

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Joe M. Crosby, Master-In-Equity

Case No. 2011-CP-22-0180
Appellate Case No. 2013-001447

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SC Court of Appeals

Kennedy Funding, Inc. as predecessor-in-interest, and BNP
Paribas.....Respondents,

v.

Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and J. Mars
Sapp, Defendants,
Of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb are
Respondents and

J. Mars Sapp is the Appellant.

RECORD ON APPEAL VOLUME I

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Exhibits

Plaintiff's Trial Exhibits:

1. Closing Binder bearing Bates Numbers KENNEDY 01135 – 01418. This Exhibit is printed as part of Wolfer Deposition 1 at page 225.	741
2. March 2, 2009 Letter with attachments from Kennedy Funding to Peggy Wheeler-Cribb, bearing Bates Numbers KENNEDY 00497 – 00504. This Exhibit is printed as part of Wolfer Deposition 1 at page 511	742
3. March 11, 2009 – March 12 E-mail chain regarding loan documents and preliminary closing checklist bearing Bates Numbers KENNEDY 00472 – 00475. This Exhibit is printed as part of Wolfer Deposition 1 at page 520..	743
4. April 28, 2009 E-mail forwarding preliminary closing checklist bearing Bates Numbers KENNEDY 01113 – 01125. This Exhibit is printed as part of Wolfer Deposition 1 at page 525	744
5. April 29, 2009 E-mail regarding status of loan documents bearing Bates Number KENNEDY 01053. This Exhibit is printed as part of Wolfer Deposition 1 at page 539	745
6. April 30, 2009 E-mail forwarding draft Loan and Security Agreement documents bearing Bates Numbers KENNEDY 00950 – 01033. This Exhibit is printed as part of Wolfer Deposition 1 at page 542	746
7. August 1, 2012 Notice of 30(b)(6) Deposition of Kennedy Funding, Inc. This Exhibit is printed as part of Wolfer Deposition 2 at page 674	747
8. November 29, 2011 Assignment of Mortgage, Assignment of Leases and Rents and Loan Documents bearing Bates Number KENNEDY 1126-01134 This Exhibit is printed as part of Wolfer Deposition 2 at page 679	748
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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Kennedy Funding, Inc., as predecessor-)
in-interest, and BNP Paribas,)

Civil Action No. 2011-CP-22-00180

Plaintiff,)

vs.)

ORDER AND JUDGMENT

Pawleys Island North, LLC, Will)
Darwin Wheeler, Peggy Wheeler-)
Cribb, and J. Mars Sapp,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2013 JUN -7 PM 3:08
ALMA Y. WHITE
CLERK OF COURT

Pursuant to Rule 53 S.C.R.Civ.P., 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 in the cause. Any appeal from the final judgment entered by the Master-in-Equity shall be directly to the Supreme Court.

Pursuant to the said Order of Reference, a hearing was held on February 11, 2013, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on February 9, 2011.
2. The Summons and Complaint was filed by Plaintiff Kennedy Funding, Inc. ("Kennedy") on February 9, 2011 and the First Amended Complaint was filed by Plaintiff BNP Paribas, a successor-in-interest, ("Plaintiff" or "BNP") on September 5, 2012.
3. Service was made upon the Defendants named in this Report as is shown by the Affidavits of Service and certified mail receipts filed with the Court.

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4. Defendants Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb filed an Answer to the Complaint and First Amended Complaint, which is of record herein.

5. Defendant J. Mars Sapp filed an Answer to the Complaint and an Answer and Cross-Claim to the Amended Complaint, which is of record herein.

6. Pursuant to the South Carolina Supreme Court Administrative Orders the loan and mortgage subject to the above-captioned action and as stated in the Complaint, is a commercial loan and, the terms of the TRO are not applicable to this foreclosure action.

Kennedy/BNP Lien

7. Pawleys Island North, LLC ("Borrower") entered into a Loan and Security Agreement with Kennedy dated April 30, 2009 (the "Loan Agreement"), evidenced by a separately executed Promissory Note dated April 30, 2009 (the "Note"), in the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, with interest thereon.

8. Simultaneously with the execution of the above-referred Note, and in order to secure the payment thereof, Borrower executed and delivered to Kennedy that certain Mortgage and Security Agreement dated April 28, 2009, and recorded on May 5, 2009, in the Office of the Registrar of Deeds for Georgetown County, in Mortgage Book 1225 at Page 109 (the "Mortgage"), wherein and whereby Borrower mortgaged to Kennedy the real property more fully described as:

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

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AND ALSO

ALL THAT CERTAIN piece, parcel or lot of land lying, being and
situate

on Pawleys Island, Georgetown County, State of South Carolina, being
that certain lot of land designated as LOT 4 on a plat prepared by the
Earthworks Group, dated July 9, 2006 and recorded in the Office of the
Clerk of the Court for Georgetown County, South Carolina in Plat Slide
625 at page 10.

(hereafter the "Property.")

9. To further secure repayment of the Note, Borrower executed and delivered
to Kennedy the following:

- a. That certain Assignment of Leases and Rents dated April 30, 2009,
and recorded on May 5, 2009, in the Office of the Register of Deeds
for Georgetown County, in Mortgage Book 1225 at Page 161 (the
"Assignment of L&R");
- b. That certain Assignment of Licenses, Contracts, Plans Specifications,
Surveys, Drawings and Reports dated April 30, 2009 (the
"Assignment of Licenses"); and
- c. That certain UCC Financing Statement filed on May 12, 2005, with
the South Carolina Secretary of State at File No. 90512-1119397 and
recorded on May 5, 2009, in the Office of the Registrar of Deeds for
Georgetown County, in Mortgage Book 1225 at Page 175 ("UCC-
1").

The Loan Agreement, Note, Mortgage, Assignment of L&R, Assignment of Licenses, and
UCC-1 are referred to collectively herein as the "Loan Documents," and the Property and all
other property interests secured under the Loan Documents are referred to collectively herein
as the "Collateral."

10. The Loan Documents constitute a valid first lien on the Collateral.
Borrower has defaulted under the Loan Documents by, *inter alia*, failing to make payments

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when due, and Kennedy has declared the entire balance of principal and interest to be immediately due and payable and brought this foreclosure suit to collect same.

11. After filing this suit, Kennedy assigned to BNP all rights, title, interests and obligations under the Note, the Mortgage and the other Loan Documents. BNP ("Plaintiff") is, therefore, entitled to foreclosure and for the other relief stated in its Amended Complaint.

12. Payment due on the Note and Mortgage has not been made as provided for therein, and the Plaintiff, as the holder thereof, has 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 and remedy by foreclosure.

13. The amounts 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, including an attorney's fee, are as follows:

(A) Principal	\$ 960,000.00
(B) Interest as of 01/31/2013 at 25.0% per annum (\$666.67 per diem)	\$ 710,668.39
(C) Taxes paid by Plaintiff for 2010, 2011 and 2012	\$ 55,266.94
(C) Attorney's Fee	\$ 100,000.00

Total amount secured by Note and
Mortgage including interest to date shown
as of April 10, 2012: \$ 1,825,935.33

Interest for the period from the date shown in (B) above through the date of this foreclosure judgment at above stated rate to be added to the above stated "Total Foreclosure Debt" to comprise the amount of the foreclosure debt established herein and interest after the date of this

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decree at the rate of 25.0% per annum (pursuant to the terms of the Note and Mortgage) on the foreclosure debt should be added to such foreclosure debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

14. With respect to attorney fees, in view of the potential liabilities inherent in a real property matter, the attendant responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee would be One Hundred Thousand and 0/100 Dollars (\$100,000.00). The Plaintiff engaged an attorney to foreclose the Mortgages as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running interest. It appears that the attorney examined the title to identify all parties having or claiming any interest in the subject real estate, the preparation of certain pleadings and other documents including the following:

- (a) Lis Pendens;
- (b) Summons and Complaint;
- (c) Affidavit(s) of Service;
- (d) Acknowledgement(s) of Service;
- (e) Order of Reference;
- (f) Notice(s) of Hearing;
- (g) Record (Transcript of Testimony; and
- (h) Proposed Master-in-Equity's Report and Judgment of Foreclosure and Sale.

Additionally, the attorney prepared and served the pleadings upon the Defendant personally or by statutory/substitute service, provided reinstatement and payoff figures and payment histories as requested or required, scheduled and conducted written discovery and document production, took depositions, drafted and argued discovery and dispositive motions, attended roster meetings while the case was pending before the Circuit Court, and tried the case before this Court on February 11, 2013.

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Future duties include forwarding copies of the Judgment to appearing counsel, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Master-in-Equity's Deed and any other documents necessary to this particular action.

In regard to the professional standing of counsel, representation of Plaintiff has been undertaken by the firm of NELSON MULLINS RILEY & SCARBOROUGH, LLP. The attorney primarily involved in this representation has been Robert H. Jordan. He is experienced in the areas of foreclosure, financial services and commercial litigation. The fee requested is customary for the services provided, given the professional standing of Plaintiff's counsel. Also, Plaintiff's attorney has achieved the beneficial result of a prompt foreclosure of the Mortgage. For these reasons and based on the motion and affidavit for fees Mr. Jordan submitted to the Court, the Court awards Plaintiff attorney fees of \$100,000.00.

15. In addition to the above-referenced Loan Documents, Defendants Will Wheeler and Peggy-Wheeler Cribb Guaranty dated April 30, 2009 (the "Guaranty"), whereby they individually, jointly and severally, absolutely and unconditionally guaranteed repayment under the Loan Documents to Plaintiff. As further consideration for the Note, Guarantors agreed to pay all costs of collection, including reasonable attorney's fees.

16. Plaintiff has declared the entire balance under the Loan Documents due and payable and hereby demands payment of the same, but Guarantors have refused to pay, and therefore are in default under the terms of the Guaranty. Moreover, at the trial of this case, the Guarantors did not contest their liability under the Guaranty or the amounts claimed

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due pursuant to the Guaranty by Plaintiff. Accordingly, the Guarantors are found to be liable for the amounts set forth in Paragraph 13 above.

Sapp's Alleged Lien

17. In preparing to file suit, Plaintiff updated its title work on the subject Property and discovered defendant J. Mars Sapp ("Sapp") was attempting to collect a civil judgment against Will Darwin Wheeler ("Wheeler") by executing against the Property.

18. Sapp filed a civil suit related to a commercial lease against Wheeler and other parties on September 30, 2008. After a jury trial, Sapp obtained a verdict against Wheeler on June 4, 2010 in the amount of \$257,789.00 and for \$48,929.00 in attorney's fees. Wheeler appealed the verdict which was affirmed by the Court of Appeals on February 20, 2013.

19. After obtaining the jury verdict, Sapp attempted to collect the judgment against Wheeler and the Sheriff returned a *nulla bona* on the judgment.

20. The Property at issue in this action was conveyed from Wheeler to Pawleys Island North, LLC ("Borrower") on April 28, 2009 by quitclaim deed for \$5.00. Pawleys Island North then entered into the above-referenced loan documents with Plaintiff by which it loaned Pawleys Island North \$960,000.00.

21. Sapp's original Answer in this matter did not assert any cross-claims or counter-claims but did request the Court find Sapp's lien to be a first lien and interest in the property. Based on this assertion of lien priority, Plaintiff filed a motion for summary judgment requesting its lien be declared superior to Sapp's lien, if any. By Order dated March 5, 2012, this Court granted Plaintiff's motion for summary judgment, ruling that to the



extent Sapp held a lien on the subject property, his lien was inferior to Plaintiff's lien. The Court's ruling did not address the merits of Sapp's alleged lien. Sapp filed a motion to reconsider and the Court held a hearing on the motion to reconsider on August 13, 2012. The Court denied Sapp's motion to reconsider from the bench at the trial of the case.

22. After summary judgment was granted in Plaintiff's favor and while Sapp's motion to reconsider was pending, Sapp responded to Plaintiff's First Amended Complaint by filing an Answer and Cross-Claim against Wheeler. Sapp asserted a lone cross-claim against Wheeler for violation of the Statute of Elizabeth, codified at S.C. Code §27-23-10(A) in which he contended that Wheeler's transfer of the Property to Pawleys Island North, LLC constituted a fraudulent conveyance and it and all subsequent transfers should be voided. Specifically, Sapp alleged:

- (a) The conveyance by Wheeler to Pawleys Island North, LLC was a transfer of property for an intent or purpose to delay, hinder, or defraud creditors and others – including Sapp – of their just and lawful actions, suits, accounts, and damages;
- (b) The conveyance by Wheeler was for no consideration or grossly inadequate consideration;
- (c) The conveyance by Wheeler was condoned by Defendants Wheeler, Cribb, Pawleys Island North, LLC and Plaintiffs and all of them participated in the transfer of the property;
- (d) The conveyance by Wheeler is void and of no effect, and should be set aside under S.C. Code Ann. § 27-23-10(A), the Statute of Elizabeth;
- (e) The conveyance by Wheeler, if not completely void, is void as to Lot 3 which was unencumbered at the time of the transfer to Pawleys Island North, LLC.

23. Though the allegations asserted in Sapp's Answer and Cross-Claim were not asserted in his original Answer, the parties briefed and argued all of the issues presented in



Sapp's Cross-Claim at the summary judgment hearing and the motion to reconsider hearing. The Court entertained additional argument on these issues at the trial of the case. Moreover, Sapp contended at the trial of the case that even if he were not deemed to have a lien interest superior to Plaintiff's, he should be deemed to be a junior lien holder against Pawleys Island North based on the alleged fraudulent transfer from Will Wheeler to Pawleys Island North. Plaintiff and Wheeler opposed Sapp's claim to be a junior lien holder on the basis that no fraudulent conveyance occurred.

24. Sapp did not assert any counterclaim against Plaintiff.

25. Having reviewed the evidence presented and heard the testimony presented at trial, the Court concludes that no fraudulent conveyance occurred and Sapp is not a judgment creditor. The Court's analysis set forth herein applies not only to the summary judgment motion and motion to reconsider it decided in Plaintiff's favor but also to its denial of Sapp's Cross-Claim against Will Wheeler.

26. In South Carolina, a clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth. See, *Oskin v. Johnson*, 400 S.C. 390 (S.C. 2012)(citing, *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) (citations omitted). Additionally, an action to set aside a conveyance under the Statute of Elizabeth is an equitable action. *Id.*, (citing, *Future Group, II*, 324 S.C. at 97 n. 6, 478 S.E.2d at 49 n. 6; S.C. Const. art. V, § 5.)

27. The Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken . . . to be clearly and utterly void....

S.C. Code Ann. § 27-23-10(A) (2007).

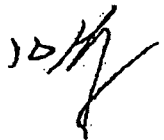
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28. In interpreting this statute, our Courts hold conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; or, second, where a transfer is made without actual intent to defraud but without valuable consideration. *Id.* (citing, *Future Group, II*, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49; *McDaniel v. Allen*, 265 S.C. 237, 242-43, 217 S.E.2d 773, 775-76 (1975). Even where it is shown that the grantor has fraudulent intent, to "annul for fraud a deed based upon value consideration [under the Statute of Elizabeth], it must not only be shown that the grantor intended to hinder, delay or defraud creditors, but it must also appear that the grantee participated in such fraudulent act." *McDaniel*, 265 S.C. at 242-43, 217 S.E.2d at 775-76 (emphasis added); *Windsor Props.*, 331 S.C. at 471, 498 S.E.2d at 860.

29. Because the mortgage given from Pawleys Island North to Plaintiff was not an intra-family transaction, the burden of proof is on Sapp to prove by clear and convincing evidence a fraudulent conveyance occurred. *Id.*, at FN. 7. The Court finds the mortgage was given in an arms-length transaction and that no familial or prior business relationship existed between Pawleys Island North and Plaintiff.

30. As found herein, Plaintiff loaned Pawleys Island North \$960,000.00 and has not been repaid any principal or its interest on its loan. The Court finds that valuable consideration existed to support the mortgage. Sapp must, therefore, prove that Pawleys Island North intended to defraud Sapp when it entered into the mortgage with Plaintiff and that Plaintiff participated in the fraud. See, *Orkin* at. 464.

31. Regarding the mortgage from Pawleys Island North to Plaintiff, the Court need not determine whether Pawleys Island North intended to defraud Sapp because



Sapp has failed to prove by clear and convincing evidence that Plaintiff participated in a scheme to defraud him. In fact, Sapp has failed to present any evidence that Plaintiff participated in a fraud. Sapp did argue that Pawleys Island North informed Plaintiff of the Sapp litigation prior to closing and that Plaintiff sent an email prior to closing inquiring about the status of the Sapp litigation but received no response. Based on this evidence, Sapp makes an inexplicable leap to argue that Plaintiff's failure to further investigate the nature, status, and merits of the Sapp litigation with Wheeler prior to closing its loan with Pawleys Island North somehow rises to the level of a fraud. The Court rejects this argument and finds that Plaintiff was a good faith purchaser for value when it entered into the mortgage agreement with Pawleys Island North and did not participate in a plan to defraud Sapp.

32. As for Sapp's contention that the first transfer from Wheeler to Pawleys Island North was fraudulent and should be declared void for purposes of establishing a junior lien in Sapp's favor, the Court likewise rejects this argument. The Quitclaim Deed Wheeler gave to Pawleys Island North included an affidavit from Wheeler stating the Deed was exempt from recording fees because the property was being transferred to the LLC in order for Wheeler to increase the value of his stock or interest held in the LLC. The parties presented to the Court an appraisal on the subject property from February 27, 2009 which indicated the total value for the two lots was \$1,920,000. The parties also submitted the Pawleys Island North *Amended Articles of Incorporation* which state in Section 9.0 that the purpose of the business was to "own, hold, sell, assign, transfer, operate, improve, lease, mortgage, pledge and otherwise deal with certain real property pledged to Kennedy Funding, Inc. as collateral pursuant to that certain Mortgage and Security Agreement" which is identified above. Wheeler, as a member of Pawleys Island North, LLC, therefore received an increase in the



value of his 99% LLC ownership interest in exchange for the transfer of property valued at \$1,920,000.00. In sum, the value of Wheeler's ownership interest in Pawleys Island North was increased by over \$1,900,000.00. The Court finds that this was valuable consideration to support the transfer. The Court additionally finds that there was no proof presented that Wheeler intended to defraud Sapp at the time he transferred the property. Finally, the Court is not persuaded that the *nulla bona* return notwithstanding that Sapp could not have attempted to collect against Wheeler's 99% ownership interest in Pawleys Island North. For all of these reasons, the Court finds that no fraudulent conveyance occurred and Sapp's cross-claim is denied.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have foreclosure of the Property and that the Property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That there is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of One Million Eight-Hundred Twenty-Five Thousand Nine Hundred Thirty-Five and 33/100 Dollars (1,825,935.33) representing the Total Foreclosure Debt due Plaintiff as set out in paragraph thirteen (13) supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.
2. The amount due in the preceding paragraph (the "Total Foreclosure Debt" as set forth in paragraph thirteen (13) supra and later accrued interests on the principal)

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shall constitute the total foreclosure debt due the Plaintiff and shall bear interest hereafter at the rate of 10.0% per annum.

3. That the Property described in the Complaint, as hereinafter set forth, be sold by the undersigned Master-in-Equity, at public auction, at the Georgetown County Courthouse, 401 Cleland Street, Georgetown, South Carolina, Georgetown County and State aforesaid, on the next available sales date, at _____ AM, or a sales day determined by the below signed Master-in-Equity, on the following terms:

(a) The undersigned Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) 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 10.0%.

(c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, and any other senior encumbrances.

(d) Purchaser to pay for deed stamps and cost of recording the deed.

(e) Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the Property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the Property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or Plaintiff's attorney or agent is present.

4. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

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5. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71 of the SCRCPP prior to the sale.

6. 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 Plaintiff, 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 Property 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.

7. If Plaintiff is 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 Plaintiff's indebtedness.

8. 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, including any fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney's fee) or so much thereof as the purchase money will pay on the same. After crediting the proceeds of the sale, net of any commission on sale, an Order for deficiency Judgment shall be entered without further notice or hearing.

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NEXT: Any surplus will be held pending further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Georgetown County is ordered and directed to eject and remove from the premises the occupant(s) of the Property sold, together with all personal property located thereon, and put the successful bidder 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.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishing, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove them from the Property. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the Property by placing said personal property on the public street or highway or by any other means.

11. It is further ORDERED, ADJUDGED AND DECREED that Defendants named herein and all persons whosoever claiming under him, her, 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.

12. 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 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

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index by Clerk of Court 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.

13. 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.

14. The following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

AND ALSO

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by the Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a personal or deficiency judgment is being demanded, the bidding will remain open for thirty (30) days after the date of the initial sale as provided by law in such cases.

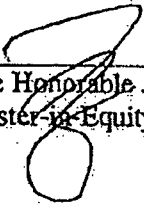
16. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the proceeds of the sale are insufficient to pay the amounts herein above

16/11

authorized to be paid out of said proceeds, with the interest, costs and expenses as aforesaid, the parties hereto entitled to a deficiency judgment against the Defendants Will D. Wheeler and Peggy Wheeler-Cribb.

AND IT IS SO ORDERED.

Georgetown, South Carolina
May 15, 2013.



The Honorable Joe M. Crosby
Master-in-Equity for Georgetown County

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

Kennedy Funding, Inc.,) Civil Action No. 2011-CP-22-00180
)

Plaintiff,)

vs.)

Pawleys Island North, LLC, Will)
Darwin Wheeler, Peggy Wheeler-Cribb,)
and J. Mars Sapp,)

Defendants.)

CONSENT ORDER OF
REFERENCE TO
MASTER-IN-EQUITY

ALMA Y. WHITE
CLERK OF COURT

2012 MAR 22 PM 2:48

FILED
GEORGETOWN COUNTY, S.C.

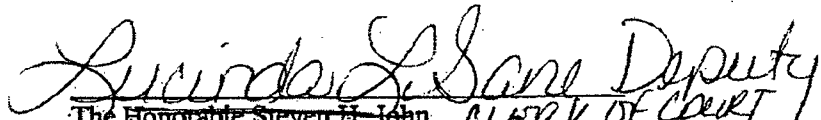
It appearing that pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the parties having appeared in this action have agreed and stipulated that the issues in this non-jury action be referred to the Master-in-Equity in the above entitled county, now by motion of the Plaintiff, by and with the consent of the Defendants, it is

ORDERED that this action be and the same hereby is referred to the Honorable Joe M. Crosby, Master-in-Equity for Georgetown County, to hear the testimony arising under the pleadings and to make his finding of fact and conclusions of law with authority to enter a final judgment in the case.

FURTHER IT IS ORDERED, pursuant to South Carolina Code Section 14-11-85 that any appeal that may be taken from the final judgment and order of the Master-in-Equity shall be directly to the Supreme Court of South Carolina or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

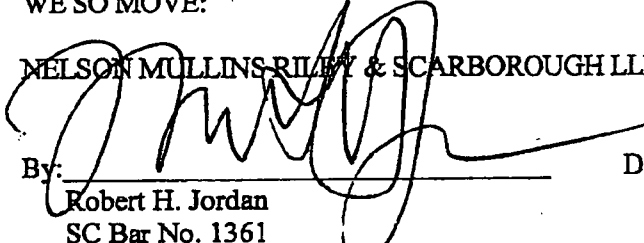
AND IT IS SO ORDERED.


~~The Honorable Steven H. John~~ *CLERK OF COURT*
Chief Administrative Judge, Georgetown County

Georgetown, South Carolina

March 22 2012

WE SO MOVE:

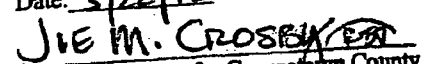

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Date: 3/11/12

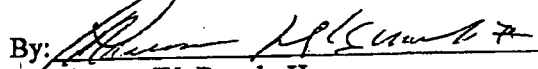
Robert H. Jordan
SC Bar No. 1361
E-Mail: robert.jordan@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Plaintiff Kennedy Funding, Inc.

Fee paid: \$ 125⁰⁰
Date: 3/22/12

Master-in-Equity for Georgetown County

WE SO CONSENT:

ROBINSON, MCFADDEN & MOORE, P.C.

By: 

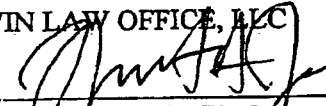
Thomas W. Bunch, II
P.O. Box 944 (29202)
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: (803) 227-1103
Fax: (803) 744-1545
Email: tbunch@robinsonlaw.com

Date: Feb. 28th, 2012

Attorneys for Defendant J. Mars Sapp

WE SO CONSENT:

GWIN LAW OFFICE, LLC

By: 

Robert H. Gwin, III, Esq.

4701-A Oleander Drive

Myrtle Beach, SC 29577

Phone: 843-839-2239

Fax: 843-839-2244

e-mail: rgwin1@sc.rr.com

Date: 3/1/12

*Attorneys for Defendants Pawleys Island North, LLC, Peggy Wheeler-Cribb
and Will Darwin Wheeler*

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
Kennedy Funding, Inc.,	)	Civil Action No. 2011-CP-22-00180
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Pawleys Island North, LLC, Will	)	<u>Order Granting Plaintiff's Motion for</u>
Darwin Wheeler, Peggy Wheeler-Cribb	)	<u>Summary Judgment as to Defendant</u>
and J. Mars Sapp,	)	<u>J. Mars Sapp</u>
	)	
Defendants.	)	
	)	

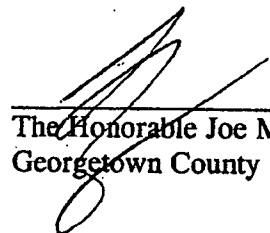
This motion is before the Court on plaintiff Kennedy Funding, Inc.'s ("Plaintiff" or "Kennedy Funding") motion for summary judgment as to the claim(s) asserted by defendant J. Mars Sapp ("Sapp"). The parties appeared before this Court for oral argument on January 17, 2012. Robert H. Jordan represented Kennedy Funding and Paul H. Hoefer represented Sapp. Counsel did not appear for the other named defendants.

This case involves a foreclosure action filed by Kennedy Funding as lender against Pawleys Island North, LLC as borrower. Kennedy Funding additionally brought claims against defendants Will Darwin Wheeler and Peggy Wheeler-Cribb to collect on personal guarantees. Kennedy Funding named defendant Sapp as a possible subordinate lien holder with an interest in the subject property. Sapp answered the complaint, asserting that he was a judgment lien holder, and requested that his lien be declared senior to Kennedy Funding's lien. Kennedy Funding filed this motion for summary judgment requesting an order dismissing Sapp's claim of a lien interest superior to Kennedy Funding's lien interest. In the alternative,

Kennedy Funding moved for an order declaring Sapp's lien junior and subordinate to Kennedy Funding's lien.

Pursuant to South Carolina Rule of Civil Procedure 56, relevant statutory and common law, and having reviewed the pleadings, the written memoranda from counsel, exhibits provided by counsel, and considered the oral arguments made during the summary judgment hearing, the Court finds that Kennedy Funding is entitled to summary judgment as to Sapp's lien superiority claim. Specifically, the Court rules that Sapp's claim to possess a lien superior to that of Kennedy Funding is dismissed and Sapp's lien, if any, is declared junior and subordinate to Kennedy Funding's lien. The Court does not make any finding as to the legitimacy of Sapp's lien and limits its ruling only to find that if such lien does exist, it is junior to Kennedy Funding's lien.

AND IT IS SO ORDERED.



The Honorable Joe M. Crosby
Georgetown County Master-In-Equity

Georgetown, South Carolina

14 Feb, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Kennedy Funding, Inc.)

Civil Action No. 2011-CP-22-00180

Plaintiffs,)

vs.)

COMPLAINT
(Foreclosure – Non-Jury)

Pawleys Island North, LLC; Will
Darwin Wheeler; Peggy Wheeler-Cribb;
and J. Mars Sapp,)

Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2011 FEB -9 PM 12:03
ALMA Y. WHITE
CLERK OF COURT

The above-named plaintiffs complaining of the defendants herein, would respectfully show:

1. Plaintiff Kennedy Funding, Inc. ("Kennedy") is a corporation organized and existing under and pursuant to the laws of the State of New Jersey with its principal place of business in Hackensack, New Jersey.

2. Upon information and belief, defendant Pawleys Island North, LLC ("Borrower") is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

3. Upon information and belief, defendant Will Darwin Wheeler ("Wheeler") is a citizen and resident of Horry County, South Carolina.

4. Upon information and belief, defendant Peggy Wheeler-Crib ("Wheeler-Crib and, jointly with Wheeler, "Guarantors") is a citizen and resident of Horry County, South Carolina.

5. Upon information and belief, defendant J. Mars Sapp ("Sapp" and, collectively with Borrower and Guarantors, "Defendants") is a citizen and resident of South Carolina.

6. The real property which is the subject of the within mortgage foreclosure action is located in Georgetown County, South Carolina.

7. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial mortgage loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program, as referenced in the above Administrative Order. As such, it is not applicable to the loan and mortgage identified herein.

8. This Court has jurisdiction over this matter.

FOR A FIRST CAUSE OF ACTION
(Foreclosure)

9. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

10. Heretofore, Borrower entered into with Kennedy, as agent for certain co-lenders (hereinafter "Lender"), a Loan and Security Agreement dated April 30, 2009 (the "Loan Agreement"), evidenced by a separately executed Promissory Note dated April 30, 2009 (the "Note"), in the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, with interest thereon, the terms of which Note are more fully explained by reference thereto. A copy of the Note is attached hereto as Exhibit A and incorporated herein by reference.

11. Simultaneously with the execution of the above-referred Note, and in order to secure the payment thereof, Borrower executed and delivered to Lender that certain Mortgage

and Security Agreement dated April 28, 2009, and recorded on May 5, 2009, in the Office of the Registrar of Deeds for Georgetown County, in Mortgage Book 1225 at Page 109 (the "Mortgage"), wherein and whereby Borrower mortgaged to Lender the real property more fully described herein as follows:

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

AND ALSO

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by the Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

hereafter the "Property." A copy of said Mortgage is attached hereto as Exhibit B and incorporated herein by reference.

12. To further secure repayment of the Note, Borrower executed and delivered to Lender the following:

- a. That certain Assignment of Leases and Rents dated April 30, 2009, and recorded on May 5, 2009, in the Office of the Register of Deeds for Georgetown County, in Mortgage Book 1225 at Page 161 (the "Assignment of L&R");
- b. That certain Assignment of Licenses, Contracts, Plans Specifications, Surveys, Drawings and Reports dated April 30, 2009 (the "Assignment of Licenses"); and

- c. That certain UCC Financing Statement filed on May 12, 2005, with the South Carolina Secretary of State at File No. 90512-1119397 and recorded on May 5, 2009, in the Office of the Registrar of Deeds for Georgetown County, in Mortgage Book 1225 at Page 175 ("UCC-1").

The Loan Agreement, Note, Mortgage, Assignment of L&R, Assignment of Licenses, and UCC-1 are referred to collectively herein as the "Loan Documents," and the Property and all other property interests secured under the Loan Documents are referred to collectively herein as the "Collateral."

13. The Loan Documents constitute a valid first lien on the Collateral.

14. Borrower has defaulted under the Loan Documents by, *inter alia*, failing to make payments when due, and Lender has declared the entire balance of principal and interest to be immediately due and payable.

15. There is due and unpaid on the Loan Documents, as of January 19, 2011, the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, plus interest in the amount of One Hundred Seventy-Two Thousand and 00/100 (\$172,000.00) Dollars, and expenses in the amount of Five Thousand and 00/100 (\$5000.00) Dollars. Interest is accruing at a rate of Six Hundred Sixty-Seven and 00/100 (\$667.00) Dollars per day. Demand has been made upon the Borrower to pay said amounts but Borrower has refused to pay the same, or any part thereof, and said refusal is continuing, all to Lender's injury and damage in the sum of One Million One Hundred Thirty-Seven and 00/100 (\$1,137,000.00) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

16. Defendant Sapp may claim a lien on or interest in the Premises by virtue of a judgment of record against Wheeler but, if such a lien exists, it is junior and subordinate to that of Lender.

17. Lender expressly reserves its right to enter a deficiency judgment against Borrower after the sale of the Collateral.

FOR A SECOND CAUSE OF ACTION
(Collection on Guaranty)

18. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

19. In consideration of the above-referenced Note, Guarantors executed a Guaranty dated April 30, 2009 (the "Guaranty"), whereby they individually, jointly and severally, absolutely and unconditionally guaranteed repayment under the Loan Documents to Lender. A copy of the Guaranty is attached hereto as **Exhibit C** and is incorporated herein by reference.

20. As further consideration for the Note, Guarantors agreed to pay all costs of collection, including reasonable attorney's fees.

21. Lender has declared the entire balance under the Loan Documents due and payable and hereby demands payment of the same, but Guarantors have refused to pay, and therefore are in default under the terms of the Guaranty.

22. There is due and unpaid on the Loan Documents and Guaranty, as of January 19, 2011, the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, plus interest in the amount of One Hundred Seventy-Two Thousand and 00/100 (\$172,000.00) Dollars, and expenses in the amount of Five Thousand and 00/100 (\$5000.00) Dollars. Interest is accruing at a rate of Six Hundred Sixty-Seven and 00/100 (\$667.00) Dollars

per day. Demand has been made upon the Guarantors to pay said amounts but said Guarantors have refused to pay the same, or any part thereof, and said refusal is continuing, all to Lender's injury and damage in the sum of One Million One Hundred Thirty-Seven and 00/100 (\$1,137,000.00) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

23. Lender expressly reserves its right to enter a deficiency judgment against Guarantors after the sale of the Collateral.

PRAYER FOR RELIEF

WHEREFORE, the Lender prays as follows:

1. That the amount due Lender under the Loan Documents, together with attorney's fees and the costs of this action, be ascertained by this Court.
2. That Lender recover judgment against Borrower and Guarantors in the amount found to be due, together with attorney's fees and the costs of this action.
3. That the Court ascertain which lien or liens, if any, are prior to that of Lender's.
4. That Lender's Loan Documents be declared to be a valid lien against the Collateral, with the appropriate priority, and that the Lender have judgment of foreclosure against the Defendants subject to the liens found to be prior to the lien held by Lender, for the amount found to be due, together with attorney's fees and costs of this action.
5. That Lender's Loan Documents be foreclosed, subject to the lien of any liens found to be superior to that of Lender, the equity of redemption barred, and the Collateral sold under the direction of this Court.
6. That the proceeds of the sale be applied as follows:

a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the Lender's attorney;

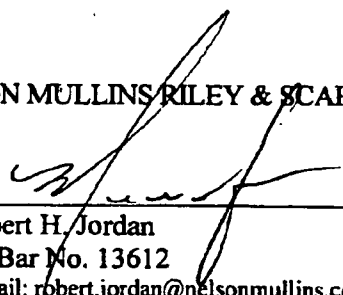
b. to the amount due Lender; and

c. the surplus, if any, be held subject to the further order of this Court.

7. That Lender be granted, if necessary, a deficiency judgment against Borrower and Guarantors for any deficiency which exists after the sale of the Collateral.

8. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Jordan

SC Bar No. 13612

E-Mail: robert.jordan@nelsonmullins.com

Merritt G. Abney

SC Bar No. 71893

E-Mail: merritt.abney@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for Plaintiff Kennedy Funding, Inc.

February 8, 2011
Charleston, South Carolina

EXHIBIT A

PROMISSORY NOTE

\$960,000

April 30, 2009

FOR VALUE RECEIVED, the undersigned, **PAWLEYS ISLAND NORTH, LLC**, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), promises to pay to the order of **KENNEDY FUNDING, INC.** ("Agent"), with an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A annexed hereto (Agent and the lenders identified on Schedule A are hereinafter collectively referred to as "Lender"), the principal sum of **NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS**, or so much thereof as may be advanced by Lender to Borrower from time to time (the "Principal Amount"), together with interest on the unpaid Principal Amount thereof computed from the date advanced (the "Commencement Date"), at the rates provided herein until April 29, 2012 or such earlier date on which the Principal Amount becomes due and payable as provided herein (the "Maturity Date"); provided, however, that from and after (i) the Maturity Date, whether upon stated maturity, acceleration or otherwise, or (ii) the date on which the interest rate hereunder is increased to the Default Rate (as hereinafter defined) as provided herein, such additional interest shall be computed at the Default Rate.

As used herein, the term "Default Rate" shall mean a rate of interest of twenty-five percent (25.0%) per annum, but in no event shall the Default Rate be in excess of the Maximum Rate (as hereinafter defined).

If any payment of interest is not paid on or before the due date for such payment, a late charge equal to the lesser of ten percent (10%) of such overdue payment or the maximum amount permitted by applicable law shall automatically become due to the holder of this promissory note (as may be amended, restated or modified from time to time, the "Note"), subject, however, to the limitation that late charges may be assessed only once on each overdue payment. Said late charges do not constitute interest and shall constitute compensation to the holder of this Note for collection and co-lender administration costs incurred hereunder. In addition, if any payment of principal or interest is not paid when due, the holder of this Note shall have the right, upon notice to Borrower, to increase the rate of interest per annum on all amounts outstanding to the Default Rate and, upon said notice, such rate increase shall be effective retroactively as of the date from which the interest component of such overdue payment began to accrue and shall remain in force and effect for so long as such default shall continue. This paragraph shall not be construed as an agreement or privilege to extend the due date of any payment, nor as a waiver of any other right or remedy accruing to the holder of this Note by reason of any default.

Principal and interest hereunder shall be payable as follows:

(a) Interest only at the rate per annum equal to the greater of: (i) Twelve (12.0%) percent and (ii) the One (1) Month Libor Rate (as hereinafter defined), as adjusted from time to time, plus Eleven (11.0%) percent on the Principal Amount outstanding hereof shall accrue from the Commencement Date through and including April 29, 2010.

(b) Interest only at the rate per annum equal to the greater of: (i) Eighteen (18.0%) percent and (ii) the One (1) Month Libor Rate, adjusted from time to time, plus Seventeen (17.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2010 through and including April 29, 2011.

(c) Interest only at the rate per annum equal to the greater of (i) Twenty One (21.0%) percent and (ii) the One (1) Month Libor Rate, as adjusted from time to time, plus Twenty (20.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2011 through and including the Maturity Date.

(d) All interest payments payable to Lender hereunder shall be paid monthly in arrears, in an amount, as determined by Lender, commencing on June 1, 2009 and continuing on the first day of each month thereafter through and including the Maturity Date.

(e) All principal, interest and other sums due hereunder shall be due and payable in full on the Maturity Date.

As used herein, the term "One (1) Month Libor Rate" shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day, or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then the One (1) Month Libor Rate shall be determined by the Agent selecting an equivalent publication that published the One (1) Month Libor Rate, and if such One (1) Month Libor Rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Agent shall select a comparable interest rate index. If interest on this Note is calculated at the One (1) Month Libor Rate as provided herein, then the interest rate will be adjusted on May 1, 2009 and on the first day of each month thereafter (each an "Adjustment Date") following any change in the One (1) Month Libor Rate.

(f) Prepaid Interest (as defined in the Loan and Security Agreement of even date herewith, as may be amended, restated or modified from time to time, hereinafter, the "Loan Agreement"), if any, shall be utilized in accordance with the terms of the Loan Agreement.

