

10           That's the benefit that Senior and Lillian  
11 received, an extinguishing of all claims made by  
12 plaintiffs.

13           If they don't get that benefit, if they don't  
14 get that benefit, that contract is void for lack of  
15 consideration.

16           I touched on this earlier, Your Honor, but I  
17 want to hit on it again just to preserve for the  
18 record, but we would ask for you to consider that,  
19 again, the restitution order in the case against  
20 Junior does exist and they have obtained the ability  
21 to get the funds to satisfy that debt as to Junior.

22           THE COURT: That's through the federal court?

23           MR. RICARD: Yes, Your Honor.

24           THE COURT: Criminal case?

25           MR. RICARD: Yes, Your Honor.

1           THE COURT: All right. Those don't always  
2 get paid, you know?

3           MR. RICARD: Understood, Your Honor. But  
4 they do have an order. They do have an order. And  
5 what plaintiffs are attempting to do here is to have a  
6 double recovery.

7           They want to see not only payment of the debt  
8 from Senior and Lillian but they also already have an  
9 order in place from a federal court.

10          THE COURT: They had an order in place from  
11 your clients at one time.

12          MR. RICARD: Right. And it was extinguished  
13 by the second settlement agreement.

14          THE COURT: It was released?

15          MR. RICARD: Right, it was released and  
16 extinguished. All claims, everything, it was all  
17 forfeited in paragraph 9 of the second settlement  
18 agreement.

19          Your Honor, just very briefly, we would like  
20 to present a list of the genuine issues of material  
21 fact in this case. We have told you that we don't  
22 believe a genuine issue of material fact is created,  
23 but as we discussed already, there's clearly some  
24 disputes between the parties.

25          So in the alternative, those disputes would

1 create genuine issues of material facts that would  
2 warrant a denial of their motion for summary  
3 judgement.

4 So here is a list, Your Honor. They have  
5 disputed that the second settlement agreement doesn't  
6 reference the note. That's a critical issue in this  
7 case. It's a genuine issue. It's one of material  
8 fact, and it's very similar to the second issue.

9 They dispute the second settlement agreement  
10 doesn't reference the mortgage. Again, that would  
11 defeat summary judgement. They dispute that the debt  
12 has been paid. We believe and our position is the  
13 debt has been paid as to Senior and Lillian.

14 And incidentally, plaintiffs mentioned they  
15 have an affidavit attached to their brief that says  
16 the debt has not been paid, but we haven't seen such  
17 an affidavit, and our position in this case is that  
18 they have paid the debt and that's proof by the filing  
19 of the release in this case.

20 If the debt hasn't been paid, though, Your  
21 Honor, then there's also an issue of how much debt  
22 remains. Because as we mentioned, Junior has an order  
23 of restitution that would satisfy that debt.

24 Next, they dispute they are not required to  
25 file a release of the mortgage under the second

1 settlement agreement. Because -- Your Honor, we asked  
2 them to file a release of the mortgage pursuant to the  
3 second settlement agreement and they refused to do  
4 that because they wanted to bring this case and seek  
5 a double recovery.

6 Just because they haven't filed a release of  
7 the mortgage doesn't mean that release doesn't exist.  
8 It exists. It's in the second settlement agreement.

9 THE COURT: How do they have a double  
10 recovery if they have gotten 10 percent of the amount  
11 they claim to be owed?

12 MR. RICARD: What they're seeking is a  
13 payment of the \$600,000 not only from Senior and  
14 Lillian but they're also seeking that restitution  
15 amount from Junior and the company. And really the  
16 order is only towards Junior, but they're seeking it  
17 from both, Your Honor. That would create a situation  
18 where there's a double recovery.

19 THE COURT: Isn't that joint and several  
20 liability?

21 MR. RICARD: No. Absolutely not, Your Honor.  
22 This is a debt. If somebody incurs a debt and trying  
23 to go after it from two separate parties, that would  
24 jamb up the entire system here.

25 Senior and Lillian, their portion of that

1 debt, their obligations to that debt have been  
2 extinguished because of the second settlement  
3 agreement. And so the only recourse that plaintiffs  
4 now have is towards Junior and the company. And,  
5 again, that restitution order is in place against  
6 Junior.

7 THE COURT: But that doesn't pay it. Go  
8 ahead.

9 MR. RICARD: Plaintiffs have also disputed  
10 that they haven't obtained satisfaction by the payment  
11 that was made by Senior and Lillian. Again, that's  
12 another genuine issue of material fact.

13 THE COURT: Say that one again, I'm sorry.

14 MR. RICARD: They dispute that they have  
15 obtained satisfaction by the payment made by Senior  
16 and Lillian. They dispute that. Obviously we  
17 disagree and we believe they have been satisfied by it  
18 and fully satisfied as to Senior and Lillian.

19 And then lastly, Your Honor, the arguments we  
20 have made related to the contract itself, the coercion  
21 of the contract in the first incidence creates a  
22 dispute as we discussed of material fact. And then  
23 also if the release isn't global then there's been no  
24 meeting of the minds and no consideration and genuine  
25 issue of material facts, all of which, each and every

1 one of those eight genuine issues of material fact,  
2 solely, independently, and in and of themselves create  
3 grounds for this Court to deny plaintiffs' request for  
4 summary judgement.

5 And if I may have one moment?

6 THE COURT: Sure.

7 MR. RICARD: Thank you, Your Honor.

8 Respectfully, we would ask for our motion to  
9 reconsider be granted and plaintiffs' motion for  
10 summary judgement be denied.

11 THE COURT: Okay. Thank you.

12 MR. FLOYD: May it please the Court, Your  
13 Honor. Joey Floyd on behalf of the plaintiffs. As a  
14 preliminary matter, I would like to point out that  
15 probably 90 percent of what he said is wholly  
16 unsupported by an affidavit from the defendants.

17 All of these statement of facts that they're  
18 trying to now resurrect and say there are issues of  
19 fact, I would point out that their memo that they  
20 filed last month says specifically there are no  
21 genuine issues of material fact.

22 Second, this document that was handed up to  
23 you a moment ago that purports to be a timeline is  
24 actually arguments and it has certain statements in it  
25 such as: Pursuant to the release, John and Lillian

1 were fully and unconditionally released and forever  
2 discharged from all claims and they go on and on to  
3 support their position. I would ask that this be  
4 excluded from any record in this matter due to the  
5 arguments, unsupported arguments, that they put in  
6 this timeline.

7 THE COURT: I'm going to allow it in the  
8 record but it's not evidence. I'll grant you that.

9 MR. FLOYD: All right. I will be pretty  
10 brief, Your Honor. I think our briefs have fairly  
11 well drilled down on all the subjects. I wanted to  
12 hit just a few things.

13 First of all, in our filing that we filed, we  
14 filed an affidavit in support of our motion for  
15 summary judgement for Mr. Young and Mr. Greene. That  
16 affidavit specifically said the debt has not been paid  
17 first and foremost.

18 We have also filed another affidavit in  
19 connection with today's hearing leading up to the  
20 foreclosure hearing that we have asked for to  
21 establish the debt. We have also put in another  
22 affidavit that says it has not been paid.

23 So I'm not sure I understand where the  
24 Beasley defendants' lawyer was going with that. I  
25 wanted to establish that.

1 I also want to point out I think the Beasley  
2 defendants have a fundamental misunderstanding about a  
3 judgement and a mortgage. Two separate remedies as  
4 provided for in legalese.

5 This entire argument on the part of the  
6 Beasley defendants is an effort to insert a term into  
7 the second settlement agreement that just does not  
8 exist, and that is they want this Court to find an  
9 obligation on the part of Young and Greene to satisfy  
10 the mortgage. It's not there. Plain and simple.  
11 It's just not there.

12 Their obligation in the second settlement  
13 agreement was specifically related to filing the  
14 document that they filed, and they did. Money was  
15 paid and they did their obligation.

16 I think I also heard the Beasley defendants'  
17 lawyer say that there was somehow not a meeting of the  
18 minds. If we go that route and there was no  
19 consideration and all that sort of stuff, it puts us  
20 right back where we are.

21 If we completely disregard the second  
22 settlement agreement, they get a credit of \$50,000 and  
23 we're right back without a second settlement. So  
24 we're right back to foreclosure.

25 And going through just this second settlement

1 agreement -- or, excuse me, the fundamental blocks  
2 of -- it's a fundamental building block exercise.

3 You have a loan where money is loaned; a  
4 promise to pay that loan, a promissory note; you have  
5 a mortgage that is signed and filed. The mortgage  
6 secures the promise to pay. There is simply no  
7 obligation in that second settlement agreement to file  
8 a satisfaction of the mortgage.

9 The Beasley defendants' arguments, having  
10 listened through today's hearing, is they seek to pull  
11 a phrase from here. They seek to pull a clause from  
12 here and suggest that that creates some sort of  
13 ambiguity.

14 Our case law specifically says that you  
15 cannot create an ambiguity by pointing out a single  
16 sentence or clause. You have to read the entire  
17 agreement. It is in its entirety.

18 The debt has not been satisfied. We have  
19 unopposed affidavits that say that the debt has not  
20 been satisfied. And we agree on the two payments that  
21 were made. We have an agreement that two payments  
22 were made, a total of \$75,000.

23 THE COURT: If there was a meeting of the  
24 minds, would there not be an intent to satisfy the  
25 mortgage, satisfy the note, would there not be a

1 writing to that effect?

2 MR. FLOYD: One sentence. That's all it  
3 takes. One phrase that says release the judgement and  
4 file a satisfaction of the mortgage. It's not there.  
5 It can be inserted by five words.

6 Okay. Paragraphs 2 and 3 I believe is  
7 Exhibit D of the second settlement agreement, I wanted  
8 to briefly touch on that. If you read paragraphs 2  
9 and 3, it tells you what's happened here.

10 Paragraph 2, it talks about the release from  
11 the judgement. If you read paragraph 3, it is their  
12 release of the creditors. Those are probably two of  
13 the most demonstrative paragraphs I believe in the  
14 entire agreement.

15 But if you read it in a whole, there is no  
16 ambiguity. The plaintiffs did what they were supposed  
17 to do in exchange for 50,000 bucks and we're entitled  
18 to foreclose, Your Honor.

19 MR. MCVEY: Your Honor, if I may, I just want  
20 to point this out. Paragraph 2 of the second  
21 settlement agreement: Sum hereof and the judgement  
22 shall (inaudible) --

23 THE COURT: Slow down. She's trying to keep  
24 up with you.

25 MR. MCVEY: It certainly says release of the

1 judgement. That's exactly what happened. Doesn't say  
2 release from the loan, which is a defined term  
3 contained in the settlement agreement.

4 If you flip over to the release of judgement  
5 lien, which is Exhibit E to the motion to reconsider,  
6 it says: The defendants are hereby released from the  
7 lien of said judgement, the property, real property  
8 owned. And it says, moreover, John W. Beasley and  
9 Lillian Beasley, the released defendants, are  
10 personally released from the judgement in this matter.

11 The third paragraph says, collect the  
12 remaining balance of the judgement from any other  
13 property.

14 This was the simplest thing in the world to  
15 avoid, everybody standing here right now. And if that  
16 was what everybody had agreed to, there would be this  
17 simple sentence: And satisfy the note and the  
18 mortgage or release the mortgage. All of those  
19 things.

20 There's a lot of conflation of the term  
21 release and satisfaction. The judgement here was  
22 released and partially satisfied. The mortgage has  
23 been -- neither of those things have happened.

24 If we had satisfied the mortgage, the  
25 confession of judgement might be a problem, too.

1 Because if I'm JJ, I'm not going to argue, no, no, you  
2 took your dirt to settle your debt. That's not what  
3 happened here. It was very specific that the mortgage  
4 stay in place. It was very specific that the  
5 judgement was all that was being released. It's that  
6 simple.

7 THE COURT: Okay.

8 MR. MCVEY: Thank you, Your Honor.

9 THE COURT: Mr. Ricard?

10 MR. RICARD: Thank you, Your Honor. Just to  
11 clarify one thing I mentioned. First, I talked about  
12 the release only applying to Senior and Lillian. It  
13 also applies to the property. I just want to clarify  
14 that. The property itself has been released as well.

15 Plaintiffs' counsel just mentioned that we  
16 have been trying to create ambiguity. We disagree.  
17 We believe that the second settlement agreement is  
18 clear and that it was a global release.

19 But, again, to the extent there's a dispute  
20 about that then a genuine issue of material fact has  
21 been created.

22 Plaintiffs' counsel also mentioned that if  
23 there's been no meeting of the minds then it would put  
24 us right back to where we started and somehow Senior  
25 and Lillian would still be on the hook. Respectfully,

1 we disagree, Your Honor.

2 They would have never incurred any obligation  
3 for the debt that was owed by Junior to begin with.  
4 And so to get us back to the position ex-ante would be  
5 Senior and Lillian are completely off the hook  
6 altogether and so we would not be right back here  
7 where we are now like plaintiffs' counsel just said.

8 And lastly, Your Honor, I think it is helpful  
9 for us to consider what the parties thinking was at  
10 the time of the second settlement agreement, Your  
11 Honor. They had a confession of judgement. They had  
12 that. They executed that and could have sought the  
13 full, entire amount of that debt. Instead, they  
14 accepted \$50,000. And according to plaintiffs, it  
15 only released that confession of judgement.

16 And so if you're in the position of  
17 plaintiffs at that point in time, you make a deal for  
18 \$50,000 to extinguish a confession of judgement where  
19 you don't have to go through any litigation whatsoever  
20 and then you're going to go after and hunt after that  
21 \$500,000 in protracted litigation by foreclosing on a  
22 property. That doesn't make any sense, Your Honor.

23 It leads to an absurd result, and South  
24 Carolina law is very clear that an absurd result  
25 should be avoided. So it's very clear in this

1 agreement and by the parties own conduct that they  
2 were releasing everything, Your Honor.

3 It just doesn't make sense why you would  
4 accept \$50,000 only for a confession of judgement and  
5 then go take up a bunch of attorney's fees and go  
6 after and foreclose and try and get the rest of that  
7 debt.

8 You do the exact opposite. You release the  
9 mortgage and accept the confession of judgement to  
10 avoid protracted litigation. And that's exactly what  
11 the release language says, to avoid protected  
12 litigation.

13 And so, again, it's another indicator of a  
14 global release. And, again, Your Honor, my last point  
15 here is that it would be inconsistent for this Court  
16 to hold that the first settlement agreement mentions  
17 and references the note and the mortgage and yet find  
18 that the second settlement agreement which has the  
19 identical language of those two whereas clauses does  
20 not reference the note and mortgage. That would be  
21 inconsistent and respectfully, Your Honor, that's  
22 grounds for reconsideration in this particular case.

23 And, again, we respectfully request that our  
24 motion to reconsider be granted and plaintiffs' motion  
25 for summary judgement be denied. Pending any

1 questions, Your Honor, that concludes my presentation.  
2 Thank you.

3 THE COURT: Thank you, Mr. Ricard. I find  
4 that there's an insufficient basis for the Court to  
5 alter its order in this case. I think that had they  
6 intended to satisfy the note and mortgage, they would  
7 have stated so. The Court's finding that the note and  
8 the mortgage are not clearly referenced in there,  
9 maybe that's what I needed to say, in the second  
10 settlement agreement is insufficient basis from which  
11 the Court should alter or amend its order, and that's  
12 why I started out with that.

13 And I believe that the intention of the  
14 parties at the time they entered into the second  
15 settlement agreement was to release the property from  
16 the judgement because the judgement is both in  
17 personam and in rem. And the note and the mortgage --  
18 the mortgage is clearly in rem, and they retained  
19 that.

20 So I just don't find -- and you made a  
21 recitation of eight separate issues of fact. However,  
22 let me say this. Today, the 27th of September 2023,  
23 is the first time I have heard argued the issue of  
24 coercion.

25 But as pointed out, there's no affidavit to

1 support that allegation. It's not been pled that I  
2 could see, and so it's just being raised in a motion  
3 to reconsider. So I don't find that the release of  
4 judgement is sufficient to satisfy the note and the  
5 mortgage. And on that basis, I'm going to deny the  
6 motion to reconsider.

7 Plaintiff chose to file the confession  
8 thereby converting the mortgage into a judgement lien;  
9 that's not a correct statement of law.

10 So the remedy contained in the second  
11 settlement was the satisfaction as to these  
12 defendants, the Beasley Senior defendants, from the  
13 confession of judgement and not the entire debt as  
14 exhibited in the note and secured by the mortgage.  
15 And on that basis, it's denied.

16 MR. MCVEY: Your Honor, you just used the  
17 word satisfaction in connection with Beasley  
18 defendants. I think you meant to use the word  
19 release.

20 THE COURT: Release.

21 MR. MCVEY: The partial release. Says  
22 release.

23 THE COURT: Yes. That's correct. It's  
24 released. I just find that -- there are facts in this  
25 case which y'all are disputing. I just don't find

1 they're genuine issues. Okay? I do not find the  
2 issues to be genuine. That's really what I'm sort of  
3 concluding.

4 And I cite the Kitchen Planters case, which I  
5 think came out the day I was writing these orders.

6 Okay. All right? So that one is covered.  
7 What else we got?

8 MR. MCVEY: Your Honor, if I may. All right.  
9 First of all, do you want an order or are you going to  
10 do a Form 4?

11 THE COURT: You write an order. You want to  
12 send me an order? Run it by counsel?

13 MR. MCVEY: Joey would be happy to send you  
14 an order.

15 THE COURT: Very good. You got a motion for  
16 summary judgement?

17 MR. MCVEY: No, Your Honor. The defendants  
18 filed a motion for summary judgement, which I would  
19 submit at this point is moot.

20 I was going to do a housekeeping on what I  
21 think is out there right now. We have our motion for  
22 what is essentially a damages hearing I believe.  
23 Though as a practical matter, Your Honor, we have now  
24 submitted two statements -- we submitted two  
25 affidavits of debt.

1           .     No one has come forth with a counter  
2 affidavit disputing any of those, nor did the  
3 defendants request an accounting in their pleadings.  
4 So I'm not sure that testimony is necessary. I think  
5 Your Honor can decide based upon the affidavits of  
6 debt as well as the affidavits of attorneys' fees that  
7 were submitted by Mr. Floyd and myself. Of course, I  
8 will defer to however the Court wants to handle that.