Each payment hereunder shall be credited first to Lender's collection expenses, next to late charges, next to unpaid interest, and the balance, if any, to the reduction of

the Principal Amount. The interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

This Note may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Borrower shall not be entitled, by virtue of any prepayment or otherwise, to a refund of the Fee (as defined in the Loan Agreement), interest, any other fees, points, charges and the like paid by Borrower to Lender in connection with the loan hereunder (the "Loan") and for fees and expenses incurred by Lender in making the Loan, all of which payments shall be retained by Lender from and after the date each such payment is made hereunder.

Borrower and each surety, endorser and guarantor hereof hereby waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Borrower further waives trial by jury. No extension of time for payment of this Note or any installment hereof, no alteration, amendment or waiver of any provision of this Note and no release or substitution of any collateral securing Borrower's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower under this Note.

Any forbearance by the holder of this Note in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Loan or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Note. The acceptance by the holder of this Note of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Note to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

If this Note is placed in the hands of an attorney for collection, Borrower shall pay all costs incurred and reasonable attorneys' fees for legal services in the collection effort, whether or not suit be brought.

At the election of the holder of this Note, all payments due hereunder may be accelerated, and this Note shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Borrower fails to pay on or before the date due, any amount payable hereunder; (2) Borrower fails to perform or observe any other term or provision of this Note with respect to payment; (3) Borrower fails to perform or observe any other term or provision of this Note; or (4) there exists a default under the Mortgage (as hereinafter defined), a default under any Guaranty (as hereinafter defined) or a default under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor (as hereinafter defined) in connection with the Loan, which default is not cured within any grace period expressly provided therefor in such document. In

addition to the rights and remedies provided herein, the holder of this Note may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

If this Note is transferred in any manner, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof.

Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Borrower under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Borrower stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Borrower and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Borrower.

This Note is secured by, among other things, that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage"), an Assignment of Leases and Rents (as may be amended, restated or modified from time to time, the "Assignment"), an Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports (as may be amended, restated or modified from time to time, the "Assignment of Licenses"), all of the foregoing being of even date herewith and a first lien on the certain real estate collateral (the "Collateral") identified in the Mortgage, and is entitled to the benefits and security thereof. Reference is made to the Mortgage, Assignment and Assignment of Licenses for descriptions of the respective rights and obligations of the Borrower and Lender thereunder. This Note is guaranteed by the separate Guaranty of even date herewith (as may be amended, restated or modified from time to time, the "Guaranty") of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor") and reference is made to the Guaranty for the respective rights of the parties thereunder. Borrower hereby agrees to indemnify, defend and hold harmless Lender from and against any and all claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) which may be incurred by Lender in connection with or as a result of any default (following notice and the opportunity to cure provided for in such document) by Borrower or Guarantor under the Mortgage, Assignment, or Assignment of Licenses, or by the

Guarantor (following notice and the opportunity to cure provided for in such document) under the Guaranty, or a default (following notice and the opportunity to cure provided for in such document) under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor executed or delivered in connection with the Loan (collectively, the "Loan Documents").

By its acceptance of Lender's funds and execution of this Note, Borrower acknowledges, agrees and confirms that it has no defense, offset or counterclaim for any occurrence in relation to this Loan and Borrower acknowledges that Lender has complied with all of its obligations under the Loan Documents as of the date hereof.

All payments of principal and interest hereunder are payable in lawful money of the United States of America and shall be made by wire transfer to the account of Agent or Brookline Financing SPV, LLC, as instructed, at Valley National Bank, pursuant to wiring instructions to be provided to Borrower at the closing of the Loan or to such other accounts as may be instructed by Agent.

Borrower is hereby prohibited from exercising against Lender (as a group) or Agent, any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the parties constituting Lender, including, without limitation, any right of setoff or any defense. Any other claim that Borrower may have, arising from or related to the transaction evidenced by this Note and the other Loan Documents shall be asserted only against the Agent and not against any of the individual parties constituting Lender.

In the event that an action to enforce this Note or the other Loan Documents results in the entry of a judgment (in foreclosure or otherwise) against the Borrower and/or any Guarantor, interest on the judgment shall continue to accrue at the Default Rate through the date of satisfaction of the judgment debt in full, and not at the statutory post-judgment rate of interest. Borrower waives any right and/or claim to have the post-judgment interest accrue at the statutory rate.

This Note shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns.

This Note shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

This Note shall be governed by the laws of the State of New Jersey without regard to choice of law consideration. Borrower hereby irrevocably consents to the jurisdiction of the courts of the State of New Jersey and of any federal court located in such State in connection with any action or proceeding arising out of or relating to this Note or the other Loan Documents. Borrower and Guarantor hereby designate Corporation Service

Company, located at 830 Bear Tavern Road, Suite 305, West Trenton, New Jersey 08628-1020, as their duly appointed agent to accept service of process within the State of New Jersey on their behalf.

This Note may not be changed or terminated orally.

A determination that any portion of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

Notwithstanding anything contained herein to the contrary, if there is more than one Borrower, each Borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Note.

JURY TRIAL WAIVER. BORROWER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BORROWER OR THE HOLDER OF THIS NOTE ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. BORROWER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS NOTE.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Note on the date set forth above.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company.


Name: ROBERT H. GWIN, JR.

By: 
Name: Peggy Wheeler-Cribb
Title: Manager

STATE OF SC)
COUNTY OF Horry) ss.:

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.


NOTARY PUBLIC

SCHEDULE A

LENDERS

Brookline Financing SPV, LLC

MGSS Fund

EXHIBIT B

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE, made as of this ~~24~~ day of April, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Mortgagor"), and KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent ("Agent") for the lenders identified in Schedule A of the Note (as hereinafter defined) (Agent and the said lenders are hereinafter collectively referred to as "Mortgagee").

WITNESSETH

WHEREAS, Mortgagee has agreed to lend and Mortgagor has agreed to borrow the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS ("Loan"), on the terms and conditions provided herein and in the Loan Documents (as hereinafter defined);

WHEREAS, Mortgagor has executed and delivered to Mortgagee, among other things, that certain Loan and Security Agreement (as same may be amended, restated or modified from time to time, "Loan Agreement") and that certain Promissory Note (as same may be amended, restated or modified from time to time, "Note") both of even date herewith, evidencing the Loan; and

WHEREAS, Mortgagor expects to derive benefit from the Loan and has agreed to secure the Loan by, among other things, the grant of this Mortgage to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in order to secure Mortgagor's obligations under the Loan Documents, including the payment of principal and interest, late fees, attorneys' fees, costs and disbursements, the full and prompt payment and performance of all of the indebtedness, obligations, covenants, agreements and liabilities of Mortgagor to Mortgagee, together with all interest and other charges thereon, whether direct or indirect, existing, contingent or otherwise, due or to become due, under or arising out of or in connection with the Loan Agreement and any future modifications thereof and any other instruments or documents delivered in connection herewith or therewith and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor has mortgaged, granted, bargained, sold, conveyed, aliened, released, transferred, warranted and confirmed, and does hereby mortgage, grant, bargain, sell, convey, alien, release, transfer, warrant and confirm unto Mortgagee, and to all its successors and assigns forever, the following described property (collectively, the "Property"):

A. The real estate located in County of Georgetown, State of South Carolina (the "State") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right,

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement as of the date first above written.

WITNESSES:

MORTGAGOR:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Witness #1

Signature: [Signature]
Name: Robert H. Gentry, Jr.

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

Witness #2, Notary Public

Signature: [Signature]
Name: Lingling M. DeTong

STATE OF SC)
COUNTY OF Horry) ss.:

ACKNOWLEDGMENT

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

Signature: [Signature]
NOTARY PUBLIC

Print Name: Lingling M. DeTong
My Commission Expires: 10-30-2013

[SEAL]

EXHIBIT "A"
PROPERTY DESCRIPTION

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as **LOT 3** on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1225 at page 103 of the public records of Horry County, South Carolina.
Record

LOT 4

ALL THAT CERTAIN, piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as **LOT 4** on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1225 at page 103 of the public records of Horry County, South Carolina.
Record

Instrument Book Page
20090028047 1225 160

84221 Gwin

20090028047
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
05-05-2009 At 11:54 am
MORTGAGE 58.00
STATE TAX .00
COUNTY TAX .00
Book 1225 Page 109 - 160
Wanda J. Prevatte

Lt 344
on Pawleys
Island

To be Recorded in
Georgetown County, South Carolina

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") made as of April 29, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Assignor"), and KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A of that certain promissory note of even date herewith ("Assignee").

WITNESSETH

FOR VALUE RECEIVED, Assignor does hereby irrevocably grant, sell, assign, transfer, set over and deliver unto Assignee all of the leases covering or affecting all or any part of that certain real property more particularly described in Schedule "A" annexed hereto and made a part hereof, together with the improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property"), together with the immediate and continuing right to collect and receive all of the rents, income, receipt and revenues arising from those certain leases the Property;

TOGETHER WITH all other leases and other rental agreements now or hereafter made covering the Property or any portion thereof, together with any extension or renewal of same, and all present and future leases and present and future rental agreements and rents, income and profits arising therefrom (hereinafter collectively referred to as the "Leases"), being effective without further or supplemental assignment;

TOGETHER WITH all rents, room and occupancy charges, income and profits arising from the leases and renewals thereof and together with all rents, income and profits for the use, enjoyment and occupation of the Property (hereinafter collectively referred to as the "Rents").

This Assignment is intended, and shall be construed and enforced as an absolute, present assignment of the Leases and Rents, not merely as an assignment for security, subject only to the license granted to Assignor in the next paragraph hereof.

Until notice from Assignee, Assignor shall have the right under a temporary, revocable license granted hereby to collect upon all of said Rents arising from or out of the Leases or any renewals or extensions thereof, and Assignor shall receive said Rents, and shall hold same, as a trust fund to be applied in the following priority, and Assignor

3139270000-0400674v3

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above set forth.

ASSIGNOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS ASSIGNMENT WITHOUT CHARGE.

WITNESSES:

ASSIGNOR:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Witness #1

Signature: [Signature]
Name: ROBERT H. SWIN

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

Witness #2 Notary Public

Signature: [Signature]
Name: LOUISE M. VIKERS

STATE OF SOUTH CAROLINA)

COUNTY OF Horry) ss.:

ACKNOWLEDGEMENT

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

Print Name: LOUISE M. VIKERS
My Commission Expires: 10 06 09

[SEAL]

SCHEDULE "A"
PROPERTY DESCRIPTION

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April ~~21~~, 2009 and recorded in Mortgage Book ~~1225~~ at page ~~103~~ of the public records of Horry County, South Carolina.
Record

LOT 4

ALL THAT CERTAIN, piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April ~~21~~, 2009 and recorded in Mortgage Book ~~1225~~ at page ~~103~~ of the public records of Horry County, South Carolina.
Record

EXHIBIT C

GUARANTY

\$960,000

April 30, 2009

WHEREAS, PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), has requested from KENNEDY FUNDING, INC., a New Jersey corporation, having its principal place of business at Two University Plaza, Suite 402, Hackensack, New Jersey 07601 ("Agent"), as agent for lenders identified in Schedule A annexed to the Note (as hereinafter defined) (Agent and Lenders identified in Schedule A are hereinafter collectively referred to as "Lender"), a loan in the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "Loan"), which Loan will be evidenced by a Promissory Note of even date herewith, (as may be amended, restated or modified from time to time, hereinafter, the "Note") from Borrower to Lender, and secured by, among other things, that certain Loan and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "Loan Agreement") and that certain Mortgage and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "Mortgage") from Borrower to Lender, all of the foregoing being of even date herewith. All capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Loan Agreement;

WHEREAS, Lender is willing to make the Loan to Borrower only if, among other things, the undersigned (sometimes referred to herein individually and collectively as the "Guarantor") executes and delivers this Guaranty of Payment (as may be amended, restated or modified from time to time, "Guaranty") and guarantees payment to Lender of the Debt (as hereinafter defined) in the manner provided herein; and

WHEREAS, the undersigned expects to derive benefit from the Loan.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, the undersigned hereby guarantees absolutely and unconditionally to Lender the payment of the Debt and covenants and agrees with Lender as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Guaranty Clause. The Guarantor hereby absolutely, irrevocably and unconditionally guaranties to Lender the full, prompt and unconditional payment of the Debt, when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each and every term and condition of every transaction to be kept and performed by Borrower under the Note. This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible guaranty. Lender may require Guarantor to pay and perform any or all of the Guarantor's liabilities and obligations under this Guaranty and may

proceed immediately against Guarantor without being required or obligated to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto. The liability of each Guarantor hereunder is joint and several with all other Guarantors, if applicable, and all other guarantors, and is independent of and separate from the liability of Borrower, any other guarantor, person or entity, and is independent of the availability of any collateral security for and/or under any documents granting Lender security for the Loan.

(a) The term "Debt" as used in this Guaranty shall mean the principal sum evidenced by the Note and secured by the Mortgage, together with interest thereon at the rate of interest specified in the Note and all other sums which may or shall become due and payable pursuant to the provisions of the Note, Mortgage, Loan Agreement, or any other agreement, document or certificate executed and/or delivered by Borrower to Lender in connection with the Loan, including any and all modifications, amendments, and ratifications thereto (collectively the "Loan Documents").

(b) The undersigned agrees that, upon demand, the undersigned will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all expenses (including reasonable counsel fees) incurred by Lender in connection with the collection of the Debt or any portion thereof, including any expenses incurred in any post-judgment proceedings to collect and enforce such judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

(c) All moneys available to Lender for application in payment or reduction of the Debt may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of the Debt or other obligations of Borrower as Lender may elect.

(d) This Guaranty is an absolute, continuing, unconditional and unlimited guaranty of payment and not merely of collection and Lender shall be entitled to payment from the undersigned without first commencing any action against Borrower or resorting to any security or to any credit on the books of Lender in favor of Borrower. The undersigned acknowledges and agrees that this Guaranty and any or all other guaranties made to Lender in connection with this Loan are joint and several guaranties.

3. Lender's Rights. The undersigned hereby consents that from time to time, before or after any default by Borrower, with or without further notice to or assent from the undersigned, (i) any security at any time held by or available to Lender for any obligation of Borrower, (ii) any security at any time held by or available to Lender for any obligation of any other person or party secondarily or otherwise liable for all or any portion of the Debt, and/or (iii) any obligation arising under any other guaranty to Lender made in connection with the Loan, may be exchanged, surrendered or released and any

obligation of Borrower may be changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or any default with respect thereto waived, and Lender may fail to set off and may release, in whole or in part, any balance of any credit on its books in favor of Borrower, and may extend further credit in any manner whatsoever to Borrower, and generally deal with Borrower or any such security or obligation and the undersigned shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. No invalidity, irregularity or unenforceability of all or any part of the Debt or the impairment or loss of security or obligation therefor, whether caused by any action or inactions of Lender or otherwise, shall affect or impair this Guaranty.

4. Guarantor Waivers. The undersigned hereby waives and agrees not to assert or take advantage of any defense based upon:

- (a) Notice of acceptance of this Guaranty and of the making of the Loan by Lender to Borrower;
- (b) Presentment and demand for payment of the Debt or any portion thereof;
- (c) Protest and notice of dishonor or default to the undersigned with respect to the Debt or any portion thereof;
- (d) Notice of intent to accelerate, notice of acceleration and all other notices to which the undersigned might otherwise be entitled;
- (e) Any demand for payment under this Guaranty;
- (f) The incapacity, lack of authority, death or disability of Borrower or any other person or entity;
- (g) The failure of Lender to commence an action against Borrower and/or Guarantor or to proceed against or exhaust any security held by Lender at any time, or to pursue any other remedy whatsoever at any time;
- (h) Any duty on the part of Lender to disclose to the undersigned any facts Lender may now or hereafter know regarding Borrower, regardless of whether Lender has reason to believe (i) that any such facts materially increase the risk beyond that which the undersigned intends to assume, or (ii) that such facts are unknown to the undersigned, the undersigned acknowledging that he, she or it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;

(i) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or Borrower's obligations guaranteed hereby;

(j) The consideration for this Guaranty (or lack or inadequacy thereof);

(k) Any acts or omissions of Lender which vary, increase or decrease the risk on the undersigned;

(l) Any rights or defenses based upon an offset by the undersigned against any obligation now or hereafter owed to the undersigned by Borrower;

(m) Any statute of limitations affecting the liability of the undersigned hereunder, the liability of Borrower or Guarantor under the Loan Documents or the enforcement hereof, to the extent permitted by law;

(n) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender and the undersigned or intended or understood by Lender or the undersigned;

(o) An election of remedies by Lender, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of the undersigned or the rights of the undersigned to proceed against Borrower or any guarantor by way of subrogation or for reimbursement or contribution, or all such rights;

(p) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of the principal obligor;

(q) Lender's election, in any proceeding instituted under Title 11 of the United States Code (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code or any successor statute; and

(r) Any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES THE UNDERSIGNED MAY HAVE BECAUSE BORROWER'S DEBT IS SECURED BY INTERESTS IN REAL PROPERTY.

5. Collection and Enforcement.

(a) LENDER MAY COLLECT FROM THE UNDERSIGNED WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER; AND

(b) IF LENDER FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER:

i. THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT A FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND

ii. LENDER MAY COLLECT FROM THE UNDERSIGNED EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT THE UNDERSIGNED MAY HAVE TO COLLECT FROM BORROWER.

6. Successors and Assigns. Each reference herein to Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty.

7. No Waiver. No delay on the part of Lender in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of Lender to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which such waiver is given.

8. Representations and Warranties. To further induce Lender to make the Loan to Borrower, the Guarantor makes the following warranties and representations, with the knowledge that Lender will rely on the veracity thereof:

(a) The execution and delivery by the Guarantor of this Guaranty and any other document executed and/or delivered by the Guarantor to Lender in connection therewith (collectively, the "Guaranty Documents"), and the performance of the obligations thereunder, do not and will not: (a) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Guarantor; or (b) result in any breach of or constitute any default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Guarantor is a party or by which the Guarantor or his/her/their/its properties may be bound or affected, and the Guarantor is not in default

under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(b) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, or before any court, governmental instrumentality, public board or arbitrator pending or threatened against or affecting the Guarantor or any of his properties or rights, wherein an unfavorable decision, ruling or finding would (i) to the extent not covered by insurance as to which the insurer has not disclaimed coverage, result in any material adverse change in the financial condition, business, properties or operations of the Guarantor; (ii) materially or adversely effect the Guaranty; or (iii) adversely effect the validity or enforceability of the Guaranty Documents.

(c) The Guarantor is in compliance with all applicable laws.

(d) Borrower is a pre-existing entity actively engaged in the operation of its business and has not been created as a vehicle to obtain the Loan. The proceeds of the Loan will be used by Borrower solely to (a) discharge or release liens upon the real property encumbered by the Mortgage (the "Property") or for other business purposes directly related to the Property, and (b) pay fees and other amounts related thereto or to the making of the Loan.

(e) On the date hereof, (i) the assets of the Guarantor exceed his liabilities, and (b) the Guarantor is paying his debts as they become due.

9. No Subrogation. Notwithstanding any payments made by the undersigned pursuant to the provision of this Guaranty, the undersigned shall have no right of subrogation in and to the Note, or any other security held by or available to Lender for the Debt or the payment thereof until the Debt has been paid in full to Lender.

10. Limitation of Remedies. The Guarantor is hereby prohibited from exercising against Lender or Agent any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting Lender, including, without limitation, any right of set-off or any defense.

11. Miscellaneous.

(a) Governing Law. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New Jersey and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said state without regard to conflicts of laws considerations; and this Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted; and no defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of

New Jersey. The undersigned agrees to submit to personal jurisdiction in the State of New Jersey in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered mail to or by personal service at the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court.

(b) Waivers. The Guarantor hereby waives any claim, right or remedy which the Guarantor may now have or hereafter acquire against Borrower that arises hereunder and/or from the performance by the Guarantor hereunder, including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Lender against Borrower or any security which Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. The foregoing waiver by the Guarantor shall terminate and be of no further force or effect at such time as the entire Debt has been fully and indefeasibly paid to and received by Lender.

(c) Severability. A determination that any portion of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other circumstances.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:

Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer
Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Guarantor: Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Will Darwin Wheeler
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

With a copy to: Gwin Law Office, LLC
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
Attention: Robert H. Gwin, III, Esq.
Facsimile No.: (843) 839-2244

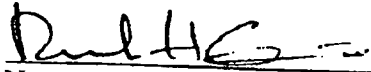
A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

(e) Jury Trial Waiver. THE UNDERSIGNED AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE UNDERSIGNED OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. LENDER AND THE UNDERSIGNED EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

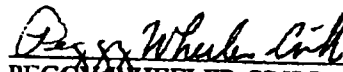
[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above set forth.

WITNESS:


Name: ROBERT H. GWIN, JR.

GUARANTOR:

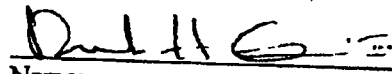

PEGGY WHEELER-CRIBB

Residence Address:

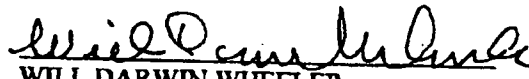
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 248-60-0536

WITNESS:


Name: ROBERT H. GWIN, JR.

GUARANTOR:


WILL DARWIN WHEELER

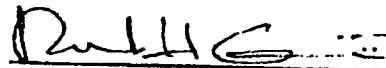
Residence Address:

334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 249-11-5370

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Peggy Wheeler-Cribb, who being by me duly sworn, did depose and say that she signed this instrument as her voluntary act and deed.


NOTARY PUBLIC

STATE OF SC)
) ss.:
COUNTY OF Horry)

On the 28 day of April, 2009, before me personally came Will Darwin
Wheeler, who being by me duly sworn, did depose and say that he signed this instrument
as his voluntary act and deed.



NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-22-00180

Answer of J. Mars Sapp

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GEORGETOWN COUNTY, S.C.
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CLERK OF COURT
ALMA Y. WHITE

Defendants.

9. He denies paragraph 13.

10. He lacks sufficient information to admit the allegations of paragraphs 14, and 15 and denies the same.

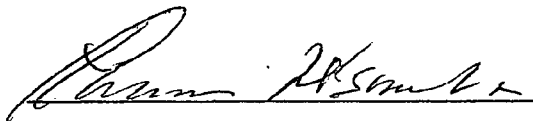
11. He admits paragraph 16 in that he claims a lien and interest in the property which is the subject of this action. Further answering paragraph 16, he is informed and believes that his lien and interest in the property is superior to that of the Plaintiff.

12. He lacks sufficient information to admit paragraph 17 and denies the same.

13. Answering paragraph 18, he incorporates by reference the foregoing allegations of this Answer.

14. He lacks sufficient information to admit the allegations of paragraphs 19, 20, 21, 22 and 23 and denies the same.

WHEREFORE, having answered the Plaintiff's Complaint, Defendant Sapp prays tha the Court inquire into the matters alleged therein, that the Court declare Sapp's lien and interest in the property upon which this foreclosure case is brought to be a first lien and interest in the property, that the Court protect Sapp's interest and lien on the subject property, and for other and further relief as the Court deems just and proper.



Thomas W. Bunch, II
ROBINSON, McFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900

March 16, 2011

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FILED
GEORGETOWN COUNTY, S.C.
2011 MAR 17 PM 3:33
ALMA Y WHITE
CLERK OF COURT


Amy E. Lovette

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Kennedy Funding, Inc, as predecessor-)
in-interest, and BNP Paribas,)

Civil Action No. 2011-CP-22-00180

Plaintiff,)

vs.)

AMENDED COMPLAINT
(Foreclosure – Non-Jury)

Pawleys Island North, LLC; Will)
Darwin Wheeler; Peggy Wheeler-Cribb;)
and J. Mars Sapp,)

Defendants.)

The above-named plaintiffs complaining of the defendants herein, would respectfully show:

1. Plaintiff Kennedy Funding, Inc. ("Kennedy") is a corporation organized and existing under and pursuant to the laws of the State of New Jersey with its principal place of business in Hackensack, New Jersey.

2. Plaintiff BNP Paribas ("BNP" or "Lender") is a French corporation with an office located in New York, New York. BNP, in its capacity as general agent, is being added as a plaintiff because Kennedy has assigned to BNP all rights, title, interests and obligations under the note and subject mortgage contract and BNP is the real party in interest as set forth in the Assignment and Acceptance Agreement attached hereto as Exhibit A.

3. Upon information and belief, defendant Pawleys Island North, LLC ("Borrower") is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

4. Upon information and belief, defendant Will Darwin Wheeler ("Wheeler") is a citizen and resident of Horry County, South Carolina.

5. Upon information and belief, defendant Peggy Wheeler-Crib ("Wheeler-Crib and, jointly with Wheeler, "Guarantors") is a citizen and resident of Horry County, South Carolina.

6. Upon information and belief, defendant J. Mars Sapp ("Sapp" and, collectively with Borrower and Guarantors, "Defendants") is a citizen and resident of South Carolina.

7. The real property which is the subject of the within mortgage foreclosure action is located in Georgetown County, South Carolina.

8. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial mortgage loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program, as referenced in the above Administrative Order. As such, it is not applicable to the loan and mortgage identified herein.

9. This Court has jurisdiction over this matter.

FOR A FIRST CAUSE OF ACTION
(Foreclosure)

10. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

11. Heretofore, Borrower entered into with Kennedy, as agent for certain co-lenders, a Loan and Security Agreement dated April 30, 2009 (the "Loan Agreement"), evidenced by a separately executed Promissory Note dated April 30, 2009 (the "Note"), in the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, with interest

thereon, the terms of which Note are more fully explained by reference thereto. A copy of the Note is attached hereto as Exhibit B and incorporated herein by reference.

12. Simultaneously with the execution of the above-referred Note, and in order to secure the payment thereof, Borrower executed and delivered to Lender that certain Mortgage and Security Agreement dated April 28, 2009, and recorded on May 5, 2009, in the Office of the Registrar of Deeds for Georgetown County, in Mortgage Book 1225 at Page 109 (the "Mortgage"), wherein and whereby Borrower mortgaged to Lender the real property more fully described herein as follows:

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

AND ALSO

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by the Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

hereafter the "Property." A copy of said Mortgage is attached hereto as Exhibit C and incorporated herein by reference.

13. To further secure repayment of the Note, Borrower executed and delivered to Lender the following:

- a. That certain Assignment of Leases and Rents dated April 30, 2009, and recorded on May 5, 2009, in the Office of the Register of Deeds

for Georgetown County, in Mortgage Book 1225 at Page 161 (the "Assignment of L&R");

- b. That certain Assignment of Licenses, Contracts, Plans Specifications, Surveys, Drawings and Reports dated April 30, 2009 (the "Assignment of Licenses"); and
- c. That certain UCC Financing Statement filed on May 12, 2005, with the South Carolina Secretary of State at File No. 90512-1119397 and recorded on May 5, 2009, in the Office of the Registrar of Deeds for Georgetown County, in Mortgage Book 1225 at Page 175 ("UCC-1").

The Loan Agreement, Note, Mortgage, Assignment of L&R, Assignment of Licenses, and UCC-1 are referred to collectively herein as the "Loan Documents," and the Property and all other property interests secured under the Loan Documents are referred to collectively herein as the "Collateral."

14. The Loan Documents constitute a valid first lien on the Collateral.

15. Kennedy subsequently assigned to BNP all rights, title, interests and obligations under the Note, the Mortgage and the other Loan Documents.

16. Borrower has defaulted under the Loan Documents by, *inter alia*, failing to make payments when due, and Lender has declared the entire balance of principal and interest to be immediately due and payable.

17. There is due and unpaid on the Loan Documents, as of January 19, 2011, the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, plus interest in the amount of One Hundred Seventy-Two Thousand and 00/100 (\$172,000.00) Dollars, and expenses in the amount of Five Thousand and 00/100 (\$5000.00) Dollars. Interest

is accruing at a rate of Six Hundred Sixty-Seven and 00/100 (\$667.00) Dollars per day. Demand has been made upon the Borrower to pay said amounts but Borrower has refused to pay the same, or any part thereof, and said refusal is continuing, all to Lender's injury and damage in the sum of One Million One Hundred Thirty-Seven and 00/100 (\$1,137,000.00) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

18. Defendant Sapp may claim a lien on or interest in the Premises by virtue of a judgment of record against Wheeler but, if such a lien exists, it is junior and subordinate to that of Lender.

19. Lender expressly reserves its right to enter a deficiency judgment against Borrower after the sale of the Collateral.

FOR A SECOND CAUSE OF ACTION
(Collection on Guaranty)

20. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

21. In consideration of the above-referenced Note, Guarantors executed a Guaranty dated April 30, 2009 (the "Guaranty"), whereby they individually, jointly and severally, absolutely and unconditionally guaranteed repayment under the Loan Documents to Lender. A copy of the Guaranty is attached hereto as Exhibit D and is incorporated herein by reference.

22. As further consideration for the Note, Guarantors agreed to pay all costs of collection, including reasonable attorney's fees.

23. Lender has declared the entire balance under the Loan Documents due and payable and hereby demands payment of the same, but Guarantors have refused to pay, and therefore are in default under the terms of the Guaranty.

24. There is due and unpaid on the Loan Documents and Guaranty, as of January 19, 2011, the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars, plus interest in the amount of One Hundred Seventy-Two Thousand and 00/100 (\$172,000.00) Dollars, and expenses in the amount of Five Thousand and 00/100 (\$5000.00) Dollars. Interest is accruing at a rate of Six Hundred Sixty-Seven and 00/100 (\$667.00) Dollars per day. Demand has been made upon the Guarantors to pay said amounts but said Guarantors have refused to pay the same, or any part thereof, and said refusal is continuing, all to Lender's injury and damage in the sum of One Million One Hundred Thirty-Seven and 00/100 (\$1,137,000.00) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

25. Lender expressly reserves its right to enter a deficiency judgment against Guarantors after the sale of the Collateral.

PRAYER FOR RELIEF

WHEREFORE, the Lender prays as follows:

1. That the amount due Lender under the Loan Documents, together with attorney's fees and the costs of this action, be ascertained by this Court.
2. That Lender recover judgment against Borrower and Guarantors in the amount found to be due, together with attorney's fees and the costs of this action.
3. That the Court ascertain which lien or liens, if any, are prior to that of Lender's.
4. That Lender's Loan Documents be declared to be a valid lien against the Collateral, with the appropriate priority, and that the Lender have judgment of foreclosure

against the Defendants subject to the liens found to be prior to the lien held by Lender, for the amount found to be due, together with attorney's fees and costs of this action.

5. That Lender's Loan Documents be foreclosed, subject to the lien of any liens found to be superior to that of Lender, the equity of redemption barred, and the Collateral sold under the direction of this Court.

6. That the proceeds of the sale be applied as follows:

a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the Lender's attorney;

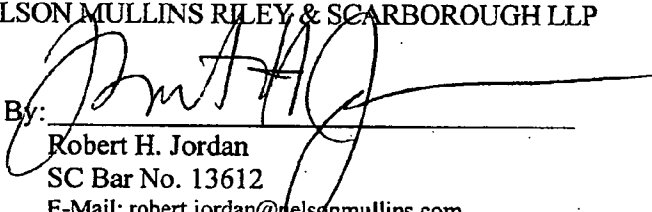
b. to the amount due Lender; and

c. the surplus, if any, be held subject to the further order of this Court.

7. That Lender be granted, if necessary, a deficiency judgment against Borrower and Guarantors for any deficiency which exists after the sale of the Collateral.

8. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Jordan
SC Bar No. 13612

E-Mail: robert.jordan@nelsonmullins.com

Merritt G. Abney

SC Bar No. 71893

E-Mail: merritt.abney@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for Plaintiff BNP Paribas

August 30, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for BNP Paribas, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified via electronic mail and by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

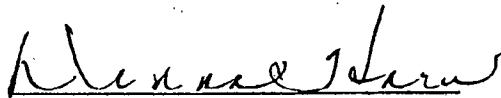
Pleadings:

Amended Summons and Amended Complaint

Counsel Served:

Thomas W. Bunch, II, Esq.
Robinson, McFadden & Moore, P.C.
PO Box 944
Columbia, SC 29201
tbunch@robinsonlaw.com

Robert H. Gwinn, III, Esq.
Gwinn Law Office, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577
rgwin1@sc.rr.com



Donna Horn
Administrative Assistant

Aug 30, 2012

EXHIBIT A

Assignment and Acceptance

Dated November 10, 2011

Reference is made to that certain Loan and Security Agreement, dated as of April 30, 2009 (as amended or modified, the "Loan Agreement"), between PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company ("Borrower") and KENNEDY FUNDING, INC., a New Jersey corporation, as Agent (the "Agent") for the lenders named therein (collectively, the "Lenders") and that certain Co-Lenders Agreement (the "Co-Lender Agreement"), dated April 30, 2009, among the Agent and the Lenders. Capitalized terms not otherwise defined in this Assignment and Acceptance shall have the meanings assigned to them in the Loan Agreement.

Pursuant to the terms of the Loan Agreement, Brookline Financing LLC ("Assignor") wishes to assign and delegate certain of its rights and obligations under the Loan Agreement and the Co-Lender Agreement. Therefore, Assignor, BNP Paribas VPG Brookline CRE, LLC, a Delaware limited liability company ("Assignee"), and the Agent agree as follows:

1. The Assignor hereby sells and assigns and delegates to the Assignee, and the Assignee hereby purchases and assumes from the Assignor a 100% interest in and to all of the Assignor's rights and obligations under the Loan Agreement and related loan documents and the Co-Lender Agreement.
2. As of the date hereof, (i) the Assignee shall be a Lender under the Loan Agreement and related loan documents and the Co-Lender Agreement for all purposes, and have the rights and obligations of a Lender under each of the Loan Agreement and related loan documents and the Co-Lender Agreement for all purposes and (ii) the Assignor shall relinquish its rights and be released from its obligations under the Loan Agreement and related loan documents and the Co-Lender Agreement accruing from and after the Effective Date.
3. As of the date hereof, the Agent shall make all payments under the Loan Agreement and related loan documents and the Co-Lender Agreement in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest, and commitment fees) to the Assignee.
4. This Assignment and Acceptance shall be governed by, and construed and enforced in accordance with, the laws of the State of New York. This Assignment and Acceptance may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one Assignment and Acceptance.

The parties hereto have caused this Assignment and Acceptance to be duly executed as of the date first above written.

ASSIGNOR:

BROOKLINE FINANCING LLC

By: Kevin Woller
Name: Kevin Woller
Title: member

AGENT:

KENNEDY FUNDING, INC.

By: Kevin Woller
Name: Kevin Woller
Title: COO

ASSIGNEE:

BNP PARIBAS VPG BROOKLINE CRE, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The parties hereto have caused this Assignment and Acceptance to be duly executed as of the date first above written.

ASSIGNOR:

BROOKLINE FINANCING LLC

By: _____
Name: _____
Title: _____

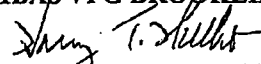
AGENT:

KENNEDY FUNDING, INC.

By: _____
Name: _____
Title: _____

ASSIGNEE:

BNP PARIBAS VPG BROOKLINE CRE, LLC

By: 
Name: HARRISON T. NULLET
Title: VICE PRESIDENT

By: 
Name: Govind Gupta
Title: Vice President

EXHIBIT B

PROMISSORY NOTE

\$960,000

April 30, 2009

FOR VALUE RECEIVED, the undersigned, PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), promises to pay to the order of KENNEDY FUNDING, INC. ("Agent"), with an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A annexed hereto (Agent and the lenders identified on Schedule A are hereinafter collectively referred to as "Lender"), the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS, or so much thereof as may be advanced by Lender to Borrower from time to time (the "Principal Amount"), together with interest on the unpaid Principal Amount thereof computed from the date advanced (the "Commencement Date"), at the rates provided herein until April 29, 2012 or such earlier date on which the Principal Amount becomes due and payable as provided herein (the "Maturity Date"); provided, however, that from and after (i) the Maturity Date, whether upon stated maturity, acceleration or otherwise, or (ii) the date on which the interest rate hereunder is increased to the Default Rate (as hereinafter defined) as provided herein, such additional interest shall be computed at the Default Rate.

As used herein, the term "Default Rate" shall mean a rate of interest of twenty-five percent (25.0%) per annum, but in no event shall the Default Rate be in excess of the Maximum Rate (as hereinafter defined).

If any payment of interest is not paid on or before the due date for such payment, a late charge equal to the lesser of ten percent (10%) of such overdue payment or the maximum amount permitted by applicable law shall automatically become due to the holder of this promissory note (as may be amended, restated or modified from time to time, the "Note"), subject, however, to the limitation that late charges may be assessed only once on each overdue payment. Said late charges do not constitute interest and shall constitute compensation to the holder of this Note for collection and co-lender administration costs incurred hereunder. In addition, if any payment of principal or interest is not paid when due, the holder of this Note shall have the right, upon notice to Borrower, to increase the rate of interest per annum on all amounts outstanding to the Default Rate and, upon said notice, such rate increase shall be effective retroactively as of the date from which the interest component of such overdue payment began to accrue and shall remain in force and effect for so long as such default shall continue. This paragraph shall not be construed as an agreement or privilege to extend the due date of any payment, nor as a waiver of any other right or remedy accruing to the holder of this Note by reason of any default.

Principal and interest hereunder shall be payable as follows:

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(a) Interest only at the rate per annum equal to the greater of: (i) Twelve (12.0%) percent and (ii) the One (1) Month Libor Rate (as hereinafter defined), as adjusted from time to time, plus Eleven (11.0%) percent on the Principal Amount outstanding hereof shall accrue from the Commencement Date through and including April 29, 2010.

(b) Interest only at the rate per annum equal to the greater of: (i) Eighteen (18.0%) percent and (ii) the One (1) Month Libor Rate, adjusted from time to time, plus Seventeen (17.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2010 through and including April 29, 2011.

(c) Interest only at the rate per annum equal to the greater of (i) Twenty One (21.0%) percent and (ii) the One (1) Month Libor Rate, as adjusted from time to time, plus Twenty (20.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2011 through and including the Maturity Date.

(d) All interest payments payable to Lender hereunder shall be paid monthly in arrears, in an amount, as determined by Lender, commencing on June 1, 2009 and continuing on the first day of each month thereafter through and including the Maturity Date.

(e) All principal, interest and other sums due hereunder shall be due and payable in full on the Maturity Date.

As used herein, the term "One (1) Month Libor Rate" shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day, or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then the One (1) Month Libor Rate shall be determined by the Agent selecting an equivalent publication that published the One (1) Month Libor Rate, and if such One (1) Month Libor Rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Agent shall select a comparable interest rate index. If interest on this Note is calculated at the One (1) Month Libor Rate as provided herein, then the interest rate will be adjusted on May 1, 2009 and on the first day of each month thereafter (each an "Adjustment Date") following any change in the One (1) Month Libor Rate.

(f) Prepaid Interest (as defined in the Loan and Security Agreement of even date herewith, as may be amended, restated or modified from time to time, hereinafter, the "Loan Agreement"). if any, shall be utilized in accordance with the terms of the Loan Agreement.