9           Your Honor, the other motion that is out  
10 there is our amended motion to dismiss or strike the  
11 Beasley defendants' counterclaims and for summary  
12 judgement on the counterclaims.

13           Based on the Court's ruling on summary  
14 judgement, again, I think those counterclaims should  
15 be dismissed or denied at this point.

16           You can't have abuse of process if we were  
17 entitled to foreclose on our mortgage. We haven't  
18 breached the contract if we're entitled to foreclose  
19 on the mortgage.

20           And then we have a protective order. We did  
21 get served discovery after the last hearing on this.  
22 It's due pretty soon. And, Your Honor, we don't think  
23 that -- all of the discovery is moot again at this  
24 point based on the Court's summary judgement ruling I  
25 believe at this point.

1           So, Judge, that's my housekeeping. I'm  
2 willing to handle this however you would like.

3           THE COURT: Let's take up the motion to  
4 dismiss the counterclaims and the issue of discovery.  
5 Who wants to argue that one? Who is up for that one?

6           MR. DENNIS: Your Honor, may it please the  
7 Court, Markley Dennis. I certainly understand your  
8 ruling and that's what this is all about. We agree to  
9 disagree.

10           But the bottom line is if a summary judgement  
11 is granted, our abuse of process claim really depends  
12 on certain things that are existing that we think are  
13 material, one of which is frankly the defenses of  
14 accord and satisfaction which clearly goes to  
15 addressing what your statement was why would you do  
16 that.

17           Well, there's a basis for it but it's going  
18 to take testimony to establish that. So you rule as a  
19 matter of summary judgement we don't have any right to  
20 have that testimony, so we don't get to put that in.

21           So the bottom line is I don't know how we  
22 prove our abuse of process if we can't rely on the  
23 pleadings that we have and you have basically negated  
24 that with your ruling.

25           THE COURT: And the same as to breach of

1 contract.

2 MR. DENNIS: And I want to be sure I  
3 understand what you said. The ambiguities you're  
4 construing as a matter of law --

5 THE COURT: I find no ambiguities.

6 MR. DENNIS: You find none, although you've  
7 stated there's some ambiguities.

8 THE COURT: No.

9 MR. DENNIS: The record will speak for  
10 itself, thank you very much.

11 THE COURT: No. That, I did not say.

12 MR. DENNIS: I've sat where you are sitting  
13 and heard many of those things. And numbers of things  
14 of ambiguities as to what? And ambiguities here as to  
15 the accord and satisfaction, I don't think that's been  
16 addressed at all. And I think that's very significant  
17 here because it goes to answer why the second and  
18 third settlement agreements are there.

19 So just for the record so that that's clear,  
20 we can't -- I guess we can't argue that because you  
21 ruled them out because you said as a matter of law,  
22 they're entitled to do what they're doing.

23 THE COURT: Well, what I intended to say was  
24 eight issues of fact were presented before me, but in  
25 order for there to be -- that has to do with one, the

1 note; two, the mortgage; three, the debt; four, the  
2 release; five, the order of restitution satisfying the  
3 debt, which I totally disagree with --

4 MR. DENNIS: Your Honor, the debt has  
5 never -- we never said it was satisfied.

6 THE COURT: Right. And coercion was raised,  
7 which I've reviewed the pleadings. It's never been  
8 raised, so it's not appropriate at this time.

9 And as to a global release and whether or not  
10 there was a meeting of the minds, I just find that  
11 it's just not -- it's apparent to this Court that that  
12 was not the intention at the time that the second  
13 settlement agreement was entered into, that it was  
14 entered into for the purpose of releasing the  
15 judgement from the record as it pertains to Beasley  
16 Senior defendants because that's all it addressed.

17 MR. DENNIS: Yes, sir. And my whole point is  
18 this: Assuming all of those things to be correct, if  
19 accord and satisfaction is a valid defense which we've  
20 raised then our abuse of process would -- we would  
21 have a base for.

22 And that would be an issue that -- I looked  
23 at several cases, one E.C. Burnett ruled on, that got  
24 reversed, and in every single one of them, accord and  
25 satisfaction is something that goes to the jury

1 because it depends on what the parties intended, and I  
2 don't think you can construe what the parties intended  
3 without having testimony.

4 Thank you, sir.

5 MR. MCVEY: Your Honor, if I may be heard  
6 briefly on that. First of all, I think your summary  
7 judgement ruling at this point precludes any of the  
8 affirmative defenses as well as the counterclaims that  
9 were asserted by the defendants in this.

10 And if I may specifically address  
11 Mr. Dennis's arguments related to whether he's  
12 entitled to create a factual record at this point, the  
13 opportunity to have submitted evidence in  
14 contradiction or in defense of summary judgement was  
15 two days prior to the summary judgement hearing.

16 That's why the rule says what it is. Not one  
17 time have the defendants submitted affidavits signed  
18 by Mr. or Mrs. Beasley, not one time, and it makes me  
19 wonder why that is.

20 Is somebody uncomfortable signing that  
21 statement? I don't know. But everything on this is  
22 utterly and completely unsupported. And all of the  
23 facts that have now been -- or the facts that they  
24 would use to support the defense, again, wholly  
25 unsupported.

1           You cannot simply rest upon your laurels in  
2 your answer once somebody moves for summary judgement  
3 that is properly supported by an affidavit.

4           THE COURT: That's basic Rule 56.

5           MR. FLOYD: That is basic rule that I had  
6 beaten into my head by many a circuit court, Judge.  
7 Your Honor, that's just a fact.

8           THE COURT: I got one beating on me now. Go  
9 ahead.

10          MR. DENNIS: I will happily respond to that  
11 one. There's no question about it we didn't submit  
12 it. You have the exhibits which show the agreements  
13 that we're relying on, Your Honor. Those speak for  
14 themselves.

15          I don't need an affidavit to say that's what  
16 it says. It says what it says. So I disagree totally  
17 with his statement. And I assure you, summary  
18 judgement, you're entitled to rely on the pleadings,  
19 too. I guarantee you that.

20          THE COURT: All right. I'm going to grant  
21 the motion to strike defenses in the counterclaim.

22          What was the other one? Something to do with  
23 discovery? It had to do with request to admit.

24          MR. MCVEY: Your Honor, we were served  
25 discovery by the defendants shortly after the hearing,

1 and we move for a protective order that we don't have  
2 to answer those because, again, there was a request to  
3 admit included in there under Rule 34 because at this  
4 point, they're moot.

5 The discovery that they seek has to do with  
6 their defenses and with the claims, all of which have  
7 now been ruled on. So at this point, Your Honor, we  
8 don't think we should have to answer that discovery  
9 and we think it's time to go forward with the damages  
10 hearing as -- if that's what Your Honor is inclined to  
11 do then we would submit that when there's sufficient  
12 evidence in the record to establish the debt to do a  
13 foreclosure, as well as your order which allowed us to  
14 do so.

15 Your Honor, we submitted an affidavit at the  
16 time we filed the summary judgement motion that has  
17 been uncontested as to what the debt amount is.  
18 Further, the defendants have not requested an  
19 accounting. They didn't plead it. It's been waived.

20 So the Court can make that determination.  
21 It's just math, Your Honor. It's just simple math.  
22 So the Court can make a determination as to the debt  
23 amount and then we can have an argument about whether  
24 the attorneys' fees that we're requesting are  
25 reasonable or not. But we can do all of that without

1 having to do live testimony at this point.

2 THE COURT: Okay. I agree with that. I'm  
3 going to grant the motion for protective order unless  
4 y'all want to be heard on that.

5 Let's talk about moving forward with the  
6 damages. Determination, any question on that one?

7 MR. MCVEY: Your Honor, again, I think I  
8 stated my position on that. I think the affidavits  
9 support it. I think we can submit you a proposed  
10 order.

11 THE COURT: You want to be heard on that?

12 MR. DENNIS: Yes, sir. There are a number of  
13 things, first of all, you've alluded to them. We  
14 don't know what's been paid in restitution. We don't  
15 know -- because those sums are listed as a part of the  
16 restitution. And I don't know -- we don't have a clue  
17 what's been paid.

18 THE COURT: Well, I guess y'all can testify  
19 to that.

20 MR. FLOYD: Your Honor, the affidavit says  
21 this is what is due and owing. And it is  
22 uncontroverted by any affidavit. The restitution  
23 issue, much like the coercion thing, that's the first  
24 I've heard of it today, too. That's, again, also not  
25 pled.

1           And, Your Honor, if you want, we updated the  
2 figures. It's the last two pages contained in the  
3 notebook that we provided you and counsel with that it  
4 just does the math for you. It also shows the dates  
5 in which the \$25,000 and \$50,000 payments were made,  
6 gives credit for all of those.

7           THE COURT: And I don't know what the  
8 interest rate was.

9           MR. MCVEY: 12 percent. It started accruing  
10 after maturity.

11          THE COURT: Upon maturity?

12          MR. MCVEY: The note matured November 21,  
13 2018, and it's been calculated from that date as is  
14 set forth in the affidavit.

15          THE COURT: Okay. All right. All right. So  
16 let's run down. Go ahead and tell me what the  
17 statement of debt is.

18          MR. MCVEY: Thank you, Your Honor. As of  
19 today's date, there's due and owing to the plaintiffs  
20 the original principal balance of \$64,500. Excuse me,  
21 \$647,500, Your Honor.

22          THE COURT: They might have taken that first  
23 one.

24          MR. MCVEY: Exactly. With 12 percent  
25 interest, that total is \$931,097.41 with a per diem.

1 That's as of September 5th, which is the date we  
2 submitted the affidavit in support of the damages.

3 The total debt which would include a 15  
4 percent attorney fee under the note of \$139,541.61.  
5 Costs, which are supported in the affidavit, so  
6 attorneys' fees and costs that were both submitted by  
7 Mr. Floyd and myself are \$4,487.92 for a total debt as  
8 of September 27th of \$1,075,126.94.

9 There's 22 days of interest that have accrued  
10 between the 5th of September and today. That's a  
11 total of \$4,510.22. The total debt as we stand here  
12 today is \$1,079,637.16.

13 THE COURT: Your costs, I think you submitted  
14 affidavits on that; did you not?

15 MR. MCVEY: That's correct. They are broken  
16 out by firm in each of our affidavits, Your Honor, as  
17 are the factors that are set forth for determining the  
18 reasonableness of the attorneys' fees, et cetera.

19 THE COURT: Okay. Cost of the 2,973.34  
20 submitted by Mr. Floyd?

21 MR. FLOYD: I believe that's correct, Your  
22 Honor. Yes, sir.

23 THE COURT: 1,514.18 by Mr. McVey? Just  
24 under 4500. And the affidavit of debt which y'all  
25 submitted at the time, November 5th, was filed

1 September 7th, signed by both Mr. Young and  
2 Mr. Greene.

3 So the principal of 572,500, which  
4 acknowledges the payment of 75,000, correct?

5 MR. MCVEY: That is correct, Your Honor.

6 THE COURT: Okay. Accrued interest of  
7 358,597.41. The total debt figure you're showing me  
8 here is 931,097.41?

9 MR. MCVEY: Correct, Your Honor. And, again,  
10 with adding in the fees, costs, et cetera, and the  
11 additional interest of \$4,510.28 for a total figure as  
12 of September 27th of \$1,079,637.16.

13 THE COURT: Okay. All right. And of course  
14 acknowledges the payments showed there. Any other  
15 payments they acknowledge? Any other payments being  
16 received on this debt?

17 MR. FLOYD: It's agreed those are the  
18 payments based on request to admit, Your Honor.

19 THE COURT: Okay. Just those payments were  
20 made, the 25 and 50? All right.

21 Any question about those, about how they  
22 calculated?

23 MR. DENNIS: Your Honor, just for the  
24 purpose -- I assumed this is in response to  
25 plaintiffs' motion for foreclosure hearing. And it

1 says: We request the honorable court to schedule a  
2 hearing to establish the debt.

3 And this is the hearing, I assume?

4 THE COURT: Yes, sir.

5 MR. DENNIS: Thank you, sir.

6 THE COURT: What they argue is there's been  
7 no accounting, been no affidavits in response.

8 MR. DENNIS: I understand that. What we're  
9 hearing is what I read and that's what I would  
10 consider.

11 THE COURT: All right. I find that the total  
12 amount of the debt as calculated in what is now  
13 Exhibit F to the plaintiffs' memoranda today is the  
14 total sum of \$1,079,637.16 with a per diem of \$205.01  
15 per day based upon the principal amount plus the  
16 interest of 12 percent.

17 I didn't check your back page. Looks like  
18 this is where you did your math.

19 MR. MCVEY: Your Honor, that's correct.  
20 That's a spreadsheet that shows when the payments were  
21 applied and how they were applied.

22 THE COURT: All right. I'll grant you that  
23 relief and request that y'all submit a proposed order  
24 of foreclosure. Certainly would like you to run that  
25 by counsel for the defendants and we'll do the usual

1 terms of sale. I would expect an appeal in this  
2 particular case. We'll cross that bridge when we get  
3 to it.

4 I don't set for sales prior to 60 days  
5 anyway. So October, November, December would be the  
6 earliest date and I probably would not want to put  
7 defendants out before Christmas, so probably next  
8 year. Okay?

9 MR. MCVEY: Your Honor, if I may, are you  
10 still selling twice a month?

11 THE COURT: No. I'm not having sales again  
12 until November. Let's look for January. Okay?

13 MR. MCVEY: Thank you, Your Honor.

14 THE COURT: I do sell the first Tuesday of  
15 each month is when I sell. I'll have to get you the  
16 date to find out when that would be.

17 MR. MCVEY: Your Honor, the only other point  
18 I would like to make is I do believe that the case law  
19 requires you to make a finding about the attorneys'  
20 fees.

21 THE COURT: I'm sorry. I didn't do that.  
22 Y'all submitted affidavits?

23 MR. MCVEY: We did, Your Honor.

24 THE COURT: You're asking -- your statement  
25 is 15 percent.

1 MR. MCVEY: The note says 15 percent.

2 THE COURT: Y'all cite *Dees v. Strickland* in  
3 your request?

4 MR. MCVEY: Mr. Floyd cited one that's near  
5 and dear to his heart because his law firm was  
6 involved. But it's cited in the affidavit. Cited in  
7 the motion I believe.

8 THE COURT: 15 percent included in the note?

9 MR. MCVEY: It is included in the note, Your  
10 Honor.

11 THE COURT: Okay. I'll grant it, then.  
12 Okay. Grant those fees. All right, gentlemen. Thank  
13 you for being here today. And ladies, I should not  
14 leave y'all out. Good to see y'all again. Thank you.

15 (Off the record at 3:29 p.m. on September  
16 27th, 2023.)

17  
18  
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24  
25

COURT REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY THAT THE TESTIMONY CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL, ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS THE 2ND DAY OF OCTOBER 2023.

*Josie Boehm*  
-----  
JOSIE ALLEN BOEHM

My Commission Expires 10/18/32

# EXHIBIT B

# UNITED STATES DISTRICT COURT

## District of South Carolina

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

vs.

Case Number: 2:22-cr-00364-DCN

JOHN WOODROW BEASLEY, JR.

USM Number: 07089-510

William Camden Lewis, Retained  
Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to Count 1.
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

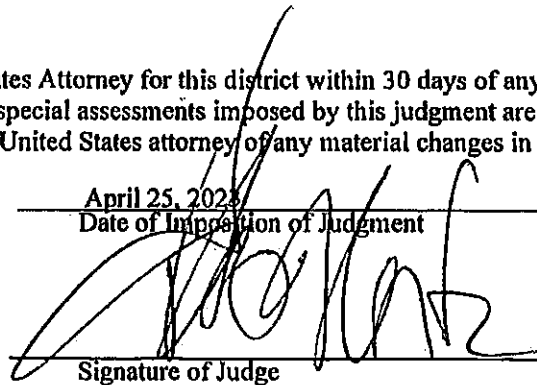
| <u>Title &amp; Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|--------------------------|----------------------|--------------|
| 18:1343                    | Please see Information   | 10/12/17             | 1            |

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)\_\_\_\_\_.
- All remaining counts are dismissed on the motion of the United States.
- Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

April 25, 2023  
Date of Imposition of Judgment

  
Signature of Judge

DAVID C. NORTON, U.S. DISTRICT JUDGE  
Name and Title of Judge

May 16, 2023  
Date

DEFENDANT: JOHN WOODROW BEASLEY, JR.  
CASE NUMBER: 2:22-cr-00364-DCN

**PROBATION**

The defendant is hereby sentenced to probation for a term of five (5) years. The defendant shall pay the mandatory \$100 special assessment fee and restitution in the amount of \$1,334,400.00, both due beginning immediately. While on supervised release, the defendant shall comply with the mandatory and standard conditions of supervision and the following special conditions. 1. You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer. 2. You must provide the probation officer with access to any and all requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office. 3. You must pay any remaining unpaid restitution balance imposed by the Court in minimum monthly installments of \$100.00 to commence June 1, 2023. The payments shall be made payable to "Clerk, U.S. District Court" and mailed to P.O. Box O Box 835, Charleston, SC 29402. Interest on any restitution/fine ordered is waived. Payments shall be adjusted accordingly, based upon the defendant's ability to pay as determined by the Court. 4. The defendant shall be subject to placement in the Financial Litigation Unit Wage Garnishment program for the purpose of collecting restitution, if deemed necessary by the U.S. Probation Officer. 5. You must be monitored on stand alone with GPS for a term of 365 days. You have no residential curfew, home detention, or home incarceration restrictions. However, you must comply with the location or travel restrictions as imposed by the court. You must contribute to the cost of such program not to exceed the amount determined reasonable by the Court approved U.S. Probation Office's "Sliding Scale for Services".