Each payment hereunder shall be credited first to Lender's collection expenses, next to late charges, next to unpaid interest, and the balance, if any, to the reduction of

the Principal Amount. The interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

This Note may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Borrower shall not be entitled, by virtue of any prepayment or otherwise, to a refund of the Fee (as defined in the Loan Agreement), interest, any other fees, points, charges and the like paid by Borrower to Lender in connection with the loan hereunder (the "Loan") and for fees and expenses incurred by Lender in making the Loan, all of which payments shall be retained by Lender from and after the date each such payment is made hereunder.

Borrower and each surety, endorser and guarantor hereof hereby waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Borrower further waives trial by jury. No extension of time for payment of this Note or any installment hereof, no alteration, amendment or waiver of any provision of this Note and no release or substitution of any collateral securing Borrower's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower under this Note.

Any forbearance by the holder of this Note in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Loan or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Note. The acceptance by the holder of this Note of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Note to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

If this Note is placed in the hands of an attorney for collection, Borrower shall pay all costs incurred and reasonable attorneys' fees for legal services in the collection effort, whether or not suit be brought.

At the election of the holder of this Note, all payments due hereunder may be accelerated, and this Note shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Borrower fails to pay on or before the date due, any amount payable hereunder; (2) Borrower fails to perform or observe any other term or provision of this Note with respect to payment; (3) Borrower fails to perform or observe any other term or provision of this Note; or (4) there exists a default under the Mortgage (as hereinafter defined), a default under any Guaranty (as hereinafter defined) or a default under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor (as hereinafter defined) in connection with the Loan, which default is not cured within any grace period expressly provided therefor in such document. In

addition to the rights and remedies provided herein, the holder of this Note may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

If this Note is transferred in any manner, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof.

Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Borrower under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Borrower stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Borrower and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Borrower.

This Note is secured by, among other things, that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage"), an Assignment of Leases and Rents (as may be amended, restated or modified from time to time, the "Assignment"), an Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports (as may be amended, restated or modified from time to time, the "Assignment of Licenses"), all of the foregoing being of even date herewith and a first lien on the certain real estate collateral (the "Collateral") identified in the Mortgage, and is entitled to the benefits and security thereof. Reference is made to the Mortgage, Assignment and Assignment of Licenses for descriptions of the respective rights and obligations of the Borrower and Lender thereunder. This Note is guaranteed by the separate Guaranty of even date herewith (as may be amended, restated or modified from time to time, the "Guaranty") of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor") and reference is made to the Guaranty for the respective rights of the parties thereunder. Borrower hereby agrees to indemnify, defend and hold harmless Lender from and against any and all claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) which may be incurred by Lender in connection with or as a result of any default (following notice and the opportunity to cure provided for in such document) by Borrower or Guarantor under the Mortgage, Assignment, or Assignment of Licenses, or by the

Guarantor (following notice and the opportunity to cure provided for in such document) under the Guaranty, or a default (following notice and the opportunity to cure provided for in such document) under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor executed or delivered in connection with the Loan (collectively, the "Loan Documents").

By its acceptance of Lender's funds and execution of this Note, Borrower acknowledges, agrees and confirms that it has no defense, offset or counterclaim for any occurrence in relation to this Loan and Borrower acknowledges that Lender has complied with all of its obligations under the Loan Documents as of the date hereof.

All payments of principal and interest hereunder are payable in lawful money of the United States of America and shall be made by wire transfer to the account of Agent or Brookline Financing SPV, LLC, as instructed, at Valley National Bank, pursuant to wiring instructions to be provided to Borrower at the closing of the Loan or to such other accounts as may be instructed by Agent.

Borrower is hereby prohibited from exercising against Lender (as a group) or Agent, any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the parties constituting Lender, including, without limitation, any right of setoff or any defense. Any other claim that Borrower may have, arising from or related to the transaction evidenced by this Note and the other Loan Documents shall be asserted only against the Agent and not against any of the individual parties constituting Lender.

In the event that an action to enforce this Note or the other Loan Documents results in the entry of a judgment (in foreclosure or otherwise) against the Borrower and/or any Guarantor, interest on the judgment shall continue to accrue at the Default Rate through the date of satisfaction of the judgment debt in full, and not at the statutory post-judgment rate of interest. Borrower waives any right and/or claim to have the post-judgment interest accrue at the statutory rate.

This Note shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns.

This Note shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

This Note shall be governed by the laws of the State of New Jersey without regard to choice of law consideration. Borrower hereby irrevocably consents to the jurisdiction of the courts of the State of New Jersey and of any federal court located in such State in connection with any action or proceeding arising out of or relating to this Note or the other Loan Documents. Borrower and Guarantor hereby designate Corporation Service

Company, located at 830 Bear Tavern Road, Suite 303, West Trenton, New Jersey 08628-1020, as their duly appointed agent to accept service of process within the State of New Jersey on their behalf.

This Note may not be changed or terminated orally.

A determination that any portion of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

Notwithstanding anything contained herein to the contrary, if there is more than one Borrower, each Borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Note.

JURY TRIAL WAIVER. BORROWER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BORROWER OR THE HOLDER OF THIS NOTE ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. BORROWER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS NOTE.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Note on the date set forth above.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

[Signature]
Name: ROBERT H. GWIN, JR.

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

STATE OF SC)
): ss:
COUNTY OF Horry)

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

SCHEDULE A

LENDERS

Brookline Financing SPV, LLC

MGSS Fund

11/03/2000 14:02:05-4

A-1

EXHIBIT C

Lab 8-4
mfr 11-11-15
11-12-16

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE, made as of this ~~22~~²³ day of April, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Mortgagor"), and KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent ("Agent") for the lenders identified in Schedule A of the Note (as hereinafter defined) (Agent and the said lenders are hereinafter collectively referred to as "Mortgagees").

WITNESSETH

WHEREAS, Mortgagee has agreed to lend and Mortgagor has agreed to borrow the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS ("Loan"), on the terms and conditions provided herein and in the Loan Documents (as hereinafter defined);

WHEREAS, Mortgagor has executed and delivered to Mortgagee, among other things, that certain Loan and Security Agreement (as same may be amended, restated or modified from time to time, "Loan Agreement") and that certain Promissory Note (as same may be amended, restated or modified from time to time, "Note") both of even date herewith, evidencing the Loan; and

WHEREAS, Mortgagor expects to derive benefit from the Loan and has agreed to secure the Loan by, among other things, the grant of this Mortgage to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in order to secure Mortgagor's obligations under the Loan Documents, including the payment of principal and interest, late fees, attorneys' fees, costs and disbursements, the full and prompt payment and performance of all of the indebtedness, obligations, covenants, agreements and liabilities of Mortgagor to Mortgagee, together with all interest and other charges thereon, whether direct or indirect, existing, contingent or otherwise, due or to become due, under or arising out of or in connection with the Loan Agreement and any future modifications thereof and any other instruments or documents delivered in connection herewith or therewith and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor has mortgaged, granted, bargained, sold, conveyed, aliened, released, transferred, warranted and confirmed, and does hereby mortgage, grant, bargain, sell, convey, alien, release, transfer, warrant and confirm unto Mortgagee, and to all its successors and assigns forever, the following described property (collectively, the "Property"):

A. The real estate located in County of Georgetown, State of South Carolina (the "State") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right,

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement as of the date first above written.

WITNESSES:

MORTGAGOR:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Witness #1

By: [Signature]
Name: Walter H. Smith, Jr.

By: [Signature]
Name: Foggy Wheeler-Cribb
Title: Manager

Witness #2 Notary Public

By: [Signature]
Name: Langston St. John

STATE OF SC)
COUNTY OF Horry) ss:

ACKNOWLEDGMENT

I certify that on April 28, 2009, Foggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

Print Name: Langston St. John
My Commission Expires: 10-30-2013

(SEAL)

EXHIBIT "A"
PROPERTY DESCRIPTION

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 623 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1323 at page 103 of the public records of Horry County, South Carolina.
Record

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of court for Georgetown County, South Carolina in Plat Side 623 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1323 at page 103 of the public records of Horry County, South Carolina.
Record

Instrument 20090022867 Book Page 1225 140

84221 Gwin

20090022867
Filed for Record in
GEORGETOWN, DC
MARIA PERALTA
DE-03-2009 DE 11154 DE
FERTILIZER 50.00
STATE TAX .00
COUNTY TAX .00
Book 1225 Page 109 - 140

Wanda G. Gwin

EXHIBIT D

GUARANTY

\$960,000

April 30, 2009

WHEREAS, PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "**Borrower**"), has requested from KENNEDY FUNDING, INC., a New Jersey corporation, having its principal place of business at Two University Plaza, Suite 402, Hackensack, New Jersey 07601 ("**Agent**"), as agent for lenders identified in Schedule A annexed to the Note (as hereinafter defined) (Agent and Lenders identified in Schedule A are hereinafter collectively referred to as "**Lender**"), a loan in the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "**Loan**"), which Loan will be evidenced by a Promissory Note of even date herewith, (as may be amended, restated or modified from time to time, hereinafter, the "**Note**") from Borrower to Lender, and secured by, among other things, that certain Loan and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "**Loan Agreement**") and that certain Mortgage and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "**Mortgage**") from Borrower to Lender, all of the foregoing being of even date herewith. All capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Loan Agreement;

WHEREAS, Lender is willing to make the Loan to Borrower only if, among other things, the undersigned (sometimes referred to herein individually and collectively as the "**Guarantor**") executes and delivers this Guaranty of Payment (as may be amended, restated or modified from time to time, "**Guaranty**") and guarantees payment to Lender of the Debt (as hereinafter defined) in the manner provided herein; and

WHEREAS, the undersigned expects to derive benefit from the Loan.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, the undersigned hereby guarantees absolutely and unconditionally to Lender the payment of the Debt and covenants and agrees with Lender as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Guaranty Clause. The Guarantor hereby absolutely, irrevocably and unconditionally guaranties to Lender the full, prompt and unconditional payment of the Debt, when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each and every term and condition of every transaction to be kept and performed by Borrower under the Note. This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible guaranty. Lender may require Guarantor to pay and perform any or all of the Guarantor's liabilities and obligations under this Guaranty and may

proceed immediately against Guarantor without being required or obligated to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto. The liability of each Guarantor hereunder is joint and several with all other Guarantors, if applicable, and all other guarantors, and is independent of and separate from the liability of Borrower, any other guarantor, person or entity, and is independent of the availability of any collateral security for and/or under any documents granting Lender security for the Loan.

(a) The term "Debt" as used in this Guaranty shall mean the principal sum evidenced by the Note and secured by the Mortgage, together with interest thereon at the rate of interest specified in the Note and all other sums which may or shall become due and payable pursuant to the provisions of the Note, Mortgage, Loan Agreement, or any other agreement, document or certificate executed and/or delivered by Borrower to Lender in connection with the Loan, including any and all modifications, amendments, and ratifications thereto (collectively the "Loan Documents").

(b) The undersigned agrees that, upon demand, the undersigned will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all expenses (including reasonable counsel fees) incurred by Lender in connection with the collection of the Debt or any portion thereof, including any expenses incurred in any post-judgment proceedings to collect and enforce such judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

(c) All moneys available to Lender for application in payment or reduction of the Debt may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of the Debt or other obligations of Borrower as Lender may elect.

(d) This Guaranty is an absolute, continuing, unconditional and unlimited guaranty of payment and not merely of collection and Lender shall be entitled to payment from the undersigned without first commencing any action against Borrower or resorting to any security or to any credit on the books of Lender in favor of Borrower. The undersigned acknowledges and agrees that this Guaranty and any or all other guaranties made to Lender in connection with this Loan are joint and several guaranties.

3. Lender's Rights. The undersigned hereby consents that from time to time, before or after any default by Borrower, with or without further notice to or assent from the undersigned, (i) any security at any time held by or available to Lender for any obligation of Borrower, (ii) any security at any time held by or available to Lender for any obligation of any other person or party secondarily or otherwise liable for all or any portion of the Debt, and/or (iii) any obligation arising under any other guaranty to Lender made in connection with the Loan, may be exchanged, surrendered or released and any

obligation of Borrower may be changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or any default with respect thereto waived, and Lender may fail to set off and may release, in whole or in part, any balance of any credit on its books in favor of Borrower, and may extend further credit in any manner whatsoever to Borrower, and generally deal with Borrower or any such security or obligation and the undersigned shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. No invalidity, irregularity or unenforceability of all or any part of the Debt or the impairment or loss of security or obligation therefor, whether caused by any action or inactions of Lender or otherwise, shall affect or impair this Guaranty.

4. Guarantor Waivers. The undersigned hereby waives and agrees not to assert or take advantage of any defense based upon:

- (a) Notice of acceptance of this Guaranty and of the making of the Loan by Lender to Borrower;
- (b) Presentment and demand for payment of the Debt or any portion thereof;
- (c) Protest and notice of dishonor or default to the undersigned with respect to the Debt or any portion thereof;
- (d) Notice of intent to accelerate, notice of acceleration and all other notices to which the undersigned might otherwise be entitled;
- (e) Any demand for payment under this Guaranty;
- (f) The incapacity, lack of authority, death or disability of Borrower or any other person or entity;
- (g) The failure of Lender to commence an action against Borrower and/or Guarantor or to proceed against or exhaust any security held by Lender at any time, or to pursue any other remedy whatsoever at any time;
- (h) Any duty on the part of Lender to disclose to the undersigned any facts Lender may now or hereafter know regarding Borrower, regardless of whether Lender has reason to believe (i) that any such facts materially increase the risk beyond that which the undersigned intends to assume, or (ii) that such facts are unknown to the undersigned, the undersigned acknowledging that he, she or it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;

(i) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or Borrower's obligations guaranteed hereby;

(j) The consideration for this Guaranty (or lack or inadequacy thereof);

(k) Any acts or omissions of Lender which vary, increase or decrease the risk on the undersigned;

(l) Any rights or defenses based upon an offset by the undersigned against any obligation now or hereafter owed to the undersigned by Borrower;

(m) Any statute of limitations affecting the liability of the undersigned hereunder, the liability of Borrower or Guarantor under the Loan Documents or the enforcement hereof, to the extent permitted by law;

(n) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender and the undersigned or intended or understood by Lender or the undersigned;

(o) An election of remedies by Lender, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of the undersigned or the rights of the undersigned to proceed against Borrower or any guarantor by way of subrogation or for reimbursement or contribution, or all such rights;

(p) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of the principal obligor;

(q) Lender's election, in any proceeding instituted under Title 11 of the United States Code (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code or any successor statute; and

(r) Any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES THE UNDERSIGNED MAY HAVE BECAUSE BORROWER'S DEBT IS SECURED BY INTERESTS IN REAL PROPERTY.

5. Collection and Enforcement.

(a) LENDER MAY COLLECT FROM THE UNDERSIGNED WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER; AND

(b) IF LENDER FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER:

i. THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT A FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND

ii. LENDER MAY COLLECT FROM THE UNDERSIGNED EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT THE UNDERSIGNED MAY HAVE TO COLLECT FROM BORROWER.

6. Successors and Assigns. Each reference herein to Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty.

7. No Waiver. No delay on the part of Lender in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of Lender to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which such waiver is given.

8. Representations and Warranties. To further induce Lender to make the Loan to Borrower, the Guarantor makes the following warranties and representations, with the knowledge that Lender will rely on the veracity thereof:

(a) The execution and delivery by the Guarantor of this Guaranty and any other document executed and/or delivered by the Guarantor to Lender in connection therewith (collectively, the "Guaranty Documents"), and the performance of the obligations thereunder, do not and will not: (a) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Guarantor; or (b) result in any breach of or constitute any default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Guarantor is a party or by which the Guarantor or his/her/their/its properties may be bound or affected, and the Guarantor is not in default

under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(b) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, or before any court, governmental instrumentality, public board or arbitrator pending or threatened against or affecting the Guarantor or any of his properties or rights, wherein an unfavorable decision, ruling or finding would (i) to the extent not covered by insurance as to which the insurer has not disclaimed coverage, result in any material adverse change in the financial condition, business, properties or operations of the Guarantor; (ii) materially or adversely effect the Guaranty; or (iii) adversely effect the validity or enforceability of the Guaranty Documents.

(c) The Guarantor is in compliance with all applicable laws.

(d) Borrower is a pre-existing entity actively engaged in the operation of its business and has not been created as a vehicle to obtain the Loan. The proceeds of the Loan will be used by Borrower solely to (a) discharge or release liens upon the real property encumbered by the Mortgage (the "Property") or for other business purposes directly related to the Property, and (b) pay fees and other amounts related thereto or to the making of the Loan.

(e) On the date hereof, (i) the assets of the Guarantor exceed his liabilities, and (b) the Guarantor is paying his debts as they become due.

9. No Subrogation. Notwithstanding any payments made by the undersigned pursuant to the provision of this Guaranty, the undersigned shall have no right of subrogation in and to the Note, or any other security held by or available to Lender for the Debt or the payment thereof until the Debt has been paid in full to Lender.

10. Limitation of Remedies. The Guarantor is hereby prohibited from exercising against Lender or Agent any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting Lender, including, without limitation, any right of set-off or any defense.

11. Miscellaneous.

(a) Governing Law. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New Jersey and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said state without regard to conflicts of laws considerations; and this Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted; and no defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of

New Jersey. The undersigned agrees to submit to personal jurisdiction in the State of New Jersey in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered mail to or by personal service at the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court.

(b) Waivers. The Guarantor hereby waives any claim, right or remedy which the Guarantor may now have or hereafter acquire against Borrower that arises hereunder and/or from the performance by the Guarantor hereunder, including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Lender against Borrower or any security which Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. The foregoing waiver by the Guarantor shall terminate and be of no further force or effect at such time as the entire Debt has been fully and indefeasibly paid to and received by Lender.

(c) Severability. A determination that any portion of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other circumstances.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	Kennedy Funding, Inc. Two University Plaza, Suite 402 Hackensack, New Jersey 07601 Attention: Jeffrey Wolfer Facsimile No. (201) 342-8373

With a copy to: Cole, Scholtz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Guarantor: Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Will Darwin Wheeler
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

With a copy to: Gwin Law Office, LLC
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
Attention: Robert H. Gwin, III, Esq.
Facsimile No.: (843) 839-2244

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

(c) Jury Trial Waiver. THE UNDERSIGNED AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE UNDERSIGNED OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. LENDER AND THE UNDERSIGNED EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

[Remainder of this page intentionally left blank.]

313920000-340863146

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above set forth.

WITNESS:

Robert H. Guin, Jr.
Name: ROBERT H. GUIN, JR.

GUARANTOR:

Peggy Wheeler-Cribb
PEGGY WHEELER-CRIBB

Residence Address:

334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 248-60-0536

WITNESS:

Robert H. Guin, Jr.
Name: ROBERT H. GUIN, JR.

GUARANTOR:

Will Darwin Wheeler
WILL DARWIN WHEELER

Residence Address:

334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 249-11-5370

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Peggy Wheeler-Cribb, who being by me duly sworn, did depose and say that she signed this instrument as her voluntary act and deed.

Robert H. Guin, Jr.
NOTARY PUBLIC

STATE OF SC)
) ss.:
COUNTY OF Horry)

On the 28 day of April, 2009, before me personally came Will Darwin
Wheeler, who being by me duly sworn, did depose and say that he signed this instrument
as his voluntary act and deed.



NOTARY PUBLIC

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

)
) IN THE COURT OF COMMON PLEAS
)

Kennedy Funding, Inc., as
predecessor-in-interest, and BNP
Paribus

Case No.: 2011-CP-22-00180

Plaintiff,

) **Answer to Amended Complaint and**
) **Crossclaim of J. Mars Sapp**
)

v.

Pawleys Island North, LLC; Will Darwin
Wheeler; Peggy Wheeler-Cribb; and J.
Mars Sapp,

Defendants.

FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 20 PM 4:33
ALMA Y. WHITE
CLERK OF COURT

J. Mars Sapp answers Plaintiffs' Amended Complaint dated August 30, 2012 and Crossclaims against the Defendants Pawley's Island North, LLC, Will Darwin Wheeler, and Peggy Wheeler Cribb as follows:

For A First Defense

1. He denies each and every allegation of the Complaint except as hereinafter admitted.

2. He lacks sufficient information to admit the allegations of paragraphs 1 and 2, and denies the same.

3. Based on filings in the public record at the South Carolina Secretary of State's office, he admits on information and belief the allegations of paragraph 3.

4. He lacks sufficient information to admit paragraphs 4 and 5, and denies the same.

5. Answering paragraph 6, he admits that he is a citizen and resident of South Carolina.

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6. He admits paragraph 7 on information and belief.
7. He lacks sufficient information to admit the allegations of paragraph 8 and denies the same.
8. He admits on information and belief paragraph 9.
9. Answering paragraph 10, he incorporates by reference the forgoing allegations of this answer.
10. He lacks sufficient information to admit the allegations of paragraphs 11, 12 and 13, and denies the same.
11. He denies paragraph 14.
12. He lacks sufficient information to admit the allegations of paragraphs 15, 16, and 17, and denies the same.
13. He admits paragraph 18 in that he claims a lien and interest in the property which is the subject of this action. Further answering paragraph 18, he is informed and believes that his lien and interest in the property is superior to that of the Plaintiffs.
14. He lacks sufficient information to admit paragraph 19 and denies the same.
15. Answering paragraph 20, he incorporates by reference the foregoing allegations of this Answer.
16. He lacks sufficient information to admit the allegations of paragraphs 21 through 25, and denies the same.



For a Second Defense

17. To the extent not inconsistent herewith, Sapp incorporates by reference the forgoing allegations of this Answer and Crossclaim.

18. Plaintiffs come to this Court with unclean hands, and as a matter of equity, the relief they seek should be denied.

For A Third Defense and Crossclaim

19. To the extent not inconsistent herewith, Sapp incorporates by reference the forgoing allegations of this Answer and Crossclaim.

20. In 1994 Sapp entered into a 20 year Lease for commercial property located in Surfside Beach, S.C. The Defendant Will Darwin Wheeler ("Wheeler") guaranteed the tenant's obligations including payment of rent under that Lease.

21. The Lease was assigned to another tenant in 1998, but Wheeler agreed to remain obligated on his personal guaranty.

22. The lease payment went into default in 2007, and the last payment made under the lease was made in January 2008. This payment was applied to rent due in 2007.

23. In 2008 Sapp brought suit against Wheeler in Georgetown County alleging that he breached his guarantee obligations. *See Sapp v. Wheeler et al.*, 2008-CP-22-1345.

24. This suit resulted in a jury verdict against Wheeler on June 3, 2010 in the amount of \$252,798.00 which was enrolled in Georgetown County on June 4, 2010.


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Further, by order entered March 10, 2011, the trial judge awarded Sapp legal fees against Wheeler in the amount of \$48,929.00.

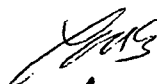
25. The Georgetown County Sheriff has returned *nulla bona* an Execution against Wheeler on Sapp's judgment.

26. On May 5, 2009, while Wheeler was indebted to Sapp and while Sapp's suit was pending against him, Wheeler conveyed by quitclaim deed to Pawley's Island North, LLC two lots located at Pawley's Island, S.C. in Georgetown County. The two lots are identified in this case as Lot 3 and Lot 4. Lot 3 was unencumbered by any liens at the time of the conveyance. The stated consideration on the quitclaim deed was "Five and no/100 (\$5.00) and no other consideration." On information and belief, at the time of the conveyance the unencumbered Lot 3 had a value of approximately \$1,000,000.00, and both lots had a combined value of \$1,920,000.00. On information and belief, the lots were taken by Kennedy Funding in its own capacity, or acting as agent for various lenders including the co-plaintiff BNP Paribus, as security for the loan at issue in this case.

27. On information and belief, BNP Paribus is charged with actual or constructive knowledge of Kennedy and any others for which Kennedy acted in the loan and mortgage transactions at issue in this case.

28. On information and belief Pawley's Island North is a South Carolina limited liability company owned by Defendants Wheeler and his mother, Defendant Peggy Wheeler Cribb. Wheeler has a 99% interest in the company.

29. By conveying unencumbered Lot 3 to Defendant Pawley's Island North, Wheeler had insufficient or no assets to answer for his debts and in particular the debts



4

owed Sapp, both at the time of conveying the property and when Sapp obtained his judgment against Wheeler.

30. The conveyance by Wheeler to Pawley's Island North, LLC was a transfer of property for an intent or purpose to delay, hinder, or defraud creditors and others – including Sapp – of their just and lawful actions, suits, accounts, and damages.

31. The conveyance by Wheeler was for no consideration or grossly inadequate consideration.

32. The conveyance by Wheeler was condoned by Defendant's Wheeler, Cribb, Pawley's Island North, LLC and Plaintiffs and all of them participated in the transfer of the property.

33. The conveyance by Wheeler is void and of no effect, and should be set aside under S.C. Code Ann. §27-23-10(A), the Statute of Elizabeth.

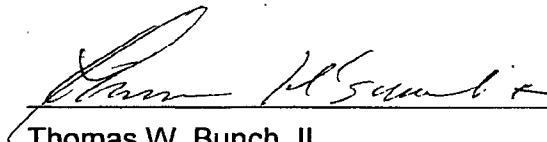
34. The conveyance by Wheeler, if not completely void is void as to Lot 3 which was unencumbered at the time of the transfer to Pawleys Island North LLC.

WHEREFORE, having answered the Plaintiff's Complaint and having crossclaimed against the other Defendants, Defendant Sapp prays that the Court:

- a. inquire into the matters alleged therein;
- b. declare the conveyance of property by Wheeler to be void and of no effect;
- c. declare the conveyance of the unencumbered Lot 3 to be void and of no effect;
- d. declare Sapp's lien and interest in the property upon which this foreclosure case is brought to be a first lien and interest in the property;



- e. declare that if there was a partial consideration for the conveyance by Wheeler that the lots be divided with Sapp's lien on the unencumbered Lot 3 be a first lien, and Plaintiff's lien on Lot 4 being a first lien;
- f. protect Sapp's interest and lien on all of the subject property, and;
- g. grant Sapp such other and further relief as the Court deems just and proper.



Thomas W. Bunch, II
Paul H. Hoefer
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900

September 10, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
Kennedy Funding, Inc. ,	)	Case No.: 2011-CP-22-00180
	)	
Plaintiff,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
Pawleys Island North, LLC, Will	)	
Darwin Wheeler, Peggy Wheeler-	)	
Cribb and J. Mars Sapp,	)	
	)	
Defendant.	)	

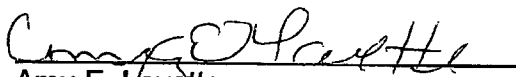
This is to certify that I, Amy E. Lovette, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Answer to Amended Complaint and Crossclaim of J. Mars Sapp** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Robert H. Jordan, Esquire
Nelson Mullins Riley & Scarborough, LLC
151 Meeting Street, 6th Floor
Post Office Box 1806 (29402)
Charleston, SC 29401

Robert H. Gwinn, III, Esquire
Gwinn Law Office, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577

FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 20 PM 4:34
ALMA Y. WHITE
CLERK OF COURT

Dated at Columbia, South Carolina this 10th day of September, 2012.


Amy E. Lovette

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Kennedy Funding, LLC, as Predecessor-)
In-Interest and BNP Paribas,)
)
Plaintiff,)
)
vs.)
)
Pawleys Island North, LLC, Will Darwin)
Wheeler; Peggy Wheeler-Cribb and)
J. Mars Sapp,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-22-00180

**ANSWER OF DEFENDANTS
WILL DARWIN WHEELER AND
PEGGY WHEELER-CRIBB
TO AMENDED COMPLAINT**

The Defendants, Will Darwin Wheeler and Peggy Wheeler-Cribb, responding to the Amended Complaint of the Plaintiff, would respectfully allege as follows:

1. Each and every allegation not hereinafter specifically admitted, explained or qualified is denied and strict proof demanded thereof.

FOR A FIRST DEFENSE

2. Upon information and belief, the answering Defendants admit the allegations of Paragraphs 1 and 2 of the Amended Complaint.

3. The answering Defendants admit that portion of Paragraph 3 of the Amended Complaint which sets forth that Pawleys Island North, LLC is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina. The remaining allegations of Paragraph 3 of the Amended Complaint are denied and the Defendants would assert that the principal place of business for Pawleys Island North, LLC is located in Georgetown County, South Carolina.

4. The answering Defendants deny the allegations of Paragraphs 4 and 5 of the Amended Complaint and further would assert that they are citizens and residents of Georgetown County, South Carolina.

5. Upon information and belief, the answering Defendants admit the allegations of Paragraph 6 of the Amended Complaint.

6. The answering Defendants admit the allegations of Paragraphs 7 through 9, inclusive, of the Amended Complaint.

7. The allegations set forth in Paragraph 10 of the Amended Complaint do not require a response of these Defendants. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

8. The answering Defendants admit that portion of Paragraph 11 of the Amended Complaint which sets forth that Borrower entered into with the Plaintiff a Loan and Security Agreement dated April 30, 2009 and a Promissory Note dated April 30, 2009. As to the remaining allegations of Paragraph 11 of the Amended Complaint, the answering Defendants would crave reference to the Loan Agreement and the Note for their full terms and conditions and would deny any allegations inconsistent therewith.

9. The answering Defendants admit that portion of Paragraph 12 of the Amended Complaint which states that the Borrower executed and delivered to Lender a Mortgage and Security Agreement dated April 28, 2009 and recorded on May 5, 2009 in the office of the Registrar for Deeds for Georgetown County in Mortgage Book 1225 at Page 109. As to the remaining allegations of Paragraph 12 of the Amended Complaint, the answering Defendants would crave reference to the Mortgage for its full terms and conditions and would deny any allegations inconsistent therewith.

10. The answering Defendants admit the allegations of Paragraphs 13 through 15 of the Amended Complaint.

11. The answering Defendants deny the allegations of Paragraphs 16 and 17 of the Amended Complaint.

12. The answering Defendants are without sufficient information or knowledge with which to form an opinion or belief as to the allegations of Paragraph 18 of the Amended Complaint and therefore denies such allegations, demanding strict proof thereof.

13. The allegations of Paragraphs 19 and 20 of the Amended Complaint do not require a response of these Defendants. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

14. The answering Defendants admit that portion of Paragraph 21 of the Amended Complaint which sets forth that the Guarantors executed a Guaranty dated April 30, 2009. As to the remaining allegations of Paragraph 21 of the Amended Complaint, the answering Defendants would crave reference to the Guaranty for its full terms and conditions and would deny any allegations inconsistent therewith.

15. In response to Paragraph 22 of the Amended Complaint, the answering Defendants would crave reference to the Guaranty for its full terms and conditions and would deny any allegations inconsistent therewith.

16. The answering Defendants deny the allegations of Paragraphs 23 and 24 of the Amended Complaint.

17. The allegations set forth in Paragraph 25 of the Amended Complaint do not require a response of these Defendants. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

18. The allegations set forth in Paragraphs 1 through 17 hereinabove are incorporated herein as if fully restated.

19. The answering Defendants Wheeler and Wheeler-Cribb are informed and believe that the Plaintiff agreed with Pawleys Island North, LLC to extend the time of payment and/or modify the terms of any debt purportedly guaranteed by Wheeler and Wheeler-Cribb.

20. The answering Defendants Wheeler and Wheeler-Cribb had no knowledge of such extension of time and did not then consent to such extension or modification nor have the Defendants since consented to it.

21. By reason of such occurrence, these answering Defendants have been and are released or discharged from liability on any purported Guaranty of such debt or for any payments of monies specified to be made in it.

WHEREFORE, having fully responded to the Amended Complaint of the Plaintiff the Defendants Will Darwin Wheeler and Peggy Wheeler-Cribb pray that the Honorable Court would inquire into the matters as set forth in the Amended Complaint; dismiss the Amended Complaint with prejudice; assess costs and disbursements against the Plaintiff; and for such other and further relief as this Court may deem just and proper.



Robert H. Gwin, III
GWIN LAW OFFICE, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577
(843) 839-2239

Attorney for Defendants Will Darwin Wheeler
and Peggy Wheeler-Cribb

September 14, 2012
Myrtle Beach, SC 29577

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Kennedy Funding, LLC, as Predecessor-
In-Interest and BNP Paribas,)

Plaintiff,)

vs.)

Pawleys Island North, LLC, Will Darwin
Wheeler; Peggy Wheeler-Cribb and
J. Mars Sapp,)

Defendants.)

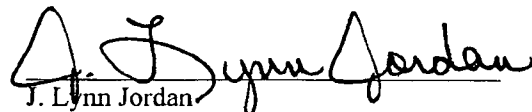
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-22-00180

CERTIFICATE OF MAILING

I, the undersigned Legal Assistant of Robert H. Gwin, III, Esquire, attorney for the Defendants, Will Darwin Wheeler and Peggy Wheeler-Cribb, do hereby certify that I have served the counsel for the Plaintiff in this action with a copy of the Answer of Defendants Will Darwin Wheeler and Peggy Wheeler-Cribb to Amended Complaint, on the 14th day of September, 2012, by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Robert H. Jordan, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
P. O. Box 1806
Charleston, SC 29402-1806

✓ Thomas W. Bunch, II, Esquire
Robinson, McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29201


J. Lynn Jordan
Legal Assistant to Robert H. Gwin, III

September 14, 2012

Myrtle Beach, SC 29577

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-22-00180

Kennedy Funding, LLC, as Predecessor-
In-Interest and BNP Paribas,

Plaintiff,

vs.

Pawleys Island North, LLC, Will Darwin
Wheeler; Peggy Wheeler-Cribb and
J. Mars Sapp,

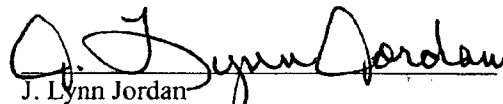
Defendants.

CERTIFICATE OF MAILING

I, the undersigned Legal Assistant of Robert H. Gwin, III, Esquire, attorney for the Defendant, Pawleys Island North, LLC, do hereby certify that I have served the counsel for the Plaintiff in this action with a copy of the Answer of Defendant Pawleys Island North, LLC to Amended Complaint on the 14th day of September, 2012, by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Robert H. Jordan, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
P. O. Box 1806
Charleston, SC 29402-1806

✓ Thomas W. Bunch, II, Esquire
Robinson, McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29201


J. Lynn Jordan
Legal Assistant to Robert H. Gwin, III

September 14, 2012

Myrtle Beach, SC 29577

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Kennedy Funding, LLC, as Predecessor-)
In-Interest and BNP Paribas,)
)
Plaintiff,)
)
vs.)
)
Pawleys Island North, LLC, Will Darwin)
Wheeler; Peggy Wheeler-Cribb and)
J. Mars Sapp,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-22-00180

**ANSWER OF DEFENDANT
PAWLEYS ISLAND NORTH, LLC
TO AMENDED COMPLAINT**

The Defendant, Pawleys Island North, LLC, responding to the Amended Complaint of the Plaintiff, would respectfully allege as follows:

1. Each and every allegation not hereinafter specifically admitted, explained or qualified is denied and strict proof demanded thereof.
2. Upon information and belief, this answering Defendant admits the allegations of Paragraphs 1 and 2 of the Amended Complaint.
3. This answering Defendant admits that portion of Paragraph 3 of the Amended Complaint which sets forth that Pawleys Island North, LLC is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina. The remaining allegations of Paragraph 3 of the Amended Complaint are denied and the Defendant would assert that its principal place of business is located in Georgetown County, South Carolina.

4. This answering Defendant denies the allegations of Paragraphs 4 and 5 of the Amended Complaint and further would assert that the Defendants Wheeler and Wheeler-Cribb are citizens and residents of Georgetown County, South Carolina.

5. Upon information and belief, this answering Defendant admits the allegations of Paragraph 6 of the Amended Complaint.

6. This answering Defendant admits the allegations of Paragraphs 7 through 9, inclusive, of the Amended Complaint.

7. The allegations set forth in Paragraph 10 of the Amended Complaint do not require a response of this Defendant. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

8. This answering Defendant admits that portion of Paragraph 11 of the Amended Complaint which sets forth that Borrower entered into with Kennedy a Loan and Security Agreement dated April 30, 2009 and a Promissory Note dated April 30, 2009. As to the remaining allegations of Paragraph 11 of the Amended Complaint, this answering Defendant would crave reference to the Loan Agreement and the Note for their full terms and conditions and would deny any allegations inconsistent therewith.

9. This answering Defendant admits that portion of Paragraph 12 of the Amended Complaint which states that the Borrower executed and delivered to Lender a Mortgage and Security Agreement dated April 28, 2009 and recorded on May 5, 2009 in the office of the Registrar for Decds for Georgetown County in Mortgage Book 1225 at Page 109. As to the remaining allegations of Paragraph 12 of the Amended Complaint, this answering Defendant would crave reference to the Mortgage for its full terms and conditions and would deny any allegations inconsistent therewith.

10. This answering Defendant admits the allegations of Paragraphs 13 through 15 of the Amended Complaint.

11. This answering Defendant denies the allegations of Paragraphs 16 and 17 of the Amended Complaint.

12. This answering Defendant is without sufficient information or knowledge with which to form an opinion or belief as to the allegations of Paragraph 18 of the Amended Complaint and therefore denies such allegations, demanding strict proof thereof.

13. The allegations of Paragraphs 19 and 20 of the Amended Complaint do not require a response of this Defendant. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

14. This answering Defendant admits that portion of Paragraph 21 of the Amended Complaint which sets forth that the Guarantors executed a Guaranty dated April 30, 2009. As to the remaining allegations of Paragraph 21 of the Amended Complaint, this answering Defendant would crave reference to the Guaranty for its full terms and conditions and would deny any allegations inconsistent therewith.

15. In response to Paragraph 22 of the Amended Complaint, this answering Defendant would crave reference to the Guaranty for its full terms and conditions and would deny any allegations inconsistent therewith.

16. This answering Defendant denies the allegations of Paragraphs 23 and 24 of the Amended Complaint.

17. The allegations set forth in Paragraph 25 of the Amended Complaint do not require a response of this Defendant. In the event a response is deemed required, then such allegations are denied and strict proof demanded thereof.

WHEREFORE, having fully responded to the Amended Complaint of the Plaintiff the Defendant Pawleys Island North, LLC would pray that the Honorable Court would inquire into the matters as set forth in the Amended Complaint; dismiss the Amended Complaint with prejudice; assess costs and disbursements against the Plaintiff; and for such other and further relief as this Court may deem just and proper.



Robert H. Gwin, III
GWIN LAW OFFICE, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577
(843) 839-2239
Attorney for Defendant
Pawleys Island North, LLC

September 14, 2012

Myrtle Beach, SC 29577

FOR A FIRST DEFENSE

Each and every allegation in Sapp's cross-claim not specifically admitted herein is expressly denied.

1. Responding to paragraph 20 – 23, Plaintiff lacks information sufficient to form a belief as to the truth of those allegations and, therefore, denies same and demands strict proof thereof.

2. Upon information and belief, paragraph 24 and 25 are admitted; however, Plaintiff understands the referenced verdict remains on appeal to the South Carolina Court of Appeals.

3. Responding to paragraph 26, Plaintiff admits the first, second, third and fifth sentences in the paragraph. Plaintiff denies the fourth sentence and states an appraisal performed by Volpe Real Estate Advisors, Inc. on February 27, 2009, concluded Lots 3 and 4 had a combined "'AS IS' MARKET VALUE as Defined as Sale to a Cash Buyer in Six Months of : \$1,920,000."

4. Paragraph 27 states a legal conclusion, not factual allegations. To the extent Paragraph 27 is interpreted as stating factual allegations, Plaintiff incorporates by reference the *"Assignment of Mortgage, Assignment of Leases and Rents and Loan Documents"* dated November 10, 2011 and produced in this litigation with bates no. "Kennedy _01126" and asserts the document speaks for itself.

5. Upon information and belief, Paragraph 28 is admitted.

6. Paragraphs 29, 30, and 31 are denied.

7. Responding to Paragraph 32, Plaintiff admits so much contained therein which states it knew about the transfer of the subject property from Wheeler to Pawley's Island North, LLC.

8. Paragraphs 33 and 34 are denied.

9. Plaintiff denies Sapp is entitled to the relief requested in the Prayer for Relief, specifically including subparts (a) – (g).

FOR A SECOND DEFENSE

10. Sapp's cross-claim fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

11. Sapp's cross-claim is moot.

FOR A FOURTH DEFENSE

12. Sapp's cross-claim is barred by the doctrine of *res judicata*.

FOR A FIFTH DEFENSE

13. Sapp's cross-claim is barred by the doctrine of collateral estoppel.

FOR A SIXTH DEFENSE

14. Sapp's cross-claim is not ripe.

FOR A SEVENTH DEFENSE

15. Sapp's cross-claim is barred under Rule 59, S.C.R.Civ.P.

FOR AN EIGHTH DEFENSE

16. Sapp's cross-claim is barred under Rule 9, S.C.R.Civ.P.

FOR A NINTH DEFENSE

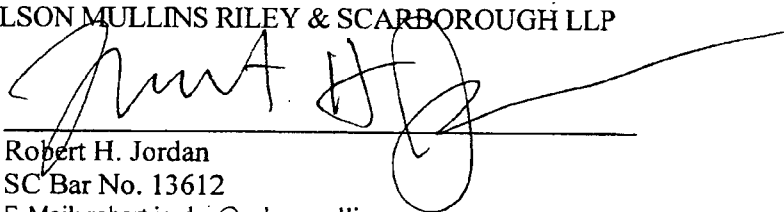
17. Sapp's cross-claim is barred under the Statute of Elisabeth.

FOR A TENTH DEFENSE

18. Sapp's cross-claim is barred by the law of the case.

WHEREFORE, having fully replied to Sapp's cross-claim, Plaintiff requests this Court dismiss the cross-claim with prejudice. If the cross-claim is not dismissed, Plaintiff requests this Court prohibit Sapp from using the cross-claim offensively against Plaintiff to re-litigated the lien priority issue decided by the Court's March 5, 2012 Summary Judgment Order. Plaintiff further requests it be awarded its costs and fees incurred as a result of defending against Sapp's cross-claim.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Jordan
SC Bar No. 13612
E-Mail: robert.jordan@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Plaintiff

Charleston, South Carolina

October 10, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for BNP Paribas, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**PLAINTIFF'S REPLY TO DEFENDANT J. MARS SAPP'S
CROSS-CLAIM**

Counsel Served:

Thomas W. Bunch, II, Esq.
Robinson, McFadden & Moore, P.C.
PO Box 944
Columbia, SC 29201

Robert H. Gwinn, III, Esq.
Gwinn Law Office, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577


Donna Horn (Michene Kerr)
Administrative Assistant

October 10, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Kennedy Funding, LLC, as Predecessor-)
 In-Interest and BNP Paribas,)
)
 Plaintiff,)
)
 vs.)
)
 Pawleys Island North, LLC, Will Darwin)
 Wheeler; Peggy Wheeler-Cribb and)
 J. Mars Sapp,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2011-CP-22-00180

**ANSWER OF DEFENDANTS
 PAWLEYS ISLAND NORTH, LLC
 WILL DARWIN WHEELER AND
 PEGGY WHEELER-CRIBB
 TO CROSS-CLAIM OF J. MARS SAPP**

The Defendants, Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb, responding to the Cross-Claim of J. Mars Sapp, would respectfully allege as follows:

1. Each and every allegation not hereinafter specifically admitted, explained or qualified is denied and strict proof demanded thereof.

FOR S FIRST DEFENSE

2. These answering Defendants admit the allegations of Paragraphs 20 and 21 of the Cross-Claim.

3. These answering Defendants are without sufficient information or knowledge with which to form an opinion or belief as to the allegations of Paragraph 22 of the Cross-Claim and therefore denies such allegations, demanding strict proof thereof.

4. These answering Defendants admit the allegations of Paragraphs 23 and 24 of the Cross-Claim.

5. These answering Defendants are without sufficient information or knowledge with which to form an opinion or belief as to the allegations of Paragraph 25 of the Cross-Claim and therefore deny such allegations, demanding strict proof thereof.

6. These answering Defendants admit that portion of the allegations of Paragraph 26 of the Cross-Claim which sets forth that Wheeler conveyed a Quit-Claim Deed to Pawleys Island North, LLC for two (2) lots located in Pawleys Island, Georgetown County, South Carolina. Defendants would deny the remaining allegations of Paragraph 26, demanding strict proof thereof.

7. These answering Defendants are without sufficient information or knowledge with which to form an opinion or belief as to the allegations of Paragraph 27 of the Cross-Claim and therefore deny such allegations, demanding strict proof thereof.

8. These answering Defendants admit the allegations of Paragraph 28 of the Cross-Claim.

9. These answering Defendants deny the allegations of Paragraphs 29,30,31,32,33 and 34 of the Cross-Claim.

FOR A SECOND DEFENSE

10. The allegations set forth in Paragraphs 1 through 9 hereinabove are incorporated herein as if fully restated.

11. The allegations set forth in the Cross-Claim fail to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE

12. The allegations set forth in Paragraphs 1 through 11 hereinabove are incorporated herein as if fully restated.

13. The Defendants Pawleys Island North, LLC and Peggy Wheeler-Cribb were not indebted in any manner to the Plaintiff at the time of the execution and delivery of the Quit-Claim Deed referenced in the Cross-Claim.

14. The allegations in the Cross-Claim are barred in whole or in part because the Plaintiff fails to satisfy the elements under the Statute of Elizabeth, S.C. Code §27-23-10, et. seq. and South Carolina case law pertaining to fraudulent conveyances in general.

FOR A FOURTH DEFENSE

15. The allegations set forth in Paragraphs 1 through 14 hereinabove are incorporated herein as if fully restated.

16. By Order granting Plaintiffs' Motion for Summary Judgment as to the Defendant J. Mars Sapp dated February 14, 2012, the Court determined that "Sapp's claim to possess a lien superior to that of Kennedy Funding is dismissed and Sapp's lien, if any, is declared junior and subordinate to Kennedy Funding's lien".

17. The relief sought by the Defendant J. Mars Sapp in its Cross-Claim would have the derivative effect of invalidating the Plaintiff's Mortgage.

18. The validity of the Plaintiff's Mortgage was adjudicated by the Order Granting Summary Judgment.

19. These answering Defendants would plead res judicata as an affirmative defense to the action.

FOR A FIFTH DEFENSE

20. The allegations set forth in Paragraphs 1 through 19 hereinabove are incorporated herein as if fully restated.

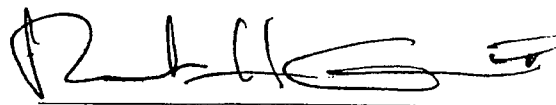
21. By Order granting Plaintiffs' Motion for Summary Judgment as the Defendant J. Mars Sapp dated February 14, 2012, the Court determined that "Sapp's claim to possess a lien superior to that of Kennedy Funding is dismissed and Sapp's lien, if any, is declared junior and subordinate to Kennedy Funding's lien".

22. The relief sought by the Defendant J. Mars Sapp in its Cross-Claim would have the derivative effect of invalidating the Plaintiffs' Mortgage.

23. The validity of the Plaintiff's Mortgage was adjudicated by the Order Granting Summary Judgment.

24. These answering Defendants would plead collateral estoppel as a full and complete affirmative defense to the action.

WHEREFORE, having fully responded to the Cross-Claim of the Defendant J. Mars Sapp, the Defendants Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb would pray that the Honorable Court inquire into the matters as set forth in the Cross-Claim; dismiss the Cross-Claim with prejudice; assess costs and disbursements against the Defendant J. Mars Sapp; and for such other and further relief as this Court may deem just and proper.



Robert H. Gwin, III
GWIN LAW OFFICE, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577
(843) 839-2239
Attorney for Defendants Pawleys Island
North, LLC, Will Darwin Wheeler and
Peggy Wheeler-Cribb

October 10, 2012
Myrtle Beach, SC 29577

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Kennedy Funding, LLC, as Predecessor-)
In-Interest and BNP Paribas,)
)
Plaintiff,)
)
vs.)
)
Pawleys Island North, LLC, Will Darwin)
Wheeler; Peggy Wheeler-Cribb and)
J. Mars Sapp,)
)
Defendants.)
_____)

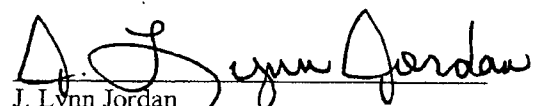
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-22-00180

CERTIFICATE OF MAILING

I, the undersigned Legal Assistant of Robert H. Gwin, III, Esquire, attorney for the Defendants, Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb, do hereby certify that I have served the counsel for the Plaintiff and counsel for the Defendant J. Mars Sapp in this action with a copy of the Answer of Defendants Pawleys Island North, LLC Will Darwin Wheeler and Peggy Wheeler-Cribb to the Cross-Claim of J. Mars Sapp on the 10th day of October, 2012, by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Robert H. Jordan, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
P. O. Box 1806
Charleston, SC 29402-1806

✓ Thomas W. Bunch, II, Esquire
Robinson, McFadden & Moore, PC
P.O. Box 944
Columbia, SC 29201


J. Lynn Jordan
Legal Assistant to Robert H. Gwin, III

October 10, 2012
Myrtle Beach, SC 29577

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GEORGETOWN COUNTY
Master-In-Equity**

The Honorable Joe M. Crosby, Master-In-Equity

Case No. 2011-CP-22-0180

RECEIVED

JUN 27 2013

SC Court of Appeals

**Kennedy Funding, Inc. as predecessor-in-interest, and BNP
Paribas.....Respondents,**

v.

**Pawleys Island North, LLC, Will Darwin. Wheeler, Peggy Wheeler-Cribb and J. Mars
Sapp Defendants,**

Of whom J. Mars Sapp is the Appellant.

NOTICE OF APPEAL

J. Mars Sapp appeals the Order Granting Summary Judgment dated February 14, 2012, and the Order denying Appellant Sapp's Motion to Alter or Amend the Order Granting Summary Judgment entered June 7, 2013, and the Order and Judgment entered June 7, 2013, all Orders having been executed by the Honorable Joe M. Crosby, Master-In-Equity for Georgetown County.

Undersigned counsel received notice of entry of the June 7, 2013 Order after June 10, 2013. Copies of the Orders and Judgment are attached.


Thomas W. Bunch, II

Paul H. Hoefer

ROBINSON, MCFADDEN & MOORE, P.C.

Post Office Box 944

Columbia, SC 29202

(803) 779-8900

Attorneys for Appellant

June 27, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Master-In-Equity

The Honorable Joe M. Crosby, Master In Equity

Case No. 2011-CP-22-0180

RECEIVED

JUN 27 2013

SC Court of Appeals

Kennedy Funding, Inc. as predecessor-in-interest, and BNP
Paribas.....Respondents,

v.

Pawleys Island North, LLC, Will Darwin. Wheeler, Peggy Wheeler-Cribb and J. Mars
Sapp Defendants,

Of whom J. Mars Sapp is the Appellant.

PROOF OF SERVICE

I certify that I have filed the Notice of Appeal with Clerk of Court for Georgetown County and served opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on June 27, 2013 addressed as follows:

Robert H. Jordan, Esquire
Nelson Mullins Riley & Scarborough, LLC
151 Meeting Street , 6th Floor
Post Office Box 1806 (29402)
Charleston, SC 29401

Robert H. Gwinn, III, Esquire
Gwinn Law Office, LLC
4701-A Oleander Drive
Myrtle Beach, SC 29577


Thomas W. Bunch, II
Paul H. Hoefer
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorneys for Appellant



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.
COLUMBIA, SOUTH CAROLINA

July 10, 2013

Thomas W. Bunch, II
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

PH
(803) 779-8900 | (803) 227-1103 direct

FAX
(803) 744-1545

tbunch@RobinsonLaw.com

**Re: Kennedy Funding, Inc., as predecessor-in-interest, and BNP Paribas
v. Pawleys Island North, LLC, et al of whom J. Mars Sapp is the
Appellant
State Court Case No. 2011-CP-22-00180
Appellate Case No. 2013-001447
File No. 30440-0003**

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Appellant's Amended Notice of Appeal and Proof of Service in the above-referenced case. Please file these documents and return a clocked copy with our courier. The Amended Notice is filed to designate the role of all parties involved in the case as respondents or appellant, and to include other counsel of record.

By copy of this letter, I am filing the Amended Notice of Appeal with the Clerk of Court of Georgetown County, and serving counsel of record.

Thank you for your attention to this matter.

Yours very truly,

ROBINSON, MCFADDEN & MOORE, P.C.


Thomas W. Bunch, II

TWB:ael

Enclosures as stated

cc: (w/enclosures)

Robert H. Jordan, Esquire
Robert H. Gwinn, III, Esquire
Clerk of Court, Georgetown County

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
The Honorable Joe M. Crosby, Master-In-Equity

Case No. 2011-CP-22-0180
Appellate Case No. 2013-001447

RECEIVED

JUL 10 2013

SC Court of Appeals

Kennedy Funding, Inc. as predecessor-in-interest, and BNP
Paribas.....Respondents,

v.

Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and J. Mars
Sapp
Of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb are
Respondents and

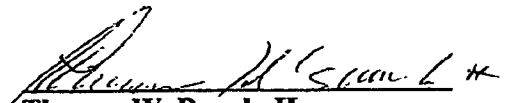
J. Mars Sapp is the Appellant.

AMENDED NOTICE OF APPEAL

J. Mars Sapp appeals the Order Granting Summary Judgment dated February 14, 2012, and the Order denying Appellant Sapp's Motion to Alter or Amend the Order Granting Summary Judgment entered June 7, 2013, and the Order and Judgment entered June 7, 2013, all Orders having been executed by the Honorable Joe M. Crosby, Master-In-Equity for Georgetown County.

Undersigned counsel received notice of entry of the June 7, 2013 Order after June 10, 2013. Copies of the Orders and Judgment are attached.

July 10, 2013


Thomas W. Bunch, II
Paul H. Hoefer
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900
Attorneys for Appellant J. Mars Sapp

Other Counsel of Record:

Robert H. Jordan, Esquire
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151 Meeting Street , 6th Floor
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Attorneys for Respondents Kennedy Funding, Inc.predecessor-in-interest, and BNP Paribas
(843) 853-5200

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Attorney for Respondents Pawley's Island North, LLC, Will Darwin Wheeler, and Peggy
Wheeler-Cribb
(843) 839-2239

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas**

The Honorable Joe M. Crosby, Master In Equity

**Case No. 2011-CP-22-0180
Appellate Case No. 2013-001447**

RECEIVED

JUL 10 2013

SC Court of Appeals

**Kennedy Funding, Inc. as predecessor-in-interest, and BNP
Paribas.....Respondents,**

v.

**Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and J. Mars
Sapp**

**Of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-Cribb are
Respondents and**

J. Mars Sapp is the Appellant.

PROOF OF SERVICE

I certify that I have filed the **Amended Notice of Appeal** with Clerk of Court for Georgetown
County and served opposing counsel by depositing a copy of it in the United States Mail, postage
prepaid, on **July 10, 2013** addressed as follows:

Robert H. Jordan, Esquire
Nelson Mullins Riley & Scarborough, LLC
151 Meeting Street , 6th Floor
Post Office Box 1806 (29402)
Charleston, SC 29401
Attorneys for Respondents Kennedy Funding, Inc., predecessor-in-interest, and BNP Paribas

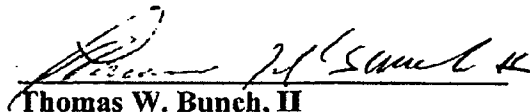
Robert H. Gwinn, III, Esquire

Gwinn Law Office, LLC

4701-A Oleander Drive

Myrtle Beach, SC 29577

Attorney for Respondents Pawleys Island North, LLC, Will Darwin Wheeler, and Peggy Wheeler-Cribb

A handwritten signature in dark ink, appearing to read "Thomas W. Bunch, II", is written over a horizontal line.

Thomas W. Bunch, II

Paul H. Hoefler

ROBINSON, MCFADDEN & MOORE, P.C.

Post Office Box 944

Columbia, SC 29202

(803) 779-8900

Attorneys for Appellant

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CASE NO. 2011-CP-22-00180
Kennedy Funding, Inc,)
Plaintiff,)
vs.)
Pawleys Island North,)
LLC, Will Darwin)
Wheeler, Peggy)
Wheeler-Cribb and J.)
Mars Sapp,)
Defendants.)

* * * * *

PROCEEDINGS HEARD JUDGE JOE M. CROSBY,
BEFORE: MASTER-IN-EQUITY

DATE TAKEN: January 17, 2012

TIME: 12:59 P.M.

PLACE: Georgetown County Courthouse
401 Cleland Street
Georgetown, SC

REPORTED BY: DENISE LAUDER
Registered Professional
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

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843.832.0801 * www.carolina-reporting.com

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

ROBERT H. JORDAN, ESQUIRE
Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street
Sixth Floor
Charleston, SC 29401
(843) 853-5200

REPRESENTING THE DEFENDANT:

PAUL H. HOEFER, ESQUIRE
Robinson McFadder & Moore, PC
1901 Main Street
Suite 1200
Columbia, SC 29202
(803) 779-8900

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Electronically signed by Denise Lauder (301-268-293-2597)

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PROCEEDINGS

Page

4

CERTIFICATE OF REPORTER

30

E X H I B I T S

(No Exhibits Proffered)

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1 The following proceedings were had:

2 MR. JORDAN: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. JORDAN: Your Honor, Robert Jordan

5 representing Kennedy Funding. As a housekeeping

6 matter, Mr. Hoefer represents J. Mars Sapp who

7 we've added as a third-party creditor. The

8 debtors, Will Wheeler and Peggy Wheeler-Cribb and

9 Pawleys Island North, are represented by Bob Quinn.

10 My motion today is a motion for summary judgment

11 just between the creditors. Mr. Quinn e-mailed me

12 that he did not plan to attend, that he had no

13 objection to my motion being granted and didn't

14 take a position, one way or the other.

15 THE COURT: Sure.

16 MR. JORDAN: As we say, Your Honor, we

17 represent Kennedy Funding. They are the lender in

18 a foreclosure action which they filed as the

19 Plaintiffs. The property at issue are two lots at

20 Pawleys Island. They were originally owned by

21 Mr. Will Wheeler, who is one of the debtors.

22 Kennedy Funding in May of 2009 loaned \$960,000 to

23 Pawleys Island North. That is an LLC that

24 Mr. Wheeler deeded the property to prior to the

25 loan closing. So Pawleys Island North is the

1 landowner.

2 Again, 960,000 was loaned for two lots.

3 We filed a memorandum in support of our Rule 56
4 motion. There's one thing I wanted to clarify and
5 correct that wasn't clear in our memorandum. This
6 was originally part of a larger tract that
7 Mr. Wheeler subdivided into four lots. In some of
8 the paperwork and the appraisals, you'll see these
9 two lots which are raw land referred to as lots
10 three and four. Lot three, at the time the loan
11 was made, was owned outright by Mr. Wheeler. Lot
12 four had a mortgage on it by Sun Trust for
13 \$300,000, and Kennedy Funding, my client, paid that
14 off at closing.

15 So what wasn't clear in my motion, as
16 I've argued, obviously, that we had a purchase
17 money mortgage. As to lot four, I think we clearly
18 do, because we paid that off at closing and
19 therefore helped Mr. Wheeler purchase the property.
20 Lot three is a situation that no mortgage
21 pre-existed at the time of closing. So I wanted to
22 clarify that for my brief.

23 So, Judge, we filed a -- Pawleys Island
24 North fell behind. We filed a foreclosure action.
25 In doing our title work prior to filing the suit,

1 we saw that J. Mars Sapp attempted to collect a
2 judgment against the Wheelers individually. The
3 Wheelers are not on the note and are personal
4 guarantors to my client, that's why they're in the
5 suit. Mr. Sapp it appears had an action here in
6 Georgetown on a commercial lease that was unrelated
7 to this land, it was another business that Mr.
8 Wheeler ran. He apparently through an LLC rented
9 property from Mr. Sapp and they got into a
10 landlord/tenant dispute. Okay? I think the time
11 line is important to our argument because obviously
12 Mr. Sapp is claiming that he has a senior lien
13 priority to my client who owns the mortgage.

14 THE COURT: Apparently it's on appeal?

15 MR. JORDAN: Correct.

16 MR. HOEFER: The appeal is pending.

17 THE COURT: Okay.

18 MR. JORDAN: Mr. Hoefer works in
19 Columbia. I spoke with his partner last week and
20 was told that that appeal -- initial briefs hadn't
21 even been filed. So I'll discuss that more in my
22 motion. So, in any event, I think the time line is
23 operative in -- as it is in all lien priority
24 cases, and the Court knows. Again, that my client,
25 Kennedy Funding, loans and records the mortgage

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1 May 5, 2009, on both lots. Mr. Sapp obtains his
2 verdict on June 4th, 2010, 13 months after we
3 loaned the money. As we just heard, and I think
4 it's stipulated now on the record by opposing
5 counsel, that action is still on appeal. We take
6 the position that's not even the final judgment and
7 therefore not collectible because it's still on
8 appeal.

9 We filed this motion. Mr. Sapp and --
10 we filed our Complaint, we named Mr. Sapp as we
11 think he's a junior -- junior lien creditor or
12 possibly a junior lien creditor. He obviously,
13 from our position, doesn't have an enforceable lien
14 yet as it remains on appeal. He answered and did
15 not assert any counterclaims, Judge, but he did
16 assert generally in his defenses what I would call
17 a declaratory judgment, where he simply requested
18 that the Court declare in the interest of the
19 parties, and he did assert informally, not in a
20 cause of action, that he thought he was superior to
21 Kennedy Funding.

22 Having seen that, we got concerned so
23 we filed our motion for summary judgment and that's
24 why we're here today, is to have Mr. Sapp's claim
25 that he has a senior lien priority dismissed via

1 Rule 56. We do not contest, if he wants to argue
2 in a separate trial of this proceeding or some
3 other motion, he's junior to us; that's of no
4 concern to us.

5 So the issue, Judge, I think -- and the
6 reason I told you about lots three and four is lot
7 three was unencumbered, lot four had a mortgage. I
8 would think that my opposition would concede that
9 lot four -- because we paid off a pre-existing
10 mortgage, that we are a purchase money mortgage
11 holder and therefore we beat everyone, and whether
12 there was a fraudulent conveyance or not is
13 immaterial, and that that property, that lot, lot
14 four is ours -- it will be ours if we prevail as
15 the first lienholder. So that would be our first
16 position.

17 As to the remaining lot that was
18 unencumbered, what I understand my opposition will
19 argue, although they've not briefed it, is that
20 there was a fraudulent conveyance from Mr. Wheeler
21 to this Pawleys Island, LLC and that that
22 fraudulent conveyance essentially undoes or voids
23 the mortgage that Kennedy Funding made to this LLC;
24 with that voided, they jump in line ahead of us.
25 We don't think that's correct for a number of

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Electronically signed by Denise Lauder (301-268-293-2597)

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1 reasons.

2 As the Court knows, this is an
3 equitable matter, all foreclosures are, and the
4 case law we cited in our brief I think clearly
5 establishes at the time we closed this loan we had
6 no notice --

7 THE COURT: You said a lis pendens
8 hadn't been filed --

9 MR. JORDAN: Lis pendens had not been
10 filed. So when we did our title work, it was
11 clean. My client was deposed last week on
12 Thursday, a 30(b)(6) was taken of Kennedy Funding.
13 And I will certainly concede, in their loan closing
14 documents Mr. Wheeler listed that he had a pending
15 lawsuit against Mr. Sapp in one of the forms he had
16 to fill out. But there was no lis pendens. So we
17 got a clean title report back, but for the Sun
18 Trust Mortgage that we paid off, and we loaned the
19 money.

20 The transfer from Mr. Wheeler to the
21 LLC is quite common and I'm sure Your Honor knows
22 that probably 80 percent of the properties on the
23 coast that have financing are in the name of an
24 LLC. That's very common and it's often something
25 lenders actually want, because they want to make

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Electronically signed by Denise Lauder (301-268-293-2597)

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1 sure that, if the individuals go bankrupt or
2 something like that, that they still maintain their
3 lien priority as to the property. So it's held in
4 a single-purpose LLC, which is what Pawleys Island
5 North was.

6 The conveyance from Will Wheeler to
7 Pawleys Island North, LLC was simply a
8 pass-through. When you look at the South Carolina
9 cases -- and I tried to find something on point,
10 and quite honestly, Your Honor, I'm trying to prove
11 a negative in finding a case for you where what
12 they're alleging has been upheld. So I don't have
13 a case where it's been upheld or rejected. What I
14 have seen is the volume of fraudulent conveyance
15 cases where a husband and wife or family members,
16 in order to avoid a creditor, transfer for some
17 nominal amount of money the property and thereby
18 get around the creditor and it's essentially being
19 held by this friendly party in a collusive
20 arrangement for the benefit of the debtor. And
21 those are the typical cases, and the Courts do
22 overturn those and allow the creditor to go after
23 that party. That's not the case here.

24 The transfer of the property from Mr.
25 Wheeler to an LLC was simply to facilitate the

1 loan. We don't have a situation here where the
2 loan was closed without valuable consideration, in
3 fact, \$960,000 was loaned. So the property is not
4 being held in an LLC for Mr. Wheeler's benefit to
5 avoid creditors. In fact, my client, I think, is
6 entitled to foreclose on it and take it from him.
7 So we don't think that this a situation where
8 fraudulent conveyance applies.

9 There's a case I found, and these are
10 -- these are cases that they all say the same
11 thing. This is Albert v. Robinson; I'll be happy
12 to pass up a copy --

13 THE COURT: And just so I can follow
14 the maneuvers or alleged maneuvers, Sapp's position
15 will be that it was fraudulently conveyed from
16 Wheeler to your client. Even though you're
17 foreclosing on your mortgage -- I'm just looking
18 through the mortgage and securities -- am I
19 correct?

20 MR. JORDAN: I'll let him argue it; I
21 don't understand it. I mean, I'm not being smart
22 when I say that. I thought that they would argue
23 that the transfer from Wheeler just to his LLC was
24 fraudulent, and then that chain or that fraudulent
25 act, if it was fraudulent, voids the subsequent

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1 mortgage to my client, but if they want to say that
2 we were collusive or that the conveyance, the
3 pass-through from the LLC to us was fraudulent, I
4 think that's clearly wrong.

5 And that's why I'm arguing that under
6 the law there are really two ways to prove a
7 fraudulent conveyance; one is if the transfer is
8 made with the intent to defraud. And there's been
9 nothing developed in this case. The only discovery
10 done is I produced my entire loan file, and they
11 deposed my client on Thursday, and there's nothing
12 that showed that Kennedy Funding was in collusion
13 or intending to defraud J. Mars Sapp.

14 All we knew about J. Mars Sapp was that
15 he had some lawsuit against Mr. Wheeler. So we
16 don't have an intent to defraud and I don't think
17 they've produced anything; there's no affidavit or
18 deposition testimony they can cite to or any
19 documents.

20 The second ground is when property is
21 transferred without valuable consideration. And I
22 cited the Albertson (sic) case here. This is 371
23 S.C. 311. It's a 2006 Supreme Court case. And it
24 states these two bases for fraudulent conveyance.
25 The valuable consideration, if there's not an

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1 attempt to defraud, is the linchpin of that
2 analysis. And we've got 960,000 that was conveyed
3 here. So there was valuable consideration. The
4 transfer from Wheeler to his LLC was just a
5 pass-through to allow the mortgage to happen. We
6 have an arm's-length transaction here where my
7 client, the lender, has a perfectly clean title,
8 according to the title report, and should be able
9 to loan money on land and not be subject years down
10 the road to the claims of a potential judgment
11 creditor. We don't even have a judgment creditor
12 yet, we have a potential judgment creditor.

13 So our position is that we're first in
14 line. If he wants to argue fraudulent conveyance
15 as to Mr. Wheeler, that's fine. He may be right
16 that he still gets to go after Mr. Wheeler in a
17 junior capacity, but the issue is not was there a
18 fraudulent conveyance. I think it's still an issue
19 of what's the lien priority and I see nothing in
20 the law of South Carolina that allows a potential
21 judgment creditor to jump a mortgage holder.

22 THE COURT: Okay.

23 MR. JORDAN: Thank you, Judge.

24 THE COURT: Yes, sir.

25 MR. HOEFER: Thank you, Your Honor.

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1 I'm Paul Hoefer, representing Mars Sapp. I'm here
 2 for Tommy Bunch who has a conflict today. Your
 3 Honor, I understand Kennedy Funding claims the
 4 first lien on the property which has been termed
 5 lots three and four. We disagree for really two
 6 reasons; one is that we would argue that Kennedy
 7 Funding doesn't have a valid lien on the property,
 8 and even if they do, that our client -- Mr. Sapp's
 9 judgment lien is prior. And I certainly believe
 10 there are material issues of fact which should
 11 preclude the grant of summary judgment today. We
 12 will rely on the pleadings, Your Honor, the matters
 13 that are of public record which we e-mailed to
 14 Mr. Jordan, I believe he'll stipulate to, and also
 15 the deposition testimony of Kevin Wolfford, who is
 16 the CEO of Kennedy Funding.

17 And I don't mean to belabor and repeat
 18 all the facts that he just said, but I think,
 19 because they are so important, I just want to run
 20 through them real quick once again. In September
 21 of 2008, Mr. Sapp commenced his litigation against
 22 Will D. Wheeler individually for a breach of the
 23 lease guarantee. At that time Mr. Wheeler owned
 24 lots three and four. Lot three, as Mr. Jordan
 25 stated, was unencumbered. Lot four did have a

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1 \$300,000 mortgage on it.

2 In February of 2009, lots three and
3 four were appraised at a value of over \$1.9
4 million, and that is deposition testimony in
5 Exhibit Number 2 to the deposition. And I'm glad
6 to hand a copy of these up if necessary.

7 THE COURT: I don't know that I need
8 the deposition. I'm certainly happy to review them
9 if you would like me to.

10 MR. HOEFER: Okay. Your Honor, lot
11 three was valued at over \$1 million. So here's an
12 unencumbered piece of property on Pawleys Island,
13 valued at over a million dollars, that Mr. Sapp
14 owns individually unencumbered when we filed suit.
15 Thereafter, when the litigation is pending, Mr.
16 Wheeler executes a quitclaim deed for lots three
17 and four to an LLC named Pawleys Island, LLC.

18 The LLC was just formed right before
19 the transfer in March of '09. Mr. Wheeler was a
20 99 percent member of the LLC. His mother had
21 another 1 percent interest. The transfer was for
22 \$5 and no other consideration. Pawleys Island, LLC
23 was just formed in March of '09, Mr. Wheeler was a
24 99 percent member.

25 At the same date of the quitclaim deed,

1 the LLC granted a mortgage on lots three and four
2 to Kennedy Funding, which is the mortgage they're
3 foreclosing. Thereafter, in June 2010, a jury
4 verdict was returned for Mr. Sapp against
5 Mr. Wheeler for over \$250,000. So there are the
6 facts.

7 And our first argument is that the
8 transfer from Mr. Wheeler to the LLC was a
9 fraudulent conveyance in violation of the Statute
10 of Elizabeth, South Carolina Code 272310(A). The
11 language in that statute, and I'm simply
12 paraphrasing, is every transfer, conveyance of
13 lands, by writing or otherwise, which may be had or
14 made to or for any intent or purpose to delay,
15 hinder, or defraud creditors, and others, of their
16 just and lawful actions, suits, damages, must be
17 deemed and taken to be clearly and utterly void and
18 of no effect. And that statute applies directly
19 to Mr. Sapp in this situation, even though the
20 transfer was made prior to the judgment in June of
21 2010.

22 There's case law; I would cite Lebovitz
23 v. Mudd, South Carolina Supreme Court Decision
24 1987, which states the statute is not limited to
25 judgment creditors. It applies to others of their

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1 just and lawful actions, suits, debts and damages.
2 Mr. Sapp fits clearly within that scope of the
3 statute. And I would like to hand up a --

4 THE COURT: Well, understanding that,
5 you know, the question I would ask is, without a
6 lis pendens, how are they provided notice? Address
7 that.

8 MR. HOEFER: I'm glad to get to that,
9 Your Honor. The lis pendens, there's no statutory
10 authority that I'm aware of, or that Mr. Jordan
11 cites, that requires us to file a lis pendens.
12 They admitted in their testimony that, based on a
13 title search, they were well aware that the
14 litigation was pending. I don't even know that we
15 had a right to file a lis pendens. We weren't
16 filing an action against any real property. We
17 were simply pursuing a judgment against
18 Mr. Wheeler.

19 THE COURT: Which that point get gets
20 me to the next question. Is -- on the -- you know,
21 educate me, on what basis is a subsequent creditor
22 entitled to a senior lien?

23 MR. HOEFER: Okay. Well, our -- and
24 I'll get to that. I think the -- number one is
25 that it was a fraudulent conveyance from Mr.

1 Wheeler to the LLC, therefore, the transaction is
2 void and, therefore, the property reverts back to
3 Mr. Wheeler. Kennedy Funding has a mortgage from
4 an LLC that doesn't own the property. That's the
5 number one argument. And that's -- this is my
6 focus number one, is the Statute of Elizabeth. The
7 law is clear -- there's -- is clear and consistent
8 in South Carolina. There's a case, Windsor
9 Properties.v. Dolphin Head Construction, which says
10 the same thing as many cases. And I'll -- here's a
11 copy.

12 MR. JORDAN: Thanks.

13 MR. HOEFER: May I approach, Your
14 Honor?

15 THE COURT: Thank you.

16 MR. HOEFER: And, Your Honor, like I
17 said, this is one example of the case law in this
18 situation. And this case is strikingly similar,
19 where property was conveyed for \$5 and no other
20 consideration; exact same scenario here, no real
21 money exchanged hands. And if you turn to page 3
22 of the -- of the opinion, under law analysis,
23 letter A, Statute of Elizabeth, you go down and I
24 will not read the entire paragraph, but in the
25 middle -- under the statute, in the middle of the

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1 paragraph, it says: If the transfer was not made
2 on valuable consideration, no actual intent to
3 hinder or delay creditors need be proven. And it
4 goes down and says, the deed transferring the
5 property stated \$5 and no other consideration. The
6 Court goes on to set aside the conveyance, there's
7 no valuable consideration.

8 Mr. Jordan on this whole valuable
9 consideration issue seems to be focusing on the
10 fact there was a \$960,000 loan. That's not the
11 focus of valuable consideration. The focus is on
12 the transfer of property, \$5 and no other
13 consideration was given. And -- and regardless,
14 whether we get into valuable consideration, if
15 there was none, there's no need to go whether -- we
16 don't need to prove that there was an intent to
17 defraud the creditors, but going there is
18 necessary.

19 There was a pending suit against Mr.
20 Wheeler. He had a valuable, million-dollar
21 unencumbered piece of property which he transferred
22 to an LLC that he just created that he owned 99
23 percent of, and there was no money exchanged. In
24 this Windsor property case, if you go up to the
25 second column, the first paragraph states -- talks

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1 about intra-family transfers. When transfers --

2 THE COURT: Tell me where you are
3 again.

4 MR. HOEFER: I'm sorry?

5 THE COURT: Tell me where you are
6 again.

7 MR. HOEFER: On page 3, the top of the
8 second column, where transfers to members of the
9 family are attacked either upon the ground of
10 actual fraud or on account of their voluntary
11 character, the law imposes the burden on the
12 transferee, here Pawleys Island, LLC, to establish
13 both valuable consideration and to bona fide the
14 transaction by clear and convincing evidence.
15 There is absolutely no evidence of valuable
16 consideration, the property was given for \$5. No
17 money exchanged, a million-dollar property.

18 Secondly, based on the timing and the
19 circumstances, it's certainly not a bona fide
20 transaction. And that's what I'm getting to, Your
21 Honor, is because it's a fraudulent conveyance, the
22 transfer is void. The property is still owned by
23 Mr. Wheeler and the LLC's mortgage is of no effect.
24 And our second argument really turns to Kennedy
25 Funding's participation and involvement in the

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1 creation of the mortgage. Our argument is that
2 their participation in their mortgage is
3 fraudulent.

4 Your Honor, if I may approach again,
5 this is South Carolina Jurisprudence article -- oh,
6 I'm sorry, I handed you the wrong thing. Let me
7 try again. Tommy gave me a complicated hearing
8 today.

9 MR. JORDAN: That's all right.

10 MR. HOEFER: Sorry about that.

11 Sorry, Your Honor.

12 Your Honor, this is 27 South Carolina
13 Jurisprudence, Mortgages, section 92, under Fraud,
14 B. The second paragraph states: Additionally,
15 when a mortgage to secure a note is executed in
16 fraud of the mortgagor's creditors, the creation of
17 the mortgage is a fraudulent conveyance and the
18 Courts will not enforce the note.

19 Your Honor, I have this deposition
20 testimony and I'm happy to walk through it if
21 necessary, but the discovery of the deposition
22 shows that at the time of the loan, Kennedy Funding
23 knew the following things: They knew Mr. Wheeler
24 individually owned the property before the transfer
25 in '09. They knew Mr. Wheeler was being sued

1 individually. They failed to secure any
2 explanation of the litigation. They knew Mr.
3 Wheeler was forming an LLC, which he owned
4 99 percent of, and they knew that he was conveying
5 this property by quitclaim deed to secure a
6 mortgage. Kennedy Funding participated in this
7 fraud. There was no analysis of how the debt would
8 be repaid, they relied solely on a property value
9 here. And I think this is important to recognize,
10 that Kennedy Funding took a mortgage for 960,000 --
11 they made a loan for \$960,000, secured by mortgage,
12 on property worth close to two million, so it's a
13 50 percent loan-to-value ratio.

14 The result, Your Honor, is that Kennedy
15 Funding took the property beyond the reach of known
16 or existing creditors. And the statute's very
17 clear that our judgment lien is valid even while
18 it's on appeal. Your Honor -- let's see. Your
19 Honor, South Carolina Code 189130, this is the
20 Effective Notice of Appeal on Execution of
21 Judgment. If you go down to the second part, since
22 we're -- effective January 1, 2012. A Notice of
23 Appeal from a judgment directing the payment of
24 money does not stay the execution of the judgment
25 unless the presiding judge before whom the judgment

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1 was obtained grants a stay of the execution. That
2 hasn't happened here.