**MANDATORY CONDITIONS**

- 1. You must not commit another federal, state or local crime.
- 2. You must not unlawfully possess a controlled substance.
- 3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 5.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. §20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 6.  You must participate in an approved program of domestic violence. *(check if applicable)*
- 7.  You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
- 8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- 9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
- 10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JOHN WOODROW BEASLEY, JR.  
CASE NUMBER: 2:22-cr-00364-DCN

### STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines, based on your criminal record, personal history or characteristics, that you pose a risk to another person (including an organization), the probation officer, with the prior approval of the Court, may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

ELECTRONICALLY FILED - 2023 Oct 17 11:09 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003510



DEFENDANT NAME: John Woodrow Beasley, Jr.  
CASE NUMBER: 2:22-364

**RESTITUTION PAYEES**

| No. | Name of Payee                                 | *Total Amount of Loss | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|-----|---|-----------------------|-------------------------------|---|
| 1   | Dennis Latham                                 | \$55,000.00           | \$55,000.00                   |   |
| 2   | Dallas Burnett                                | \$55,000.00           | \$55,000.00                   |   |
| 3   | Hugh Burnett                                  | \$55,000.00           | \$55,000.00                   |   |
| 4   | Richard Young                                 | \$215,000.00          | \$215,000.00                  |   |
| 5   | Dusty Garus                                   | \$250,000.00          | \$250,000.00                  |   |
| 6   | Jason Green                                   | \$375,000.00          | \$375,000.00                  |   |
| 7   | Austin Franklin                               | \$115,000.00          | \$115,000.00                  |   |
| 8   | Robert Hoffland                               | \$65,500.00           | \$65,500.00                   |   |
| 9   | Small Business Administration                 | \$48,900.00           | \$48,900.00                   |   |
| 10  | David and Rhadika Alosi C/O<br>Lizzi Law Firm | \$100,000.00          | \$100,000.00                  |   |

DEFENDANT: JOHN WOODROW BEASLEY, JR.  
CASE NUMBER: 2:22-cr-00364-DCN

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$100.00 special assessment and restitution in the amount of \$1,334,400.00, both due immediately.
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D, or  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal monthly installments of \$100 to commence June 1, 2023; or
- D  Payment in equal monthly installments of \$0.00, to commence within \_\_\_\_ days after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed 3/8/2023 and the said order is incorporated herein as part of this judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

# Turner Padget

Ian D. McVey

REPLY TO  
E-Mail: [Imcvey@turnerpadget.com](mailto:Imcvey@turnerpadget.com)  
Writer's Direct Dial: 803-227-4267  
Writer's Direct Fax: 803-400-1564

October 26, 2023

VIA EMAIL  
COUNSEL OF RECORD

RE: *Richard Young, et al. v. John W. Beasley a/k/a John W. Beasley, Sr., et al.*  
Case No.: 2022-CP-10-03510  
TPGL File No.: 19077.101

Dear Counsel:

Please find enclosed and serviced upon you the **Motion Pursuant to Rule 60(a), SCRPC, Amended Order and Judgment of Foreclosure and Sale and Certificate of Service**. In connection with the above-referenced matter.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

TURNER PADGET GRAHAM AND LANEY P.A.

*s/ Ian D. McVey*

Ian D. McVey

Attachments as stated

cc: Cheryl D. Shoun, Esq. (email w/encls.)  
Rhett D. Ricard, Esq. (email w/encls.)  
Markley Dennis, Jr., Esq. (email w/encls.)  
John C. Johnston, Esq. (email w/encls.)  
Victoria W. Kurtz, Esq. (email w/encls.)  
Kiera C. Dillon, Esq. (email only w/encls.)  
Joey Floyd, Esq. (email only w/encls.)

TPGL 14041071v1

**STATE OF SOUTH CAROLINA**  
**COUNTY OF CHARLESTON**

Richard Young and Jason Greene

Plaintiffs,  
v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service,

Defendants.

**IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT**

**CASE NO.: 2022-CP-10-03510**

**MOTION PURSUANT TO  
RULE 60(a), SCRCP**

NOW COME PLAINTIFFS, Richard Young and Jason Greene, by and through their undersigned counsel, who hereby move for an order of this Court for the Amendment of the Order and Judgment of Foreclosure and Sale ("Foreclosure Decree") entered by this Honorable Court on October 6, 2023 pursuant to Rule 60(a), SCRCP. The Foreclosure Decree contains certain clerical errors which need correcting. The Promissory Note ("Note") at issue in this matter, provides for a twelve (12%) interest rate. While paragraph 15 of the Findings of Fact contained in the Foreclosure Decree correctly notates the interest rate due under the Note, paragraph 6 B of the Conclusions of Law indicates the interest rate of eight and one-quarter (8.25%) percent. Further, the Mortgage at issue in this case is, as correctly noted in paragraph 12 of the Findings of Fact as a second priority mortgage, junior and subordinate only to the mortgage of Community First Bank of Charleston dated December 28, 2006 and recorded on January 2, 2007 in the office of the Register of Mesne Conveyances for Charleston County in Book 610 at page 484, paragraph 2 of the Conclusions of Law indicate that the Mortgage is

a first priority lien.

Therefore, Plaintiff would respectfully submit that the Foreclosure Decree should be amended to correct the forgoing clerical errors pursuant to Rule 60(a), SCRPC which provides, "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

WE SO MOVE.

TURNER PADGET GRAHAM & LANEY, P.A.

*s/Ian D. McVey*

Ian D. McVey, SC Bar No. 71196  
Lindsey M. Böhnke, SC Bar No. 105719  
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BRUNER POWELL WALL & MULLINS, LLC

*s/Joey R. Floyd*

Joey R. Floyd, SC Bar No. 68491  
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*Attorneys for the Plaintiffs*

Columbia, South Carolina  
October 25, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,  
v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

**AMENDED ORDER AND  
JUDGMENT  
OF FORECLOSURE AND  
SALE**

**John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto pursuant to S.C. Code §29-3-650**

**(Deficiency Waived)**

Pursuant to Rule 53 SCRCF, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment. Any appeal from the final judgment entered by the Master in Equity shall be directly to the South Carolina Supreme Court or South Carolina Court of Appeals, as provided in the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held on September 27, 2023. Present at said hearing were Ian D. McVey and Joey Floyd for Plaintiffs, as well as the Plaintiffs themselves. Cheryl D. Shoun, R. Markley Dennis, Jr., Rhett Ricard, John C. Johnston and Victoria W. Kurtz appeared for the Beasley Defendants, none of whom were present at the hearing. This Court has previously determined that Plaintiffs are entitled to Summary Judgment on all issues

contested by Defendants. *See Order Granting Plaintiffs Motion for Summary Judgment entered on August 23, 2023.* Plaintiffs' initial Motion for Summary Judgment was properly supported by an Affidavit of Plaintiffs' attesting to the Debt due and owing by the Beasley Defendants. Plaintiffs filed a Motion for Foreclosure Hearing and Award of Attorney's Fees and Costs. Said motion was supported by an Updated Affidavit of Debt as well as Affidavits of Attorney's Fees and Costs from counsel for Plaintiff. Based on the evidence presented to this Court, I find and conclude as follows:

#### **FINDINGS OF FACT**

1. The Lis Pendens was filed on August 4, 2022 and the Amended Lis Pendens was filed on August 22, 2022.
2. The Summons and Complaint were filed on August 4, 2022 and the Amended Summons and Amended Complaint were filed on August 22, 2022.
3. Service was made upon the Defendants named in this Report as is shown by the Affidavits of Service filed herein.
4. The Defendants John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto (collectively referred to herein as "Beasley Defendants" or "the Beasley Defendants") were served and an Answer to the Amended Complaint was timely filed on their behalf on August 26, 2022, along with Counterclaims. The Counterclaims have been dismissed pursuant to an order entered by the undersigned on October 6, 2023.
5. The Defendant The United States of America, by and through its agency, the Internal Revenue Service filed an Answer through their attorney George J. Conits. The United

States of America has also filed a Disclaimer of Interest in this civil action (filed on October 14, 2022), wherein the Internal Revenue Service disclaimed its interest in the real property that is the subject of this civil action. Defendant the United States of America was dismissed pursuant to an Order Granting Partial Summary Judgment on August 23, 2023.

6. The Defendant South Carolina Department of Revenue was served and an Answer was filed by the South Carolina Department of Revenue on October 7, 2022.

7. The Defendants Bob Hollow Investments, LLC, Seaside Plantation Property Owners Association, Inc. and Anna Pruitt are in default as more particularly described in the Order Granting Partial Summary Judgment which resolved certain issues related to title, filed on August 23, 2023.

8. The Defendants were notified of the time, date, and place of the hearing in this matter and Counsel for the Defendants appeared at said hearing.

9. With the formal discontinuance of the Home Affordable Modification Program (HMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

#### **AS TO THE SECOND CAUSES OF ACTION**

10. For value received, the Beasley Defendants made, executed and delivered to the Plaintiffs Ricky Young and Jason Greene (collectively referred to herein as "Plaintiffs") a promissory note dated November 20, 2017, promising thereby to pay the sum of Six Hundred Forty-Seven Thousand and Five Hundred Dollars and 00/100 (\$647,500.00), with interest thereon, the terms of which are more fully explained by reference thereto ("Note"). Other terms and conditions are stated in the Note, which is of record in this civil action (electronically filed with the Plaintiffs' initial pleadings, as an exhibit to the original Complaint and the Amended Complaint

and/or filed numerous times with this Court in connection with the various motion hearings).

11. To better secure the payment of the Note described above, the Beasley Defendants made, executed and delivered to Plaintiffs a Mortgage in writing, dated November 20, 2017, covering real property in Charleston County, which is the same as that described in the Complaint, with an address of 1050 Sea Eagle Watch, Charleston, SC 29412. The Mortgage was recorded on December 8, 2017 and is of record in the Office of Register of Deeds for Charleston County in Mortgage Book 0684 at Page 902.

12. Said Mortgage constitutes a second priority lien on the Subject Property subordinate only to that certain mortgage to Community First Bank of Charleston dated December 28, 2006 and recorded on January 2, 2007 in the office of the Register of Mesne Conveyances for Charleston County in Book 610 at page 484.

13. Payment due on the Note was not, and has not been, made as provided for therein, and the Plaintiffs, as the holder thereof, have elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

14. In accordance with the terms of the Note, the Beasley Defendants are responsible for the costs and attorneys fees in the amount of fifteen (15%) percent of the outstanding balance due as attorney fees for Plaintiffs' attorney for services performed and anticipated to be performed until final adjudication of the within action under the terms of the Note and Mortgage. See *West v. Gladney*, 341 S.C. 127, 533 S.E.2d 334. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. The outstanding balance due, as of September 5, 2023, is Nine Hundred Thirty One Thousand Ninety Seven dollars and 41/100 (\$931,097.41). As such, the attorneys fee for services rendered by

Plaintiffs' counsel is \$139,541.61, which I find to be reasonable having given due consideration to the factors set forth in *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992).<sup>1</sup> This case is a contested foreclosure action and includes some issues related to title clean-up / quiet title. The Plaintiffs' actions in this foreclosure matter have been contested from day one in this litigation. Counsel for the Plaintiffs' (both of them/their firms) have devoted a significant amount of time in connection with their pursuit of this foreclosure on the part of the Plaintiffs. The Plaintiffs have conducted written discovery, filed a motion to compel, filed and defended numerous motions, attended multiple motion hearing dates (with numerous motion hearings), filed memoranda in support and in opposition to various motions. Both attorneys for the Plaintiffs have been practicing for approximately twenty years and both attorneys are well respected for their practices. The Promissory Note at issue in this civil action expressly provides that the attorneys' fee is fifteen percent (15%) of the outstanding balance due. A fifteen percent (15%) fee is at, or below, the fee that would be customarily charged in this locality for similar legal services, particularly in light of the litigious fight in this lawsuit (coupled with the likelihood of an appeal). Without question, Plaintiffs' Counsel have achieved the most beneficial result possible at this point in time, since an award of Summary Judgment in favor of the Plaintiffs has been issued. In light of these factors, duly considered by this Court, the fee being requested by Plaintiffs in this matter is indeed reasonable.

15. The amount due and owing on the Note, secured by the above-referenced Mortgage, with interest at the rate provided in the Note and other costs and expenses of collection,

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<sup>1</sup> See *Dedes V. Strickland*, 307 S.C. at 160, 414 S.E.2d at 137 (1992) ("Where a contract provides for reasonable attorney's fees without specifying a rate or amount, the issue of attorney's fees is left to the discretion of the trial judge and will not be reversed on appeal unless there is a showing of an abuse of discretion. Factors to consider by the trial court in making a determination as to attorneys' fees are: 1) The nature, extent and difficulty of the legal services rendered; 2) the time and labor necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the fee customarily charged in the locality for similar legal services; and 6) the beneficial result obtained.")

including an attorney's fee, is as follows:

|     |  |              |
|-----|--|--------------|
| (A) | Principal Due  | \$572,500.00 |
| (B) | Interest to Sept. 5, 2023,<br>@ 12%, Per Diem:<br>\$205.01     | \$358,597.41 |
|     | (thru 9/27/22, 22 days *<br>\$205.01)                          | \$4,510.22   |
| (C) | Cost of Collection prior to hearing<br>(service, filing, etc.) | \$4,487.92   |
| (D) | Attorney's Fee   | \$139,541.61 |

Total debt secured by Note and Mortgage,  
including interest to September 27, 2023

\$1,079,637.16

**\*\* Plus interest accruing thereon at \$205.01/day**

Interest for the period from the date shown in (B) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate (per the terms of the Note) of 12.0% per annum on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

16. The following Defendants claim, or may claim, a lien upon or interest in the subject Property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The said Defendants and such claims or liens are as follows:

- a. The South Carolina Department of Revenue due to various liens filed by the South Carolina Department of Revenue. Plaintiff alleges that the liens are against a different John W. Beasley than the John W. Beasley that is the owner

of the Property at issue in this civil action and the Court finds the liens do not attach to the Property.

17. Anna Pruitt was named as a defendant herein by virtue of any claim she may have to the Property by virtue of the Deeds to her from Dr. A. Bert Pruitt, Jr., recorded April 1, 2002 in Book R401 at Page 216 and May 29, 2003 in Book S450 at Page 717. I find it was the intent that Anna Pruitt be deeded Lot 6 as shown on the Plat recorded in Book DD at Page 586 and find that Anna Pruitt has no interest or claim to the Property to be foreclosed herein. The Court craves reference and incorporates herein that certain Order Granting Partial Summary Judgment entered on August 23, 2023.

#### CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. With the formal discontinuance of the Home Affordable Modification Program (HMP) on December 31, 2016, South Carolina Administrative Order 2009-05-22-01 has expired by operation of law and is no longer applicable.

2. Plaintiffs' Mortgage is declared a valid second priority lien on the Subject Property as affected by the Order Granting Partial Summary Judgment subordinate only to the mortgage lien of First Community Bank of Charleston dated December 28, 2006 and recorded on January 2, 2007 in the office of the Register of Mesne Conveyances for Charleston County in Mortgage Book 610 at page 484, and Plaintiffs should have judgment of foreclosure of their Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

3. That there is due to the Plaintiffs on the Note and Mortgage set forth in the Amended Complaint the sum of One Million Seventy-Nine Thousand Six Hundred Thirty-Seven Dollars and 16/100 (\$1,079,637.16), as of September 27, 2023, with per diem interest accruing thereon at \$205.01 per day, representing the Total Debt due Plaintiffs as set out in paragraph fifteen

*supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraphs (the "Total Debt" as set forth in paragraph twenty-five *supra* and later accrued interest on the principal) shall constitute the total judgment debt against the Beasley Defendants and shall bear interest hereafter at the rate of 12.0% per annum.

5. That the Beasley Defendants liable for the aforesaid debt on the Mortgage shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiffs, or Plaintiffs' attorneys the amount of Plaintiffs' debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity at public auction, at Charleston County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on day following such holiday), on the following terms, that is to say:

A. FOR CASH: The Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) at time of bid, same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days, same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 12.00% per annum per the Note.

C. The sale shall be subject to real property taxes and assessments, existing

easements and restrictions of record.

D. The purchaser is to pay for deed stamps and costs of recording the deed.

7. A personal or deficiency judgment having been waived, bidding shall not remain open for thirty (30) days after the date of sale, and shall be final upon that date.

8. Should the Plaintiffs or Plaintiffs' agent fail to appear at the time of the sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale.

7. If Plaintiffs are the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiffs' indebtedness.

8. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof, and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiffs, or any other party to this action, may become a purchaser at such sale, and that if upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

9. That the undersigned Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action,

NEXT: To the payment to the Plaintiffs or Plaintiffs' attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further Order of this Court.

10. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, the Sheriff of Charleston County is hereby ordered and directed to eject and remove from the premises the named Defendants holding record title to the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. IT IS FURTHER ORDERED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants holding record title and in possession herein, and the property remains occupied by a person or persons holding or claiming to hold the property under lease from the record title holders, or who otherwise may have rights or protections under Federal or State statutes protecting such lessees, the Sheriff of Charleston County shall only be ordered and directed to eject and remove from the premises those occupants under the terms stated above, after a hearing as directed by this court and under such order or writ as may be issued by this court as deemed equitable under the circumstances.

12. And it is further ORDERED, ADJUDGED AND DECREED that the Beasley Defendants named herein and all other Defendants named herein, and all persons

whosoever claiming under them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

13. IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. § 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. Said deed of conveyance shall be indexed in the grantor index by the Charleston County Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

14. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance, any issues concerning the appraisal statutes, and disposing of any surplus funds pursuant to Rule 71(c), SCRPC.

15. This case was referred to a Master-in-Equity for Charleston County to direct entry of final judgment in this action under Rule 53, SCRPC. Any appeal from the final judgment entered by the Master-in-Equity shall be directly to the South Carolina Court of Appeals.

16. The following is a description of the premises herein ordered to be sold:

ALL that certain piece, parcel, or lot of land, lying and being on James Island, in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as New Lot 4, measuring and containing 5.139 acres on a plat entitled "RESUBDIVISION LOTS 4, 4A, & 6 INTO NEW LOT 4 & NEW LOT 6, TMS NUMBER 427-00-00-066, 102, AND 109, SEASIDE PLANTATION" by Absolute Surveying, Inc., dated January 15, 2003, revised February 13, 2003 and recorded February 28, 2003 in the ROD Office for Charleston County in Plat Book DD at Page 586.

Said lot having such, size shape, dimensions, and boundaries as will be reference to said plat more fully appear, together with that certain fifty (50') foot ingress/egress easement

for access to the lot conveyed herein, said easement being shown on the aforementioned plat recorded in Plat book DD at page 586.