3 Further, this is Rule 241 of the
4 Appellate Court Rules, Stay and Supersedeas in
5 Civil Actions. If you go down to -- I'm sorry,
6 I'll read the General Rule first. As a general
7 rule, the service of a notice of appeal in a civil
8 matter acts to automatically stay matters decided
9 in the order, and it goes on. B is Exceptions.
10 The exceptions to the general rule are found in
11 statutes, court rules, and case law. A list of
12 some, but not all, are below. B(1) is money
13 judgments.

14 So although our judgment is on appeal,
15 it's absolutely still a valid lien. The statute is
16 clear and I don't think there's really anything to
17 dispute that.

18 As to the purchase money mortgage
19 argument, I don't believe Kennedy Funding can claim
20 that they're a purchase money mortgagor. The
21 definition from the case law is that there has to
22 be a purchase of land and there be purchase money.
23 There wasn't any purchase of land here. There was
24 no purchase money exchanged. There was \$5 and no
25 other consideration given. They knew the risks,

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1 they knew the litigation was pending, and I just --
2 I don't believe that we would concede -- definitely
3 not that they're a purchase money mortgagor as to
4 lot three, and I don't think we can concede that as
5 to lot four either.

6 I believe that's all I have, Your
7 Honor. I know it's a little bit all over the
8 place, but, especially considering the fact that
9 this is a summary judgment motion and the Court is
10 to view the facts most favorable to the nonmoving
11 party and it's only proper if there are no issues
12 of fact. I think there are many issues of fact.
13 One is whether Wheeler fraudulently transferred
14 this property. I think there's a lot of evidence
15 that he did. What the effect of that is the
16 transaction should be voided, in our opinion.

17 And there are other arguments that
18 Kennedy Funding's mortgage is invalid based on
19 their transfer and their participation. And then
20 based on that, Your Honor, the foregoing, we
21 believe the Court should deny the Kennedy Funding's
22 motion.

23 THE COURT: Yes, sir.

24 MR. JORDAN: Just briefly, Your Honor,
25 I haven't heard anything that I don't think I

1 addressed in my primary argument. We've been -- we
2 passed up case law of a typical husband and wife
3 fraudulent conveyance in which the wife ends up
4 holding the property for the benefit of the husband
5 to avoid the creditor. And as I stated in my
6 argument in chief, that's just simply not the case
7 here, in that the Wheeler transfer to the LLC was
8 just to accommodate a loan to a third-party lender
9 in an arm's-length transaction.

10 I think maybe the way to look at it is,
11 had Wheeler not transferred through the LLC, what
12 would their position be? If that's just a
13 pass-through transfer, their position is that the
14 -- the -- as I heard my adversary, that the loan
15 closing with Kennedy Funding was itself fraudulent.
16 And that simply can't be the case when there's
17 \$960,000 loaned and it's 50 percent loan to land
18 value. There's nothing illegal about a cashout
19 finance. They're not done much anymore, but
20 certainly a decade ago, they were pretty common.
21 So there's nothing untoward about that.

22 There's been no evidence presented that
23 we were somehow in collusion with Mr. --
24 Mr. Wheeler to -- to defraud or help him avoid
25 potential creditor claims. And I would also like

1 to -- maybe as a matter of public policy, if you
2 consider their position, that a lender can never
3 lend money on land if there are any existing
4 lawsuits pending, I think you -- we've already got
5 a frozen lending situation, but imagine large
6 corporations, Wal-Mart or International Paper,
7 looking to buy some land or do a land transaction
8 and seeking lending, and their third-party -- any
9 third-party litigation claims that may be pending
10 against them put the lender on notice that he can
11 be jumped down the road should a default occur.

12 I suspect just about every person that
13 borrows money has or has had some type of
14 litigation in their background. So you're talking
15 about making lending on land almost impossible, if
16 creditors can't be assured that they're going to be
17 first in line when they complete an arm's-length
18 transaction.

19 So again, Your Honor, I wish I had a
20 case exactly on point. I don't think -- their
21 argument, I don't think it's ever been addressed by
22 the Courts, so I do think it's novel. And I think
23 at the end of the day, when someone loans \$960,000
24 and the title search is clean, they remain first in
25 line. And all their argument he makes about having

1 a fraudulent conveyance between Wheeler and the
2 LLC, it may allow them to go against the LLC as a
3 junior creditor, but in terms of lien priority, I
4 don't see anything that allows them to jump us.

5 Also, again, on lots three and four,
6 the Sun Trust mortgage we paid off was a mortgage
7 that was closed prior to even the institution of
8 their lawsuit. And we stepped into the shoes of
9 the prior lienholder when we paid that off. So I
10 don't think there can be any argument, when we paid
11 off the \$300,000 Sun Trust loan which predated even
12 his lawsuit, much less his judgment, that we
13 stepped into the shoes, and as to that lot, we're
14 clearly a purchase money mortgagor and therefore
15 first in line regardless of what the opposition has
16 argued.

17 Any questions from the Court?

18 THE COURT: No, I don't have any
19 questions. The main issue, and if it's going to go
20 up, it's a fine point, is the 13-month distinction
21 between the closing of the loan and the -- is my
22 understanding, and the verdict, not the appeal,
23 because I agree with you that the -- that the -- I
24 believe the judgment is final when the verdict is
25 issued and the -- but I don't know that -- I don't

1 see how your person can leap through 13 months
2 later. Is that time line correct? That the
3 mortgage was closed and then 13 months later, your
4 client, Mr. Sapp, got his verdict?

5 MR. HOEFER: I believe the mortgage was
6 closed in May 2009.

7 MR. JORDAN: May 5, 2009, and then --

8 MR. HOEFER: The verdict was entered
9 June 2010.

10 MR. JORDAN: Right.

11 MR. HOEFER: But I -- I think that our
12 case law is what we rely on, that the fraudulent
13 transfer shows that the transaction is void
14 regardless of the timing of 13 months.

15 THE COURT: All right. And I just
16 want to make sure, as you sort of narrow things
17 down, I don't believe that -- the timing of the
18 judgment or the fact that a lawsuit is pending does
19 not give you priority, in my opinion. And that
20 would certainly be a finding of the Court. The
21 issue of the fraudulent conveyance, the -- I
22 haven't seen it pled. I've certainly seen it
23 argued, but -- I certainly think that the Plaintiff
24 has carried their burden of proof, so that I can
25 grant their motion for summary judgment on that

1 issue.

2 Anything else?

3 MR. HOEFER: And, I'm sorry, Your
4 Honor, to understand your -- you're granting their
5 motion for summary judgment as to their entire
6 motion?

7 THE COURT: That's correct.

8 MR. HOEFER: Okay.

9 MR. JORDAN: And, Your Honor, do you
10 need any proposed orders or --

11 THE COURT: Absolutely. I need you to
12 do a proposed order and, of course, make sure that
13 Counsel reviews it, and we'll go from there.

14 MR. JORDAN: Okay. And, Judge, can I
15 take up a housekeeping matter with
16 you?

17 (Off-the-record conference.)

18 THE COURT: Counsel, I understand
19 you've made a motion to amend the caption to
20 substitute a party. And I certainly understand
21 that you would be preparing an order, but as this
22 motion was made in open court, pending the final
23 approval, or not, by opposing counsel, you'll be
24 preparing an order to substitute parties; is that
25 correct?

1 MR. JORDAN: That's correct, Your
2 Honor.

3 THE COURT: Thank you.

4 (These proceedings were concluded at
5 1:32 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of January, 2012 at Charleston, Charleston County, South Carolina.

Denise Lauder

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN:)
CASE NO.: 2011-CP-22-00180

-----)
KENNEDY FUNDING, INC.,)

Plaintiff,)

vs.)

PAWLEYS ISLAND NORTH,)

LLC, WILL D. WHEELER,)

DARWIN WHEELER, PEGGY)

WHEELER-CRIBB and)

J. MARS SAPP,)

Defendants.)

-----)

DEPOSITION OF KEVIN WOLFER

THURSDAY, JANUARY 12, 2012

10:37 a.m.

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Deposition of KEVIN WOLFER, held at
the offices of Kennedy Funding, Inc.,
930 Sylvan Avenue, Suite 110, Englewood
Cliffs, New Jersey 07632, pursuant to Rule
30(B)(6), before Stacy Ann Mace, Certified
Court Reporter and a Notary Public of the
State of New Jersey.

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1/12/12

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INDEX

WITNESS	EXAMINATION BY	PAGE:LINE
K. Wolfer	By Mr. Bunch	
	Direct	
-----INFORMATION REQUESTS-----		
DIRECTIONS NOT TO ANSWER		(NONE)
REQUESTS FOR INFORMATION		(NONE)
RULINGS		(NONE)
MOTIONS		(NONE)

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2

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3

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1

Copy of complete closing

12

: 24

5

binding bearing Bates

6

stamps KENNEDY 01135

7

through KENNEDY 01418

8

2

Copy of documents bearing

20

: 3

9

Bates stamps KENNEDY_00472

10

through KENNEDY_00504

11

3

Copy of e-mail chain

28

: 10

12

bearing Bates stamps

13

KENNEDY_00472 through

14

KENNEDY_00475

15

4

Copy of documents bearing

32

: 5

16

Bates stamps KENNEDY_01113

17

through KENNEDY_01125

18

5

Copy of document bearing

37

: 9

19

Bates stamps KENNEDY_01053

20

through KENNEDY_01054

21

6

Copy of documents bearing

48

: 8

22

Bates stamps KENNEDY_00950

23

through KENNEDY_01033

24

25

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1

2 MR. JORDAN: This is Robert Jordan,
3 and I represent Kennedy Funding and also BNP Paribas.

4 MR. BUNCH: And here you have in
5 Columbia, South Carolina, you have Tommy Bunch who
6 represents Mars Sapp, M-a-r-s S-a-p-p.

7 Also with me is Paul Hoefer, who's an
8 attorney in our office, H-o-e-f-e-r.

9 MR. HORNUNG: And finally, Stephan
10 Hornung, that's H-o-r-n-u-n-g, from Hughes, Hubbard &
11 Reed in New York, also from BNP.

12 Kevin Wolfer, business address 930
13 Sylvan Avenue, Englewood Cliffs New Jersey or 7632,
14 sworn.

15

16

17 K E V I N W O L F E R , called
18 as a Rule 30(b)(6) witness, Kennedy Funding, Inc.,
19 930 Sylvan Avenue, Suite 110, Englewood Cliffs, New
20 Jersey 07632, having been duly sworn by a Notary
21 Public (Stacy Ann Mace), was examined and testified
22 as follows:

23

24 DIRECT EXAMINATION

25 BY MR. BUNCH:

8

1 Q. And yes, Mr. Wolfer, this is Tommy
2 Bunch. I represent Mr. Mars Sapp in this litigation.

3 If you don't understand anything I ask
4 you, will you let me know that, please?

5 A. Okay.

6 Q. All right.

7 And also if the question calls for a
8 yes or no response, go ahead and say yes or no
9 instead of shaking or nodding your head because,
10 obviously, we're here on the telephone deposition,
11 but also the court reporter needs that as well to
12 give a clear -- to make a clean deposition
13 transcript.

14 Okay?

15 A. Okay.

16 Q. And you are employed by Kennedy
17 Funding, is that right?

18 A. Yes -- I mean I'm the CEO and
19 president of Kennedy Funding.

20 Q. Okay.

21 Explain just briefly what Kennedy
22 Funding does.

23 A. Sure.

24 Kennedy Funding is a private
25 commercial lender. We make loans secured by

1 commercial properties to commercial entities.

2 Q. And what was your role in the loan
3 that was made to Pawleys Island North, LLC, were you
4 the lender or were you an agent for a lender or what
5 was the role in that loan?

6 A. I mean we are listed as the agent for
7 the -- we're the agent for the lender. But, you
8 know, we are initially contacted as, I guess, it's
9 the lender and -- but we state very clearly that we
10 will have participants in the loan with us.

11 Q. Okay.

12 And who were the participants in the
13 loan that was made to Pawleys Island North, LLC that
14 is involved in this litigation?

15 A. Okay, I believe -- I think there's
16 only two participants, I believe. The two
17 participants were, I believe, or are -- it's Morning
18 Gate Fund as well as Brookline. I'm not sure --
19 Brookline Holdings or Brookline Financing.

20 Q. Okay.

21 I didn't catch the name of the first
22 entity.

23 A. Sure, Morning Gate.

24 Q. Morning Gate.

25 And what was the second one,

10

1 Brookline?

2 A. Brookline, yes. Maybe Brookline

3 Financing.

4 Q. Okay.

5 What interest do they currently have

6 or what interest -- once the loan was made, what

7 interest did they have in it?

8 A. My recollection is they were

9 50 percent each.

10 Q. Okay.

11 And you were acting as their agent and

12 did you also service the loan?

13 A. Yes.

14 Q. Okay.

15 Does Kennedy Funding actually own the

16 loan?

17 A. Does Kennedy --

18 Q. At that time, at the time the loan was

19 made did Kennedy Funding actually own the loan or was

20 it owned by these participating entities?

21 A. I don't recall.

22 Q. Okay.

23 What is your understanding, and let me

24 ask you, I had Fed Exed up to you, did you receive

25 some documents from me this morning via Fed Ex?

1 A. I received some documents from
2 somebody, I don't know if they were from you, related
3 to the Pawleys matter, yes.

4 Q. Yes, okay.

5 And did also yesterday after I
6 designated those and compiled them and had them sent
7 to you, your lawyer, Mr. Jordan, gave me a -- some
8 more documents that dealt -- that came in the closing
9 binder for the loan.

10 Do you also have those updated
11 documents that he sent me?

12 A. I believe I do, yes.

13 Q. Okay.

14 During the course of the deposition
15 I'm going to be referring to these documents and if
16 you have them there, then I would ask, you know, when
17 we do talk about it, we'll hand them to the court
18 reporter and we'll have her mark them as exhibits so
19 we'll know what we're talking about.

20 Okay?

21 A. Okay.

22 Q. All right, so -- and actually, if you
23 have that closing binder for the loan, which was
24 delivered to me yesterday, it's labeled KENNEDY 01135
25 through KENNEDY 01418.

12

1 Would you just hand them to the court
2 reporter?

3 A. My numbers are different at the
4 bottom.

5 The number of my closing binder for
6 the loan that I received today says KENNEDY _ 00027
7 and goes all the way through Kennedy _ 00240.

8 Q. Right.

9 And as I was explaining to you
10 yesterday, the documents that were originally given
11 to us were not the complete closing binder and
12 Mr. Jordan provided us with a more full set of
13 documents later yesterday, which were the Bates
14 numbers I had just given you of 1135 through 1418.

15 Do you not have those documents?

16 A. I do not have them in front of me now.

17 Q. Okay.

18 MR. JORDAN: Let's go off the record
19 for a second.

20 (Whereupon, a discussion was held off
21 the record.)

22 (Whereupon, a brief recess was now
23 taken.)

24 (Deposition Exhibit 1, copy of
25 complete closing binding bearing Bates stamps

1 KENNEDY 01135 through KENNEDY 01418, was
2 marked for identification, as of this date.)

3 BY MR. BUNCH:

4 Q. Mr. Wolfer, thanks for taking care of
5 that with the exhibit.

6 Prior to -- we've marked as deposition
7 Exhibit 1, the closing binder for the loan, is that
8 right?

9 A. Yes.

10 Q. And is that the entire contents of
11 your loan closing binder?

12 A. It appears to be.

13 Q. All right.

14 Now, prior to -- this closing took
15 place, according to the page -- first page of this
16 exhibit, Page 1135 on April 30th, 2009.

17 Prior to that, had you had any
18 dealings with either Mr. Will Wheeler, Ms. Peggy
19 Wheeler-Cribb or Pawleys Island North, LLC or an
20 entity called South Causeway?

21 A. Yes.

22 Q. All right, what other dealings did you
23 have with these folks?

24 A. Oh, I'm sorry, I thought you meant
25 dealings with them specific to this deal.

14

1 No, I don't recall any other dealings
2 unrelated to this deal, but I do recall many
3 conversations with Peggy Wheeler, I don't recall the
4 specifics of them, but prior to this closing.

5 Q. That's what I was trying to get out.

6 If you had had other loan
7 relationships with them or they had applied for loans
8 with you prior to this -- the one in issue in this
9 case?

10 A. Not that I'm aware of.

11 Q. Okay.

12 And how did Ms. Wheeler or how were
13 you first contacted by anyone involved with the
14 Wheelers or their companies?

15 A. I don't recall.

16 Q. In connection with this loan, you have
17 the closing binder here, would it be fair to say that
18 your knowledge of this transaction comes from your
19 communications with either Ms. Wheeler, Ms. Peggy
20 Wheeler-Cribb, I should say, Mr. Wheeler or the
21 documentation they have provided you in connection
22 with the loan?

23 MR. JORDAN: Object to the form.

24 You can answer.

25 A. I'm not sure I understand the question

1 specifically related to like when you say any
2 communication with them or the --

3 BY MR. BUNCH:

4 Q. Well, let me back up then.

5 Prior to this loan closing, you had
6 either conversations or e-mail communications with
7 Ms. Peggy Wheeler-Cribb?

8 A. Yes.

9 Q. Did you have both or was it by e-mail
10 only?

11 A. I recall it being both.

12 Q. Okay.

13 Did you have conversations with
14 Mr. Will D. Wheeler?

15 A. I don't recall.

16 MR. JORDAN: Tommy, Tommy --

17 (Whereupon, there was a pause in the
18 proceedings.)

19 BY MR. BUNCH:

20 Q. I was asking you if you in the course
21 of this loan, prior to the loan being made if you had
22 had conversations with Mr. Will D. Wheeler?

23 A. I do not recall.

24 Q. And in connection with the loan you
25 were provided with certain documentation, some of

16

1 which would be included in Deposition Exhibit 1.

2 Is that right?

3 A. Yes.

4 Q. All right.

5 And other than what might be in your
6 loan files and your conversations that you recall
7 having with Peggy Wheeler-Cribb, is there any other
8 information which you -- any other means by which you
9 would have gathered information concerning the
10 principals involved in the borrowing of this money?

11 And when I say the principals
12 involved, I'm talking about Pawleys Island North and
13 the guarantors, Peggy Wheeler-Cribb and Will D.
14 Wheeler.

15 A. I'm not sure that -- like, for
16 instance, the evaluation report that was done, I
17 don't know if it's included, if that's your question,
18 included in this closing binder, but it would be in
19 the loan file, if that's what you're referring to.

20 Q. What do you mean by evaluation report?

21 A. Like, for instance, I'm not -- you
22 know what, would you please restate your question so
23 I can see if I understand it better?

24 Q. I'm just trying to find out how you --
25 what information you knew about, how you went about

1 gathering information and what information you knew
2 about these people before making the loan?

3 A. We had various -- you know, several
4 conversations and there were e-mails exchanged and
5 there was, you know, draft loan commitments and
6 eventually an executed loan commitment.

7 And an evaluation report was done and
8 a loan offer was made consistent with that, and then
9 documents were provided in accordance with what's
10 necessary to close, and the loan closing occurred.

11 So I hope I answered your question.

12 Q. That's fine.

13 And what is this evaluation report
14 that you're referring to?

15 A. I recall there being -- Volpe Real
16 Estate Advisors did a report for us to determine the
17 value.

18 Q. The value of the property?

19 A. Correct.

20 Q. All right, since you refer to it, let
21 me ask you if you'd pull out the documents that are
22 Bates labeled KENNEDY 00472 through KENNEDY 00504.

23 A. I'm sorry, so you don't want me to
24 look at the one that I just printed out, the number
25 one that I just printed out those pages, it's on a

18

1 separate --

2 Q. Right, we're going to go back to that
3 larger document in a minute, but since you referred
4 to the Volpe report, I was going to confirm that what
5 you're talking about is what is within these pages I
6 just mentioned, which is 472 through 504.

7 A. Okay, hold on one second. I think I
8 have those in my office. One second, I'll be right
9 there.

10 (Whereupon, let the record reflect
11 that the witness has left the room.)

12 (Whereupon, there was a pause in the
13 proceedings.)

14 THE WITNESS: Okay, I have all the
15 documentation that I have in front of me now, so
16 sorry about that.

17 BY MR. BUNCH:

18 Q. Okay.

19 A. Okay, so you said starting with what
20 Bates Number?

21 Q. 472.

22 A. Okay, hold on. 472. Yes, I have 472
23 here in front of me.

24 Q. All right.

25 Ending with 504?

1 A. My paper clipped 00472 ends --

2 Q. Actually, that's my bad, my bad.

3 A. Because mine ends on 00475.

4 Q. Let me -- I paper clipped two things
5 together that should have only been -- let me start
6 that over again.

7 MR. JORDAN: Tommy, I think it starts
8 on 499.

9 BY MR. BUNCH:

10 Q. Yes, there's an e-mail on Page 497
11 that may be related.

12 A. Yes, I have that paper clip starting
13 from 00497, and then 499 is where the Volpe Real
14 Estate Advisors report is contained and it ends, the
15 paper clip ends at 00504.

16 Q. Right, and so when you said earlier in
17 reference to the question about what the evaluation
18 report was, you mentioned the Volpe report.

19 Is that what you're talking about
20 that's in these documents between 4 -- well, it
21 starts at Page 499?

22 A. Yes.

23 Q. All right, let's go ahead and ask the
24 court reporter to mark this as Deposition Exhibit 2,
25 this group of documents, 497 through 504.

20

1 A. Yes, that's exactly what we have in
2 the paper clip.

3 (Deposition Exhibit 2, copy of
4 documents bearing Bates stamps KENNEDY_00472
5 through KENNEDY_00504, was marked for
6 identification, as of this date.)

7 BY MR. BUNCH:

8 Q. All right, in reference to, Bates
9 label 497 on Deposition Exhibit 2, do you see that's
10 an e-mail by the name of somebody named Sue Gold?

11 A. Yes.

12 Q. Who is Sue Gold?

13 A. Secretary in our office or she was at
14 the time.

15 Q. And she is, apparently, communicating
16 by e-mail with Ms. Peggy Wheeler-Cribb, and there are
17 two attachments to the e-mail.

18 Do you see that?

19 A. Yes.

20 Q. And do you know is the first
21 attachment that says "South Wheeler-Cribb
22 3-2-09.pdf," would that be the letter that's attached
23 or that's on Page 498, KENNEDY 498?

24 A. Yes.

25 Q. And that letter is the loan commitment

1 to lend \$960,000?

2 A. Well, you use in your statement, the
3 loan commitment. It's a loan offer to lend 960,000.

4 Q. It's a loan offer --

5 A. Yes.

6 Q. -- for \$960,000 --

7 A. Exactly.

8 Q. -- to Peggy Wheeler-Cribb, is that
9 right?

10 A. Yes.

11 Q. Okay.

12 And then the second attachment would
13 be the Volpe Real Estate Advisors report?

14 A. Yes.

15 Q. All right.

16 And so the Volpe Real Estate Advisors
17 report talks about, essentially, two lots, lots on
18 which you were going to get security for this loan,
19 the Lots 3 and 4, it's a valuation of those lots
20 together?

21 A. Yes.

22 Q. All right.

23 Okay, let me go back to the larger
24 document that we had.

25 All right, it's mentioned this loan

22

1 closed in April 2009, April 30th, 2009, and I just
2 want to ask you about -- just try to establish some
3 information based on your loan documents. And if you
4 would look to Page 1305, KENNEDY 1305.

5 A. Yes.

6 Q. All right, based on the documents that
7 are attached beginning at KENNEDY 1305 and continuing
8 through KENNEDY 1308, based on that, your assessment
9 -- would your assessment be that the Articles of
10 Organization for Pawleys Island North, LLC were filed
11 with the South Carolina Secretary of State on
12 March the 4th, 2009?

13 A. That appears to be the case.

14 Q. Okay.

15 And then going to Page 1345 of
16 Deposition Exhibit 1, that document would show that
17 Mr. Will Darwin Wheeler, D-a-r-w-i-n, was a
18 99 percent -- that his membership share in Pawleys
19 Island North, LLC was 99 percent as to financial and
20 as to voting rights, is that right?

21 A. Yes.

22 MR. JORDAN: Objection to form.

23 You can answer.

24 A. Yes.

25 BY MR. BUNCH:

1 Q. Would that be your understanding of
2 Mr. Wheeler's interest in the company, Pawleys Island
3 North, LLC?

4 A. That's what it appears to be on the
5 piece of paper in front of me.

6 I don't recall seeing this previously,
7 so I'm looking at it now, but that appears to be the
8 case, yes.

9 Q. Okay.

10 And in your loan agreement, I believe
11 it's the loan agreement, let me get the correct
12 title. Well, it's called a Loan and Security
13 Agreement, which begins on Page 1141.

14 A. Okay.

15 Q. All right, if you go to Page 11 of the
16 Loan and Security Agreement, which is at KENNEDY
17 Bates -- the Bates Number is KENNEDY 01153 --

18 A. Yes.

19 Q. -- that would also reflect that
20 Mr. Wheeler had a 99 percent ownership interest in
21 Pawleys Island North, LLC, is that right?

22 A. That appears to be the case.

23 Q. And the document was signed off on
24 KENNEDY Bates Number 01176 by Jeffrey Wolfer, is that
25 right?

24

1 A. Yes.

2 Q. And who is Jeffrey Wolfer?

3 A. My brother, and at the time the
4 president and co-CEO of the company.

5 Q. So it would have been the
6 understanding then of Kennedy Funding at the time of
7 the closing of this loan that Mr. Will D. Wheeler had
8 a 99 percent interest in Pawleys Island North, LLC?

9 A. From what you're showing me here, yes.

10 Q. Okay.

11 And going to the mortgage for the
12 property, which is at in the Deposition Exhibit 1,
13 beginning at 1193.

14 A. I have 1193 in front of me, just in
15 case you're waiting on me.

16 Q. Yes.

17 And then the entire mortgage, itself,
18 goes through page KENNEDY 1245.

19 Would you confirm that, please, or
20 tell me if that's not right?

21 MR. JORDAN: What numbers were those,
22 Tommy?

23 MR. BUNCH: Beginning at KENNEDY 1193
24 and going through KENNEDY 1245.

25 A. That appears to be correct.

1 BY MR. BUNCH:

2 Q. And then I'm just trying to confirm
3 the information in the documents here.

4 If you would go to the
5 next-to-the-last page that we were just referring to,
6 which is KENNEDY 01244.

7 A. Okay.

8 Q. It shows that as security for the
9 loan, the mortgaged property is Lots 3 and 4 of some
10 property located at Pawleys Island, South Carolina?

11 MR. JORDAN: Object to the form, but
12 you can answer.

13 A. Yes.

14 BY MR. BUNCH:

15 Q. Okay.

16 Is there any other real estate
17 security for the loan, other than Lots 3 and 4?

18 A. Not that I recall.

19 Q. Okay.

20 And do you recall that one of those
21 lots was encumbered by a mortgage to First South Bank
22 in the approximate amount of \$300,000?

23 A. I don't recall that, but that's quite
24 possibly the case.

25 Q. Okay.

26

1 If you would go to KENNEDY 01138 in
2 Deposition Exhibit 1.

3 A. Okay, I'm there.

4 Q. Now, this is the Loan Closing
5 Statement, is that right?

6 A. Yes.

7 Q. And Item 1L, yes, Item 1L shows a
8 First South Bank payoff of \$300,000?

9 A. Yes.

10 Q. What do you know about that?

11 A. I don't recall any specifics on it
12 whatsoever. I'm just -- I see it here on the Closing
13 Statement.

14 Q. Okay.

15 Do you have any knowledge as to
16 whether that encumbered both of the lots or one of
17 the lots or any of the lots on which -- of real
18 estate on which your company took a mortgage?

19 A. I don't recall.

20 Q. Okay, I think we can put aside for
21 right now the large exhibit, Deposition Exhibit 1.
22 We might come back to it later, but I'm going to go
23 over a couple other things.

24 And going back to Exhibit 2, which was
25 the e-mail and the loan offer and the Volpe Real

1 Estate Advisor report, Volpe valued this property at
2 that time, the market value of \$1,920,000?

3 A. Correct.

4 Q. And your loan offer was to make a loan
5 at 50 percent of that market value, is that right?

6 A. I'd have to look at the Loan
7 Commitment, but that appears to be correct.

8 Q. Okay, if you looked at page
9 KENNEDY 00498 on Deposition Exhibit 2, could you
10 conclude that from that page as well?

11 A. Yes, you can conclude that 960 is
12 exactly 50 percent of a million-920.

13 So although I don't have the Loan
14 Commitment in front of me, I would assume the loan
15 commitment says we're going to lend 50 percent of the
16 value.

17 Q. What income was Kennedy Funding or the
18 lenders that you were agent for, what income were you
19 relying upon for repayment of this loan?

20 A. The sale of the individual lots.

21 Q. Okay.

22 So the plan was for the lots to be
23 sold and that would repay the loan?

24 A. Correct.

25 Q. Okay.

28

1 All right, let me go back to what I
2 had previously kind of messed up a little bit in
3 trying to mark these exhibits.

4 Let's pull this chain of e-mails
5 beginning at KENNEDY 00472 going through
6 KENNEDY 00475.

7 A. I have that in front of me now.

8 MR. BUNCH: Let's mark that e-mail
9 chain as Deposition Exhibit 3.

10 (Deposition Exhibit 3, copy of e-mail
11 chain bearing Bates stamps KENNEDY_00472
12 through KENNEDY_00475, was marked for
13 identification, as of this date.)

14 BY MR. BUNCH:

15 Q. If you would, turn to page 00473 of
16 that Deposition Exhibit 3. And there's an e-mail at
17 the top of the page from Doug Hinds, H-i-n-d-s,
18 Wednesday, March 11, 2009 at 4:40 p.m.

19 Do you see the e-mail I'm referring
20 to?

21 A. Yes.

22 Q. And it is to Roger Iorio, is that how
23 you pronounce it?

24 A. Iorio.

25 Q. Iorio.

1 And tell me, if you would, who these
2 other people in the -- who are cc'd, who is Michael
3 Leighton?

4 A. Michael Leighton is an attorney at the
5 law firm of Cole, Schotz, Meisel, Leonard & Forman
6 (sic).

7 Q. And is that Mr. Iorio's law firm?

8 A. Yes, Roger Iorio; yes.

9 Q. And what was their role in this loan,
10 the Cole law firm?

11 A. They represented us in the closing of
12 the transaction.

13 Q. They represented Kennedy Funding?

14 A. Yes.

15 Q. All right.

16 And Mr. Leighton was also a lawyer at
17 that law firm?

18 A. Yes.

19 Q. Mr. Iorio was a lawyer at that law
20 firm?

21 A. Yes.

22 Q. Who is Jon Hornik?

23 A. An attorney at the time at Kennedy
24 Funding.

25 Q. He was in-house at Kennedy Funding?

30

1 A. Yes.

2 Q. And Evan Bell is also in-house with
3 Kennedy Funding?

4 A. Yes.

5 Q. And he's in-house -- and when I say
6 in-house, more specific, he's in-house counsel for
7 Kennedy Funding?

8 A. Yes.

9 Q. All right.

10 And who is Mautone, LLC?

11 And if I am pronouncing that
12 incorrectly, just let me know.

13 A. I do not recall.

14 Q. All right.

15 Do you see in the document it says the
16 property presently owned by Will D. Wheeler -- in the
17 body of the e-mail, I should say, the property is
18 presently owned by Will D. Wheeler?

19 A. No, actually, we're looking at the
20 e-mail of March 11th, 2009 at 4:40?

21 Q. Yes.

22 A. It says:

23 "I am answering this in Mr. Hinds'
24 absence this afternoon. He will receive these
25 documents in the morning.

1 "First of all" --

2 Q. Right.

3 A. "First of all, the new borrower is
4 Pawleys Island North, LLC. Copies of the Articles of
5 Organization were e-mailed to Mr. Leighton yesterday.
6 Property is presently owned" -- I think that's what
7 you're getting at -- "by Will D. Wheeler and will be
8 conveyed to Pawleys Island North, LLC.

9 "Also, it is my understanding the loan
10 was to be for \$1,200,000."

11 Q. Okay.

12 So the information conveyed either
13 to -- well, it was conveyed to -- in-house to Kennedy
14 Funding, as well as to outside counsel, that as of
15 March 11th the property at issue was owned by
16 Mr. Wheeler?

17 A. Yes.

18 Q. I'm finding another document in my
19 stack here.

20 (Whereupon, there was a pause.)

21 MR. BUNCH: All right, if you would,
22 let's mark for Deposition Exhibit 4 the documents
23 that are Bates labeled KENNEDY 1113 through 1125.

24 A. Could you repeat those numbers one
25 time so I can just make sure?

32

1 Q. KENNEDY 1113 through KENNEDY 1125.

2 A. Yes, I have those here.

3 MR. BUNCH: Okay, let's mark those as
4 Deposition Exhibit 4.

5 (Deposition Exhibit 4, copy of
6 documents bearing Bates stamps KENNEDY_01113
7 through KENNEDY_01125, was marked for
8 identification, as of this date.)

9 BY MR. BUNCH:

10 Q. If you would turn to the page KENNEDY
11 01119. Actually, that information starts on the
12 prior page or that whatever it pertains to in Item 18
13 starts on the prior page of 1118.

14 Okay?

15 A. Okay, yes, I have that here right in
16 front of me.

17 Q. All right, in the column to the left
18 it says, "Responsible party." And I'm looking at
19 Item 18, beginning on Page 1118. It says,
20 "Responsible party," and it says, "BC/TIC."

21 What do the initials BT/TIC mean?

22 A. Borrower's counsel and, I think,
23 that's title insurance company.

24 Q. Okay.

25 And what is this -- what is this

1 document that I'm looking at, is this the -- a
2 closing binder checklist?

3 A. Yes. It appears to be, yes.

4 Q. And actually, not to mislead you or
5 misstate, if you go to Page 1115, it's a preliminary
6 closing checklist, at least that's what it's titled.

7 A. Yes.

8 Q. Okay.

9 That was sent out to Mr. Robert Gwinn
10 by this e-mail of April 28, 2009 on Page 1113?

11 A. Yes.

12 Q. And explain who Robert Gwinn is.

13 A. I don't know.

14 Q. Do you know if he's the borrower's
15 counsel?

16 A. It would make sense that he would be,
17 but I am not certain of that. But it would seem that
18 would be the case.

19 Q. All right.

20 All right, going back to this
21 Page 1118, apparently, there were some searches
22 performed at Item 18?

23 A. Yes.

24 Q. And those searches were performed on
25 Pawleys Island and that would refer to the borrower

34

1 Pawleys Island North, LLC as one of the searches?

2 A. Appears to be, yes.

3 Q. They were also searches performed on

4 Peggy Wheeler-Cribb and Will Darwin Wheeler?

5 A. Yes, appears to be.

6 Q. Included in the searches, and I'm

7 focusing now on Mr. Will Wheeler, included in those

8 searches were litigation reports, federal and county

9 litigation?

10 A. It states that on this closing

11 checklist under Will Darwin Wheeler; yes.

12 Q. Is this a record of Kennedy Funding?

13 A. Yes.

14 Q. Okay.

15 And it would indicate that Kennedy

16 Funding had received some sort of information in

17 response to a record search for federal and county

18 litigation?

19 A. Yes.

20 Q. And down at the bottom of that column

21 under the status notes pertaining to Will Darwin

22 Wheeler it says, "Borrower to provide e-mail status

23 of litigation against Mr. Wheeler."

24 Do you see that?

25 A. Yes.

1 Q. To what does that refer?

2 A. I don't recall. I leave this up to
3 our attorneys.

4 Q. Okay.

5 Are you aware that Mr. Wheeler was
6 being sued at the time by Mr. Mars Sapp?

7 A. Back in 2009, I don't recall if I was
8 ever aware of that.

9 Again, we -- you know, I relied on our
10 in-house attorney, as well as our outside firm, in
11 this case Cole Schotz, to make -- you know, to make
12 sure we're getting a valid first lien with title
13 insurance.

14 MR. BUNCH: All right, well, let's
15 pull up page -- let's mark as another deposition
16 exhibit, it's two pages here, KENNEDY 01053 to 01054.

17 MR. JORDAN: What was that number
18 again, Tommy?

19 MR. BUNCH: 01053 to 01054.

20 And for what it's worth, 01054 is
21 Page 2 of a two-page document, but it's also blank.

22 THE WITNESS: I do not see that in
23 front of me here. Just repeat the numbers one more
24 time, I'll do one more search.

25 MR. BUNCH: 1053 and 1054.

36

1 THE WITNESS: So 1053, 1054.

2 MR. JORDAN: It comes after 1035.

3 They jump around. It's not sequential.

4 THE WITNESS: I have one big clipped
5 thing that is 00950 that goes through 01033.

6 Then I have the -- okay, hold on. No,
7 this is some of it. No, this is not it.

8 No, that's not it.

9 This is not in the item marked 1,
10 right?

11 No, no, it's not there. Okay. I
12 don't know --

13 MR. JORDAN: Kevin, it should be a
14 couple documents behind the document we just looked
15 at.

16 THE WITNESS: Okay, a couple documents
17 behind the one we just looked at.

18 MR. JORDAN: Like three behind the one
19 we just looked at.

20 THE WITNESS: All right, where we just
21 were, let's just see that, was 01113 through 01124 or
22 25, sorry.

23 MR. JORDAN: Yes. And right behind
24 those is 1053 and 1054.

25 THE WITNESS: Okay, so hold on.

1 (Whereupon, there was a pause in the
2 proceedings.)

3 THE WITNESS: I just found it. So I
4 have that behind 1034, 1035, then it goes to 1053 and
5 1054.

6 So you want me to have 1053 and 1054?

7 MR. BUNCH: Yes, marked as deposition
8 Exhibit 5.

9 (Deposition Exhibit 5, copy of
10 document bearing Bates stamps KENNEDY_01053
11 through KENNEDY_01054, was marked for
12 identification, as of this date.)

13 BY MR. BUNCH:

14 Q. All right, again, that's an e-mail
15 from Roger Iorio on the first page at the top of
16 Page 1053, is that right?

17 A. Yes.

18 Q. And Mr. Iorio is the counsel, outside
19 counsel with Cole Schotz for Kennedy Funding, is that
20 right?

21 A. Yes.

22 Q. Mr. Michael Leighton is also outside
23 counsel for Kennedy Funding, is that right?

24 A. Yes.

25 Q. And who is Tara Duggan Ryan?

38

1 A. She's also an attorney at the Cole
2 Schotz law firm.

3 Q. All right, Jon Hornik, was that the
4 one that used to be in-house with your company?

5 A. Exactly.

6 Q. Evan Bell is at that time and
7 currently in-house with your company?

8 A. Exactly.

9 Q. And so Mr. Iorio was communicating
10 with Mr. Robert Gwinn in this e-mail and asking for
11 an e-mail regarding the status of litigation against
12 Mr. Wheeler.

13 Do you see that?

14 A. Yes.

15 Q. Do you know what response Mr. Iorio
16 received?

17 A. I do not.

18 Q. Do you know if he received any
19 response?

20 A. I do not know that.

21 But, again, our attorneys would never
22 authorize us to close the loan unless we had a valid
23 first lien, title insurance and there were no
24 encumbrances.

25 Q. Do you know whether there was ever any

1 evaluation by anyone as to whether the conveyance of
2 property from Mr. Wheeler to Pawleys Island North,
3 LLC may have been a fraudulent conveyance?