ALL of my right, title and interest in and to the marsh located along new Lot 4 conveyed herein and abutting Seaside Creek as shown on the aforesaid Plat; Subject to any and all rights reserved to the State of South Carolina to that marsh lying between the low water mark and the high water mark of Seaside Creek and the areas referred to as "marshland" and further subject to the authority of the South Carolina Coastal Council, now known as the Office of the Ocean and Coastal Resource Management, in "critical areas" as defined in §49-39-10 et seq., 1976 S.C. Code of Laws, as amended and Rules and Regulations promulgated pursuant thereto.

BEING the same property conveyed to John W. Beasley and Lillian J. Beasley by deed of Dr. A. Bert Pruitt, Jr., dated November 10, 2003 and recorded in the ROD Office for Charleston County in Book H475 at page 025. Thereafter John W. Beasley and Lillian J. Beasley conveyed the property to John W. Beasley and Lillian J. Beasley, Trustees, or their successors in trust, under the Beasley Living Trust, dated August 14, 2018, by quit claim deed recorded August 29, 2018 in Book 0743 at Page 826.

Tax Map #427-00-00-102

Property Address: 1050 Sea Eagle Watch, Charleston, SC 29412

**[Electronic Signature of the Master in Equity to follow.]**

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON

Richard Young and Jason Greene

Plaintiffs,  
 v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service,

Defendants.

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03510

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served a copy of the foregoing Motion Pursuant to Rule 60(a), SCRPC and Amended Order and Judgment of Foreclosure and Sale in the above-captioned matter to all counsel of record, via Electronic Mail, as addressed below:

|   |   |
|---|---|
| <p>Cheryl D. Shoun, Esq.<br/>                 Rhett D. Ricard, Esq.<br/>                 Markley Dennis, Jr., Esq.<br/>                 MAYNARD NEXSEN, PC<br/> <a href="mailto:cshoun@maynardnexsen.com">cshoun@maynardnexsen.com</a><br/> <a href="mailto:rricard@maynardnexsen.com">rricard@maynardnexsen.com</a><br/> <a href="mailto:mdennis@maynardnexsen.com">mdennis@maynardnexsen.com</a><br/>                 Attorneys for Defendants John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley</p> | <p>John C. Johnston, Esq.<br/>                 Victoria W. Kurtz, Esq.<br/>                 JOHNSTON LAW FIRM, LLC<br/> <a href="mailto:john@johnstonlawsc.com">john@johnstonlawsc.com</a><br/> <a href="mailto:victoria@johnstonlawsc.com">victoria@johnstonlawsc.com</a><br/>                 Attorneys for Defendants John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley</p> |
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*Cindy A. Gatlin*  
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October 26, 2023  
Columbia, South Carolina

ELECTRONICALLY FILED - 2023 Oct 26 3:15 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1003610

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard Young and Jason Greene,

Plaintiffs,

v.

John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacities and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto, Bob Hollow Investments, LLC, Anna Pruitt, Seaside Plantation Property Owners Association, Inc., South Carolina Department of Revenue, and the United States of America by and through its agency the Internal Revenue Service.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C/A NO.: 2022-CP-10-03510

**PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO BEASLEY  
DEFENDANTS' MOTION TO  
RECONSIDER**

NOW COME PLAINTIFFS, by and through their undersigned counsel, who hereby submit this Memorandum in Opposition to the Motion to Reconsider filed by John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley in their individual capacity and as Trustees or as successors in trust under the Beasley Living Trust dated August 14, 2018 and any amendments thereto (the "Beasley Defendants") on October 16, 2023 (the "Motion"). In their Motion, the Beasley Defendants seek reconsideration of the Court's Order and Judgment of Foreclosure and Sale entered October 6, 2023 (the "Order"). Prior to the entry of the Order, a hearing was held before this Court on September 27, 2023, where the Court heard several motions, including the Beasley

Defendants' Motion to Reconsider the Court's order granting summary judgment, which was denied. Now, the Beasley Defendants argue that the Court's Order was in error because it did not consider a Restitution Order that has been entered against the Beasley Defendants' son ("Beasley Jr."). Based upon the arguments set forth below, Plaintiffs would respectfully submit that reconsideration of the Court's Order on this basis is inappropriate.

### LEGAL STANDARD

It is well-settled that "[a] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 30, 686 S.E.2d 689, 694 (Ct. App. 2009). *See also Repko v. County of Georgetown*, 424 S.C. 464, 502, 818 S.E.2d 743, 748 (S.C. 2018) ("an issue may not be raised for the first time in a motion to reconsider"). A motion to reconsider serves to address the narrow scenario when a party believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue that was presented to it. *See Elam v. South Carolina Dept. of Transp.*, 602 S.E.2d 772 (S.C. 2004).

As for the interplay between restitution orders and civil judgments, the South Carolina Court of Appeals has made clear that the existence of a restitution order "do[es] not limit any civil claims a crime victim may file." *State v. Morgan*, 417 S.C. 338, 342, 790 S.E.2d 27, 29 (Ct. App. 2016). The court in *State v. Morgan* held that "the constructs of restitution and civil damages are separate and distinct." *Id.* at 344, 790 S.E.2d at 30. Therefore, the existence of a restitution order does not prevent any subsequent civil remedy or recovery; rather, the amount of restitution shall be set off by the amount of civil recovery. *Id.* at 343, 790 S.E. 2d at 30, n. 1.

### ARGUMENT

The Beasley Defendants' Motion to Reconsider should be denied because they improperly seek to introduce a new argument: the existence of a restitution order filed against Beasley Jr. on May 17, 2023 ("Restitution Order"), that could have been presented prior to this Court's grant of summary judgment. Further and in the alternative, even if the Court were to consider the Restitution Order raised by the Beasley Defendants, it would have no impact on the calculation of the debt because Beasley Jr. has not paid Plaintiffs any amount of the debt.

In the Motion, the Beasley Defendants argue that this Court erred by not considering the Restitution Order against Beasley Jr. This Court could not have failed to consider the Restitution Order, because the Beasley Defendants never raised it as an argument at any point in the case, including when they filed their response to Plaintiffs' Motion for Summary Judgment on August 8, 2023. Although the Restitution Order was filed on May 17, 2023, well before the hearing on Plaintiffs' Motion for Summary Judgment on August 8, 2023, the Beasley Defendants did not make an argument based upon the Restitution Order until the hearing on September 27, 2023, after the grant of Summary Judgment and as part of a motion to reconsider. The Beasley Defendants' motion to reconsider was denied at that time, and they have again attempted to introduce the Restitution Order. This Court has not failed to understand, consider, or rule on any argument presented prior to the Court's ruling. *See Elam*, 602 S.E.2d 772, *supra*. Rather, the Beasley Defendants seek to introduce an entirely new argument, which easily could have been raised before the grant of summary judgment, in direct contradiction to the purpose of a Rule 59 motion. *See Poch*, 386 S.C. at 30, 686 S.E.2d at 694, *supra*.

Additionally and in the alternative, the Beasley Defendants' contention that the Court failed to consider offsetting and double recovery is a conflation or a deliberate obfuscation of the case

law on the relationship between restitution and civil judgments. A restitution order and a civil judgment are different enforcement mechanisms, but the mere existence of an order does not mean that a party has recovered on the debt owed. Although a party may only recover once for its injuries, multiple paths to that recovery may exist simultaneously. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 56, 691 S.E.2d 135, 153 (2010). The Beasley Defendants have not proffered any evidence that Beasley Jr. has paid any part of the debt, but merely seek to characterize the Restitution Order as the sole remedy for Plaintiffs, despite the undisputed existence of a civil cause of action.

In their Motion, the Beasley Defendants cite *United States v. Cluck*, which provides that a restitution order is an additional enforcement mechanism and that offsetting between restitution and civil judgments is appropriate. 143 F.3d 174, 180 n. 9 (5th Cir. 1998). However, in that same footnote, the Court explained why offsetting was not required in that case: “Because [the debtor] had not (and has not, for that matter) shown that he *actually paid* any portion of the 1992 [civil judgment] order, *there was no reason for the district court to take that order into account* at the time it calculated his restitution.” *Id.* (emphasis added). *United States v. Cluck* makes clear that while offsetting is appropriate, it only comes into play when a payment has actually been made.

South Carolina courts have come to the same conclusion. In *State v. Morgan*, the South Carolina Court of Appeals held that “the constructs of restitution and civil damages are separate and distinct.” 417 S.C. 338, 344, 790 S.E.2d 27, 30 (Ct. App. 2016). Although it is reasonable and equitable to offset any amounts actually paid, offsetting need not be considered in the calculation when no amounts have been paid. *See id.* at 343, 790 S.E.2d at 30, n. 1.

In this case, by asking that the Court offset the debt calculation based on the Restitution

Order, the Beasley Defendants are not seeking to prevent a double recovery. Rather, they are seeking to eliminate this Court's order as an enforcement mechanism, simply because another enforcement mechanism exists. This is a misapplication of the law, which clearly provides that while only one recovery may be had, multiple paths to recovery may exist. *See Austin*, 387 S.C. at 56, 691 S.E.2d at 153, *supra*. Beasley Jr. has not paid any amount to Plaintiffs (*see* Affidavit of Debt, Exhibit 3 to Plaintiffs' Motion for Foreclosure Hearing and Award of Attorney's Fees/Costs, filed Sept. 7, 2023) and the Beasley Defendants have not presented any evidence to suggest that any payments by Beasley Jr. have been made. If the Beasley Defendants had any evidence to show that their son, Beasley Jr., had actually made any payment of restitution, surely that evidence would have been presented to the Court. However, no affidavits, testimony or any other evidence has been submitted by the Beasley Defendants throughout this case. The Beasley Defendants' eleventh hour reference to the Restitution Order is nothing more than a last-ditch effort to stall and further obfuscate the Plaintiffs' efforts to obtain a remedy in this civil action.

As has been established throughout this case, there is no dispute as to the original amount of the debt nor is there any dispute about the payments that have been made. The Beasley Defendants have had every opportunity to be heard and present evidence in this case, and their attempts to stall after an Order has been entered should fail. *See First Citizens Bank & Tr. Co. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020) (denying the defendants' Motion for Reconsideration because the defendants had the ability and opportunity to present evidence during the case, and given the existing evidence it was "difficult to imagine what, if any, evidence or testimony that [defendants] could have presented to dissuade [the Court's findings]"). The Court only has to consider and offset payments that have already been made, not amounts that might be

paid in the future. *See State v. Morgan, United States v. Cluck, supra.* Because the evidence clearly shows that Beasley Jr. has not made a single restitution payment, there was and is no reason for this Court to take the Restitution Order into account when calculating the amount of the debt.

### CONCLUSION

For the reasons set forth herein, the Beasley Defendants' Motion to Reconsider improperly raises an argument not previously presented to this Court. Further, the existence of the Restitution Order does not impact the calculation of the debt owed to the Plaintiffs, as no payments by Beasley Jr. have been made and Defendants presented no evidence of any payment other than an order requiring restitution. Therefore, Plaintiffs would respectfully submit that the Beasley Defendants' Motion to Reconsider should be denied.

**RESPECTFULLY SUBMITTED.**

**TURNER PADGET GRAHAM & LANEY, P.A.**

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT  
3 CASE NUMBER 2022-CP-10-03510  
4

5 Richard Young and Jason Greene, )

6 )

7 Plaintiff, )

8 )

9 vs. ) Motions Hearings

10 ) held August 8th,

11 John W. Beasley a/k/a John W. ) 2023

12 Beasley, Sr., and Lillian Beasley, )

13 et al, )

14 )

15 Defendants. )

16  
17  
18  
19 Hearing before the Honorable Mikell R.

20 Scarborough, reported by Josie Allen Boehm, Registered  
21 Professional Reporter and Notary Public, at 100 Broad  
22 Street, Courtroom 2A, Charleston, South Carolina,  
23 August 8th, 2023, commencing at 12:13 p.m.  
24  
25

## APPEARANCES

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1           THE COURT: All right. This case is  
2 captioned Richard Young and Jason Greene as plaintiff  
3 versus John W. Beasley, Sr. and Lillian Beasley,  
4 individually and as trustees under the Beasley Living  
5 Trust. Case number is 2022-CP-10-510 I think that  
6 says, and we've got a number of motions that have been  
7 filed. I have done some reading to get to this point.

8           MR. FLOYD: Your Honor, there's a notebook  
9 that tracks the order of motion hearings that you sent  
10 us.

11          THE COURT: That's exactly what I was looking  
12 for.

13          MR. FLOYD: It includes all of their filings  
14 as well as our filings.

15          THE COURT: Good. Thank you. All right. So  
16 I think they're in the order I need to address them.

17          So we've got the Beasley defendant's motion  
18 for recusal, which we need to take up first.

19          Is this done in timeliness, or how is this  
20 scheduled? Because the next one -- I got a motion for  
21 summary judgement. I got a motion to strike  
22 counterclaims. I got a motion for entry of default.  
23 There's a motion for summary judgement on the access  
24 issue. Declaratory judgement. And then Aaron  
25 Beasley's motion to intervene.

1           So let me do this before we start. Let's go  
2 ahead and have appearances for the record, and I'll  
3 start with Mr. McVey.

4           MR. MCVEY: Thank you, Your Honor. Ian McVey  
5 on behalf of the plaintiffs.

6           MR. FLOYD: Joey Floyd on behalf of the  
7 plaintiffs.

8           MR. HASELDEN: Andrew Haselden on behalf of  
9 Aaron Beasley.

10          MS. SHOUN: Cheryl Shoun on behalf of John W.  
11 Beasley, Sr. and Lillian Beasley in their individual  
12 and their other capacities as the trustees.

13          MR. DENNIS: Markley Dennis here for the same  
14 parties.

15          MR. JOHNSTON: John Johnston here, same  
16 parties.

17          THE COURT: Very good. So let's start in  
18 with the motion to recuse. Ms. Shoun?

19          MS. SHOUN: Thank you, Your Honor. If I  
20 might just offer the Court, and I'm sure the Court  
21 recalls, the brief history of this. And please  
22 forgive me for looking at my phone. My notes are  
23 actually on my telephone. I'm not actually TikToking.

24          THE COURT: Unless it rings, I won't hold it  
25 against you.

1 MS. SHOUN: It will not, I promise you.

2 THE COURT: If it does, I will give you the  
3 one reprieve that we should all get.

4 MS. SHOUN: That's more than Judge Dennis  
5 would give when he was on the bench.

6 THE COURT: We had a talk about that  
7 recently.

8 MS. SHOUN: Very respectfully, Your Honor,  
9 this is absolutely nothing personal directed to Your  
10 Honor. This goes to Your Honor's position and to the  
11 position that Your Honor holds as it reflects on  
12 lawyers, on litigants, on laypeople.

13 And that's why this motion to recuse is, we  
14 felt, Your Honor, essential to bring before the Court,  
15 and did it pursuant to Your Honor's instructions,  
16 frankly.

17 Initially, Your Honor, when I got into this  
18 case, it seemed a bit curious to me as to the urgency  
19 to refer the matter to Your Honor, but as Your Honor  
20 also knows, cases captioned as mortgage foreclosures  
21 are not particularly my forte, so I thought perhaps it  
22 wasn't all that unusual.

23 And then if memory serves me, we had a  
24 conference with plaintiffs' counsel on March 27. And  
25 I think at that point, again, if memory serves me,

1 there was a follow-up call where it was disclosed to  
2 us that Your Honor's son may have been made an offer  
3 on behalf of Turner Padget.

4           Shortly after that on April 3rd, we had a  
5 status conference with Your Honor. And as I recall  
6 this, and I looked back to find notes from this. I do  
7 not remember that being discussed with the Court on  
8 that April 3rd status conference.

9           THE COURT: It was.

10          MS. SHOUN: It was?

11          THE COURT: Do you know when the offer was  
12 made?

13          MR. MCVEY: Your Honor, I think it had been  
14 made the week before the status conference, so I found  
15 out about it on the Friday before.

16          MS. SHOUN: He told me about it on Friday,  
17 and next thing I know, we had a hearing on Monday.

18          MS. SHOUN: That was actually the 24th, Your  
19 Honor.

20          THE COURT: I don't know. We're going to  
21 check my records. I been trying to figure out that  
22 day. It came up the first time because everything we  
23 have done so far has been on the web as opposed to in  
24 person.

25          MS. SHOUN: It came up in this courtroom, and

1 that was on the 24th when there was a hearing on the  
2 motion to compel.

3 THE COURT: I thought it was April the 3rd.

4 MS. SHOUN: That was a telephone conference.

5 THE COURT: Okay. April 3rd. My notes  
6 reflect it was April 3rd. Go ahead.

7 MS. SHOUN: We were in this courtroom on the  
8 24th and not before that, and I think I have the WebEx  
9 calendar invite for the 3rd.

10 Be that as it may, it was shortly after the  
11 first mention of it to Mr. Johnston, my co-counsel,  
12 and I. Three days later, we got an e-mail from  
13 plaintiff's counsel saying, hey, do you have an answer  
14 on your position yet? And I said, no, we don't,  
15 because this is something that clearly we had to talk  
16 to our clients about.

17 And then we appeared before Your Honor on  
18 April 24, which was a hearing on plaintiff's motion to  
19 compel. And my recollection -- and I did not get the  
20 transcript. But my recollection is that Your Honor  
21 said it had been just previously that it was disclosed  
22 to you that perhaps your son had taken the position at  
23 Turner Padget and that you had just learned of that  
24 and were disclosing it to the courtroom.

25 It went on to say should any of the parties

1 wish to request Your Honor be recused, that you would  
2 recuse yourself. The case would go back to the Judge  
3 Young.

4 THE COURT: Actually, I asked for a remittal  
5 of disqualification at that time, just the opposite.

6 MS. SHOUN: Okay.

7 THE COURT: I didn't think it was going to be  
8 a problem. That's what my Form 4 order said.

9 MS. SHOUN: Okay.

10 THE COURT: I talked about the discovery  
11 issue. Further, the parties are to provide this Court  
12 with their determination as to any remittal of  
13 disqualification pursuant to Cannon 3F, Rule 501 due  
14 to Judge Scarborough's son's future employment at  
15 Turner Padgett Law Firm. And that's entered April  
16 25th, so that was right after the April 24th hearing.  
17 So it did come up at the 24th hearing.

18 MS. SHOUN: And I recall before then, there  
19 was no indication -- my recollection before then,  
20 there was an offer. But I think that was the first we  
21 knew that there was an agreement as to employment was  
22 when Your Honor disclosed it.