4 MR. JORDAN: Objection to form.

5 You can answer.

6 A. I -- I don't know at all. I don't
7 recall that.

8 BY MR. BUNCH:

9 Q. By the way, going back to Deposition
10 Exhibit 4, which is the Page 1000 -- begins at 1113.

11 A. Yes, I have it here in front of me.

12 Q. This is also -- this is the one with
13 the preliminary loan closing checklist transmitted by
14 Mr. Iorio to Mr. Gwinn, is that right?

15 A. Yes.

16 Q. And just for the record, again, we've
17 got Mr. Michael Leighton, Tara Duggan Ryan, who are
18 also with Cole Schotz, listed on that as receiving
19 copies of that e-mail, is that right?

20 A. Yes.

21 Q. Mr. Hornik and Mr. Bell with your
22 company listed as receiving copies, is that right?

23 A. Yes.

24 Q. As well as Kevin Wolfer?

25 A. Yes.

40

1 Q. All right.

2 That would be you?

3 A. Yes.

4 Q. So when you received this e-mail with
5 this preliminary closing checklist, what would you
6 typically do with such an e-mail?

7 A. I would rarely spend any time
8 reviewing it at all. It was to our attorneys and I
9 could tell a closing checklist is normally handled by
10 our attorneys.

11 Q. Okay.

12 But had you reviewed it, you would
13 have seen that Mr. Wheeler was involved with
14 litigation?

15 A. I don't know if the litigation was
16 ongoing or it was just finished, I don't know. So
17 I -- you know, I don't know.

18 Q. All right.

19 I've said that, in fact, the document,
20 itself, specifically says it needs a status as to the
21 litigation, but had you reviewed the document you
22 would have known that Mr. Wheeler was involved in
23 some manner in some litigation, is that right?

24 A. Yes.

25 Q. Do you know if Pawleys Island North,

1 LLC owned any property other than Lots 3 and 4, owned
2 any real property other than Lots 3 and 4 on which
3 Kennedy Funding took a mortgage?

4 A. I don't recall that being the case.

5 Q. You don't recall that they owned any
6 other property?

7 A. Oh, I'm sorry, no. I thought you
8 asked me whether or not I recalled whether or not
9 that which Kennedy Funding took a mortgage on any
10 other property they owned.

11 I don't recall that we ever took a
12 mortgage on anything other than that Lots 3 and 4. I
13 think they do own other properties, but I don't know
14 what they are.

15 Q. Okay.

16 What would lead you to believe that
17 they did own other property other than Lots 3 and 4,
18 other real property?

19 A. I just recall from conversations with
20 Peggy Wheeler over the last couple of years how she
21 was trying to pay us back when she was in default. I
22 recall her mentioning she had some other properties
23 listed for sale.

24 So I remember something like that.

25 Q. Do you know whether those would have

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1 been owned by Pawleys Island North, LLC or by them
2 individually or by some other entities?

3 A. Do not know.

4 Q. All right, let's go back to the
5 Deposition Exhibit 1.

6 A. Okay, that big one; okay.

7 Q. That's the large document, closing
8 binder.

9 A. Yes, I have it in front of me.

10 Q. What was the -- and if it would be
11 contained in these documents, to your knowledge, what
12 would be the purpose of this loan to Pawleys Island
13 North and where would it be located in these
14 documents?

15 A. I don't know if there's a specific
16 item marked purpose of loan anywhere.

17 Clearly, the closing binder reflects
18 that they were paying off an existing mortgage that
19 may have been on one of the two lots and, obviously,
20 may be buying them time. But, again, I don't know
21 for sure.

22 Q. All right.

23 If you would, beginning on deposition
24 Exhibit 1, beginning at KENNEDY 1143, you've got the
25 Loan and Security Agreement.

1 A. I have that in front of me now, yes.

2 Q. And then if you turn over to the page
3 Bates labeled KENNEDY 1154, that's -- there are a
4 number of subparagraphs on that page that actually
5 begin -- the paragraph, itself, begins on Page 1152,
6 and it's representations and warranties of the
7 borrower.

8 Looking at Subparagraph O on
9 Page 1154, what limitations does the borrower have on
10 the use of this money?

11 MR. JORDAN: Objection to form.

12 You can answer.

13 BY MR. BUNCH:

14 Q. Well, what limitations, if any -- I'll
15 rephrase it.

16 Are there any limitations expressed in
17 Paragraph 6(o) on Page 1154 on the borrower's use of
18 the money that would come from the loan at issue
19 here?

20 A. Yes.

21 Q. What limitations are those?

22 A. "Proceeds from the loan shall be used
23 only as set forth in this agreement, THE Closing
24 Statement, and for other proper corporate limited
25 liability company purposes. No part of the proceeds

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1 of the loan shall be used directly or indirectly for
2 the purpose of purchasing or carrying any margin
3 stock within the meaning of Regulation U of the Board
4 of Governors of the Federal Reserve System or for the
5 purposes of purchasing or carrying or trading in any
6 stock under such circumstances as to involve borrower
7 in a violation of Regulation U of the Board of
8 Governors of the Federal Reserve System. No part of
9 the proceeds from the loan are intended to be used to
10 acquire any publicly-held stock of any kind."

11 Q. Okay.

12 And they go on more and talk about
13 restrictions on purchasing margin stock in the rest
14 of that subparagraph, is that right?

15 A. Yes.

16 Q. All right, but as to the -- all right,
17 so understanding that you can't use the loan to
18 purchase stock or in a publicly-held -- publicly-held
19 stock or to -- or margin stock, what about the
20 initial part of the first sentence of the
21 Subparagraph 6(o), does that limit the manner in
22 which Pawleys Island North could use the proceeds of
23 the loan?

24 MR. JORDAN: Object to the form.

25 You can answer.

1 A. Could you restate the question,
2 please?

3 BY MR. BUNCH:

4 Q. Does the first sentence of
5 Paragraph 6(o) in your mind limit the manner in which
6 Pawleys Island North can use the proceeds of the
7 loan?

8 MR. JORDAN: Same objection.

9 You can answer.

10 A. Yes.

11 Q. Okay.

12 Does it require that the loan be used
13 for a corporate limited liability company purpose,
14 and for that I'm referring to Pawleys Island North,
15 LLC?

16 A. Could you restate your question,
17 please?

18 Q. Does Paragraph 6(o), the first
19 sentence, require that the loan proceeds be used for
20 a corporate/limited liability company purpose, and by
21 that I am referring to Pawleys Island North, LLC?

22 MR. JORDAN: Object to form.

23 You can answer.

24 A. If I understand your question, yes.

25 BY MR. BUNCH:

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1 Q. Okay.

2 And kind of consistent with that, if
3 you would turn to the previous page of Deposition
4 Exhibit 1 to page Bates Number KENNEDY 1153, and look
5 at Paragraph 6(g) --

6 A. Yes.

7 Q. -- there's also some limitation in
8 terms of using the money in connection with the
9 operation of the borrower's business.

10 Would that be right?

11 MR. JORDAN: Object to form.

12 You can answer.

13 A. Yes.

14 BY MR. BUNCH:

15 Q. Okay.

16 And the borrower is Pawleys Island
17 North, LLC?

18 A. That's my understanding, yes.

19 Q. And your understanding of their
20 business was to try to sell these two lots located in
21 Pawleys Island on which your company took a mortgage?

22 A. I don't know if that includes their
23 entire scope of their business. I don't know that.

24 Q. Okay, but you understand that to be at
25 least one purpose of their business?

1 A. Would you repeat the question for me?

2 Sorry.

3 Q. Hang on one second.

4 The initial question, and I may not be
5 phrasing it exactly as I did earlier, the initial
6 question dealt with your understanding of the nature
7 of the business of Pawleys Island North, LLC and it
8 was based on something you had said earlier.

9 And I was trying to gather or trying
10 to determine from you if your understanding of the
11 nature of their business was to own and, ultimately,
12 sell these two lots at Pawleys Island.

13 A. I believe that was part of the nature
14 of -- of their business, yes. I don't know what else
15 they intended to do.

16 Q. Okay.

17 Are you aware of any other nature of
18 their business?

19 A. Not that I'm aware of, no.

20 Q. Okay. I'm going to ask you to get
21 another exhibit marked, Mr. Wolfer, and that is Bates
22 labeled KENNEDY 0950 through 1033.

23 THE WITNESS: Can you repeat that,
24 please?

25 MR. BUNCH: The documents are

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1 KENNEDY 950 through KENNEDY 1033.

2 THE WITNESS: Okay, I have starting
3 with 950 going through 1033 in front of me.

4 MR. BUNCH: All right, can we get
5 those marked?

6 And let me know when they're given
7 back to you.

8 (Deposition Exhibit 6, copy of
9 documents bearing Bates stamps KENNEDY_00950
10 through KENNEDY_01033, was marked for
11 identification, as of this date.)

12 THE WITNESS: Okay, I have it back in
13 front of me.

14 BY MR. BUNCH:

15 Q. Is that Exhibit 6?

16 A. Yes.

17 Q. All right, bear with me one minute, I
18 think I wrote down in my notes an incorrect
19 reference, so I need to go find something in this
20 document.

21 A. Okay.

22 (Whereupon, there was a pause.)

23 MR. BUNCH: Okay. I found what I
24 need.

25 BY MR. BUNCH:

1 Q. Can you turn to page KENNEDY 1005?

2 A. Yes.

3 Q. All right.

4 Do you see on that page there's a
5 strike-through in what was Paragraph 6(g), an earlier
6 version of the Loan and Security Agreement?

7 A. Yes.

8 Q. All right, why was that language
9 struck from the -- from this earlier version?

10 A. I don't recall.

11 Q. Who would know the answer to that?

12 A. Probably our attorneys.

13 Q. Mr. Iorio?

14 A. I don't know if it would be Roger
15 Iorio or Tara or Michael Leighton.

16 Q. Okay.

17 Mr. Wolfer, if Mr. Will Wheeler was
18 conveying an unencumbered lot owned by him to Pawleys
19 Island North, LLC, would that make it more
20 difficult -- based on your experience in the lending
21 industry, would that make it more difficult for
22 Mr. Wheeler's creditors to satisfy claims against him
23 out of that lot?

24 MR. JORDAN: Objection to form.

25 You can answer.

50

1 A. I don't know.

2 BY MR. BUNCH:

3 Q. Would it make it more difficult if
4 Mr. Wheeler were allowed to place a mortgage on the
5 property for Mr. Wheeler's creditors to satisfy
6 claims out of that lot?

7 MR. JORDAN: Same objection.

8 You can answer.

9 A. I don't know.

10 Q. Are you aware that at the time the
11 loan was authorized for recording, which actual
12 recording took place on or about May 5, 2009, that
13 that is when Mr. Wheeler conveyed Lots 3 and 4 to
14 Pawleys Island North, LLC?

15 A. I don't recall sitting here.

16 Q. Are you aware that that was done by
17 quitclaim deed?

18 A. I do not recall.

19 Q. Would the fact that a quitclaim deed
20 was used to convey the property from Mr. Wheeler to
21 Pawleys Island North, LLC, would that raise any
22 concern to you?

23 A. Not necessarily.

24 Q. As long as you got the title insurance
25 on the property and your -- the opinion letter, you

1 were okay with the quitclaim deed?

2 A. If my attorneys who I put -- I have
3 trust in our outside firm, as well as our in-house
4 attorneys, are comfortable, then I'm comfortable with
5 that.

6 Q. Would that raise a red flag to you
7 that something might be amiss that the product was
8 deeded by quitclaim instead any type of warranty
9 deed?

10 MR. JORDAN: Objection to form.

11 You can answer.

12 A. No, not necessarily.

13 BY MR. BUNCH:

14 Q. As I understand it, this loan has been
15 conveyed now to another financial institution, is
16 that right?

17 A. When you say the loan is conveyed, the
18 agency and the servicing of the loan has been
19 transferred; yes.

20 Q. All right, so explain to me what was
21 transferred.

22 A. The agency and servicing of the loan.

23 Q. So Kennedy Funding no longer services
24 the loan, is that what you're saying?

25 A. Correct.

52

1 Q. Who actually holds or owns the note?

2 A. I'm not sure.

3 Q. Okay.

4 What, to your knowledge, is the role
5 of BNP Paribas?

6 A. BNP is now acting as the agent and
7 servicer of the loan.

8 In addition, BNP has a -- okay, it's a
9 little confusing, but Brookline Financing, I think
10 the entity was called, which is 50 percent of the
11 loan, the interest in that has been transferred over
12 to BNP as well.

13 So BNP is a 50 percent owner in the
14 loan, as well as the agent and servicer of the loan
15 at this time.

16 Q. How did BNP acquire, if you know, its
17 50 percent interest from Brookline?

18 A. Through a Settlement Agreement.

19 Q. Arising -- what kind of Settlement
20 Agreement, a litigation Settlement Agreement or a
21 Loan Agreement or Settlement Agreement or what?

22 A. There -- there was a warehouse
23 facility created with Fortis Bank, a bank out of
24 Belgium, with the Brookline Financing. And the bank
25 out of Belgium was subsequently taken over by BNP

1 Paribas.

2 And when the warehouse facility was no
3 longer operating in the manner it should, the parties
4 entered into a Settlement Agreement.

5 Q. Do you know if any money exchanged
6 hands?

7 A. Between what entities?

8 Q. Between Brookline and BNP or
9 whoever -- or whoever the parties were to that
10 settlement.

11 A. There are a few Brookline entities.
12 There was Brookline Financing, Brookline Servicing,
13 Brookline Origination, so I don't recall under what
14 entity -- we certainly did not receive money in
15 exchange for transferring over the interests in the
16 loan from Brookline to BNP.

17 However, there may have been other
18 transfers related to servicing operations or whatnot.

19 Q. Okay.

20 So to your knowledge, did BNP pay
21 anyone for -- when I say pay, I mean actually write a
22 check or wire funds for its interest in the loan?

23 A. No.

24 Q. And who owns the other 50 percent of
25 the loan?

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1 A. I just want to clarify my earlier
2 answer just now.

3 When you say did BNP -- previously
4 Fortis Bank, when we closed the loan back in '09,
5 Fortis Bank put up their share of the 50 percent and
6 then Fortis Bank was subsequently taken over by BNP.
7 So when you asked the question did BNP put up money
8 for the transfer of the loan, if you're referring to
9 the recent settlements, no. But if you're referring
10 to at the time of closing a few years ago, if Fortis
11 Bank put up money, then yes.

12 Q. Okay. I think I -- I'm going on now.
13 That's fine, I appreciate that clarification.

14 So BNP now owns 50 percent of the loan
15 based on your understanding.

16 Who owns the other 50 percent?

17 A. A fund by the name of Morning Gate
18 Capital Partners.

19 Q. Which was one of the original lenders
20 as well?

21 A. Correct.

22 MR. BUNCH: Can we take about a two or
23 three-minute break?

24 THE WITNESS: Yes, I just have a quick
25 question.

1 (Whereupon, a discussion was held off
2 the record.)

3 (Whereupon, a brief recess was now
4 taken.)

5 BY MR. BUNCH:

6 Q. I think I only have one more question.
7 Mr. Wolfer, again, back on the record.

8 I just want to confirm that you are
9 the designee of Kennedy Funding, Inc. to answer
10 questions under the Rule 30(b)(6) deposition notice
11 that I issued or served on your counsel of
12 January 6th of this year?

13 A. Yes.

14 Q. Okay.

15 MR. BUNCH: That's all the questions I
16 have.

17 MR. JORDAN: I have no questions.

18 MR. BUNCH: I need the original and I
19 need it -- there's actually a hearing in the case
20 next Tuesday. Any chance getting it before then?

21 THE REPORTER: Yes, no problem.

22 MR. JORDAN: I guess I'll need a copy
23 as well at the same time Mr. Bunch receives his.

24 MR. BUNCH: You can send me an
25 electronic copy as well, if you can.

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1 (Whereupon, there was a pause.)
2 (Whereupon, at 12:19 p.m. the
3 deposition of Kevin Wolfer was adjourned.)
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1 C E R T I F I C A T E

2

3 I, STACY ANN MACE, a Certified Court
4 Reporter, License No. 30XI00146000, and Notary
5 Public, License No. 2300730, within and for the State
6 of New Jersey, do hereby certify:

7 That the proceedings hereinbefore set
8 forth were recorded by me and that such proceedings
9 are a true record of the testimony given by the
10 parties.

11 I further certify that this transcript
12 was prepared in accordance with Rule N.J.A.D.C.
13 13.43-5.8 and N.J.A.D.C. 13.43-5.9.

14 I further certify that I am not related to
15 any of the parties to this action by blood or
16 marriage, and that I am in no way interested in the
17 outcome of this matter.

18 ** The foregoing certification of
19 this transcript does not apply to any reproduction of
20 the same by any means unless under the direct control
and/or supervision of the certifying reporter. **

21

22

23

24

25

STACY ANN MACE, CSR
CSR NO. 30XI00146000

1 JANUARY 12, 2012 - KEVIN WOLFER

2 I wish to make the following changes for

3 The following reasons:

4 PAGE LINE

5 _____ CHANGE: _____

6 REASON: _____

7 _____ CHANGE: _____

8 REASON: _____

9 _____ CHANGE: _____

10 REASON: _____

11 _____ CHANGE: _____

12 REASON: _____

13 _____ CHANGE: _____

14 REASON: _____

15 _____ CHANGE: _____

16 REASON: _____

17 _____ CHANGE: _____

18 REASON: _____

19 _____ CHANGE: _____

20 REASON: _____

21 _____ CHANGE: _____

22 REASON: _____

23 _____ CHANGE: _____

24 REASON: _____

25 Hudson Reporting & Video, Inc. 1-800-310-1769

New York
Connecticut

Hudson Reporting & Video
Nationwide 1-800-310-1769

New Jersey
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EXHIBIT 1

CLOSING BINDER FOR LOAN

BETWEEN

PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company,

AS BORROWER

AND

KENNEDY FUNDING, INC.

AS AGENT

PRINCIPAL LOAN AMOUNT: \$960,000.00

CLOSING DATE: APRIL 30, 2009

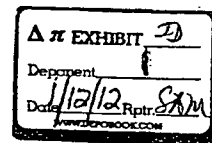
OUR FILE NO: 31392-0569

PREPARED BY:

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Attorneys at Law a Professional Corporation

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31392/0569-5836910v1



KENNEDY_01135

PARTIES

COLLATERAL: Two vacant building lots having tax
Parcel numbers 42-0167-042-02-00 (Lot 3) and 42-
0167-042-03-00 (Lot 4) located in Pawley's
Island, South Carolina.

BORROWER: PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company,
having an address at 334 Myrtle Avenue, Pawleys
Island, South Carolina 29585

GUARANTORS: Will Darwin Wheeler
Peggy Wheeler-Cribb

BORROWER'S COUNSEL: GWIN LAW OFFICE, LLC
Robert H. Gwin, III, Esq.
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577

BORROWER'S NJ COUNSEL: ARONSOHN WEINER & SALERNO
263 Main Street
Hackensack, New Jersey 07601

AGENT: KENNEDY FUNDING, INC.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attn: Mr. Jeffrey Wolfer

AGENT'S COUNSEL: COLE, SCHOTZ, MEISEL, FORMAN & LEONARD
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07602-0800
Attn: Michael R. Leighton, Esq.

3139ZAS69-3E36910v1

KENNEDY_01136

CLOSING BINDER

1. Loan Closing Statement
2. Loan and Security Agreement
3. Promissory Note
4. Mortgage and Security Agreement
5. UCC-1 Financing Statements
6. Assignment of Leases and Rents
7. Guaranty
8. Environmental Indemnity Agreement
9. Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports
10. Document Re-Execution Agreement
11. Certificate of Manager
12. Certificates of Liability Insurance
13. Closing Instruction Letter (with Title Proforma)
14. Opinion Letter of Borrower's Counsel
15. Opinion Letter of Borrower's New Jersey Counsel
16. Opinion Letter of Cole, Schotz, Meisel, Forman & Leonard P.A.
17. Title Review Memorandum
18. Environmental Review Memorandum
19. Search Memorandum
20. Notice of Waiver of Appraisal Rights

313920369-5830910v1

KENNEDY_01137

LOAN CLOSING STATEMENT

Borrower: PAWLEYS ISLAND NORTH, LLC
Lender: KENNEDY FUNDING, INC.
Amount of Loan: \$980,000.00
Date of Loan Closing: April 30, 2009

1	Loan Amount	\$	960,000.00
LOAN CLOSING DISBURSEMENTS			
A. KENNEDY FUNDING, INC.			
1	Balance of the Commitment Fee	\$	70,000.00
2	Prepaid Interest	\$	115,200.00
Subtotal: (1) - (2)		\$	185,200.00
B. OLEANDER TITLE AGENCY, INC.		\$	2,734.00
Title Insurance Premium, Endorsements, Recording Fees and Costs			
C. COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.		\$	27,500.00
Lender's Counsel's and Legal Fees, Costs and Expenses (\$37,500 less \$10,000 retainer)			
D. VOLPE REAL ESTATE ADVISORS		\$	5,645.50
Real Estate Evaluation Fee			
E. RED MANAGEMENT, LLC		\$	15,360.00
Mortgage Broker			
F. ARONSOHN, WEINER & SALERNO		\$	2,500.00
Borrower's New Jersey Counsel's Legal Fees, Costs and Expenses			
G. UIC, INC.		\$	500.00
Lender's Insurance Consultant			
H. EARTHWORKS		\$	2,500.00
Borrower's Environmental Consultant			
I. CT CORPORATION		\$	1,444.00
Search Reports			
J. CORPORATION SERVICE COMPANY		\$	1,800.00
Independent Manager			
K. PLANNING AND ZONING RESOURCE CORPORATION		\$	600.00
PZR Report			
L. FIRST SOUTH BANK		\$	300,000.00
Mortgage Payoff			
M. WALLACE ABSTRACT		\$	335.00

KENNEDY_01138

LOAN CLOSING STATEMENT

N.	GWIN LAW OFFICE, LLC Borrower's Counsel's Legal Fees, Costs and Expenses	\$ 15,000.00
O.	CORPORATION SERVICE COMPANY New Jersey Agent Fee	\$ 807.00
P.	USI GROUP Liability Insurance Premium	\$ 636.00
2	SUBTOTAL A. thru P.	<u>\$ 562,561.50</u>
3	NET AMOUNT TO BORROWER (1. minus 2.)	\$397,438.50

[SIGNATURE PAGE TO FOLLOW]

KENNEDY_01139

Apr 30 09 02:58P

Peggy Wheeler-Crabb

8432373885

P. 1

Agreed to and acknowledged as of the day set forth above.

PAWLEYS ISLAND NORTH, LLC

By: Peggy Wheeler-Crabb
Name: Peggy Wheeler-Crabb
Title: Manager

KENNEDY_01140

LOAN AND SECURITY AGREEMENT

Between

**PAWLEYS ISLAND NORTH, LLC,
a South Carolina limited liability company
as Borrower,**

AND

**KENNEDY FUNDING, INC.
as Agent for the
lenders named herein**

Date: as of April 30, 2009

313920000-5408236-v1

KENNEDY_01141

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Agreement"), dated as of April 30, 2009, between PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Borrower"), and KENNEDY FUNDING, INC. ("Agent"), a New Jersey corporation having an address at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule D attached hereto and incorporated herein by reference, in each case having an address care of Kennedy Funding, Inc., Two University Plaza, Suite 402, Hackensack, New Jersey 07601 (the aforesaid Agent and lenders are hereinafter collectively referred to as "Lender").

WITNESSETH

WHEREAS, Borrower has requested that Lender make a loan to Borrower in the amount of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "Loan"), subject to and upon the terms and conditions hereinafter contained, which Loan shall be evidenced by a Promissory Note as of even date herewith from Borrower to Lender (as may be amended, restated or modified from time to time, the "Note");

WHEREAS, the Loan is to be secured by certain instruments, agreements and documents, including, but not limited to, those items identified in the Principal Loan Documents as set forth on Schedule B hereto and made a part hereof, and payment and performance of the Loan is to be guaranteed pursuant to that certain guaranty of even date herewith from Guarantor (as hereinafter defined) to Lender (as may be amended, restated or modified from time to time, the "Guaranty");

WHEREAS, capitalized terms not otherwise defined herein shall have those meanings assigned to them in the Loan Documents (as hereinafter defined); and

WHEREAS, Lender has agreed to make the Loan to Borrower on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions hereinafter set forth, Borrower and Lender hereby agree as follows:

1. **Definitions.** As used herein:

(a) "Account" or "Accounts Receivable" means, in addition to the definition of account as contained in the Uniform Commercial Code, the right of Borrower to receive payment for goods sold or leased or for services rendered which are not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(b) "Account Debtor" means, in addition to the definition of account debtor as contained in the Uniform Commercial Code, the person or persons obligated to Borrower on an Account, or who is represented by Borrower to be so obligated.

(c) "Affiliate" of any Person (as hereinafter defined) shall mean any other Person which, directly or indirectly, controls or is controlled by, or is under common control with such Person. For the purposes of this definition, "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(d) "Business Day" shall mean any day upon which banks located in the State of New Jersey generally are open to conduct regular banking business.

(e) "Closing Date" shall mean the date on which this Agreement is executed by the parties hereto and the conditions set forth in Paragraph 5 are fulfilled to the satisfaction of Lender.

(f) the "Collateral" shall mean the Real Property Collateral, the Collateral described in Paragraph 4 hereof, any other collateral described in any Loan Document and any other property of Borrower and/or Guarantor now or hereafter subject to a security agreement, mortgage, pledge, assignment or other document granting Lender a security interest therein and/or securing the Loan.

(g) the "Default Rate" shall have the meaning ascribed thereto in the Note.

(h) "Dollar" or "\$" or "dollar" or any other terms of similar import shall mean United States Dollars, it being understood and agreed that all advances of the Loan shall be made in U.S. Dollars and repaid or reimbursed in U.S. Dollars without reduction for currency exchange fluctuation.

(i) "Environmental Laws" shall mean a collective reference when and as applicable to (i) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 U.S.C. Section 9601 *et seq.*, (ii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*, and (iii) any and all other federal, state and local statutes, laws, rules, ordinances, regulations and executive orders pertaining to environmental matters applicable to the Borrower's business and/or properties, as the same may be amended or supplemented from time to time.

(j) "Governmental Authority" or "Governmental Authorities" shall mean any federal, state, county or municipal governmental agency, board, commission,

officer, official or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over Borrower, the Guarantor (as hereinafter defined) or the Collateral.

(k) the "Guarantor" shall collectively mean, jointly and severally, Will Darwin Wheeler and Peggy Wheeler-Cribb.

(l) the "Indemnified Party" and "Indemnified Parties" shall mean Agent and Lender as well as their directors, officers, trustees, partners, employees, agents, attorneys and shareholders.

(m) "Independent Director" or "Independent Manager" shall mean a Person, acceptable to Lender in its sole discretion, who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager), officer, employee, partner, member, manager, contractor or attorney of the Borrower or any Affiliate of any of them; (b) a customer, creditor or other person who derives any of its purchases or revenues from its activities with the Borrower or any Affiliate; (c) a Person controlling or under common control with any such stockholder, director, officer, partner, member, manager, contractor, customer, creditor, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, contractor, customer, creditor or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(n) the "Loan Documents" shall mean this Agreement, the Note, the Mortgage (as hereinafter defined), the Guaranty and any other documents or agreements given to Lender by Borrower or the Guarantor in connection with the Loan whether or not specifically set forth herein, as each may be amended, restated or modified from time to time.

(o) "Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Borrower be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Borrower, to file a petition seeking, or consent to, reorganization or relief with respect to the Borrower under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Borrower or a substantial part of its property, to make any assignment for the benefit of creditors of the Borrower, to

admit in writing the Borrower's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

(p) "Mortgage" shall mean that certain Mortgage and Security Agreement of even date herewith, as may be amended, restated or modified from time to time, given by Borrower (as such term is defined therein), as mortgagor, in favor of Lender, as mortgagee, in connection with the Mortgaged Property, which Mortgage is given as security for the due payment of Borrower's obligations under the Note.

(q) "Person" or "Persons" shall mean any one or more individuals, partnerships, corporations (including a business trust), joint stock companies, limited liability company, trusts, unincorporated associations, joint ventures or other entities, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

(r) "Personalty" shall mean all Accounts, Accounts Receivable, Equipment, Inventory, Goods (as such terms are defined in the Uniform Commercial Code) and other personal property of the Borrower, as more particularly described herein.

(s) "Real Property Collateral" or "Mortgaged Property" shall mean that certain real property owned or leased by Borrower, situated in Pawleys Island, South Carolina as more particularly described in Schedule A attached hereto and made a part hereof.

(t) "Uniform Commercial Code" shall mean the Uniform Commercial Code, as enacted in the State of New Jersey and the jurisdiction in which the Mortgaged Property is located, as applicable, as in effect from time to time.

2. The Loan.

(a) Provided that no default shall have occurred and be continuing hereunder, Lender agrees, subject to the terms and conditions hereinafter set forth, to advance to Borrower up to Nine Hundred Sixty Thousand and 00/100 (\$960,000) Dollars.

(b) Subject to a final closing statement prepared by Lender's counsel and executed by Borrower (the "Closing Statement"), the Loan proceeds shall be disbursed as follows and used only for the following purposes:

(1) The sum of One Hundred Fifteen Thousand Two Hundred and 00/100 (\$15,200) Dollars shall be disbursed by Lender on behalf of Borrower on the Closing Date and simultaneously paid to Lender (the "Prepaid Interest") which shall be credited against interest payments due under the terms of the Note, as such interest payments become due; and

(2) The sum of Fifteen Thousand Three Hundred Sixty and 00/100 (\$15,360) Dollars shall be disbursed by Lender on behalf of Borrower on the

Closing Date and simultaneously paid to Red Management, LLC (the "Broker") as full satisfaction of the Broker's commission resulting from the consummation of this Loan; and

(3) The sum of Seventy Thousand and 00/100 (\$70,000) Dollars shall be disbursed by Lender on behalf of Borrower on the Closing Date and simultaneously paid to Lender as the balance of the commitment fee ("Commitment Fee") due to Lender pursuant to the loan commitment letter entered into by and between Borrower and Lender, dated February 12, 2009;

(4) The sum of Five Hundred and 00/100 (\$500.00) Dollars shall be disbursed by Lender on behalf of Borrower on the Closing Date and simultaneously paid to UIC, Inc. in payment of its insurance consulting fees; and

(5) The sum of Twenty Seven Thousand Five Hundred and 00/100 (\$27,500) Dollars shall be disbursed by Lender on behalf of Borrower on the Closing Date and simultaneously paid to Cole, Schotz, Meisel, Forman & Leonard, P.A., in payment of its legal fees.

(c) The foregoing disbursements may be made, notwithstanding contrary directions from Borrower, and for such purpose Borrower agrees that:

A. The foregoing constitutes an irrevocable direction or authorization to so disburse the funds (said authorization being coupled with an interest) and no further direction or authorization from Borrower shall be necessary to warrant any such disbursements; and

B. All such disbursements shall satisfy the obligations of Lender to advance funds to Borrower notwithstanding any other agreement or document to the contrary and shall be secured by the Mortgage as fully as if made by Borrower, regardless of the disposition by the party to whom such disbursements are so made.

(d) Prepaid Interest. So long as no Event of Default and no event which with the passage of time and/or the giving of notice would constitute a default hereunder or under any other Loan Documents shall have occurred, Lender shall credit Borrower from Prepaid Interest to the extent of amounts not so credited for payments of interest under the Note, it being understood, however, that the Prepaid Interest does not in any way limit Borrower's obligations to make payments of interest under the Note. Any amounts not so credited from Prepaid Interest on the Maturity Date (as defined in the Note) shall be credited to the payment of the Loan, and any remaining Prepaid Interest after payment in full of the Loan shall be disbursed to Borrower. Upon an Event of Default (as hereinafter defined), the Lender may credit to the extent of amounts not so credited from the Prepaid Interest any amounts then due hereunder and under the Loan Documents.

(c) Notwithstanding anything contained herein to the contrary, provided that no Event of Default and no event which with the passage of time and/or the giving of notice would constitute an Event of Default hereunder or under any other Loan Documents shall have occurred, Lender agrees, that in the event all amounts due and owing to the Lender pursuant to the Note and the other Loan Documents are paid in full on or prior to October 30, 2009 (other than through the refinance of the Loan with Lender), Borrower shall receive a credit at the time of such final payoff of Twenty Thousand (\$20,000) Dollars.

3. **The Note.** The obligation of the Borrower to repay all monies advanced by Lender to Borrower in connection with the Loan shall be evidenced by this Agreement and the Note. The Loan shall bear interest at the rate(s) set forth in the Note and shall be payable as provided in the Note with final payment due on the Maturity Date. All of Borrower's obligations hereunder and under the Note are secured by the Mortgage and the other Loan Documents. Should the principal of or interest on the Loan become due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, in the case of principal, interest shall be payable thereon at the rate per annum specified in the Note during such extension.

4. **Grant of Security Interest.**

(a) Borrower hereby assigns and pledges to Lender, and hereby grants to Lender a security interest in all property of the following types, wherever located and whether now owned or hereafter owned or acquired by Borrower, whether or not affixed to the Mortgaged Property, in all proceeds (including, without limitation, amounts payable under any policies of insurance with respect thereto), and Products (as such term is defined in the Uniform Commercial Code) thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, and in all increases or profits received therefrom:

(1) all Accounts, to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property;

(2) all Equipment (as such term is defined in the Uniform Commercial Code), and in all of Borrower's machinery and equipment of every kind, nature and description, as well as trucks and vehicles of every kind and description, including, but not limited to, trailers, cranes and hoisting equipment, whether presently owned by Borrower or hereafter acquired, and wherever located to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property;

(3) all Inventory (as such term is defined in the Uniform Commercial Code);

(4) all General Intangibles (as such term is defined in the Uniform Commercial Code), to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property;

(5) all deposit accounts of Borrower with Lender, now or hereafter existing, and all money, instruments, securities, documents, chattel paper, credits, claims, performance bonds, payment bonds, all other forms of surety to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property, and other property of Borrower now or hereafter in the possession or custody of Lender or any of its agents;

(6) all Chattel Paper (as such term is defined in the Uniform Commercial Code), to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property, including, but not limited to, all such Chattel Paper now or hereafter left in the possession of Lender for any purpose;

(7) all Instruments (as such term is defined in the Uniform Commercial Code), including any negotiable instruments or a securities, or any other writing which evidences a right to the payment of money and is of the type which is, in the ordinary course of business, transferred by delivery with any necessary endorsement or assignment whether presently owned by Borrower or hereafter acquired, to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property, including, but not limited to, all such Instruments now or hereafter left in the possession of Lender for any purpose;

(8) all Documents (as such term is defined in the Uniform Commercial Code);

(9) all Goods (as such term is defined in the Uniform Commercial Code), to the extent that the same relate to the Mortgaged Property and/or the operations at the Mortgaged Property whether presently owned by Borrower or hereafter acquired; and

(10) all books and records, including, without limitation, customer lists, credit files, computer programs, print-outs and other computer materials and records of Borrower pertaining to all of the Collateral.

(b) Borrower will perform any and all steps requested by Lender to create and maintain in Lender's favor a first and valid lien on and security interest in the Collateral or pledges of Collateral, including, without limitation, the execution, delivery, filing and recording of financing statements and continuation statements, supplemental security agreements, notes, filings with federal government offices and any other documents necessary, in the opinion of Lender, to protect its interest in the Collateral which liens shall be exclusive except for those liens expressly permitted elsewhere

herein. Lender and its designated officer are hereby appointed Borrower's attorney-in-fact to do all acts and things which Lender may deem necessary to perfect and continue perfected the security interests and Liens provided for in this Agreement, including, but not limited to, executing financing statements on behalf of Borrower.

5. Conditions Precedent to Lender's Obligations. Lender shall not be obligated to make the Loan hereunder unless Lender shall have received the following, all in form and substance satisfactory to the Lender in all respects:

- (a) the Note, duly executed by Borrower;
- (b) the Mortgage, duly executed by Borrower;
- (c) this Agreement, duly executed by Borrower;
- (d) the Guaranty, duly executed by Guarantor;
- (e) the Assignment of Leases and Rents, duly executed by Borrower;
- (f) the Assignment of Licenses, Contracts, Plans, etc., duly executed by Borrower;
- (g) the Environmental Indemnity Agreement, duly executed by Borrower and Guarantor;
- (h) the Document Re-Execution Agreement, duly executed by Borrower and Guarantor;
- (i) the Closing Statement, duly executed by Borrower;
- (j) certificates of insurers, or other evidence satisfactory to Lender, indicating that Borrower and Guarantor have obtained the policies of insurance as are required under the terms of the Mortgage;
- (k) a paid title insurance policy (without survey exception) in the full amount of the Loan issued by a title insurance company acceptable to Lender and insuring the Mortgage as a valid first lien on the Mortgaged Property, with such endorsements as Lender shall require and subject to the Permitted Exceptions identified in the Mortgage;
- (l) UCC-1 financing statements required to evidence or perfect Lender's security interest in the personal property now or hereafter owned by the Borrower and located on or used in connection with the Mortgaged Property and UCC-1 financing statements required to perfect Lender's security interest in the Collateral;
- (m) an appraisal of the Mortgaged Property;

- (n) financial statements and tax returns for Borrower, and the Guarantor;
- (o) evidence of a search of the public records which discloses no conditional sales contracts, chattel mortgages, leases of personalty, financing statements or title retention agreements filed or recorded against the Borrower or the Mortgaged Property;
- (p) a survey of the Mortgaged Property prepared in accordance with the "Minimum Standard Detail Requirements for ALTA and ACSM Land Title Surveys" jointly established by ALTA and ACSM in 2005, as updated, and certified to Lender by a registered land surveyor acceptable to the Lender ("Survey");
- (q) copies of all permits or approvals required by Governmental Authorities to such date with respect to Borrower or the Mortgaged Property, to the extent the same are necessary and appropriate to operate and develop the Mortgaged Property;
- (r) an environmental audit of the Mortgaged Property (Phase I and, if necessary Phase II);
- (s) the operating agreement of Borrower certified by the Manager of Borrower;
- (t) an incumbency certificate of Borrower which shall certify the names and titles of the members of the Borrower authorized to sign, in the name and on behalf of Borrower this Agreement and each other Loan Document to be delivered pursuant to this Agreement by Borrower, together with the true signatures of such officers, upon which certificate the Lender may conclusively rely;
- (u) consents of the Borrower authorizing the transactions to be entered into by Borrower in connection with this Agreement;
- (v) evidence that the Mortgaged Property is not located in a federal or state flood hazard area;
- (w) certification regarding debts and liens, executed by the owner of the Mortgaged Property;
- (x) payment of the Short Interest, and other fees and expenses required to be paid to or on behalf of Lender in connection with the Loan;
- (y) opinions of legal counsel to the Borrower with respect to such matters as the Lender may reasonably request including, but not limited to, opinions from Borrower's local South Carolina counsel and Borrower's New Jersey counsel;

(z) an opinion of legal counsel to the Guarantor with respect to such matters as the Lender may reasonably request including, but not limited to, opinions from Guarantor's local South Carolina counsel and Guarantor's New Jersey counsel;

(aa) evidence of the appointment of a New Jersey agent to accept service of process on behalf of the Borrower and Guarantor, pursuant to the requirements of the Loan Documents;

(bb) evidence demonstrating current full compliance with all applicable zoning, health, environmental and safety laws, ordinances and regulations (including, without limitation, approval of local, private or public sewage or water utility);

(cc) certification from Borrower that Borrower is not a party to any existing or pending or threatened litigation, except as previously disclosed to Lender;

(dd) evidence demonstrating receipt of all appropriate approvals meeting all applicable requirements of all Governmental Authorities having jurisdiction including, but not limited to, subdivision and site plan approvals, potable water supply, sewage discharge and sewage connection, use of septic tanks or alternatives;

(ee) satisfactory evidence that all roads and utilities necessary for the full utilization of the Collateral for its intended purposes have been completed or the presently installed and proposed roads and utilities will be sufficient for the full utilization of Collateral for its intended purposes; and

(ff) such other agreements, certificates or other documents as Lender or Title Insurance Company may reasonably request.