23 And thereafter, we did then submit a letter  
24 to Your Honor on May 31st after conversations with and  
25 consultation with Mr. and Mrs. Beasley, and we

1 followed through with that respectfully asking for the  
2 recusal based, again, not on anything personal as far  
3 as Your Honor is concerned but the esteemed position  
4 held by Your Honor, and that is as to the appearance  
5 of impropriety.

6 Obviously, this is a position that sends  
7 messages to many, many people, including laypeople and  
8 litigants as mentioned at the initial part of my  
9 argument. And it's very difficult to explain to a  
10 layperson how one can remain completely neutral and  
11 yet have one's relative within the degree anticipated  
12 under the Canon employed at one of the opposing  
13 party's law firm. So we do think very respectfully,  
14 Your Honor, this presents a question as to  
15 impartiality.

16 Plaintiffs have indicated in their opposition  
17 to our motion that there has been no prejudice at this  
18 time; that's correct. At this point, there is no  
19 prejudice. However, should we move forward and there  
20 is not a recusal, of course there becomes a heightened  
21 review whether the facts in the record support any  
22 findings of Your Honor once that potential is  
23 established there. I think the review is a little bit  
24 different once we've reached that point.

25 And, again, it was -- candidly, our curiosity

1 is peaked as to why plaintiffs are so adamant in their  
2 objections to Your Honor's recusal. If we rely -- and  
3 they mentioned in -- I can't remember if it's the  
4 memoranda or motion. And I've got the e-mails with  
5 me. Some indication early on that I had said there  
6 was no conflict at that point, and I did say there was  
7 no conflict at that point, because it's my  
8 recollection is that's when the offer was out there,  
9 not confirmation of the acceptance of the offer.

10 Counsel even said if you're going to seek  
11 recusal, perhaps we start looking for a special  
12 referee now. And, again, Your Honor, we very  
13 respectfully request based on the Canons the degree of  
14 relationship with your son taking the position at  
15 Turner Padget, the necessity that we avoid the  
16 appearance of impropriety, and any question of  
17 impartiality that Your Honor respectfully recuse  
18 himself from this matter.

19 THE COURT: Okay. I got your written motion  
20 after the letter. And just for the record so you  
21 know, I went back through this yesterday for the  
22 timeline because I only recall it coming up after Ross  
23 had accepted the job, and I think I found out about it  
24 on a Friday, and we had the hearing first thing that  
25 Monday morning. So as I came on, I think Mr. McVey

1 and y'all were discussing that.

2 MS. SHOUN: That may have been, Your Honor.  
3 I do remember learning of the acceptance was in this  
4 courtroom.

5 THE COURT: Right. I don't think we were  
6 physically here.

7 MS. SHOUN: We were on the motion to compel.

8 MR. MCVEY: On the motion to compel, we were  
9 here. The April 3rd status conference was via WebEx.  
10 As you directed, I found out about it on Friday, and I  
11 think you found out about it on Friday. And we  
12 decided to hit that head on when we came in that  
13 Monday morning.

14 THE COURT: Okay. Go ahead and let me hear  
15 your response.

16 MR. MCVEY: Your Honor, actually Ms. Shoun  
17 has already pretty much put forward my opinion on  
18 this. First of all, Your Honor, that bias  
19 impartiality, et cetera, if it exists at all, does not  
20 exist until such time as Ross sits down in a chair at  
21 Turner Padgett and starts working for us.

22 While I hope he doesn't do this, it is not  
23 unheard of for candidates to say, you know what, I got  
24 a better offer, and go somewhere else. It's not  
25 unheard of for them to take different jobs.

1           So until he takes a job with us on October  
2 1st, I don't know what's going to happen, except  
3 regardless, it is that that is the triggering event.

4           At that point, Your Honor, if there is -- and  
5 it's not simply enough to say there's an appearance of  
6 bias. There has to be actual evidence of bias in  
7 order for a recusal motion -- for a judge to mandate  
8 they recuse. Otherwise, it's at your discretion.

9           So, Your Honor, at this point, I would  
10 respectfully submit to you there is no reason for you  
11 to recuse yourself. I think our brief lays that out  
12 pretty clearly. I tried to keep it short and sweet.  
13 And I have -- I'm here to answer any questions that  
14 you have, but Your Honor has had a chance to look at  
15 this.

16           I did note that we did -- at the April 24th  
17 hearing that was not reflected in the Form 4 order,  
18 you did ask for a decision to have been made on  
19 remittal of recusal within 10 days. It didn't come  
20 until May 31st.

21           THE COURT: Right.

22           MR. MCVEY: And that was a significant --  
23 this case has been dragging on, Your Honor. It's time  
24 to move it forward. As you well know, even a  
25 contested foreclosure at a year's time, that's a

1 pretty long period of time.

2 So at this point, we're ready to move forward  
3 with the case. We've done discovery. We're trying to  
4 get depositions scheduled, and we're trying to move  
5 forward as quickly as we can. Thank you, Your Honor.

6 THE COURT: Let me say this.

7 MR. DENNIS: May respond briefly, Your Honor?

8 THE COURT: Markley Dennis. Glad to have  
9 you.

10 MR. DENNIS: It's a privilege. I don't  
11 quarrel -- well, I quarrel with it, but it doesn't  
12 make any difference whether Canon 3 is controlled.  
13 Canon 2 is the one that -- really and truly is the one  
14 because I been there, done that, and I understand it.

15 I understand your position, especially when  
16 somebody says this has been dragging on. And we as  
17 judges, you have a duty and an obligation to move it.  
18 Very true.

19 And no question about the fact that -- I  
20 guess the greatest example right now involves the  
21 church that I'm involved. We all heard what happened  
22 with the decision in the episcopal church about  
23 Justice Hearn. Interesting.

24 That didn't -- the Canon says we have to make  
25 that decision. It's up to us. And she made one and

1 said it won't influence me. But look what happened.  
2 And therein lies the issue that I think is so critical  
3 here.

4 I had a similar situation, and I offered just  
5 as you did. And I understand it, and it really and  
6 truly becomes something that you put yourself out of  
7 it. Because as long as you're looking at it, I know  
8 the feeling, I need to get this thing done.

9 But we also have something else where we're  
10 representing something bigger than us, bigger than  
11 you, bigger than me, bigger than Justice Hearn. We're  
12 representing an office.

13 The key in this case is not whether we  
14 believe you will be. The key in this case is the  
15 client says I'm concerned.

16 And the reason I say that -- I don't know  
17 whether you remember Judge Fanning. I do. There was  
18 a case, *Mallet v. Mallet*. He got in a discussion in a  
19 case and got a little heated. And the defendant --  
20 well, it was a female in a domestic matter. Said tell  
21 the lawyer I want him to recuse himself. He wouldn't  
22 do it. Interest in that decision because the Court  
23 heard it and said he made the right decision as a  
24 matter of law, but he should have recused himself.

25 My thought as a judge, as you as a judge,

1 that's the last thing I'd want to have happen. Not  
2 that there's going to be any mistake, you got it  
3 right, but you should have done it for the office.  
4 That's what is important here. And I thank you for  
5 allowing me the privilege of speaking. Thank you.

6 THE COURT: I haven't seen an affidavit or  
7 any statement from the Beasleys. Am I correct in  
8 that? I've gotten the information via letter from  
9 you, Ms. Shoun, and then of course the motion for  
10 recusal.

11 MS. SHOUN: That is correct. In fact, in  
12 disclosure, Judge Dennis and I did talk about that,  
13 whether it should be attached to the affidavit. And  
14 our decision was -- our conclusion to that was we are  
15 legal counsel for the Beasleys and we speak on their  
16 behalf.

17 THE COURT: Anything?

18 MR. MCVEY: Again, Your Honor, as I indicated  
19 kind of all along, including in my June 5th letter,  
20 this is a discretionary matter for you. The  
21 discretion of standard to the extent that conflict is  
22 even going to arise does not prevent you from hearing  
23 things right now.

24 Your Honor has already picked up on the fact  
25 that it is not supported by an affidavit. The rules

1 do require motions to be supported by affidavits, and  
2 I think in this case, it would have been appropriate  
3 for an affidavit to have been submitted.

4 THE COURT: All right. Let me tell you, I  
5 have been reviewing this. It says avoid the  
6 appearance of impropriety and promote public  
7 confidence and integrity and impartiality.

8 And then we start looking at the specific  
9 rules, and so I did some of that yesterday. Because  
10 number one thing I want to do is get the timeline down  
11 as to when this all came up.

12 You know, a contested foreclosure hearing is  
13 not unusual to take a year to move through the  
14 process, it's been my experience. But I had asked in  
15 the April 25 order for determination as to remittal of  
16 disqualification, in other words, we agree when to go  
17 forward. That didn't come in, and it didn't come in  
18 for a while, and it came in by way of letter in late  
19 May.

20 And I believe I got an e-mail, my  
21 recollection, from Mr. McVey saying I'm on vacation,  
22 but I want to respond. And apparently you wrote a  
23 letter on the following Monday, the 5th of June, five  
24 days later. But apparently you didn't send it  
25 directly. Must have come through your secretary.

1 Because I was looking for e-mails from Ian McVey for  
2 about two or three weeks. I didn't see the thing  
3 until the 10th of July, which is five weeks later  
4 unfortunately. But it was brought to my attention by  
5 my law clerk.

6 So by that time, we had set this hearing, and  
7 I think my response was I'll address it at that time.  
8 I think that's how we got to where we are.

9 And then the motion was filed on the 20th of  
10 July, and we got to that point. So I went -- I have  
11 looked at this thing from the perspective of the  
12 Canons.

13 And I, of course, know about Canon 2, which  
14 is the appearance of impartiality. So I looked at  
15 Canon 3 for some guidance. Let me take you through  
16 what my analysis of that has been.

17 Canon 3E, disqualification. A judge shall  
18 disqualify himself or herself in a proceeding in which  
19 the judge's impartiality might reasonably be  
20 questioned, including but not limited to instances  
21 where, Section C, the judge knows that he or she or  
22 the judge's child wherever residing has an economic  
23 interest in the subject matter in controversy or in a  
24 party to the proceeding or has any other more than de  
25 minimis interest that could be substantially affected.

1           And I don't find that he's got an economic  
2 interest, he being my child, or myself an economic  
3 interest of this matter at this time.

4           Section D, the judge or the judge's spouse,  
5 or a person within the third degree of relationship,  
6 which my son Ross would be. He's my child. Is a  
7 person known by the judge to have more than de minimis  
8 interest that could be substantially affected by the  
9 proceeding.

10           And, again, I don't know how he could be  
11 affected by the proceeding if not employed by the  
12 firm. And that led to a discussion with my law clerk  
13 yesterday, what we used to call the Chinese wall, but  
14 I'm sure you can't use that term anymore. I don't  
15 know what you call it now when you block off somebody  
16 from the office. I didn't see where that one applied.

17           And then there's a commentary, and this is  
18 what really caught my interest. The fact that a  
19 lawyer in a proceeding is affiliated with a law firm  
20 with which a relative of the judge is affiliated does  
21 not of itself disqualify the judge. That seemed to be  
22 the answer to the question I was looking for,  
23 commentary E(1)(c).

24           But that doesn't fully answer the question.  
25 Under the appropriate circumstances, the fact that the

1 judge's impartiality might reasonably be questioned or  
2 that the relative is known by the judge to have an  
3 interest in the law firm that could be substantially  
4 affected by the outcome of the proceeding may require  
5 the judge's disqualification.

6 And I think that's where I've come down. My  
7 feeling -- and, Ms. Shoun, you acknowledged that. I  
8 don't know that there's any prejudice at this point in  
9 time. There could be, and I acknowledge that, that it  
10 could be. And I think that's a different question  
11 than what we've got before the Court today. And it's  
12 on that basis that I'm going to deny the motion to  
13 recuse.

14 And, Mr. Dennis, I appreciate you bringing  
15 that. I do remember Judge Don Fanning because he  
16 always had a close-cropped haircut. He was a military  
17 man from Beaufort, family court judge.

18 MR. DENNIS: Very strict military.

19 THE COURT: I appeared in his courtroom a few  
20 times. So let's overcome that hurdle and then let's  
21 get into the merits of it.

22 Mr. Haselden, let's take up your motion.  
23 Your motion would be the next one I would think we  
24 need to spend some time on.

25 MR. HASELDEN: Thank you, Your Honor. I been

1 on this job for about two weeks, and I tell you how I  
2 came about. Aaron Beasley is the son of the primary  
3 defendants. His deposition was noticed and these wise  
4 people here thought Aaron Beasley, who is not a party,  
5 not previously represented by anybody, may need his  
6 own attorney.

7 Ms. Shoun calls me, Mr. Johnston. We have a  
8 conference call and talked to Mr. Aaron Beasley and  
9 agreed to undertake his representation. Immediately  
10 said he's not available on the 1st; I'm not available  
11 on the 1st. We need to push back the deposition. So  
12 that's how we got to where we are.

13 THE COURT: I got some e-mails back and  
14 forth. Just so you know, I don't generally act on  
15 e-mails, but y'all file a motion and I will act on it  
16 because I got to. Okay. If I can avoid the problem  
17 with an e-mail --

18 MR. HASELDEN: And I do recall Your Honor  
19 being on some of those e-mails about scheduling.  
20 Immediately when I looked at -- having talked to Aaron  
21 Beasley, the background is his parents are older.  
22 They have no source of income. Mr. Aaron Beasley and  
23 his family, his wife and children, have actually lived  
24 in the home that's the subject of this for years.  
25 Aaron has paid everything.

1           THE COURT: Are the parents living there or  
2 not?

3           MR. HASELDEN: Yep. They're living there.  
4 Aaron is living there with his family. He's paying  
5 for everything.

6           The settlement amount that's the subject of  
7 the release, Aaron paid. Aaron has paid everything.  
8 What I hear -- I just feel like I don't know -- I  
9 would love to say Your Honor, you absolutely have to  
10 let him intervene. I don't know whether you do or  
11 not, but I feel like if I didn't jump in at this point  
12 and ask, later someone is going to say, well, why  
13 didn't you do something for Aaron here? Because he's  
14 going to lose as much as everybody else if the summary  
15 judgement is granted and they win this and there's  
16 foreclosure.

17           He's been paying for everything for years.  
18 The arguments I hear are it's not timely. I started  
19 this by telling Your Honor I've been in this two  
20 weeks. Aaron didn't have an attorney before then. To  
21 say his interests were properly represented by the  
22 other Beasley attorneys is not quite true.

23           There may be some overlap, but Aaron Beasley  
24 wasn't represented until I got hired. And the first  
25 thing I did was file a motion after I talked to him

1 about depositions. I filed a motion to intervene  
2 under a couple of theories.

3 The second argument that I hear in response  
4 is that he doesn't really have an interest. If that's  
5 the case then every renter would have an interest when  
6 they're property owners, but it's different, because  
7 this isn't just a renter who says, you know, if you  
8 foreclose, I'm going be out on the street. This is  
9 his parents. This is the family home. He has paid  
10 everything. He's paid all the expenses, the upkeep on  
11 the property, for years.

12 It's just a situation where it's better, it's  
13 cleaner, if Aaron is involved at this point because of  
14 his interest in it. He's paid the settlement amount.  
15 He has a direct interest in seeing that his parents  
16 aren't put out of the house. He has a direct interest  
17 in seeing that he and his family aren't put out of the  
18 house.

19 And moreover, he has a direct interest in  
20 this situation because he thought this was resolved  
21 with these two people. He really did. Plaintiffs --  
22 he paid the settlement amount. He has no  
23 understanding of why this case is even in court  
24 because it was settled in his mind.

25 So to say that he has no interest in this

1 matter and it's not timely is just not true. I don't  
2 know if legally I can stand up here and say, Your  
3 Honor, absolutely if you say I can't intervene, I'm  
4 going to win at the next level. I don't know. But I  
5 know I'm not waiving it. I'm coming in here and  
6 asking to be a party in the suit so it's clean.

7 If Your Honor thinks I shouldn't be, I'll sit  
8 back down and not say another word throughout the day.  
9 I can't take the chance of waiving Aaron's interest in  
10 this by not at least making this motion to come to the  
11 Court and say, Your Honor, he needs to be a party to  
12 this action.

13 THE COURT: And your theory for that is what?

14 MR. HASELDEN: That he has an equitable  
15 interest built up by the payment of rent, the payment  
16 of the settlement amount in this case, and the fact  
17 that he resides there. His equitable interest -- I  
18 don't know where it would fall in the hierarchy of  
19 more tangible interests.

20 But like I said, I could not take the risk of  
21 waiving any argument he may have for later and then  
22 come back and say you should have jumped in back then.  
23 I just couldn't do it. It is what it is. His  
24 interest is very much what I said it is at this point.

25 There's nothing secret. He doesn't have a

1 mortgage. He's not a quitclaim recipient. He just  
2 has an interest in this litigation and this property  
3 that I felt like I would not be doing him a service as  
4 an attorney if I didn't at least ask Your Honor to  
5 consider his interests in this case.

6 THE COURT: Do you know how title is  
7 currently held in the property? Is it in the trust or  
8 is it individually?

9 MR. HASELDEN: Your Honor, I don't know. But  
10 I guarantee one of these fine people could answer that  
11 question. I cannot honestly answer that question.

12 THE COURT: Let me hear a response to that.

13 MR. MCVEY: Thank you, Your Honor. To answer  
14 your first question, title is held in the name of  
15 Lillian Beasley and John Beasley, Sr. as trustees.

16 THE COURT: Okay.

17 MR. MCVEY: It was transferred subsequent to  
18 the mortgage to them as trustees for the property.

19 THE COURT: Post mortgage?

20 MR. MCVEY: Post mortgage, post both of the  
21 mortgages.

22 THE COURT: At the time of the mortgage, they  
23 were individual owners of the property?

24 MR. MCVEY: That is correct. Your Honor has  
25 probably already read the brief so you're aware of the

1 four elements you need in order to intervene.

2 You also looked at Rule 19, so I'll just make  
3 a couple points in response to what Mr. Haselden said  
4 and then I will rely on my brief.

5 To say that this is timely intervention, Your  
6 Honor, is just simply not the case. This case has  
7 been pending since August 4th of last year. Service  
8 was accomplished on August 24th of the last year.

9 If Mr. Beasley was living in the house -- and  
10 I would point out, by the way, that motion is also not  
11 supported by an affidavit. All of the facts that have  
12 just been recited are not -- there is no affidavit to  
13 support all that. So I don't know that the Court has  
14 evidence of any equitable interest in front of it  
15 right now.

16 Regardless, if he has been living there since  
17 August 24, he sure knows about this lawsuit. He  
18 showed up in mid January to a mediation with his  
19 mother in which we tried to resolve this prior to,  
20 quite frankly, having to put all of this in your lap,  
21 and he was very involved in it.

22 We are now six and a half months after that  
23 mediation date, and now he's making the determination  
24 that, wait, I may have an equitable interest.

25 Now, addressing, if I can, the other

1 interests. This is a stack of cases right here. I  
2 had my law clerks go find every case they possibly  
3 could on equitable interests, equitable liens, et  
4 cetera.

5 And in every single one of them, there was a  
6 writing. That's how you satisfy the statute of the  
7 frauds. What you really should do is not only have a  
8 writing but record it under the recording statute.  
9 That's the whole point of the recording statute. But  
10 here, all we have is an adult child and his family  
11 living with mom and dad and making sure all the bills  
12 get paid.

13 Mr. Haselden used the example of a tenant  
14 earlier, which I think also is one of my examples in  
15 here as well. A tenant has a better interest than  
16 what Mr. Beasley and his wife and children have right  
17 now because they actually have a possessory interest  
18 granted to them by law by way of a lease in a  
19 leasehold estate.

20 Mr. Aaron Beasley, he doesn't have any of  
21 that. He also -- I didn't hear much on the subject of  
22 his ability to be defended by those that are already  
23 in the litigation and how it would impair his  
24 interests.

25 I understand if a foreclosure takes place,

1 both he and his parents are -- it's going to go to  
2 sale and they're going to have some tough decisions  
3 they have to make. But this case is being vigorously  
4 defended by the Beasley Sr.

5 Beasley Sr. is adequately represented, even  
6 if he has an interest. And he only convinced one of  
7 those four elements on intervention, or if not, it  
8 shouldn't be granted.

9 So, Your Honor, again, I'm going to fall back  
10 on my brief to a certain degree here because I don't  
11 want to take a lot of the Court's time because we have  
12 a lot of hearings.

13 But, Your Honor, I don't think intervention  
14 or joinder at this late stage is appropriate at all  
15 because all it's going to do is add another 120 days  
16 to that.

17 THE COURT: I think you addressed that in  
18 your memo.

19 MR. MCVEY: I did, Your Honor.

20 THE COURT: Which one did you consider? You  
21 went in particular with one of the four as I recall.

22 MR. MCVEY: It was really the timeliness.  
23 The timeliness issue of course is there, and then the  
24 lack of the interest -- lack of the equitable interest  
25 is in there. And also the prejudice to the parties.

1           At this point -- and I didn't mention this.  
2           I should have. We have engaged in written discovery.  
3           The defendants have served none. We have been  
4           attempting to get the depositions taken of Mr. Aaron  
5           Beasley as well as Lillian Beasley. We weren't able  
6           to get that done on August the 1st, despite conferring  
7           with counsel, et cetera.

8           We then offered to pull those deposition  
9           notices down, went back to dates that had been given  
10          to us after this, provided the Court doesn't grant  
11          summary judgement, and still haven't heard anything  
12          from there either.

13          Your Honor, from the plaintiff's perspective,  
14          we can probably try this thing within 30 days if we  
15          need to because we've been moving forward with the  
16          case.

17          I can't help that the defendants aren't doing  
18          the other stuff to move the case along. All I can do  
19          is move my case is long. So, Your Honor, I think at  
20          this point to allow another party and add another 120  
21          days would be extraordinarily prejudicial to my  
22          clients as parties, Your Honor. Thank you.

23          THE COURT: Response?

24          MR. HASELDEN: Yes, Your Honor. Mr. Beasley  
25          attended mediation. But, again, he was never

1 represented until I got hired. Any interest he had  
2 was not the foremost consideration of these fine  
3 attorneys over here.

4 Once I got hired, that was my sole thing is  
5 what does Aaron Beasley need? Timeliness. Let's talk  
6 about discovery. Mr. McVey hit it on the head. No  
7 depositions have been taken. They've exchanged  
8 written discovery. No depositions have been taken.

9 We waive the 120 days. That takes that off  
10 the table. Waive it. We'll try it in 30 days if they  
11 want.

12 THE COURT: How would any interest that he  
13 has -- and I'm not sure he's got one. But how would  
14 it be impaired if he's not in the case?

15 MR. HASELDEN: I don't know. I really don't.  
16 And that's -- again, I don't want to be in a position  
17 where afterward, somebody says Mr. Beasley's interest  
18 should have been represented at that trial because of  
19 all the facts we have already discussed.

20 And I would rather ask now and be told no  
21 than later be told you were wrong for not doing it.

22 THE COURT: You stated that he paid the  
23 \$50,000 judgement?

24 MR. HASELDEN: The settlement in this case.  
25 He paid every cent of that.

1 THE COURT: Right. Paid through his funds or  
2 through the trust funds or how was that paid?

3 MR. HASELDEN: Paid through his funds  
4 himself.

5 Your Honor, another thing I point out. I  
6 have been doing this as long as everybody else in  
7 here. There are a ton of motions that don't require  
8 affidavits.

9 THE COURT: Listen, I like to see the  
10 affidavits. Because one benefit of being here is I  
11 try to run this court like they do across the street.  
12 We just have a lot more volume that we do. So when I  
13 get a motion, I'm always looking for some substance  
14 behind it.

15 MR. HASELDEN: I understand.

16 THE COURT: That's why I ask that question.  
17 Okay? I'm with you.

18 All right. At this point, I'm not inclined  
19 to grant them the motion to join. If he attended the  
20 mediation in January, which there doesn't seem to be  
21 any question about that, and he had an interest to  
22 protect, he should have been in this case long before  
23 he is now.

24 So under the timeliness, it's been a long  
25 time. I don't know what the reason for the delay is

1 other than he didn't pursue it until recently. Action  
2 is moving forward, and you may well want to take his  
3 deposition, and it sounds like you do.

4 And at this point in time, I think it would  
5 just tend to delay the matter to the prejudice of the  
6 plaintiffs. All right?

7 So let's go to some substance. All right.  
8 We've got -- where is our list? You had a summary  
9 judgement motion -- you had a partial summary  
10 judgement and a summary judgement motion.

11 MR. MCVEY: Your Honor, depending on what you  
12 would rather do, I'm prepared to do the partial  
13 summary judgement, which I quite frankly think is a  
14 routine ground ball. All it is is cleaning up title  
15 issue. Even if we're unsuccessful ultimately on the  
16 merits of the case, the curing of the title issue will  
17 be beneficial to the Beasleys who live in the property  
18 if that's --

19 THE COURT: It's an access issue.

20 MR. MCVEY: It's an access issue, Judge.  
21 There's a cul-de-sac that wasn't properly dedicated  
22 under the declaration for this neighborhood, and so  
23 there's a gap basically between the access.

24 There's really two issues. A, there's a bad  
25 survey reference. The survey that's in there now

1 doesn't even show this property. It's somewhere else,  
2 not even -- I don't think it's on James Island.

3 The correct survey -- what a proposed order  
4 in this would do is submit the correct survey  
5 information, would make sure the easement is valid,  
6 and would also dedicate the cul-de-sac to the  
7 homeowners association, all of whom are in default, as  
8 is the person -- the servient estate, and fix that  
9 little gap title issue.

10 The neighborhood has been maintaining it  
11 anyway as far as we can tell. That's all it is, just  
12 cleaning up that one issue. It's a benefit to really  
13 everybody here.

14 THE COURT: Were the Beasleys involved with  
15 the creation of this subdivision, or did it predate  
16 them?

17 MR. MCVEY: I think it predated them. They  
18 bought their property from a guy named Dr. Pruitt.  
19 Anna Pruitt is his daughter I think perhaps. She's  
20 got the lot -- she's the servient estate, Your Honor.

21 THE COURT: All right. Y'all have any  
22 objection to these?

23 MR. DENNIS: I do.

24 THE COURT: Okay.

25 MR. DENNIS: Because I know this when I got

1 reversed on declaratory judgement. Declaratory  
2 judgement, you got to have a justiciable controversy.  
3 They're not a party yet.

4 And the problem is everything he just alluded  
5 to -- I know I did this in my practice. When you're a  
6 junior lien holder and you want a note and there's a  
7 foreclosure, you check the title. You find out what's  
8 there. This has been there since 2003. That's when  
9 the property was bought.

10 So at this stage, I agree with him. May  
11 expedite it. But he doesn't have a right to bring  
12 this action. He really doesn't have any interest in  
13 this. He has a perspective interest, but he has no  
14 interest to be a true party to the justiciable  
15 controversy.

16 THE COURT: As a lien holder.

17 MR. DENNIS: Again, the cart is before the  
18 horse. I think he's got -- don't you think -- my  
19 thought is he's got to actually -- let's assume for  
20 the sake of discussion that you deny all of this and  
21 it goes through, you foreclose it, and then it's sold.  
22 He might, but somebody else might be. So he can't  
23 speak for that perspective purchaser or perspective  
24 owner in my opinion.

25 THE COURT: Do you remember the name of that

1 case you're referring to?

2 MR. DENNIS: I don't remember. It was a case  
3 involving the CPW and going across the marsh to  
4 service some property. I ruled yeah, you could, that  
5 one party didn't have a interest in it.

6 MR. MCVEY: Your Honor, as a lienholder on a  
7 property, I absolutely have an interest in the  
8 property that would allow me to cure this defect. Not  
9 to mention, Your Honor, that the homeowners  
10 association as well as the servient estate are both in  
11 default and have thereby admitted the allegation.

12 So if everybody is going to raise a standing  
13 issue on that, it's got to be them, right? And so  
14 this is something -- you know, you've handled more  
15 foreclosures than I have and the collective knowledge  
16 of property law over on that side of the table is much  
17 larger than mine, but this is something we do all the  
18 time in the foreclosure world. We clean up title  
19 problems and we clean up access problems.

20 The longer you let this access problem sit  
21 out there and fester, the bigger problem it's going to  
22 be.

23 THE COURT: I'm looking for my plat. I'm  
24 trying to remember which one it was. There's one --

25 MR. MCVEY: Your Honor, Exhibit E to the

1 motion. Okay. I wish we had numbered these pages.

2 THE COURT: Hold on. Yep, tab E. Had all  
3 this stuff last night. All right.

4 MR. MCVEY: It's tab 1, Your Honor. Exhibit  
5 E.

6 THE COURT: Here it is. This is the --

7 MR. MCVEY: It is the last exhibit, Your  
8 Honor.

9 THE COURT: So the issue is the  
10 ingress/egress across lot 6; is that it?

11 MR. MCVEY: That's correct, Your Honor.

12 THE COURT: That's your title issue?

13 MR. MCVEY: Yes.

14 THE COURT: And that's owned by Ms. Pruitt?

15 MR. MCVEY: Ms. Pruitt owns new lot 6. New  
16 lot 4 is the ones owned by the defendants. If you can  
17 see, you can see the end of the cul-de-sac sits right  
18 into the property on that property. It just doesn't  
19 have a properly dedicated -- it was clearly the intent  
20 for it to have been dedicated.

21 All of these roads are private in this  
22 neighborhood and are taken care of by the HOA, and  
23 they've been taking care of this one, but there's a  
24 gap. There is a gap between this easement and that  
25 end in this property if you don't find that the

1 cul-de-sac should have been dedicated to the  
2 homeowners association.

3 The other option of course is to say that  
4 this gets straight out and gets all the way to the  
5 property line and ties into Sea Eagle Wash. That's  
6 the other way to do this. And they're pled  
7 alternatively in the complaint.

8 THE COURT: You pled that in the name of  
9 Ms. Davis -- or Ms. Pruitt?

10 MR. MCVEY: Yes, I did. I named Ms. Pruitt  
11 and I named the HOA.

12 THE COURT: And does the legal description to  
13 your mortgage include ingress/egress?

14 MR. MCVEY: Yes, Your Honor, on Exhibit A,  
15 page 14 of 14 of the mortgage. Said lot having such  
16 size, shape, dimensions, and boundaries as will be  
17 reference to said plat more fully appear, together  
18 with that certain 50 foot ingress/egress easement for  
19 the access to the lot conveyed, said easement being  
20 shown. And then it references the plat number, Your  
21 Honor.

22 So I think that expressly gives me a right to  
23 bring that action.

24 THE COURT: This is the DD 586, right?

25 MR. MCVEY: Yes. I know it's got a different

1 number up there. But if you go pull it at the ROD,  
2 it's DD 586. It's nuts.

3 THE COURT: Well, book J 348, that's a deed  
4 reference at the top of the plat.

5 MR. MCVEY: That may very well be the case.  
6 But when you go pull this from the ROD here in  
7 Charleston County, that's what is there.

8 THE COURT: And was this the subdivision plat  
9 creating these three lots?

10 MR. MCVEY: This is the subdivision plat  
11 creating new lot 6 and new lot 4.

12 THE COURT: So resubdivision?

13 MR. MCVEY: That's correct, Your Honor.  
14 There's a whole -- quite frankly, I just don't think  
15 this was done right from start to finish. But the  
16 obvious intent was for that easement to either touch  
17 the road or the cul-de-sac, which is why --

18 THE COURT: To gain access? I'm assuming  
19 it's a dirt road.

20 MR. MCVEY: I haven't gone and trespassed on  
21 it, so I'm not sure. I'll leave that -- John is  
22 shaking his head. It's dirt.

23 THE COURT: Got to be a dirt road in there, I  
24 would think.

25 MR. JOHNSTON: Yes, Your Honor. It's from

1 the cul-de-sac. It's paved now, but the -- I'm  
2 guessing maybe 25 feet or so into what would be that  
3 55 -- probably 20 feet of that. They actually have a  
4 concrete driveway that starts there, and then it goes  
5 into the main driveway into the garage.

6 THE COURT: It's a roadway or driveway or  
7 whatever you want to call it.

8 MR. JOHNSTON: It's finished concrete. Yes,  
9 sir, not just a road. I don't know how to describe  
10 that.

11 THE COURT: Okay. All right. You want to be  
12 heard again?

13 MR. DENNIS: Again, I don't have any problem  
14 with clarifying it. It's a technical matter. I don't  
15 think he has standing to raise this issue. He has a  
16 perspective interest in it, but he's not there yet.

17 THE COURT: Well, he raised it in his  
18 pleadings.

19 MR. DENNIS: He raised it in his pleadings,  
20 which is a foreclosure, correct?

21 THE COURT: No, he's got a cause of action.

22 MR. DENNIS: Well, I understand that, but  
23 that's my point. He doesn't have standing to bring  
24 that action yet. I don't quarrel that it may be an  
25 issue that needs to be resolved but he's not the

1 person to bring it. He doesn't have any interest.  
2 He's not affected by it, so therefore, there's no  
3 declaratory judgement necessary with them at this  
4 point. Might be one day, but not now.

5 THE COURT: Let me read the case I just got  
6 reversed on on standing. I got reversed on the super  
7 beach front lots at Folly Beach, as did my good friend  
8 Roger Young. All about super beach front lots.  
9 Talking about beach front versus super beach front.  
10 Super beach fronts are under water. I guess you  
11 probably know that.

12 It talks about an inherently problematic  
13 development. This case found the City articulated  
14 particularized injuries to its aesthetic, economic,  
15 and property interest that could be redressed by a  
16 favorable decision and that be sufficient to establish  
17 standing, though not required to wait until the owners  
18 began construction of the super beach front lots in  
19 order to have the alleged interest.

20 All right. And it's on that basis, then,  
21 that I'm going to find they can do that. I'm going to  
22 grant you that motion as well. All right? Give you  
23 access. Reform the mortgage to include a clear  
24 access.

25 I think it's in the description of the

1 property. I'm sitting here looking at it. It said  
2 lot having such shapes and dimensions as the plat  
3 appears together with a 50 foot ingress/egress  
4 easement for access to the lot. This is new lot 4  
5 that the Beasleys own. All right?

6 MR. MCVEY: Your Honor, would you like a  
7 proposed order on that?

8 THE COURT: Yep. Be fine. Okay. Next,  
9 y'all got another summary judgement motion, right?

10 MR. FLOYD: Joey Floyd here. I'll handle the  
11 motion for summary judgement. That would be tab B in  
12 your notebook.

13 Just to give you a brief background and  
14 history --

15 THE COURT: Before you go there, I've got  
16 some questions, and I want to make sure we all talk in  
17 the same language. I did this last night. I was here  
18 until about six o'clock last night when I got your  
19 response.

20 All right. I need y'all to make sure these  
21 terms become fairly consistent. And that's debt and  
22 indebtedness would be one term; judgement is another  
23 term; lien is another term; note; mortgage; release;  
24 satisfaction, whether partial or complete; and then  
25 settlement agreement and confession of judgement.

1           These are all the terms that I'm looking at,  
2 looking for to try to comprehend what was going on  
3 here. The first time I got this, my head was  
4 swimming. Okay?

5           MS. SHOUN: Your Honor, may I ask Your Honor  
6 the last term that Your Honor --

7           THE COURT: The very last one I mentioned was  
8 confession of judgement. Prior to that, settlement  
9 agreement.

10          MS. SHOUN: Okay. Thank you.

11          THE COURT: Just so I'm clear. Because it's  
12 factually a very interesting case.

13          MR. FLOYD: Okay. Just to give you a little  
14 bit of background, there are two settlement agreements  
15 in this case, and I think the plaintiffs and  
16 defendants refer to them as the first settlement  
17 agreement, which would be 2017, and then you have the  
18 2020 settlement agreement, which we all refer to as  
19 the second settlement agreement.

20                 But to give you a little background,  
21 Mr. Young and Mr. Greene loaned a substantial amount  
22 of money to Beasley Jr. and his construction company.  
23 He had some financial problems. Beasley Sr. and Mrs.  
24 Lillian Beasley stepped up and signed the note and  
25 mortgage and signed a confession of judgement.

1           The one-year promissory note didn't get paid.  
2       We all agree on how much has been paid. And, in fact,  
3       I found it interesting that Ms. Shoun put in her memo  
4       that the Beasleys agreed that there's no issues of  
5       material fact that exist in this case. I wanted to  
6       touch on that.