6. Representations and Warranties of Borrower. To induce Lender to make the Loan pursuant to this Loan Agreement, Borrower hereby represents and warrants to Lender as follows:

(a) By its acceptance of Lender's funds and execution of the Loan Documents, Borrower acknowledges, agrees and confirms that it has no defense, offset or counterclaim for any occurrence in relation to this Loan and Borrower acknowledges that Lender has complied with all of its obligations under the Loan Documents as of the date hereof.

(b) Borrower is a limited liability company, duly organized under the laws of the State of South Carolina and has all requisite power and authority and legal right to own its property, to carry on its business as it is now being conducted, to enter into this Agreement and the other Loan Documents entered into by it and to perform all of its obligations hereunder and thereunder.

(c) The execution and delivery by Borrower of the Loan Documents, and the performance of its obligations thereunder, have been duly authorized by all necessary action, corporate or otherwise, and do not and will not: (i) require any further action, consent or approval on the part of the members or managers of Borrower; (ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower, or the members or managers of Borrower; or (iii) result in any breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Borrower is a party or by which the Borrower or its properties may be bound or affected, and the Borrower is not in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(d) The Loan Documents have been duly executed and delivered by Borrower and are legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

(e) Except as previously disclosed to Lender, there is no material action, suit, proceeding, inquiry or investigation, at law or in equity, or before any court, governmental instrumentality, public board or arbitrator pending or threatened against or affecting Borrower or any of its properties or rights, wherein an unfavorable decision, ruling or finding would (i) to the extent not covered by insurance as to which the insurer has not disclaimed coverage, result in any material adverse change in the financial condition, business, properties or operations of Borrower; (ii) materially or adversely effect the transactions evidenced by the Loan Documents; (iii) materially impair the right of either to carry on its business substantially as now conducted; or (iv) adversely effect the validity or enforceability of the Loan Documents.

(f) To the best of Borrower's knowledge, Borrower is in compliance with all laws applicable to Borrower or its properties or assets.

(g) Borrower is a pre-existing corporation/limited liability company and is actively engaged in the operation of its business and has not been created as a vehicle to obtain the Loan. The proceeds of the Loan will be used by Borrower for the purposes set forth in Paragraph 6(e) in connection with the operation of Borrower's business.

(h) The following persons constitute the members of Borrower and their respective ownership interest in Borrower is set forth opposite their names:

Will Darwin Wheeler	99%
Peggy Wheeler-Cribb	1%

(i) There has been no material adverse change in the condition, financial or otherwise, of Borrower or the Guarantor since the date of its financial statements furnished to Lender.

(j) Borrower's properties and assets reflected on its financial statements referred to above, and all such properties and assets are free and clear of all mortgages, pledges, liens, charges or other encumbrances, except as reflected on such financial statements which have been previously provided to Agent.

(k) Borrower and the Guarantor have each filed all federal, state and other income or franchise tax returns which are required to be filed and have paid all taxes due or which may become due pursuant to such returns or pursuant to any assessment received by it.

(l) All timely authorizations, permits, approvals and consents of Governmental Authorities which may be required in connection with the valid execution and delivery of this Agreement and the other Loan Documents and the carrying out or performance of any of the activities or transactions required or contemplated hereunder or thereunder have been obtained (and remain in full force and effect).

(m) All financial statements, information and other financial data furnished by Borrower and the Guarantor to Lender in connection with the Agreement (i) were true, correct and complete in all material respects, as of the date of said financial statements, information and other data, (ii) such financial statements present fairly the financial condition of Borrower and the Guarantor at the respective dates thereof and the results of operations and changes in financial position for the periods to which they apply, and (iii) there have been no material adverse changes in the financial condition of Borrower or any Guarantor since the delivery by Borrower or the Guarantor, as the case may be, to Lender of the most recent financial statements.

(n) Borrower's assets, at a fair valuation, exceed Borrower's liabilities (including, without limitation, contingent liabilities). Borrower is paying its debts as they become due and Borrower anticipates the continuing ability to pay its debts as they become due. Borrower has capital and assets sufficient to carry on its business.

(o) Proceeds from the Loan shall be used only as set forth in this Agreement, the Closing Statement, and for other proper corporate/limited liability company purposes. No part of the proceeds of the Loan shall be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or for the purpose of purchasing or carrying or trading in any stock under such circumstances as to involve Borrower in a violation of Regulation U of the Board of Governors of the Federal Reserve System. In particular, without limitation of the foregoing, no part of the proceeds from the Loan are intended to be used to acquire any publicly-held stock of any

kind. As used in this subparagraph (o), the terms "margin stock" and "purpose of purchasing or carrying" shall have the meanings assigned to them in the aforesaid Regulation U, and the term "publicly-held," in respect to securities, shall have the meaning assigned to it in Section 220.7(a) of Regulation T of the Board of Governors of the Federal Reserve System.

(p) Borrower is not in violation of or in default under (nor on the Closing Date is there any waiver in effect which, if not in effect, would result in a violation or default under) any provision of Borrower's bylaws/operating agreement, or under any provision of any agreement, indenture, evidence of indebtedness, loan or financing agreement, certificate, lease or other instrument to which it is a party, or by which it is bound, or of any law, governmental order, rule or regulation, in any such case under this subparagraph (p) so as to affect adversely in any material manner its business, assets or financial conditions.

(q) All statements, representations and warranties made by Borrower or any other person in this Agreement, any other Loan Document and any other agreement, document, certificate or instrument previously furnished or to be furnished by said person to Lender under this Agreement or in connection with the Loan: (i) are and shall be true, correct and complete in all material respects at the time they were made and, in the case of those made prior to the Closing Date, on and as of the Closing Date, (ii) do not and shall not contain any untrue statement of a material fact at the time made, and (iii) do not and shall not omit to state a material fact at the time made necessary in order to make the information contained herein or therein not misleading or incomplete. Borrower understands that all such statements, representations and warranties shall be deemed to have been relied upon by Lender as a material inducement to provide the Loan.

(r) No person is entitled to receive from Borrower any brokerage commission, finder's fee or similar fee or payment in connection with the consummation of the transactions contemplated by this Agreement except as provided in Section 2 of this Agreement. No brokerage or other fee, commission or compensation is to be paid by Lender by reason of any act, alleged act or omission of Borrower with respect to the transaction contemplated hereby.

(s) Borrower has no knowledge of any of the following:

(i) The release or threatened release of any hazardous substance, pollutant or contaminant as each such term is presently defined in any applicable Environmental Laws resulting from any activity by or on behalf of Borrower or any predecessor in interest to the Mortgaged Property, including, without limitation, the generation, handling, storage, treatment, transportation or disposal of any hazardous substance, pollutant or contaminant at any of the past or present business locations and facilities of Borrower; or

(ii) Any past or future action taken or to be taken by any federal, state, county or municipal Governmental Authority or by any other person under any applicable Environmental Laws concerning the release of any hazardous substance, pollutant or contaminant into the soil, air, surface or subsurface water or the environment in general from any of the past or present business locations and facilities of Borrower; or

(iii) Any claims or actions brought or which are threatened to be brought by any Person against Borrower for damages occurring at or outside of any of the past or present business locations and facilities of Borrower resulting from the alleged release or threatened release of any hazardous substance, pollutant or contaminant by Borrower or any predecessor in interest, including, without limitation, claims for health effects to Persons, property damage and/or damage to natural resources.

(i) (A) Borrower's address set forth above is the location of Borrower's chief executive office, and is the only location where Borrower keeps its records concerning its Accounts, and its inventory and equipment. (B) Within four (4) months of the date of this Agreement, none of Borrower's assets have been moved from any jurisdiction or other locations than the present location of assets set forth above except for inventory or equipment purchased or sold by Borrower in the ordinary course of business from persons or entities customarily selling such inventory or equipment. (C) As of the date hereof, no inventory is now stored with a bailee, warehouseman or similar party. (D) As of the date hereof, Borrower does not hold any goods belonging to third parties or in which other parties have an interest, including any goods sold on a bill and hold basis. (E) Borrower does not presently purchase or otherwise hold goods on a consignment basis. (F) None of Borrower's inventory is of a nature that contains any labels, trademarks, trade names, or other identifying characteristics which are the properties of third parties, and the use of which by Borrower is in violation of the rights of such third parties or under license, royalty or similar agreements with any third parties. (G) No persons hold any goods of Borrower. (H) Borrower has not purchased any inventory or equipment except in the ordinary course of business for value and from persons customarily in the business of selling such inventory or equipment. (I) Borrower does not hold any instrument or chattel paper connected with any Account. (J) Borrower does not own any trademarks, trade names, patents or copyrights. (K) No surety bonds have been issued on behalf of Borrower with respect to any contracts or purchase orders out of which Accounts Receivable have arisen or are expected to arise.

(u) Borrower is the owner and the operator of the Mortgaged Property.

(v) There is an adequate supply of public utilities (including, without limitation, water, sewer and electric) to support the Project and the Project has access to such public utilities.

7. **Survival of Representations and Warranties.** The foregoing representations and warranties shall survive the execution of this Loan Agreement and the closing of the Loan.

8. **Affirmative Covenants.** To induce Lender to make the Loan pursuant to this Agreement, Borrower hereby covenants and agrees that so long as the Loan shall remain outstanding hereunder, Borrower shall comply with the following covenants:

(a) Borrower shall keep and maintain complete and accurate books, accounts and records. Borrower shall permit access thereto and examination thereof by Lender and any authorized representatives of Lender, at all reasonable times and places during normal business hours (including the right to make copies thereof at the cost and expense of Borrower).

(b) Borrower shall comply in all material respects with all applicable federal, state, county and municipal laws, rules, regulations and orders of any Governmental Authority having jurisdiction over Borrower, subject to the limitations expressly set forth in the Mortgage, except to the extent contested in good faith and by proper proceedings or where the failure to so comply would not have a material adverse effect on Borrower, including, without limitation, all Environmental Laws and health and safety laws.

(c) Borrower shall promptly notify Lender of the occurrence of any Event of Default or an event which, with the giving of notice or passage of time or both, would constitute an Event of Default and of the occurrence of any event or the commencement of any action, suit or proceeding which, if adversely determined, would adversely affect the condition, financial or otherwise, of Borrower or Guarantor.

(d) Borrower shall indemnify, protect, defend and save harmless the Indemnified Parties from and against (i) any and all losses, damages, expenses or liabilities of any kind or nature and from any suits, claims, or demands, by third parties including reasonable counsel fees incurred in investigating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with the Loan and the transactions contemplated herein, and (ii) any and all losses, damages, expenses or liabilities sustained by Lender in connection with any environmental sampling or cleanup relating to any properties or assets owned or otherwise used by Borrower in the operation of its business, or mandated by any Environmental Law; provided, however, Borrower shall not be obligated to indemnify, protect, defend and save harmless an Indemnified Party, if the loss, damage, expense or liability was caused by or resulted from the gross negligence or willful misconduct of that Indemnified Party. In case any action shall be brought against an Indemnified Party based upon any of the above and in respect to which indemnity may be sought against Borrower, the Indemnified Party against whom such action was brought, shall promptly notify Borrower in writing, and Borrower shall assume the defense thereof, including the

employment of counsel selected by Borrower and reasonably satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Upon reasonable determination made by the Indemnified Party, the Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof at the Indemnified Party's cost and expense. Borrower shall not be liable for any settlement of any such action effected without its consent, but if settled with Borrower's consent, or if there be a final judgment for the claimant in any such action, Borrower agrees to indemnify and save harmless said Indemnified Party against whom such action was brought from and against any loss or liability by reason of such settlement or judgment. The provisions of this subparagraph (d) shall survive the termination of this Agreement and the final repayment of the Loan.

(e) If Lender shall so require, Borrower agrees to establish and maintain at a banking institution of Lender's choice a lockbox, in accordance with Lender's standard lockbox agreement in effect from time to time, and to direct all Account Debtors to make remittances on all Accounts to said lockbox. Any and all remittances received in said lockbox may be applied to the Obligations of Borrower to Lender in accordance with Paragraph (g) hereof.

(f) If, notwithstanding the notices to Account Debtors to remit payments on Accounts to the lockbox referred to above, Borrower receives any payments on Accounts or other Collateral, Borrower agrees to receive any and all payments and remittances on Accounts and Inventory and other Collateral, including cash, checks, drafts, notes, acceptances or other forms of payment in trust for Lender and to deliver such payments in the identical form in which they were received, together with collection reports in form satisfactory to Lender.

(g) All proceeds of any Account(s) and inventory and other Collateral which are delivered to or otherwise received by Lender for application to the Loan provided for herein shall be deemed received as of the date of actual receipt by Lender, and shall be applied by Lender on account of the Obligations upon Lender's receipt of same; provided, however, that no checks, drafts, or other Instruments received by Lender shall constitute payment to Lender unless and until such item of payment has actually been collected by Lender. For the sole purpose of calculation of interest due to Lender from Borrower, all such proceeds and other payments on account of the Loan provided for in this Agreement, irrespective of the type or form of payment thereof shall not be considered applied on account of the Obligations until actual clearance of such funds.

(h) Borrower shall maintain all of its property in good working condition, ordinary wear and tear excepted (including obsolete and abandoned property).

(i) Borrower shall, within ten (10) days of the end of each month, deliver to Lender an aging of its Accounts and report of its inventory, and an aging of its accounts payable in such form as may be reasonably acceptable to Lender, and within

thirty (30) days of the end of each month, a duly completed accounts receivable reconciliation report in such form as may be reasonably acceptable to Lender.

(j) Borrower will continue to hold all necessary licenses and permits for the operations of their business, including but not limited to contract vendor registrations and account numbers.

(k) Lender (by any of its officers, employees and agents) shall have the right, at any time or times during Borrower's usual business hours (provided reasonable prior notice is given except if an Event of Default has occurred and is continuing), to inspect the Collateral, all records related thereto (and to make extracts from such records) and the premises upon which any of the Collateral is located, to discuss Borrower's affairs and finances with any person and to verify the amount, quality, quantity, value and condition of, or any other matter relating to, the Collateral.

(l) (A) Lender shall have the right at any time and from time to time, without notice, to notify Account Debtors to make payments to Lender, to endorse all items of payment which may come into its hands payable to Borrower, to take control of any cash or non-cash proceeds of Accounts and of any returned or repossessed goods; to compromise, extend or renew any Account or deal with it as it may deem advisable, and to make exchanges, substitutions or surrenders of Collateral, to notify the postal authorities, after an Event of Default, to deliver all mail, correspondence or parcels addressed to Borrower to Lender at such address as Lender may choose. (B) Borrower herewith appoints Lender or its designee as Attorney-in-Fact to endorse Borrower's name on any checks, notes, acceptances, drafts or any other instrument or document requiring said endorsement and to sign Borrower's name on any invoice or bills of lading relating to any Account, or drafts against its customers, or schedules or confirmatory assignment on Accounts, or notices of assignment, financing statements under the Uniform Commercial Code, and other public records, and in verification of Accounts and in notices to Account Debtors. (C) Lender shall have no obligation to preserve any rights against any Person obligated on any Account, chattel paper, instrument or other item of Collateral. Lender shall not be permitted to exercise the rights granted to it under the foregoing clauses (A) and (B) prior to an Event of Default.

(m) Borrower will furnish Lender with at least ten (10) days' prior written notice of any change in location of or addition to its chief executive office, the office where it keeps its records concerning its Accounts, its location of Inventory, Equipment and other assets, and other business locations.

(n) Pay and discharge, and require its subsidiaries to pay and discharge, when due, all taxes, assessments or other governmental charges imposed on them or any of their respective properties, unless the same are currently being contested in good faith by appropriate proceedings and adequate reserves are maintained therefor.

(o) Operate its properties, and cause those of its subsidiaries to be operated in compliance with all applicable orders, rules and regulations promulgated by the jurisdictions and agencies thereof where such properties are located and duly file or cause to be filed such reports and/or information returns as may be required or appropriate under applicable orders, regulations or law.

(p) Permit the Lender's representatives and/or agents full and complete access to any or all of the Borrower's and its subsidiaries' properties and financial records, to make extracts from and/or audit such records and to examine and discuss the Borrower's properties, business, finances and affairs with the Borrower's officers and outside accountants.

(q) Obtain lien releases and lien waivers, in a statutory standard form, as and when Borrower pays contractors, materialmen, laborers providing labor, equipment, or materials to the Mortgaged Property and submit copies of the same to Lender.

(r) Borrower shall, within ten (10) days of the end of each month, deliver to Lender a report of the Borrower's assets, including without limitation, a report on the status of any development or construction on the Mortgaged Property, in such form as may be acceptable to Lender in its sole discretion.

(s) Borrower shall provide Lender with written evidence of flood insurance, in form and with substance satisfactory to Lender in its sole discretion, prior to any construction on the Mortgaged Property.

(t) Borrower acknowledges that simultaneously with the execution and delivery of this Agreement it has delivered to Lender, to hold in escrow, that certain Assignment of Declarant's Rights ("Assignment of Rights") pursuant to which Borrower transfers to Lender any rights which it may have as Declarant in that certain Declaration of Covenants and Reciprocal Easement Agreement dated October 30, 2006, as such rights with respect to the Mortgaged Property were thereafter assigned to Borrower. Upon an Event of Default, Lender has the right to release the Assignment of Rights from escrow and record same with the State of South Carolina, County of Georgetown.

9. **Negative Covenants of Borrower.** To induce Lender to make the Loan pursuant to this Agreement, Borrower hereby covenants and agrees that so long as the Loan shall remain outstanding, Borrower shall not:

(a) Except for Permitted Encumbrances as set forth in the Mortgage, at any time: (i) create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any nature upon or with respect to Borrower's assets and properties or (ii) sign or file under the Uniform Commercial Code of any jurisdiction a financing statement which names Borrower as a debtor or (iii) sign any security agreement authorizing any secured party thereunder to file such financing

statement. Borrower further covenants and agrees not to grant any similar negative pledge to any other lender.

(b) Except as to the sale or disposition of assets which are obsolete or worn out and are no longer used or useful in the conduct of its business, convey, sell, lease, assign, transfer, hypothecate or otherwise dispose of any of its now or hereafter acquired property, business or assets.

(c) Create, incur, suffer to exist, assume, guaranty, endorse, become a surety, or otherwise become liable for the debt or other obligations of any other Person whether directly or indirectly, or make or incur any advance, purchase commitment, other obligation or loan for the direct or indirect purpose of paying or discharging any such obligations.

(d) Make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of, or make any other investment in any Person.

(e) Enter into any merger or consolidation or liquidate or wind-up or dissolve itself (or suffer any liquidation or dissolution) or convey, sell, lease, assign, transfer or otherwise dispose (directly or indirectly) of all or substantially all of its property, business or assets or make any material change in its present method of conducting business or permit any corporate guarantor to do any of the foregoing.

(f) Materially change, amend, alter or modify the bylaws/operating agreement or other governing documents of Borrower or permit any corporate guarantor to do any of the foregoing.

(g) Enter into or permit any Guarantor to enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any officer, director, shareholder or partner of Borrower or any Guarantor or Affiliate of any of the foregoing.

(h) Declare or pay any dividends on, distributions on or make any payment on account of, or set apart assets or a sinking fund for the purchase, redemption, defeasance, retirement or other acquisition of, any interest, shares or any class of stock or any warrant or option to purchase any such stock whether now or hereafter outstanding or make any other distribution in respect thereof, directly or indirectly whether in cash or property or obligations.

(i) Create, incur, suffer to exist any indebtedness, except (i) indebtedness in respect of the Loan; and (ii) indebtedness, if any, outstanding as of the date of this Agreement and shown on the financial statements previously delivered to Lender.

(j) Transfer, sell, lease or otherwise convey (directly or indirectly) any interest or shares of capital stock or membership or ownership interest in any guarantor.

(k) Purchase any Inventory or Equipment except in the ordinary course of business from persons customarily in the business of selling such Inventory or Equipment.

(l) Without prior written consent of Lender, remove the Collateral from its present location, except for the removal of Inventory upon its sale.

(m) Sell or transfer any Inventory to any Affiliate or subsidiary of Borrower except on arms length terms in the ordinary course of business.

(n) Sell, lease or transfer any of its equipment (except for abandoned or obsolete equipment) or other assets without the prior written consent of Lender except for sales of inventory in the ordinary course of business to good faith purchasers for value.

(o) Allow its existence of as a corporation/limited liability company to be other than in good standing and will not, without the prior written consent of Lender, dissolve or liquidate, or merge or consolidate with or acquire or affiliate with any other business entity or form any subsidiary.

(p) Change its name without furnishing to Lender at least ten (10) days' prior written notice thereof.

(q) Utilize any trade name, and will not in the future utilize any trade name without furnishing to Lender at least ten (10) days prior written notice thereof.

(r) Change the nature of its business.

(s) Sell, assign, transfer or dispose of any of its accounts or notes receivable, with or without recourse, except to the Lender.

(t) Except after notice to Lender and with Lender's prior written consent, partition or subdivide the Mortgaged Property.

(u) take any Material Action without the prior written consent of the Independent Manager (or Independent Director, as applicable).

10. **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" hereunder:

(a) failure of Borrower to make any payment of any installment of principal or interest when due under the Note;

- (b) failure of Borrower to pay any other sum when due hereunder or under the Note or any other Loan Document;
- (c) any representation or warranty of Borrower or the Guarantor made herein or in any other Loan Document or in any other writing given to Lender in connection with the Loan shall have been incorrect in any material respect as of the time when the same shall have been made or is not accurate when a further disbursement is to be made to Borrower;
- (d) the occurrence of an Event of Default under the Mortgage or any other Loan Document;
- (e) the sale, conveyance, assignment, transfer or other disposition or divestiture of Borrower's title to any of the Collateral, or the mortgage or other conveyance of a security interest in, or other encumbrance on any of the Collateral or any interest therein, whether voluntary or involuntary, except as provided herein;
- (f) any merger, consolidation, liquidation or dissolution, or the sale or transfer of all or substantially all of the assets, of the Borrower;
- (g) the transfer (directly or indirectly) of any of the stock or other ownership interest of Borrower;
- (h) any default in the performance or observance of any term, covenant or agreement to be performed by Borrower or Guarantor in this Loan Agreement or in any Loan Document;
- (i) the use of proceeds of the Loan for any purpose other than the purpose described in Paragraph 6(o);
- (j) any Loan Documents for any reason shall cease to be in full force and effect, the liens on the Collateral purported to be created thereby shall cease to be or are not valid and perfected liens having priority over all other liens except any encumbrances specifically permitted under such Loan Documents, or any Guarantor shall assert that it has no liability under the Guaranty to which it is a party;
- (k) one or more judgments or decrees shall be entered against Borrower or any Guarantor (not paid or fully covered by insurance) and all such judgments or decrees shall not have been vacated or discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof;
- (l) if Borrower or any Guarantor becomes insolvent;

(m) if Borrower or any Guarantor generally does not pay its debts as they become due and Borrower has failed to make any payment to Lender required by the Loan Documents;

(n) if Borrower or any Guarantor makes an assignment for the benefit of creditors;

(o) if Borrower or any Guarantor calls or causes to be called a meeting of creditors for the composition of debts;

(p) if there shall be filed by or with the consent or authorization of Borrower or any Guarantor a petition in bankruptcy for liquidation or for reorganization, or a custodian, receiver or agent is appointed or authorized to take charge of its properties, or Borrower or any Guarantor authorizes any such action;

(q) if there shall be filed against Borrower or any Guarantor a petition in bankruptcy, for liquidation, or for reorganization, or a custodian, receiver, or agent is appointed or authorized to take charge of its properties and Borrower or any Guarantor, as the case may be, has not consented to or authorized such action and such action is not dismissed within sixty (60) days; and

(r) if any license, permit, registration, vendor account or other approval required for the normal operation of Borrower's business or any of the Collateral shall be suspended or shall cease to be in full force and effect.

11. Remedies.

(a) Upon the occurrence of an Event of Default and at any time thereafter during the continuance of such Event of Default, in addition to any remedies available to Lender under applicable law, Lender may take one or more of the following remedial steps in any order of priority:

(i) Declare immediately due and payable the outstanding principal balance of the Note, together with all accrued and unpaid interest, fees and other sums or expenses payable thereunder and hereunder and accordingly accelerate payment thereof without presentment, demand, notice of intention to accelerate, notice of acceleration or notice of any other kind, all of which are expressly waived;

(ii) Take any action at law or in equity against Borrower or the Guarantor (a) to collect the payments then due and thereafter to become due under the Loan Documents, or (b) to enforce performance and observance of any obligation, agreement or covenant of Borrower or such other parties under the Loan Documents;

(iii) Exercise any and all rights and remedies provided for in the other Loan Documents as they relate to Borrower or any Guarantor.

(iv) Proceed with or without judicial process to take possession of all or any part of the Collateral provided for herein not already in the possession of Lender and Borrower agrees that upon receipt of notice of Lender's intention to take possession of all or any part of said Collateral, Borrower will do everything reasonably necessary to assemble the Collateral and make same available to Lender at a place to be designated by Lender. Borrower hereby waives any and all rights it may have, by statute, constitution or otherwise to notice from Lender, for Lender to obtain possession, by Court proceedings or otherwise, of the Collateral provided for in this or in any other agreement with Lender;

(v) So long as Lender acts in a commercially reasonable manner, assign, transfer and deliver at any time or from time to time the whole or any portion of the Collateral or any rights or interest therein in accordance with the Uniform Commercial Code, and without limiting the scope of Lender's rights thereunder, Lender may sell the Collateral at public or private sale, or in any other manner, at such price or prices as Lender may deem best, and either for cash or credit, or for future delivery, at the option of Lender, in bulk or in parcels and with or without having the Collateral at the sale or other disposition. Lender shall have the right to be the purchaser at any public sale. Lender shall have the right to conduct such sales on Borrower's premises or elsewhere and shall have the right to use Borrower's premises without charge for such sales for such time or times as Lender may see fit. Lender is hereby granted license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in advertising for sale and selling any Collateral and Borrower's rights under all licenses and franchise agreements shall inure to Lender's benefit. Borrower agrees that a reasonable means of disposition of Accounts shall be for Lender to hold and liquidate any and all Accounts. In the event of a sale of the Collateral, or any other disposition thereof, Lender shall apply all proceeds first to all costs and expenses of disposition, including reasonable attorneys' fees, and then to the Obligations of Borrower to Lender;

(vi) Elect to retain the Collateral or any part thereof in satisfaction of all Obligations due from Borrower to Lender upon notice of such proposed election to Borrower and any other party as may be required by the Uniform Commercial Code; and

(vii) Lender shall have the right immediately, and without notice or other action to set-off against any of any Borrower's Obligations to Lender any sum owed by Lender in any capacity to any Borrower whether due or not, and Lender shall be deemed to have exercised such right of set-off and to have made a charge against any such sum immediately upon the occurrence of an Event of Default, even though the actual book entries may be made at some time subsequent thereto.

(b) No remedy conferred in this Agreement or the other Loan Documents is intended to be exclusive of any other remedy, and each and every such

remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or equity or by statute or otherwise.

12. Payment of Expenses.

(a) Borrower agrees that it shall pay, within five (5) days after demand, all out-of-pocket expenses incurred by Lender in connection with this transaction including, without limitation, fees and expenses for any title searches required hereunder, recording and filing fees, and reasonable attorneys' fees incurred by Lender in connection with the Loan (including any amendments and waivers), the preparation of the Loan Documents, the administration of the Loan, inspection of the Mortgaged Property during the course of the Project and the enforcement Lender's rights and remedies under the Loan Documents.

(b) If Borrower should fail to perform or observe, or to cause to be performed or observed, any covenant or obligation under this Agreement or any of the other Loan Documents, then the Lender, may (but shall be under no obligation to) take such steps as are necessary to remedy any such nonperformance or nonobservance and provide for payment thereof, if any (which shall include, without limitation, steps necessary to cure any defaults of Borrower under any lease).

(c) All amounts expended or advanced by the Lender pursuant to this Paragraph 12 shall become part of the outstanding principal balance of the Loan and the Note, shall be secured by, among other things, the Mortgage, shall become due and payable by the Borrower upon demand by Lender, and shall bear interest at the Default Rate (such interest to be calculated from the date of such advance by Lender to the date of repayment thereof by Borrower).

13. Lender's Right to Assign. Lender shall have the right to sell, assign, participate, transfer or dispose of all or any part of its interest in the Loan without the consent or approval of Borrower or Guarantor.

14. Default Interest Rate. All sums advanced and all expenses incurred by Lender pursuant to any provision of this Agreement or of the other Loan Documents which are not paid when due shall bear interest at the Default Rate set forth in the Note from the date such sum was due until such sum is paid in full and shall be secured by the Mortgage.

15. Usury Savings. Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder or under the Note exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Borrower under this Agreement and the Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal

balance hereof or otherwise, the aggregate amounts paid hereunder or under the Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Borrower stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Borrower and Lender or the holder of the Note, and the party receiving such excess payments shall promptly credit such excess (only to the extent such payments are in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Borrower.

16. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender:	Kennedy Funding, Inc. Two University Plaza, Suite 402 Hackensack, New Jersey 07601 Attention: Jeffrey Wolfer Facsimile No. (201) 342-8373
With a copy to:	Cole, Schotz, Meisel, Forman & Leonard P.A. 25 Main Street Hackensack, New Jersey 07602-0800 Attention: Michael R. Leighton, Esq. Facsimile No.: (201) 489-1536
If to Borrower:	Pawleys Island North, LLC 334 Myrtle Avenue Pawleys Island, South Carolina 29585
With a copy to:	Gwin Law Office, LLC 2105 Cromley Circle, Suite B Myrtle Beach, South Carolina 29577 Attention: Robert H. Gwin, III, Esq. Facsimile No.: (843) 839-2244

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first

attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

17. No Waiver. No course of dealing between Borrower and Lender or any failure or delay on the part of Lender in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Lender and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. In the event any agreement contained in this Agreement or the other Loan Documents should be breached and thereafter waived by Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder or thereunder.

18. Failure to Exercise Rights. Nothing herein contained shall impose upon Lender any obligation to enforce any terms, covenants or conditions contained in this Agreement and the other Loan Documents. Failure of Lender, in any one or more instances, to insist upon strict performance of any terms, covenants or conditions of this Agreement and the other Loan Documents, shall not be considered or taken as a waiver or relinquishment by Lender of its right to insist upon and to enforce in the future, by injunction or other appropriate legal or equitable remedy, strict compliance with all the terms, covenants and conditions of this Agreement and the other Loan Documents. The consent of Lender to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or a waiver of the requirement for Lender's consent to be obtained in any future or other instance.

19. Prohibition Against Exercise of Rights Applicable Only to Individual Lenders. Borrower is hereby prohibited from exercising against Lender or Agent any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting Lender, including, without limitation, any right of set-off or any defense.

20. Miscellaneous.

(a) Choice of Law. THE LOAN WAS NEGOTIATED IN THE STATE OF NEW JERSEY, THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW JERSEY, WAS EXECUTED AND DELIVERED BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW JERSEY, AND THE PROCEEDS OF THE NOTE WERE DISBURSED FROM THE STATE OF NEW JERSEY, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN

ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY, WITHOUT REGARD TO CHOICE OF LAW CONSIDERATIONS, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED IN THE REAL PROPERTY COLLATERAL UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE JURISDICTION IN WHICH THE REAL PROPERTY COLLATERAL IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH JURISDICTION, THE LAW OF THE STATE OF NEW JERSEY SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER.

(b) Jurisdiction. AT LENDER'S ELECTION, TO BE ENTERED IN ITS SOLE DISCRETION, ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BORROWER OR LENDER ARISING OUT OF OR RELATING TO THIS NOTE OR THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT CORPORATION SERVICE COMPANY, LOCATED AT 830 BEAR TAVERN ROAD, SUITE 305, WEST TRENTON, NEW JERSEY 08628-1020, AS ITS AUTHORIZED AGENT TO RECEIVE AND FORWARD ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED IN THE MORTGAGE, SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW JERSEY. BORROWER (1) SHALL GIVE PROMPT NOTICE TO THE LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (2) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW JERSEY (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (3) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS

AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW JERSEY OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

(c) Borrower and/or Guarantor (as applicable) agrees if Borrower and/or Guarantor is required to make any deduction or withholding of foreign taxes (or taxes imposed because Borrower and/or Guarantor is a foreign person or entity) from any payment due to Lender herein, then the amount payable to Lender upon which such deduction or withholding is based, shall be increased to the extent necessary to ensure that, after all deductions or withholdings, Lender is paid a net amount equal to the amount Lender would have been paid in the absence of such deduction or withholding. At Lender's request, Borrower and/or Guarantor shall provide Lender with documentation adequate to demonstrate payment of such deduction or withholding by Borrower and/or Guarantor under this provision.

(d) The parties hereto agree that, notwithstanding anything contained herein to the contrary, there shall be required the consent of the Agent, Borrower and Lenders holding Fifty Percent (50%) of the outstanding balance or commitment to lend under the Loan to do any of the following:

(1) Amend or modify the terms of the Note, this Agreement, the Mortgage and the other Loan Documents or execute any waiver of any material event of default under this Agreement or the other Loan Documents.

(2) Consent to or permit any substitution, withdrawal or release of any collateral, any Guarantor or any other security securing the payment of the Loan except in accordance with the terms of the Note, this Agreement and the Loan Documents.

(e) Any condition of this Agreement or any other Loan Document which requires the submission of evidence of the existence or non-existence of a specified fact or facts implies as a condition the existence or non-existence, as the case may be, of such fact or facts, and Lender shall, at all times, be free independently to establish to its reasonable satisfaction and in its absolute discretion such existence or non-existence.

(f) Borrower and each Guarantor, as the case may be, shall execute and deliver, or cause to be executed and delivered to Lender, all other instruments, certificates and agreements as Lender or Lender's counsel may reasonably require, including, but not limited to, estoppel certificates stating that the Loan is in full force and effect and that there are no defenses or offsets thereto, to effect, confirm or assure the rights, remedies and liens intended to be granted or conveyed to Lender under this Agreement or any other Loan Document.

(g) A determination that any portion of this Agreement or any of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provisions of this Agreement or any Loan Document to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provisions it may apply to other persons or circumstances.

(h) Without the consent of, or notice to Borrower, Lender may add one or more additional co-agents to this Loan.

(i) This Agreement supersedes in all respects all prior agreements and understandings relating to the Loan, including, without limitation, the Loan Commitment.

21. Successors and Assigns.

(a) Borrower may not assign its rights under this Agreement without the prior written consent of Lender. Any such attempted assignment in violation of this Agreement shall be void and of no effect.

(b) All covenants and agreements in this Agreement shall bind and inure to the benefit of the respective permitted successors and assigns of the parties hereto and any holder or holders of the Note or any portion thereof.

22. Waiver of Jury Trial. BORROWER AND LENDER AGREE THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BORROWER OR LENDER ON OR WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER (AS APPLICABLE) IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS AGREEMENT.

23. Releases of Collateral.

(a) The Lender may release, regardless of consideration, the obligation of any Person or Persons liable for payment of any of the Obligations secured hereby, or may release any part of the Mortgaged Property or any other collateral now or hereafter given to secure the payment of the Obligations or any part thereof, without impairing, reducing or affecting the obligations of the Borrower or Guarantors under the Loan Documents.

(b) Within thirty (30) days of Borrower's request, provided: (i) Borrower is not in default hereunder or under any other Loan Document(s); and (ii) no event has occurred which with the passage of time and/or the giving of notice would constitute a default hereunder or under any other Loan Document(s), Lender shall release portions of the Mortgaged Property from the lien created by the Mortgage ("Released Property") subject to: (i) Borrower's payment to Lender of the Release Price (as hereinafter defined) for the Released Property and (ii) Borrower's delivery to Lender of documentation evidencing a bonafide arms length transaction for the sale of the Released Property. The Release Price for the Released Property shall be equal to the greater of: (y) (i) eighty percent (80%) of the net sale price of the Released Property (subject to reasonable and customary closing adjustments and sales commissions to be approved by Lender in Lender's reasonable discretion); and (ii) seventy-five percent (75%) of the gross sale price of the Released Property; or (z) the minimum Release Price acceptable to Lender in its sole discretion.

24. Publicity.

(a) Lender shall have the right to issue news releases, and publicize and/or advertise the fact that it has provided financing with respect to the project and/or the Mortgaged Property and in connection therewith Lender shall have the right to photograph and use pictures of the Mortgaged Property in any such advertisements, brochures, print, media and other copy.

(b) At Lender's request, Borrower, at Lender's cost and expense, shall erect a suitable sign or signs at the Mortgaged Property in a location which is clearly visible to the public and otherwise reasonably acceptable to Lender. The Sign shall be prepared by Lender and may contain, among other things, that financing for the Mortgaged Property is being provided by Lender or another Person and otherwise publicize Lender's or such Person's role in the financing. Lender shall coordinate the placement and maintenance of such signs on the Mortgaged Property with Borrower.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature

page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

26. **Joint and Several Liability.** Notwithstanding anything contained herein to the contrary, if there is more than one Borrower, each Borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Agreement.

27. **Single Purpose Entity/Separateness.** Notwithstanding anything contained herein to the contrary, Borrower represents, warrants and covenants as follows:

(a) Borrower has not owned, does not own and will not own any asset or property other than (i) the Mortgaged Property, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property.

(b) Borrower has not engaged and will not engage in any business other than the ownership, management and operation of the Mortgaged Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any affiliate of the Borrower, any constituent party of Borrower, any Guarantor of the Loan or any part thereof or any affiliate of any constituent party of Borrower or any Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Except as otherwise set forth herein or in the other Loan Documents, Borrower has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than the Loan. No indebtedness other than the Loan may be secured (subordinate or *pari passu*) by the Mortgaged Property.

(e) Borrower has not made and will not make any loans or advances to any third party (including any affiliate or constituent party of Borrower, any Guarantor or any affiliate or constituent party of Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party.

(f) Borrower: (i) is solvent and agrees to give prompt notice to Lender of the insolvency or bankruptcy filing of Borrower or any general partner, managing member or controlling shareholder of Borrower, or the death, insolvency or bankruptcy filing of any Guarantor; and (ii) will remain solvent.

(g) Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not amend, modify or otherwise change the articles of organization, certificate of formation, certificate of incorporation, articles of incorporation, bylaws or operating agreement or other organizational documents of Borrower.