7           So you have these things. What's not in  
8       dispute, on your notebook, I have tabbed the request  
9       to admit, their responses to request to admit. I  
10      think this is helpful. The yellow tab on the top.

11           They admit, number one, they signed the note.  
12      Number two, they admit they signed the mortgage.  
13      Number three, they admit the mortgage was recorded.  
14      Number four, they admit it has not been satisfied.  
15      They suggest that it should have been satisfied. They  
16      admit that \$75,000 total has been paid.

17           So our numbers agree. We actually have an  
18      agreement on the accounting. Obviously the things  
19      that I think that we basically disagree on, there's  
20      really two things in dispute. Number one, what's the  
21      purpose of that settlement agreement. Number two, the  
22      nature of the release of judgement. And we'll get  
23      into that, and I'll explain to you how and why and  
24      what that means.

25           Let's go now to the second settlement

1 agreement. And to make it easier, tab G in your  
2 notebook has both settlement agreements. Tab one is  
3 the first settlement agreement; tab two is the 2020.  
4 So both of them are right there, easy access.

5 I just wanted to give you a road map there.  
6 So this gives us both of those agreements. And let's  
7 look real quick at the 2020 agreement. If you flip to  
8 page 2.

9 THE COURT: That would be tab 2?

10 MR. FLOYD: Tab 2 of Exhibit G. As you go  
11 through these whereas clauses, you see starting on the  
12 third one it talks about recording the confession of  
13 judgement, the confession of judgement, the judgements  
14 joint and several.

15 Then we flip down to the bottom of that page,  
16 and we see the settlement sum, which is \$50,000, and  
17 it identifies that. And it says -- this says they  
18 have an obligation to pay \$50,000. We agree they paid  
19 it.

20 Next page, page 3 paragraph 2, this tells us  
21 the obligation of what Young and Greene are supposed  
22 to do. It tells us upon receipt of the sum, they're  
23 to file partial releases of the judgement.

24 Now, the last sentence of this is also  
25 interesting in this paragraph. It shall not release

1 any other judgement debt of the principal balance of  
2 the judgement and it shall not be reduced, and  
3 everything else is going to remain in effect as to the  
4 judgement.

5 So then if we flip over, I'm going to ask you  
6 now to look at Exhibit B in the notebook.

7 THE COURT: B as in boy?

8 MR. MCVEY: B as in boy, and Exhibit 4. It's  
9 got a tab, Exhibit 4, on the side.

10 And this is a release of judgement lien. And  
11 I'll go ahead and touch on two things, or two of these  
12 terms that you mentioned. Release and satisfaction.  
13 Okay? Two different legal meanings, two different  
14 words.

15 In the context of a satisfaction, that would  
16 mean that the debt has been paid and satisfied.

17 THE COURT: Let me stop you. I want to make  
18 sure I'm on the right page. I am on Exhibit B.

19 MR. FLOYD: Exhibit 4 on the side tab.  
20 Exhibit 4, it's in writing. This is the release of  
21 judgement.

22 THE COURT: Okay. Got it. Go ahead.

23 MR. FLOYD: So this style of this is what we  
24 read about, the obligation of Young and Greene in the  
25 2020 agreement that we were just reading. This was

1 the only obligation that you will find of Young and  
2 Greene in that agreement, and that is to file this  
3 release of judgement. It is not a satisfaction of  
4 judgement.

5 If it were a satisfaction of judgement,  
6 arguably, it would discharge the debt. However, it is  
7 a release. And it releases -- it says specifically  
8 that this is a release fee.

9 Now I'm going to ask you if you will now flip  
10 back to Exhibit G, Number 2, the 2020 agreement back  
11 where we were, back at the back of the book.

12 When you go on page 3, that's where we were  
13 just looking at about how it shall not release any  
14 other judgement debtor. It's basically reservation of  
15 rights as to the other judgement debtors.

16 But more importantly, if we flip over to  
17 exhibit -- or in that same exhibit, page 5, paragraph  
18 16, it says this settlement and release shall not  
19 alter or amend the prior settlement and a release  
20 agreement nor the judgement which shall remain in full  
21 force and effect thereof.

22 Now, to look back at the 2017 agreement as  
23 you'll recall, that is the agreement where they signed  
24 the note, the mortgage, and the confession of  
25 judgement.

1           At the time this document was executed, this  
2 settlement agreement was signed. The confession of  
3 judgement had been filed. You see in paragraph 2,  
4 there's the reservation of rights as to the other  
5 judgement debtors. However, in paragraph 16, it tells  
6 us it's not going to amend anything in the prior -- it  
7 shall not alter or amend the prior settlement and  
8 release agreement.

9           Well, the only thing that's left in the prior  
10 settlement agreement is the note and mortgage. You  
11 can read this, and I've read it way too many times.  
12 This entire 2020 agreement, it does not say mortgage.  
13 It does not say note. There is absolutely no  
14 obligation of Young and Greene to satisfy the note nor  
15 satisfy the mortgage.

16           So we have to ask ourselves what was the  
17 purpose of this agreement. And the purpose is to  
18 release that confession of judgement against these  
19 Beasley defendants as to those defendants. That's it.  
20 The mortgage remains filed of record. The promissory  
21 note has not been satisfied. It's the obligation to  
22 pay again. There's nothing else that could have  
23 remained whenever you get to paragraph 16 other than  
24 the note and mortgage.

25           THE COURT: Your note and mortgage are still

1 standing, right?

2 MR. FLOYD: The debt has not been discharged.  
3 The debt remains unsatisfied with the exception of the  
4 payment that we all agree was made.

5 Now, if we go into the memoranda here that we  
6 got this morning, they say there are two reasons -- or  
7 they oppose our motion on two grounds. They say that  
8 somehow First Citizens Bank ordering a foreclosure  
9 somehow extinguishes junior liens. It did go to an  
10 order. This property did not go to sale. That  
11 judgement was actually satisfied. Junior liens  
12 remain.

13 They also try to suggest that the release  
14 acts as a satisfaction. They also said in there  
15 that -- in the foreclosure that in the amended summons  
16 from the First Citizens Bank case that Young and  
17 Greene were only identified by virtue of their  
18 confession of judgement, which in paragraph 35 of that  
19 foreclosure, it identified in the amended summons and  
20 complaint their mortgage that was filed of record. So  
21 it was there.

22 THE COURT: That was in the complaint?

23 MR. FLOYD: That was in the First Citizens  
24 foreclosure. It identified them as having a mortgage.  
25 As you recall, there were several properties that were

1 all being foreclosed on at the same time.

2 Under their theory, if a foreclosure goes to  
3 order but doesn't sell, it does not extinguish the  
4 junior liens.

5 THE COURT: That's when they get wiped out,  
6 right?

7 MR. FLOYD: Only if it goes to sale. Because  
8 the Court's order always -- in this particular  
9 instance, it says in paragraph -- let's see. It's in  
10 the back of your notebook, Your Honor.

11 Paragraph 16 talks about their rights would  
12 be foreclosed and the mortgage premises so sold or any  
13 part thereof.

14 The premises were never so sold, therefore  
15 their interests were not extinguished. It all boils  
16 down, to me, Your Honor, there's this one question.  
17 There is no obligation. Or where is the obligation of  
18 Young and Greene to satisfy the note and mortgage?

19 There are two agreements. There's absolutely  
20 no obligation on their part. We're lucky we have  
21 things in writing.

22 There's no obligation to satisfy the note and  
23 mortgage. In fact, they want you to add that  
24 provision to require Young and Greene to satisfy the  
25 note and satisfy the mortgage, but there is no

1 requirement in the written documents here that we had.

2 For that reason, I'm happy to continue on  
3 drawing on, but I am trying to hit the highlights. We  
4 briefed it very extensively. For these reasons -- and  
5 I'm happy to respond or will respond -- the plaintiffs  
6 are entitled to foreclosure of their mortgage.

7 THE COURT: What do y'all contend to be the  
8 total amount of your debt?

9 MR. FLOYD: There's an affidavit of debt we  
10 submitted, Your Honor, Exhibit 5 and Exhibit B.  
11 851,434.16.

12 THE COURT: And does that credit those  
13 \$75,000 of --

14 MR. FLOYD: It does.

15 THE COURT: And those were made in two  
16 installments, one for 25 and one for 50?

17 MR. FLOYD: The \$25,000 was paid. November  
18 26, 2018 is when the \$25,000 was paid. And the  
19 December 10th, 2020 was when the \$50,000 was paid.

20 THE COURT: Okay. Those applied to interest  
21 or principal?

22 MR. FLOYD: Interest. We started the  
23 interest calculation on the maturity date, which was  
24 November 21st, 2018, I believe. That would be when  
25 interest began to run.

1           And one of those payments -- I have a  
2 spreadsheet. I can get that to you. I can get that  
3 for you, and of course the note and mortgage providing  
4 for attorney's fee and that sort of stuff. We'll  
5 address that later.

6           THE COURT: Okay. Ms. Shoun?

7           MS. SHOUN: May it please the Court. With  
8 which scintilla shall I begin, Your Honor? Very  
9 respectfully, plaintiff's motion for summary judgement  
10 as to the second count against Mr. and Mrs. Beasley  
11 which purports to be on the note and mortgage should  
12 absolutely positively be denied, that motion,  
13 parenthetically, submitted without an affidavit.

14           And thank Your Honor for giving the list of  
15 terms that Your Honor is interested because I, too,  
16 find that those are critical.

17           THE COURT: Like I said, the first time I  
18 read this, my head started spinning and I had to do  
19 exactly what we were doing, comparing one and the  
20 other.

21           Only thing I saw different was the dates.  
22 The signatures didn't change.

23           MS. SHOUN: I agree, Your Honor. But it's  
24 really not that complicated, but at least it took me a  
25 minute, but I am probably a little slow.

1           So Mr. Floyd starts out by asking the Court  
2 to refer to the first settlement agreement, the second  
3 settlement agreement, if Your Honor will indulge us  
4 that way. The first one being the one entered in  
5 2017, and the second being the one entered late in  
6 2020.

7           And, again, it might be that perhaps some of  
8 my documents don't read the same, but the second  
9 settlement agreement that I have executed by all the  
10 parties says, this is in paragraph 5 and it's page 3  
11 of 9. This is the second settlement agreement. It's  
12 nine pages. The first one is 13 for ease of  
13 reference.

14           Paragraph 5 says, and I quote, "This  
15 settlement and release constitutes the entire  
16 agreement and understanding between creditors, the  
17 plaintiffs in this action, and debtors" -- that would  
18 be Mr. Beasley Sr. and Mrs. Beasley, our clients as  
19 defined earlier in that settlement agreement -- "and  
20 it supersedes all prior understandings or agreements  
21 written or oral on the subjects contained herein and  
22 the terms of this settlement and release are  
23 contractual."

24           Now, plaintiff's counsel has acknowledged  
25 receipt of the payment pursuant to this agreement.

1 Plaintiffs have acknowledged upon receipt of that  
2 \$50,000 given under this settlement agreement that  
3 they entered in and filed with the Court a document  
4 entitled release of judgement lien as to a specific  
5 property. Release of judgement lien as to certain  
6 defendants, and despite the fact Mr. Floyd argues  
7 there's no satisfaction, the title of that document  
8 then goes on to say "and partial satisfaction of  
9 judgement."

10 And this document does a couple of things  
11 critical to this Court's decision. This document  
12 acknowledges the payment made by and on behalf of  
13 Mr. and Mrs. Beasley, thereby releasing them. In  
14 fact, defining them in this release of judgement lien  
15 as released defendants.

16 It says that payment toward the reduction of  
17 the previously entered judgement is met with the  
18 receipt of which it's hereby acknowledged a certain  
19 parcel of real property owned by the defendants is  
20 hereby released from the lien of said judgement.

21 It goes on to say again that Mr. and  
22 Mrs. Beasley are personally released from the lien.  
23 It goes on further to say the remaining balance of the  
24 judgement lien shall continue on against the other  
25 individuals who signed the note.

1 THE COURT: Take me right there. Take me  
2 right there. Where is that document? Show me where  
3 that is.

4 MS. SHOUN: It's on the second page, Your  
5 Honor, of the release of judgement lien.

6 THE COURT: Okay.

7 MS. SHOUN: That was entered March 17, 2021.

8 THE COURT: On the release, correct?

9 MS. SHOUN: Yes, sir.

10 THE COURT: All right.

11 MS. SHOUN: Release of judgement and  
12 property.

13 THE COURT: I think that's -- want to make  
14 sure we're looking at the right thing. This is in the  
15 2019 case or where are we?

16 MS. SHOUN: It does have the 2019 case.

17 THE COURT: Okay. All right. Is this the  
18 one with the \$50,000 release fee? I think that's  
19 Exhibit 4 we were referring to just a minute ago. All  
20 right?

21 MS. SHOUN: Probably.

22 THE COURT: Take me to that language so I can  
23 highlight that.

24 MS. SHOUN: Yes, sir. If Your Honor will  
25 look at the second page of that particular document,

1 second paragraph, the remaining balance of said  
2 judgement lien plus accruing post judgement interests  
3 and costs shall continue on record against Beasley Jr.  
4 and Beasley Construction Company, collectively the  
5 remaining defendants, and any and all property of said  
6 remaining defendants. Nothing in this document shall  
7 affect or limit the rights of plaintiffs in their  
8 collective or individual pursuit of collecting  
9 remaining balance in said judgement from any other  
10 property, real, personal, presently owned, or acquired  
11 hereafter from the remaining defendants. These  
12 individuals and their property have been specifically  
13 released from any indebtedness.

14 And let's go to the indebtedness, because  
15 Your Honor asked about that. There's one  
16 indebtedness, Your Honor; that \$647,500. One and only  
17 one indebtedness. That's it.

18 Mr. and Mrs. Beasley, in an effort to help  
19 their son, signed the first settlement agreement, a  
20 confession of judgement, a note and a mortgage. Okay?

21 That first settlement agreement is not at  
22 issue here. The second settlement agreement says by  
23 its terms, it supersedes all prior agreements, which  
24 would include the mortgage.

25 The note was a one-year note. The statute of

1 limitations is gone on that note. Its maturity date  
2 is 2018. So while plaintiffs purport to bring a case  
3 before Your Honor as a suit on the note, that's gone.

4           However, the confession of judgement was  
5 entered. That became the judgement lien. And the  
6 Beasleys were subsequently released from that by their  
7 \$50,000 payment and as evidenced by this particular  
8 document.

9           Mr. Floyd asked what requires the plaintiffs  
10 to satisfy this mortgage? Payment and the law. That  
11 lien is gone as to the Beasleys. It exists as to John  
12 Jr. and as to the construction company because,  
13 actually, there's an order of the federal court  
14 requiring restitution by John Jr. to individuals  
15 including the plaintiffs. So that is out there, but  
16 these individuals are gone.

17           And, again, maybe my documents read a little  
18 differently, but Mr. Floyd says -- he refers Your  
19 Honor to the second settlement agreement, which is I  
20 think Exhibit 3, and he takes Your Honor to paragraph  
21 16 of that particular settlement agreement.

22           And what Mr. Floyd read to the Court is this  
23 settlement and release shall not alter or amend the  
24 prior settlement and release agreement nor the  
25 judgement which shall remain in full force and effect.

1           What Mr. Floyd did not read to the Court is  
2 that sentence starts in this fashion: Except for the  
3 release of the debtors herein, this settlement and  
4 release shall not alter or amend the prior settlement  
5 and release agreement, nor the judgement, which shall  
6 remain in full force and effect.

7           Your Honor, it is critical to carefully  
8 consider all the terms of this second settlement  
9 agreement and all the language of that release of  
10 judgement lien. Because as plaintiff so specifically  
11 indicated in their briefing in support of their motion  
12 for summary judgement, this matter is determined on  
13 the four corners of the documents. These documents  
14 are not ambiguous.

15           That second settlement agreement also reads:  
16 Now therefore in consideration to the payments and  
17 promises recited herein, the creditors -- the  
18 plaintiffs in this action -- fully release and forgo  
19 all legal, equitable, and statutory remedies available  
20 to them as long as defendants fully perform all  
21 obligations hereunder, and for other good and valuable  
22 consideration, the receipt and sufficiency of which is  
23 acknowledged.

24           There was an agreement; it was signed; the  
25 money was paid; they released these individuals; they

1 released these individuals' property; and then they  
2 come before this Court purporting to seek relief not  
3 just on the mortgage, but they purport to seek relief  
4 on the note, which has long-since matured and on the  
5 confession of judgement which they had clearly  
6 released.

7 Their complaint prayed for relief on that.  
8 This is absolutely, positively -- this cannot be a  
9 motion for summary judgement. This cannot prevail on  
10 the merits, Your Honor. Everything is here.

11 THE COURT: Ms. Shoun, I was intrigued that  
12 both of y'all cited to the *Lever v. Lighting Galleries*  
13 case. Tell me how that how you interpret that case  
14 relative to your facts.

15 MS. SHOUN: How I do, Your Honor?

16 THE COURT: Yes.

17 MS. SHOUN: Absolutely. That was an  
18 instance -- if we take all things being comparable to  
19 this case, which I would argue they are not, but if we  
20 take Lever as being comparable to this case, because  
21 there was an agreement entered into, there was  
22 subsequently a note, and then there was ultimately a  
23 mortgage. They got judgement on the note. They were  
24 not able to collect that. And they subsequently  
25 foreclosed the mortgage.

1           I think there were some other contingencies  
2 that affect that pattern, but let's assume there are  
3 not. Let's assume we get to that same place.

4           We have payment. We have payment, and we  
5 have the plaintiff's agreement that this settlement  
6 agreement, if these individuals make this payment,  
7 they forgo all of the remedies.

8           Even if we assume for the sake of argument  
9 they have them, which I don't concede that, but if we  
10 agree for the sake of this argument they have those  
11 remedies or had them, when they took that \$50,000,  
12 those remedies disappeared.

13           And I would submit to the Court, Your Honor,  
14 Your Honor indicated earlier the timing was critical  
15 here. I think the timing is critical here. Because  
16 if Your Honor will look at it very carefully, I rather  
17 suspect that Mr. Greene and Mr. Young anticipated the  
18 property at issue was going to be sold as a result of  
19 the order of foreclosure debt Your Honor entered.

20           And because of COVID and other reasons, the  
21 sale wasn't held that long. But it was only months  
22 after Your Honor's order of foreclosure in favor of  
23 First Citizen's that they reached this agreement and  
24 they took the \$50,000 and they released the property  
25 and they released the individuals. And that, again,

1 is how this differs from Lever. There's a payment;  
2 there's a satisfaction; there's an acknowledgment  
3 here.

4 THE COURT: Okay.

5 MR. MCVEY: Your Honor, if I can, I'm going  
6 to try to go in order.

7 THE COURT: Why don't you start on your  
8 interpretation of Lever.

9 MR. MCVEY: I think Lever is on all fours,  
10 assuming for the purposes of the argument that  
11 Ms. Shoun's argument is --

12 THE COURT: Ms. Wilkerson's father was  
13 involved in this case by the way.

14 MR. MCVEY: Really?

15 THE COURT: So we had a chance to talk about  
16 that yesterday.

17 MR. MCVEY: Well, which side do I need to  
18 argue?

19 THE COURT: I can tell you he lost but only  
20 in the Supreme Court, only when it counted.

21 MR. MCVEY: That's right. Your Honor, for  
22 the purposes of this argument, I'm going to assume  
23 Ms. Shoun's assertion that the note is no longer there  
24 is true. Okay? That the note has merged into the  
25 confession of judgement at the time the judgement was

1 recorded.

2 If that is in fact true, Lever is on all  
3 fours. You have a debt; you have a judgement; you  
4 have a mortgage.

5 You have a judgement which is a separate  
6 obligation and is a separate lien that our courts  
7 recognize as opposed to the mortgage. And so  
8 therefore, we're absolutely -- it's two pieces of  
9 security for the debt. And what Lever very clearly  
10 says, Your Honor, is that if the debt has not been  
11 satisfied in full, you're still entitled to  
12 foreclosure mortgage.

13 Now, raised the issue of statute of  
14 limitations earlier. 20 years on a mortgage, as  
15 you're well aware. It's also three years from the  
16 last day of payment under the note, which arguably  
17 would have been December of 2020.

18 So I don't think really statute of  
19 limitations has anything to do with this here, Your  
20 Honor. But Lever I think is squarely on point in that  
21 by and reducing it to a judgement -- there's no  
22 difference than if the judgement had expired. If it  
23 had expired here, we would still be entitled to  
24 foreclose so long as the judgement had not been paid,  
25 as long as the debt had not been paid. And in this

1 case, the debt has not been paid. And the parties  
2 acknowledge that the debt has not been paid in the  
3 2020 settlement agreement.

4 Now, I don't disagree that the merger clause  
5 says everything subsumed into this. That's what a  
6 merger clause does. And nowhere in this agreement,  
7 all right -- again, the 2020 agreement doesn't  
8 reference the note and the mortgage. It doesn't say  
9 anything we're doing with the note and the mortgage.  
10 All it says is we're going to release you from this  
11 judgement. We're going to release your property from  
12 this judgement, and we're going to lessen the amount  
13 of the debt owed by the amounts paid. But it doesn't  
14 say I'm satisfying the debt. It doesn't say I'm  
15 satisfying the mortgage. It just says I'm releasing  
16 you from it.

17 So we obviously can't go through the Beasley  
18 Sr. into supplemental proceedings because we agreed  
19 that we would not do that. We forgo any remedy that  
20 we have related the confession of judgement and the  
21 judgement only.

22 But if you look at paragraph 5 of the 2020  
23 agreement, this settlement and release constitutes the  
24 entire agreement and understanding between the  
25 creditors and debtors, and it supersedes all prior

1 understandings or agreement written or oral on the  
2 subjects contained herein.

3           You know what's not contained in there? The  
4 mortgage, the note. It also -- and I know they'd like  
5 to read this in a vacuum, but paragraph 16 refers us  
6 back and says nothing else has changed. Nothing has  
7 changed on the 2017 agreement. You can proceed as you  
8 like.

9           If I can draw Your Honor's attention to the  
10 2017 agreement, which is tabbed G-1. All right?  
11 Section 2-F, top of page 4. Upon the satisfaction of  
12 the underlying note and the full performance by the  
13 debtors of all obligations under this settlement and  
14 release, creditors agree to execute and record  
15 satisfactions of mortgages on the above-referenced  
16 properties in the applicable county RMC office.

17           The parties expressly agreed that until it  
18 was paid in full, there was no obligation to satisfy  
19 any of the mortgages. And do recall there were  
20 multiple mortgages.

21           And by the way, referring back to the First  
22 Citizen's mortgage, you know, I don't know whether  
23 that had anything to do with why anybody was choosing  
24 to take money or not take money. What I also know is  
25 there's no affidavit here that says why anybody was

1 doing anything.

2 The responses in the affidavit, our  
3 mortgages, our affidavit, is simply as to the debt  
4 amount. Anything else that was going on quite frankly  
5 would be parole evidence and doesn't really matter  
6 here. The parties agree there's no genuine issue of  
7 material fact. This is to be decided on the  
8 documents.

9 The only other thing I would draw the Court's  
10 attention to is go back and look at the language if  
11 you would, please, of the release of the judgement  
12 lien. It's pretty specific as to what's happening.  
13 We're releasing the judgement lien. We acknowledge we  
14 did that. That was something we agreed to do. We  
15 acknowledge we were going to partially satisfy the  
16 debt down to \$50,000, and we also agreed that we were  
17 going to take the lien off that real estate. That's  
18 what we agreed to do.

19 We never agreed to do the mortgage. Why  
20 would we? Why would we take \$50,000 to satisfy a  
21 \$700,000 debt? It makes absolutely no sense  
22 whatsoever. Thank you, Your Honor.

23 THE COURT: Well, the release, even in the  
24 heading -- and I'm looking at Exhibit 4. The  
25 judgement lien itself was released of record, correct?

1 MR. MCVEY: Correct, Your Honor.

2 THE COURT: And that in and of itself is not  
3 a satisfaction of a mortgage. Those are two separate  
4 entities.

5 MR. MCVEY: Correct, Your Honor.

6 THE COURT: Released of the judgement of  
7 certain defendants, and that would be these Beasleys,  
8 and partial satisfaction of the judgement.

9 Was there another judgement somewhere out  
10 there? We're talking about the same amount of money,  
11 are we not? It was all applied to -- there's one  
12 confession of judgement signed by all of the parties,  
13 Beasley Construction, Beasley Jr. and both Beasley Sr.

14 THE COURT: That's right. I remember that.  
15 Okay.

16 MR. MCVEY: And, again, it's very specific as  
17 to certain defendants, those being Beasley Sr. to that  
18 specific property. But, again, there's no  
19 satisfaction of the mortgage.

20 THE COURT: How do you distinguish the Lever  
21 case, then, if you in fact did receive some payments  
22 on the note and applied towards the judgement?

23 MR. FLOYD: The consideration wasn't to  
24 satisfy the mortgage. It was to release the lien.  
25 Not even satisfy the lien.

1 THE COURT: Release the judgement lien?

2 MR. MCVEY: That's exactly right. That's it.  
3 It's not -- it wasn't a payment on the mortgage. It's  
4 not -- I mean, it's a payment on the debt. It had to  
5 be credited to the debt, but it's not a satisfaction  
6 full as required under the 2017 settlement agreement.

7 THE COURT: Okay. Ms. Shoun?

8 MS. SHOUN: Your Honor does seem interested  
9 in the distinction of Lever, and I thought I might go  
10 back to that briefly. Lever provides: The mortgagee  
11 who has the note in a mortgage to secure a debt has  
12 the option to bring an action on the note or to pursue  
13 a foreclosure action. The bond is not the debt, nor  
14 is the mortgage the debt. The debt is the borrowed  
15 money.

16 In our instance, one of the terms Your Honor  
17 wanted described was debt. The debt is the \$647,000.  
18 That's the debt. The mortgage is one method of  
19 securing that debt. The lien is the other method of  
20 securing that debt.

21 THE COURT: The judgement?

22 MS. SHOUN: Yes, Your Honor. Its progeny, US  
23 Bank Trust Nat. Ass'n v. Bell, which is 385 S.C. 3624,  
24 cites to Lever and says, among other things, a  
25 mortgage and a note are separate securities for the

1 same debt, and a mortgagee who has a note and mortgage  
2 to secure a debt has the option to either bring an  
3 action on the note or to pursue a foreclosure action.

4 They don't get to do this over and over and  
5 over again. They took a total of \$75,000 from these  
6 people, but they took \$50,000. And Mr. McVey said at  
7 the time they entered into the second settlement  
8 agreement, they acknowledged the debt wasn't paid.  
9 Right. But the second settlement agreement pays the  
10 debt on behalf of the Beasleys.

11 And it says distinctly in paragraph 16 except  
12 for the release of these debtors, Mr. Beasley Sr. and  
13 Mrs. Beasley, you can do whatever you want under the  
14 first settlement agreement.

15 You can do whatever you want as to the  
16 remaining defendants under the judgement. But as to  
17 these individuals, you have made your choice. You  
18 took their money. You agreed to forego all other  
19 remedies, you released them, and you released their  
20 property.

21 This is a travesty, Your Honor. Frankly, it  
22 is a travesty what these individuals are trying to do  
23 to these people. I have never seen a clearer case of  
24 this, Your Honor. To present to this Court a  
25 complaint that says sue on the note as well as seeks

1 relief under the confession of judgement, which they  
2 acknowledge these people have -- for which they seek a  
3 relief.

4 THE COURT: I'm not sure they're seeking  
5 relief under the judgement, are they? They've  
6 released you from the judgement.

7 MS. SHOUN: They've released us from the  
8 indebtedness.

9 THE COURT: They've released you from the  
10 judgement. The debt was 675, right? 75 was paid.

11 MS. SHOUN: They took that pursuant to the  
12 settlement agreement and said by this, we forgo all  
13 other remedies. If they still had a right to the  
14 judgement at that point, they gave up that right in  
15 that settlement agreement and then they memorialized  
16 it.

17 The settlement amount was paid, and they  
18 memorialized it in that partial release by releasing  
19 these individuals and their property.

20 THE COURT: From the judgement.

21 MS. SHOUN: But, Your Honor, what was the  
22 \$50,000 paid for?

23 THE COURT: I don't know the answer to that  
24 question.

25 MS. SHOUN: I do. It's in the document. The

1 way I read the confession, it was a partial release,  
2 partial settlement.

3 MS. SHOUN: It is absolutely in the second  
4 settlement agreement as to what that \$50,000 was paid  
5 for, and that was the agreement to forgo all other  
6 remedies, legal or equitable, and other processes that  
7 may be available to them. It says it. And the  
8 plaintiffs indicated --

9 THE COURT: That's paragraph 5?

10 MS. SHOUN: Actually, Your Honor, it's the  
11 "now therefore in consideration." It's the last "now  
12 therefore" before paragraph 1 that begins the  
13 settlement sum.

14 THE COURT: All right. Okay.

15 MS. SHOUN: And just to point out, Your  
16 Honor, if I may, this settlement agreement in the  
17 prefatory paragraph references the debt, which is the  
18 \$647,500. That is the debt. There is no other debt.  
19 That is it. And by this payment pursuant to this  
20 agreement, they have released these individuals from  
21 that.

22 And they go on to -- I mean, it goes on to  
23 say you can pursue against anybody else, against any  
24 non-released judgement debtor and all the other terms  
25 remain in full force and effect except as to

1 Mr. Beasley Sr. and Mrs. Beasley.

2 MR. MCVEY: Your Honor, if I may raise one  
3 issue.

4 THE COURT: Uh-huh.

5 MR. MCVEY: I would just like to direct the  
6 Court's attention to the second to last paragraph of  
7 the Lever opinion.

8 THE COURT: Yeah.

9 MR. MCVEY: It says the creditor shall not  
10 have two satisfactions for the same debt, but there is  
11 no inconsistency with pursuing two remedies. If one  
12 produces satisfaction, that is a bar for the other. A  
13 mortgage is a specific lien, and a judgement is a  
14 general lien. Both may be consistently pursued until  
15 the debt is satisfied.

16 And that's citing to the Satterwhite case,  
17 which is 1849. This is a long standing South Carolina  
18 law, Your Honor.

19 THE COURT: These are old cases.

20 MR. MCVEY: Yes, it is. Though I'm not  
21 accusing your law clerk's father of being old. But if  
22 you have any other questions for me, Your Honor, happy  
23 to answer.

24 THE COURT: What was the case, Ms. Shoun, you  
25 referenced? I tried to write the citation down.

1           MS. SHOUN: US Bank Trust National  
2 Association, formerly known as First Trust National  
3 Association. The cite on that is 385 S.C. 364, 684  
4 S.E.2d 199.

5           It does indicate -- Lever does indicate it  
6 cannot have two satisfactions for the same debt. They  
7 can get satisfaction from other remaining defendants,  
8 but they cannot do that once they release these  
9 individuals.

10          THE COURT: Okay.

11          MR. DENNIS: Let me add, there's certainly  
12 been a lot of reading done by a lot of us. The motion  
13 is for summary judgement.

14          Everything you've talked about is nothing  
15 more than a -- it's a lot more than a scintilla of  
16 evidence. You've denied summary judgement, and we  
17 have a trial. There's a question of fact. We can't  
18 decide these things, and you can't either. That's why  
19 we have trials.

20          MR. MCVEY: Judge, I would note that the  
21 defendant's brief says there are no genuine issues  
22 besides material facts on the --

23          MR. DENNIS: Genuine issue, Your Honor, may  
24 be, but, you know, that's argumentative as well.  
25 There are issues of fact. There are tons of them.

1           THE COURT: That may be, but I think this  
2 issue -- this issue appears to me to be a question of  
3 law.

4           MR. DENNIS: I agree, when we filed summary  
5 judgement.

6           THE COURT: That Lever talks in terms of most  
7 recent -- I looked into that one last night. I found  
8 I guess the most recent one is an unpublished case.

9           The one that got my attention is one of my  
10 high fliers in here, a guy named Johnston Koola. You  
11 don't want to go there.

12           Anyway, they talk about -- they cite to some  
13 North Carolina bankruptcy court. This is Judge Waits  
14 in re Koola, 2018 WL 485 0375. They talk about Lever  
15 and some of the progeny, they say. Describe the case  
16 law in South Carolina in the following manner. This  
17 is the judge in a case called Southbay up in North  
18 Carolina. "Old and dusty as these cases may be, this  
19 Court has found no more recent precedent to contradict  
20 them. They appear to have established a lasting legal  
21 footprint." I just thought that was great law.

22           So here's what I need to do. On this one,  
23 I'm going to take it under advisement. I think I need  
24 to think at it. Y'all have focused in on -- and I  
25 found that out last night when your memoranda came in

1 that you were citing to the same authority. We just  
2 have a difference of opinion. That's why I have to  
3 scratch my head over it.

4 We had a couple other motions that I think we  
5 need to take up. Find out what they are.

6 MR. MCVEY: Your Honor, would you like us to  
7 punt on the motion to strike right now? Because  
8 depending on which way you go, that will either be  
9 necessary or unnecessary.

10 THE COURT: Right. Okay. And then you had  
11 entry of default as to the other -- that's not a real  
12 problem there, is it?

13 MR. MCVEY: No. Like I said, that's a formal  
14 entry of default related to the in default damages.

15 THE COURT: Okay. All right.

16 MR. MCVEY: I'm going to leave the motion out  
17 there but just kind of see what happens. We can  
18 always come back and deal with motion to strike later  
19 depending on what Your Honor decides.

20 THE COURT: I'm assuming y'all will file  
21 motions?

22 MS. SHOUN: Oh, yes, sir.

23 THE COURT: And I think your argument is well  
24 made. Okay.

25 MS. SHOUN: Frankly, Your Honor, candidly, we

1 would have done it well in advance except for the  
2 recusal issue.

3 THE COURT: Sure. I'm with you. Okay. And  
4 that may rear its ugly head again.

5 MS. SHOUN: It may.

6 THE COURT: Okay. So as to the rulings I've  
7 gotten so far, then, I denied the motion for recusal.  
8 I put those terms on the record. Motion for summary  
9 judgement is under advisement. Motion to strike  
10 counterclaims have been punted, and anticipated motion  
11 for summary judgement from defense. Mr. Beasley,  
12 Aaron Beasley's motion is denied. And the plaintiff's  
13 motion on the reformation of the mortgage was granted.  
14 Okay?

15 MR. MCVEY: You indicated you wanted a  
16 proposed order on the reformation cause. Do you want  
17 a proposed order on intervention as well?

18 THE COURT: Go ahead and put those together  
19 for me. Run it by everybody. What was the other one?

20 MR. MCVEY: So that I'm clear, the rulings I  
21 heard on the intervention, you found it not to be  
22 timely. You note there was no reason for a delay and  
23 that it would prejudice the parties at this time.

24 Did you find that there was an equitable  
25 interest or no?

1           THE COURT: No, I did not find that. All  
2 right. I'd like to read the -- anything further  
3 you've got? I've not read the case you cited to, so I  
4 want to take a look at that one. I'm focusing in on  
5 Lever, but seemed to be pretty right on point. How it  
6 gets interpreted here is what is significant to this  
7 Court.

8           MS. SHOUN: Yes, sir. And I think probably  
9 finding the same authority that Your Honor found. I  
10 did -- I do have Quarter Pointe Venture, LLC, that  
11 particular action, versus Lineberger.

12           It's one that -- again, that's another  
13 progeny of Lever.

14           THE COURT: That's the one? Yeah.

15           MS. SHOUN: Exactly. And, Your Honor, we  
16 staunchly take the position that if the supports our  
17 position.

18           THE COURT: I understand that.

19           MS. SHOUN: Exactly.

20           THE COURT: Got it. Okay. Anything further?  
21 Not for today? All right. Thank you.

22           (Off the record at 1:48 p.m. on August 8th,  
23 2023.)

24

25

## 1 COURT REPORTER'S CERTIFICATE

2  
3 I DO HEREBY CERTIFY THAT THE TESTIMONY  
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO  
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A  
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A  
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE  
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED  
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR  
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF  
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY  
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,  
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 21st DAY OF AUGUST 2023.

16 

17 \_\_\_\_\_  
18 JOSIE ALLEN BOEHM

19 My Commission Expires 10/18/32  
20  
21  
22  
23  
24  
25