(h) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party of Borrower and Borrower will file its own tax returns. Borrower shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any Guarantor or any affiliate of any such constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize separate stationery, invoices and checks.

(j) Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Borrower nor any constituent party of Borrower will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Borrower.

(l) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party of Borrower, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(m) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party of Borrower, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other Person.

(n) Borrower does not and will not guarantee, become obligated for or hold itself out to be responsible for the debts or obligations of any other person or entity or the decisions or actions respecting the daily business or affairs of any other person or entity.

(o) Borrower will not permit any affiliate or constituent party of Borrower independent access to its bank accounts.

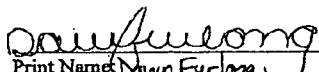
(p) Borrower shall pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations.

(q) Borrower shall have at least one (1) Independent Manager or Independent Director, as applicable.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Loan and Security Agreement as of the day and year first set forth above.

WITNESS:

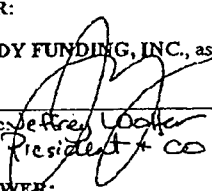

Print Name: Dawn Furlong

WITNESS:

Name:

LENDER:

KENNEDY FUNDING, INC., as Agent

By: 
Name: Jeffrey Walker
Title: President & co-CEO

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

By: _____
Name: Peggy Wheeler-Cribb
Title: Manager

IN WITNESS WHEREOF, the undersigned have executed this Loan and Security Agreement as of the day and year first set forth above.

WITNESS:

LENDER:

KENNEDY FUNDING, INC., as Agent

Print Name: _____

By: _____

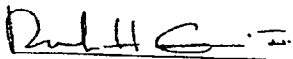
Name: _____

Title: _____

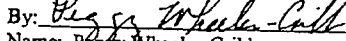
WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company



Name: ROBERT H. GWIN, II

By: 

Name: Peggy Wheeler-Cribb

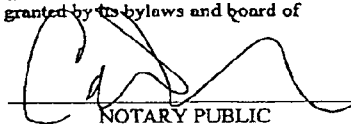
Title: Manager

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

I certify that on May 16, 2009, Jeffrey Walker personally came before me and this person acknowledged under oath, to my satisfaction, that he:

- (a) executed the attached Loan and Security Agreement; and
- (b) was authorized to and did execute the attached Loan and Security Agreement on behalf of and as Ken + Co. LLC of Kennedy Funding, Inc., the entity named in this instrument by virtue of authority granted by its bylaws and board of directors.

CARRIE-ANN L. HILLE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 10/13/2009


NOTARY PUBLIC

STATE OF)
) ss.:
COUNTY OF)

I certify that on April ____, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

NOTARY PUBLIC

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

I certify that on _____, 2009, _____ personally came before me and this person acknowledged under oath, to my satisfaction, that he:

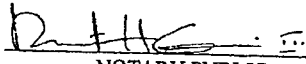
- (a) executed the attached Loan and Security Agreement; and
- (b) was authorized to and did execute the attached Loan and Security Agreement on behalf of and as _____ of Kennedy Funding, Inc., the entity named in this instrument, by virtue of authority granted by its bylaws and board of directors.

NOTARY PUBLIC

STATE OF SC)
) ss.:
COUNTY OF Horry)

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.



NOTARY PUBLIC

SCHEDULE A
DESCRIPTION OF THE COLLATERAL

31392/0000-5408836-4

A-1

KENNEDY_01180

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

SCHEDULE B

PRINCIPAL LOAN DOCUMENTS

1. Loan Commitment dated February 12, 2009;
2. Loan and Security Agreement dated as of the date hereof;
3. Promissory Note dated as of the date hereof;
4. Mortgage and Security Agreement dated as of the date hereof;
5. Document Re-Execution Agreement dated as of the date hereof;
6. Environmental Indemnity Agreement dated as of the date hereof;
7. Assignment of Leases and Rents dated as of the date hereof;
8. Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports dated as of the date hereof;
9. Guaranty dated as of the date hereof;
10. Loan Closing Statement dated as of the date hereof;
11. UCC-1 Financing Statements.

B-1

311920000-5408836-4

KENNEDY_01182

SCHEDULE C
INTENTIONALLY OMITTED

J13926000-5408836v4

C-1

KENNEDY_01183

SCHEDULE D

LENDERS

Brookline Financing SPV, LLC

MGSS Fund

PROMISSORY NOTE

\$960,000

April 30, 2009

FOR VALUE RECEIVED, the undersigned, **PAWLEYS ISLAND NORTH, LLC**, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "**Borrower**"), promises to pay to the order of **KENNEDY FUNDING, INC.** ("**Agent**"), with an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A annexed hereto (Agent and the lenders identified on Schedule A are hereinafter collectively referred to as "**Lender**"), the principal sum of **NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS**, or so much thereof as may be advanced by Lender to Borrower from time to time (the "**Principal Amount**"), together with interest on the unpaid Principal Amount thereof computed from the date advanced (the "**Commencement Date**"), at the rates provided herein until April 29, 2012 or such earlier date on which the Principal Amount becomes due and payable as provided herein (the "**Maturity Date**"); provided, however, that from and after (i) the Maturity Date, whether upon stated maturity, acceleration or otherwise, or (ii) the date on which the interest rate hereunder is increased to the Default Rate (as hereinafter defined) as provided herein, such additional interest shall be computed at the Default Rate.

As used herein, the term "**Default Rate**" shall mean a rate of interest of twenty-five percent (25.0%) per annum, but in no event shall the Default Rate be in excess of the Maximum Rate (as hereinafter defined).

If any payment of interest is not paid on or before the due date for such payment, a late charge equal to the lesser of ten percent (10%) of such overdue payment or the maximum amount permitted by applicable law shall automatically become due to the holder of this promissory note (as may be amended, restated or modified from time to time, the "**Note**"), subject, however, to the limitation that late charges may be assessed only once on each overdue payment. Said late charges do not constitute interest and shall constitute compensation to the holder of this Note for collection and co-lender administration costs incurred hereunder. In addition, if any payment of principal or interest is not paid when due, the holder of this Note shall have the right, upon notice to Borrower, to increase the rate of interest per annum on all amounts outstanding to the Default Rate and, upon said notice, such rate increase shall be effective retroactively as of the date from which the interest component of such overdue payment began to accrue and shall remain in force and effect for so long as such default shall continue. This paragraph shall not be construed as an agreement or privilege to extend the due date of any payment, nor as a waiver of any other right or remedy accruing to the holder of this Note by reason of any default.

Principal and interest hereunder shall be payable as follows:

J1392/0000-5408885-v4

KENNEDY_01185

(a) Interest only at the rate per annum equal to the greater of: (i) Twelve (12.0%) percent and (ii) the One (1) Month Libor Rate (as hereinafter defined), as adjusted from time to time, plus Eleven (11.0%) percent on the Principal Amount outstanding hereof shall accrue from the Commencement Date through and including April 29, 2010.

(b) Interest only at the rate per annum equal to the greater of: (i) Eighteen (18.0%) percent and (ii) the One (1) Month Libor Rate, adjusted from time to time, plus Seventeen (17.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2010 through and including April 29, 2011.

(c) Interest only at the rate per annum equal to the greater of (i) Twenty One (21.0%) percent and (ii) the One (1) Month Libor Rate, as adjusted from time to time, plus Twenty (20.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2011 through and including the Maturity Date.

(d) All interest payments payable to Lender hereunder shall be paid monthly in arrears, in an amount, as determined by Lender, commencing on June 1, 2009 and continuing on the first day of each month thereafter through and including the Maturity Date.

(e) All principal, interest and other sums due hereunder shall be due and payable in full on the Maturity Date.

As used herein, the term "One (1) Month Libor Rate" shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day, or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then the One (1) Month Libor Rate shall be determined by the Agent selecting an equivalent publication that published the One (1) Month Libor Rate, and if such One (1) Month Libor Rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Agent shall select a comparable interest rate index. If interest on this Note is calculated at the One (1) Month Libor Rate as provided herein, then the interest rate will be adjusted on May 1, 2009 and on the first day of each month thereafter (each an "Adjustment Date") following any change in the One (1) Month Libor Rate.

(f) Prepaid Interest (as defined in the Loan and Security Agreement of even date herewith, as may be amended, restated or modified from time to time, hereinafter, the "Loan Agreement"), if any, shall be utilized in accordance with the terms of the Loan Agreement.

Each payment hereunder shall be credited first to Lender's collection expenses, next to late charges, next to unpaid interest, and the balance, if any, to the reduction of

the Principal Amount. The interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

This Note may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Borrower shall not be entitled, by virtue of any prepayment or otherwise, to a refund of the Fee (as defined in the Loan Agreement), interest, any other fees, points, charges and the like paid by Borrower to Lender in connection with the loan hereunder (the "Loan") and for fees and expenses incurred by Lender in making the Loan, all of which payments shall be retained by Lender from and after the date each such payment is made hereunder.

Borrower and each surety, endorser and guarantor hereof hereby waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Borrower further waives trial by jury. No extension of time for payment of this Note or any installment hereof, no alteration, amendment or waiver of any provision of this Note and no release or substitution of any collateral securing Borrower's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower under this Note.

Any forbearance by the holder of this Note in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Loan or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Note. The acceptance by the holder of this Note of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Note to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

If this Note is placed in the hands of an attorney for collection, Borrower shall pay all costs incurred and reasonable attorneys' fees for legal services in the collection effort, whether or not suit be brought.

At the election of the holder of this Note, all payments due hereunder may be accelerated, and this Note shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Borrower fails to pay on or before the date due, any amount payable hereunder; (2) Borrower fails to perform or observe any other term or provision of this Note with respect to payment; (3) Borrower fails to perform or observe any other term or provision of this Note; or (4) there exists a default under the Mortgage (as hereinafter defined), a default under any Guaranty (as hereinafter defined) or a default under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor (as hereinafter defined) in connection with the Loan, which default is not cured within any grace period expressly provided therefor in such document. In

addition to the rights and remedies provided herein, the holder of this Note may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

If this Note is transferred in any manner, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof.

Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Borrower under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Borrower stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Borrower and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Borrower.

This Note is secured by, among other things, that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage"), an Assignment of Leases and Rents (as may be amended, restated or modified from time to time, the "Assignment"), an Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports (as may be amended, restated or modified from time to time, the "Assignment of Licenses"), all of the foregoing being of even date herewith and a first lien on the certain real estate collateral (the "Collateral") identified in the Mortgage, and is entitled to the benefits and security thereof. Reference is made to the Mortgage, Assignment and Assignment of Licenses for descriptions of the respective rights and obligations of the Borrower and Lender thereunder. This Note is guaranteed by the separate Guaranty of even date herewith (as may be amended, restated or modified from time to time, the "Guaranty") of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor") and reference is made to the Guaranty for the respective rights of the parties thereunder. Borrower hereby agrees to indemnify, defend and hold harmless Lender from and against any and all claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) which may be incurred by Lender in connection with or as a result of any default (following notice and the opportunity to cure provided for in such document) by Borrower or Guarantor under the Mortgage, Assignment, or Assignment of Licenses, or by the

Guarantor (following notice and the opportunity to cure provided for in such document) under the Guaranty, or a default (following notice and the opportunity to cure provided for in such document) under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor executed or delivered in connection with the Loan (collectively, the "Loan Documents").

By its acceptance of Lender's funds and execution of this Note, Borrower acknowledges, agrees and confirms that it has no defense, offset or counterclaim for any occurrence in relation to this Loan and Borrower acknowledges that Lender has complied with all of its obligations under the Loan Documents as of the date hereof.

All payments of principal and interest hereunder are payable in lawful money of the United States of America and shall be made by wire transfer to the account of Agent or Brookline Financing SPV, LLC, as instructed, at Valley National Bank, pursuant to wiring instructions to be provided to Borrower at the closing of the Loan or to such other accounts as may be instructed by Agent.

Borrower is hereby prohibited from exercising against Lender (as a group) or Agent, any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the parties constituting Lender, including, without limitation, any right of setoff or any defense. Any other claim that Borrower may have, arising from or related to the transaction evidenced by this Note and the other Loan Documents shall be asserted only against the Agent and not against any of the individual parties constituting Lender.

In the event that an action to enforce this Note or the other Loan Documents results in the entry of a judgment (in foreclosure or otherwise) against the Borrower and/or any Guarantor, interest on the judgment shall continue to accrue at the Default Rate through the date of satisfaction of the judgment debt in full, and not at the statutory post-judgment rate of interest. Borrower waives any right and/or claim to have the post-judgment interest accrue at the statutory rate.

This Note shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns.

This Note shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

This Note shall be governed by the laws of the State of New Jersey without regard to choice of law consideration. Borrower hereby irrevocably consents to the jurisdiction of the courts of the State of New Jersey and of any federal court located in such State in connection with any action or proceeding arising out of or relating to this Note or the other Loan Documents. Borrower and Guarantor hereby designate Corporation Service

Company, located at 830 Bear Tavern Road, Suite 305, West Trenton, New Jersey 08628-1020, as their duly appointed agent to accept service of process within the State of New Jersey on their behalf.

This Note may not be changed or terminated orally.

A determination that any portion of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

Notwithstanding anything contained herein to the contrary, if there is more than one Borrower, each Borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Note.

JURY TRIAL WAIVER. BORROWER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BORROWER OR THE HOLDER OF THIS NOTE ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. BORROWER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS NOTE.

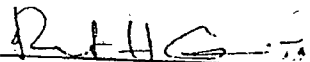
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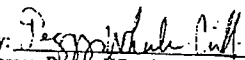
IN WITNESS WHEREOF, the undersigned has executed this Note on the date set forth above.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company


Name: ROBERT H. GWIN, Jr.

By: 
Name: Peggy Wheeler-Cribb
Title: Manager

STATE OF SC)
): ss.:
COUNTY OF Horry)

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.


NOTARY PUBLIC

SCHEDULE A

LENDERS

Brookline Financing SPV, LLC

MGSS Fund

31392/0000-5408885-4

A-1

KENNEDY_01192

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE, made as of this 30th day of April, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Mortgagor"), and KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent ("Agent") for the lenders identified in Schedule A of the Note (as hereinafter defined) (Agent and the said lenders are hereinafter collectively referred to as "Mortgagee").

WITNESSETH

WHEREAS, Mortgagee has agreed to lend and Mortgagor has agreed to borrow the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS ("Loan"), on the terms and conditions provided herein and in the Loan Documents (as hereinafter defined);

WHEREAS, Mortgagor has executed and delivered to Mortgagee, among other things, that certain Loan and Security Agreement (as same may be amended, restated or modified from time to time, "Loan Agreement") and that certain Promissory Note (as same may be amended, restated or modified from time to time, "Note") both of even date herewith, evidencing the Loan; and

WHEREAS, Mortgagor expects to derive benefit from the Loan and has agreed to secure the Loan by, among other things, the grant of this Mortgage to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in order to secure Mortgagor's obligations under the Loan Documents, including the payment of principal and interest, late fees, attorneys' fees, costs and disbursements, the full and prompt payment and performance of all of the indebtedness, obligations, covenants, agreements and liabilities of Mortgagor to Mortgagee, together with all interest and other charges thereon, whether direct or indirect, existing, contingent or otherwise, due or to become due, under or arising out of or in connection with the Loan Agreement and any future modifications thereof and any other instruments or documents delivered in connection herewith or therewith and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor has mortgaged, granted, bargained, sold, conveyed, aliened, released, transferred, warranted and confirmed, and does hereby mortgage, grant, bargain, sell, convey, alien, release, transfer, warrant and confirm unto Mortgagee, and to all its successors and assigns forever, the following described property (collectively, the "Property"):

A. The real estate located in County of Georgetown, State of South Carolina (the "State") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right,

title and interest of Mortgagor in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (b) any strips or gores between the real property and abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called "Land");

B. All buildings, structures and other improvements or any part thereof, now or hereafter situated on or under the Land and all restorations and replacements thereof ("Improvements");

C. All fixtures and systems and articles of personal property, of every kind and character, now owned or hereafter acquired by Mortgagor (Mortgagor's successors or assigns), which are now or hereafter attached to the Land or the Improvements, or used in or necessary to complete the proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, all of the following items now owned or hereafter acquired by Mortgagor, any and all fixtures, systems, heating, ventilating, air conditioning, refrigerating, plumbing, water, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage of serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, floor coverings, wall coverings, windows, window screens and shades, awnings, fans, motors, engines and boilers; motor vehicles; decorative items and art objects; and files, records and books of account (all of which are herein sometimes referred to together as "Accessories");

D. All (a) plans and specifications for the Improvements; (b) approvals, entitlements and contracts relating to the Land or the Improvements or the Accessories or any part thereof; (c) deposits including, but not limited to, Mortgagor's rights in tenants' security deposits (if any), deposits with respect to utility services to the Land or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other Loan Document (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, bonds, certificates and other rights and privileges obtained in connection with the Land or the Improvements or the Accessories or any part thereof; (e) leases, rents, royalties, bonuses, issues, profits, revenues and other

benefits of the Land, the Improvements and the Accessories; and (f) other properties, rights, titles and interests, if any, specified in any Section or any Article of this Mortgage as being part of the Property;

E. All proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, (a) the properties, rights, titles and interests referred to above in paragraphs (A), (B), (C) and (D); (b) any sale, lease or other disposition thereof; (c) each policy of insurance relating thereto (including premium refunds); (d) the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and (e) any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and

F. All other interests of every kind and character, and proceeds thereof, which Mortgagor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (A), (B), (C), (D), (E) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

TO HAVE AND TO HOLD the Property, unto Mortgagee and Mortgagee's successors, substitutes or assigns, for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anyway appertaining or belonging thereto, subject only to the "Permitted Encumbrances" listed on Exhibit B attached hereto to the extent that the same are valid, subsisting and affect the Property, free from all rights and benefits under and by virtue of any applicable homestead exemption or similar laws, which said rights and benefits Mortgagor does hereby expressly release and waive.

PROVIDED ALWAYS, that these presents are upon the express condition, that if Mortgagor shall pay unto Mortgagee, its successors or assigns, all Indebtedness due under the terms of the Loan Documents and shall pay and perform the Obligation (as hereinafter defined), without any deduction or credit for any amount payable for taxes in accordance with the terms of the said Note, and hereof, then this mortgage shall cease, determine and become null and void; otherwise to remain in full force and effect.

ARTICLE I. **THE OBLIGATION**

Section 1.1 **Mortgagee.** The expression "this Mortgage," as used herein, shall mean this Mortgage, and all rights, title, interest, liens, security interests, powers and privileges created hereby or arising by virtue hereof. This Mortgage is given to secure payment and performance of the Obligation, including the indebtedness described in Section 1.2. The word "Mortgagee," as used herein, shall mean **KENNEDY FUNDING, INC.**, a New Jersey corporation, Two University Plaza, Hackensack, New Jersey 07601.

as agent for the lenders identified in the Note defined hereinbelow, in each case having an address c/o Mortgagee, Two University Plaza, Hackensack, New Jersey 07601.

Section 1.2. Obligation. The word "Obligation", "Obligations" or the word "Indebtedness," as used herein, shall mean all of the indebtedness, obligations and liabilities described as follows:

(a) the indebtedness, obligations and liabilities of Mortgagor arising under any documents evidencing, securing, or now or hereafter executed in connection with the Loan (each a "Loan Document"; collectively "Loan Documents") evidencing the Loan; and

(b) all other and additional indebtedness, liabilities and obligations, of every kind and character, of Mortgagor now or hereafter existing in favor of Mortgagee, regardless of whether they are direct, indirect, primary, secondary, joint, several, joint and several, liquidated, unliquidated, fixed or contingent, and regardless of whether the same may, prior to their acquisition by Mortgagee, be or have been payable to some other person or entity, it being the intention and contemplation of Mortgagor and Mortgagee that future advances may be made to Mortgagor by Mortgagee for a variety of purposes, that Mortgagor may guarantee (or otherwise become directly or contingently obligated with respect to) the obligations of others to Mortgagee, and that Mortgagee may, from time to time, acquire from others obligations of Mortgagor to such others, or that Mortgagor may otherwise hereafter be or become further indebted to Mortgagee, and that payment and repayment of all of the foregoing are intended to and shall be part of the indebtedness secured hereby; and

(c) and any and all renewals, modifications, rearrangements, amendments or extensions of all or any part of the indebtedness, obligations and liabilities described or referred to in Subsections 1.2(a), 1.2(b), preceding.

Mortgagor, and each party at any time claiming an interest in or lien or encumbrance against the Property, agrees that all advances made by Mortgagee from time to time under any of the Loan Documents, and all other portions of the Obligation herein referred to, shall be secured by this Mortgage with priority as if all of the same had been advanced, had arisen or become owing or performable on the date hereof, no reduction of the outstanding principal balance under the Loan Agreement shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Mortgage shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligation without loss of priority until the Obligation is fully paid, performed and satisfied in accordance with the Note, as applicable, all agreements and obligations, if any, of Mortgagee for further advances have been terminated and this Mortgage has been released of record by Mortgagee.

ARTICLE II
CERTAIN REPRESENTATIONS, WARRANTIES
AND COVENANTS OF MORTGAGOR

Section 2.1 Payment and Performance of Obligations. Mortgagor shall pay and perform the Obligations when due in accordance with the provisions of the Loan Documents; and if any Default (hereinafter defined) shall be made in the performance of any of the Obligations, Mortgagee shall have the remedies granted to Mortgagee hereunder, under the Loan Documents and under applicable law.

Section 2.2 Indebtedness Secured. This Mortgage has been given and is intended to secure the full and prompt payment and performance of each and all of the Obligations and any renewal, extension, modification or replacement of any of the Obligations. Except as otherwise provided herein, this Mortgage shall remain in full force and effect with respect to all of the Property until all the Obligations shall have been paid and performed in full. If Mortgagor shall well and truly pay and perform the Obligations at the time and times, and in the manner mentioned in the Loan Documents and shall well and truly abide by and comply with each and every term, covenant and condition set forth in the Loan Documents, then this conveyance shall be and become null and void and shall be released at the expense of Mortgagor but if there shall be any Default, then the Obligations shall become immediately due and payable at the option of Mortgagee, without any notice to Mortgagor or any other party, all of which notices of Default or notices of intent to accelerate or acceleration hereby are waived.

Section 2.3 Title to Property.

(a) The Mortgagor represents and warrants that: (i) it has an indefeasible estate in fee simple in the Land and Improvements and Accessories; (ii) it has the good and unrestricted right, full power and lawful authority to mortgage the Property; (iii) it has obtained any and all consents and approvals necessary or required for the making of this Mortgage; and (iv) the making of this Mortgage will not violate any contract or agreement to which the Mortgagor is a party.

(b) Mortgagor does hereby and shall forever warrant and defend its title to and fee simple interest in the Property and the validity and first priority of the lien of this Mortgage to Mortgagee and its successors and assigns, against all claims and demands whatsoever of any Person (hereinafter defined). There are no defenses or offsets or counterclaims to this Mortgage or to any of the Obligations.

(c) Mortgagor represents and warrants to Mortgagee that any building or portion of any building hereafter constructed on the Land shall be in compliance with all applicable zoning and building codes, ordinances and regulations, shall lie wholly within the boundaries of the Land, and shall be an independent and self-contained operating unit.

(d) Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting Mortgagee's security and rights under this Mortgage.

Section 2.4 Liens. Mortgagor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Mortgage, other than the lien of this Mortgage and the Permitted Encumbrances; provided, however, that nothing contained in this Section 2.4 shall require Mortgagor to pay any real estate taxes or other Impositions (as hereinafter defined) prior to the time when same are required to be paid under this Mortgage. Mortgagor will keep and maintain the Property free from all liens arising in connection with the supply of labor or materials relating to the construction, alteration, modification or repair of the Improvements or the Property. Mortgagor agrees to discharge the same of record by payment or bond within thirty (30) days after the filing thereof. Notwithstanding anything to the contrary contained herein, in no event shall Mortgagor do or permit to be done, or omit to do or permit the omission of, any act or thing, where such act or omission would impair the security of this Mortgage.

Section 2.5 Impositions. Mortgagor shall pay, at least five (5) days before the date due, all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and all other governmental levies and charges (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Property or any part thereof, or which shall become payable with respect thereto. Mortgagor shall deliver to Mortgagee, within twenty (20) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a true photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to Mortgagee.

Section 2.6 Insurance.

(a) Mortgagor shall provide, at its sole cost and expense, and keep in force for the benefit of itself and Mortgagee, with respect to the Land, Improvements and Accessories: (i) insurance against loss or damage by fire, other hazards by so-called "all risk" and "extended coverage," and such other casualties and hazards as Mortgagee shall reasonably require from time to time; (ii) flood insurance if the Property is located in a flood hazard area and earthquake and/or hurricane insurance to the extent that owners of

similar buildings in the same county as the Property maintain such insurance; (iii) war risk insurance, when obtainable from the United States government or any agency thereof; (iv) rent insurance; (v) comprehensive general liability insurance against claims for bodily injury, death or property damage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (vi) water damage legal liability insurance; (vii) workers' compensation insurance as required by law, if and when applicable; (viii) business interruption insurance; (ix) prior to any construction on the Property, builder's risk insurance in an amount not less than the replacement value of the Collateral (defined in the Loan Agreement); and (x) such other insurance on the Property or any part thereof or any replacements or substitutions therefor, as Mortgagee may reasonably require.

(b) The policies of insurance required by Subsection 2.6(a) hereof shall be with companies, in forms and amounts, and for such reasonable periods as Mortgagee shall require from time to time, and shall insure the respective interests of Mortgagor and Mortgagee. The full amount of the proceeds of any insurance covering real property or tangible personal property subject to a lien or security interest in favor of Mortgagee granted pursuant to any of the Loan Documents in the case of each separate loss in excess of Ten Thousand and 00/100 (\$10,000.00) Dollars (a "Major Loss"), other than the proceeds from the insurance required under clauses (vi), and (vii) of Subsection 2.6(a) hereof, shall be payable to Mortgagee pursuant to a non-contributing loss payee endorsement satisfactory to Mortgagee. Certificates of Insurance and true photocopies of the original policies and renewals thereof covering the risks required to be insured against in accordance with this Mortgage, bearing satisfactory evidence of payment of all premiums thereon for the succeeding one year period, shall be delivered to and held by Mortgagee, and within five (5) days of demand by Mortgagee Mortgagor shall deliver to Mortgagee the original policies and renewals, replacements or endorsements thereof and shall assign to Mortgagee said policies of insurance as additional security for the indebtedness and other obligations secured hereby. At least twenty (20) days prior to the expiration of each policy required to be provided by Mortgagor, Mortgagor shall deliver Certificates of Insurance evidencing renewal or replacement thereof along with true photocopies of any endorsements or any renewal or replacement policies to Mortgagee with satisfactory evidence of payment of all premiums thereon. All insurance policies required hereunder shall be issued by companies of good standing in the State and rated by A.M. Best's Insurance Reports (or any successor publication of comparable standing) as A VIII or better (or the equivalent rating in the case of a successor publication).

(c) All insurance policies required in accordance with this Mortgage shall: (1) include effective waivers by the insurer of all rights of subrogation against Mortgagor, Mortgagee, any lessee or other occupant of all or any part of the Property, or any other Person which controls, is controlled by or is under common control with any of the foregoing; (2) provide that the full amount of the proceeds of such insurance (other than the proceeds from the insurance required under clauses (vi) and (vii) of Subsection 2.6(a) hereof) shall, in the case of each separate Major Loss, be payable

notwithstanding: (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured; (B) the occupation or use of the Improvements or the Land for purposes more hazardous than permitted by the terms thereof; (C) any foreclosure or other action or proceeding taken by Mortgagee pursuant to any provision of this Mortgage; or (D) any change in title to or ownership of the Property; (3) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Mortgagee of written notice thereof; (4) include "replacement cost endorsements" if available; and (5) be reasonably satisfactory to Mortgagee in all other respects. Mortgagor shall not permit any condition to exist with respect to the Property which would wholly or partially invalidate any of the insurance thereon.

(d) Mortgagee shall have the right but not the obligation, on behalf of Mortgagor, to adjust and compromise any claims under such insurance in the case of a Major Loss, collect and receive the proceeds thereof and execute and deliver all proofs of loss, receipts, vouchers, checks, drafts, releases and other documents in connection with such claims. Mortgagee is hereby irrevocably appointed attorney-in-fact for Mortgagor (which appointment is coupled with an interest) for such purposes, and Mortgagor shall, upon request of Mortgagee, promptly execute any proofs of loss, receipts, vouchers, checks, drafts, releases, and other documents in connection with such claims.

(e) Mortgagee may deduct from the proceeds of the insurance required to be obtained by Mortgagor pursuant to Subsection 2.6(a) hereof, other than the insurance required under clauses (vi) and (vii) thereof, any expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by it in connection with obtaining such proceeds, and Mortgagee may, at its option, release the balance of such proceeds to Mortgagor for the restoration of the Property ("Restoration") or apply the balance of such proceeds in reduction or satisfaction of all or part of the Obligations, whether or not then due and payable (in such order of priority as Mortgagee shall elect). Upon the occurrence of any Default all of Mortgagor's right, title and interest in and to all such policies, including unearned premiums thereon, shall be deemed assigned to Mortgagee. The application of such insurance proceeds toward the payment or performance of the Obligations shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the remainder of the Obligations and the interest thereon in accordance with the provisions of the Loan Documents.

(f) In the event of a sale, transfer or other disposition by Mortgagee of any of the property of Mortgagor, the purchaser, assignee or transferee of such property shall succeed to all of the rights of Mortgagee, including any right to unearned premiums, in and to all policies of insurance which Mortgagor is required to maintain under this Section 2.6 and to all proceeds of such insurance.

(g) Mortgagor's policies of insurance may be maintained under "blanket policies" insuring the Property and other property owned by Mortgagor, provided that such blanket policies shall: (i) separately set forth the amount of the insurance applicable to the Property (except as to the insurance required under clauses (iv), (v) and (vi) of Subsection 2.6(a) hereof), (ii) provide a separate aggregate for each location insured under such policy in an amount not less than \$2,000,000, (iii) otherwise comply with the provisions of this Section, and (iv) afford the same protection to Mortgagee as, in Mortgagee's judgment, would be provided by policies individually applicable to the Property.

(h) Mortgagor shall not obtain or permit to be obtained separate insurance concurrent in form or contributing in the event of loss with the insurance Mortgagor is required to maintain under the provisions of this Section.

Section 2.7 Condemnation.

(a) Mortgagor shall give notice to Mortgagee immediately upon Mortgagor's learning of the commencement of any action or proceeding to take all or any part of the Property by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. Mortgagee may participate together with Mortgagor in any such actions or proceedings in the name of Mortgagee or, whenever necessary, in the name of Mortgagor, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagor shall not settle any such action or proceeding or agree to accept any award or payment without the prior consent of Mortgagee (which consent Mortgagee may deny in its sole discretion), and the total of all awards made or allowed with respect to all right, title and interest in and to the Property or the portion or portions thereof taken or affected by such condemnation or eminent domain proceeding and any interest thereon (hereinafter collectively called the "Award") is hereby assigned to and shall be paid to Mortgagee and the amount received shall be retained and applied as provided in Subsection 2.7(b) hereof.

(b) The Obligations may be accelerated at the option of Mortgagee as a result of the exercise of the right of condemnation or eminent domain in respect of all of the Property or any part of the Property which is currently or may prior to the maturity date established in the Note be utilized in the operation of Mortgagor's business or which may, in the sole judgment of Mortgagee, make impracticable the restoration of the Property in a manner which will permit the Property to be used for the purposes for which it was used prior to the exercise of such right of condemnation or eminent domain, in which event Mortgagee shall retain and apply the Award toward payment and performance of the Obligations (in such order of priority as Mortgagee shall elect); provided, however, that to the extent that the Award received by Mortgagee shall exceed the amount required to satisfy in full the then total amount of the Obligations, Mortgagee

shall pay over to Mortgagor the amount of such excess and provided, further, that until the actual vesting of title in such proceeding, the Obligations shall continue unimpaired. If there is a taking of a portion of the Property in any such proceeding and Mortgagee does not accelerate the Obligations, then at the option of Mortgagee, the Award shall be: (i) retained and applied by Mortgagee toward the payment or performance of the Obligations in such order of priority as Mortgagee may elect; or (ii) paid over in whole or in part to pay or reimburse Mortgagor for the cost of restoring or reconstructing the Improvements and the Accessories in a manner and on conditions satisfactory to Mortgagee. In no event shall Mortgagee be required to satisfy this Mortgage until the Obligations are fully paid and Mortgagee shall not be required to release from the lien of this Mortgage until the Obligations are fully paid any portion of the Property so taken until Mortgagee receives the entire amount of Award for the portion so taken.

(c) The application of the Award toward payment or performance of the Obligations shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the balance of the Obligations in accordance with the provisions of the Loan Documents. Mortgagee shall have the right, but shall be under no obligation, to question the amount of the Award, and Mortgagee may accept same without prejudice to the rights that Mortgagee may have to question such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding (including, without limitation, attorneys' fees and disbursements) shall, on demand, be immediately due from Mortgagor to Mortgagee and the same shall be added to the Obligations and shall be secured by this Mortgage.

(d) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Property by any public or quasi-public authority or corporation, the Obligations shall continue to bear interest at the rate payable pursuant to the Note until the Award shall have been actually received by Mortgagee, and any reduction in the Obligations resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt.

Section 2.8 Restoration. If: (a) the Improvements or Accessories shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any taking in condemnation proceedings or the exercise of any right of eminent domain; and (b) Mortgagee releases or agrees to release to Mortgagor the proceeds of any insurance payable to Mortgagee or the proceeds of the Award, less any expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Mortgagee in obtaining same, and upon conditions satisfactory to Mortgagee; then Mortgagor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by Mortgagee. Mortgagor

shall give immediate notice to Mortgagee of any damage or destruction to the Property by fire or other casualty.

Section 2.9 Deposits for Impositions and Insurance. Notwithstanding anything to the contrary contained in any of the Loan Documents, upon demand by Mortgagee at any time and from time to time, Mortgagor shall deposit with Mortgagee on the first day of each month an amount equal to one twelfth (1/12th) of the sum of (collectively, the "Annual Payments"); (i) the aggregate annual payments for the Impositions; (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by Mortgagor under this Mortgage; and (iii) all other periodic charges (other than interest and principal under the Note) arising out of the ownership of the Property or any portion thereof which are or with notice or the passage of time or both will become a lien against the Property or any part thereof. In addition, upon demand by Mortgagee at any time and from time to time, Mortgagor shall deposit with Mortgagee such sum of money which, together with such monthly installments, shall be sufficient to pay all of the Annual Payments at least forty-five (45) days prior to the due date thereof. If the amount of any of the Annual Payments are not ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of Mortgagee's estimate thereof, which Mortgagee may change from time to time. The funds so deposited with Mortgagee shall, provided that no Default shall have occurred under this Mortgage, be applied in payment of all of the Annual Payments when due to the extent that Mortgagor shall have deposited funds with Mortgagee for such purpose. In the event of any Default the funds deposited with Mortgagee may, at the option of Mortgagee, be retained and applied toward the payment of any or all of the Obligations, in such order of priority as Mortgagee shall determine; but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Mortgagee. The whole of the Obligations shall become due and payable at the option of Mortgagee after the failure of Mortgagor to deliver payment of any of such deposits or after the failure of Mortgagor to deliver to Mortgagee, within ten (10) days after request by Mortgagee, a statement certified by an authorized officer of Mortgagor, specifying the current amounts of all of the Annual Payments. At any time when deposits are required to be made under this Section 2.9, Mortgagor shall furnish Mortgagee with a bill for each of the Annual Payments and/or such other documents necessary for their payment at least forty-five (45) days prior to the date they first become due. Upon an assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such deposits in its possession which have not been applied to the Obligations to the assignee, and thereupon Mortgagee shall be completely released from all liability with respect to such deposits and Mortgagor shall look solely to the assignee in reference thereto. The provisions of the preceding sentence shall apply to each and every assignment or transfer of such deposits to a new assignee.

Mortgagee agrees not to exercise its rights under this Section provided that no Default has occurred and provided that Mortgagor has at all times fully, faithfully and timely complied with all of the provisions of Sections 2.5 and 2.6 of this Article.

Nothing contained herein shall be deemed to extend the maturity date for the Loan established in the Note.

Section 2.10 Maintenance and Alterations.

(a) Mortgagor shall put, keep and maintain the Land, Improvements and Accessories, and the sidewalks, curbs and alleys adjoining or abutting the same in the same or better order, condition and repair as they were in on the date hereof, and Mortgagor shall make or cause to be made, as and when the same shall become necessary, all structural and non-structural repairs, whether exterior or interior, ordinary or extraordinary, foreseen or unforeseen in a good and workmanlike manner. Mortgagor shall not commit or suffer any waste or abandonment of the Land, the Improvements or Accessories, and shall not demolish or remove or permit the demolition or removal of the Improvements or Accessories, or any part thereof, without the prior consent of Mortgagee in each instance.

(b) Mortgagor shall not make any alterations to all or any part of the Improvements or Accessories, or construct additions to all or any part of the Improvements or construct any new or additional buildings on the Property, without the prior consent of Mortgagee in each instance, and then only upon terms and conditions satisfactory to Mortgagee.

Section 2.11 Compliance with Laws.

(a) Mortgagor shall promptly comply with, or cause to be complied with, all present and future laws, statutes, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or relating to all or any part of the Property and the sidewalks, curbs and alleys adjoining or abutting the Land, and the condition, repair, maintenance, use and occupation thereof if non-compliance therewith would result in imposition of any fine, penalty, lien or criminal liability on Mortgagor or the Property, or would result in commencement of proceedings for foreclosure or forfeiture of Mortgagor's interest in the Property; and Mortgagor shall promptly make, or cause to be made, all changes, alterations and improvements to the Property necessary to comply with all such present and future laws, statutes, ordinances, rules, regulations and other requirements to the extent aforesaid. Mortgagor shall operate the Property in compliance with all applicable laws, statutes, ordinances, rules, regulations and other legal requirements. Mortgagor shall not initiate, support, assist or acquiesce in any change in the zoning classification of the Property or any part thereof, without the prior consent of Mortgagee.

(b) Mortgagor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Property, non-compliance with which may affect the security of this Mortgage, or shall impose any duty or obligation upon Mortgagor or any tenant or other

occupant of the Property or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or of constituting any portion of, the Property.

(c) Notwithstanding anything to the contrary contained herein, Mortgagor shall not use or permit the use of the Property in any manner which would impair or adversely affect the value or utility of the Property or increase the risk of fire or other casualty.

Section 2.12 Leasing.

(a) Mortgagor shall not, without Mortgagee's prior approval in each instance, which approval shall not be unreasonably withheld or delayed: (i) enter into or change, amend or modify, in any manner whatsoever, any Lease, License or other agreement for the rental or occupancy of all or any portion of the Property (each a "Lease"); (ii) terminate or cancel, or accept a surrender or suffer or permit any cancellation, termination or surrender of, any Lease, in any manner whatsoever or (iii) receive, collect or accept, or permit the receipt, collection or acceptance of, any prepayment of rent or other charges under any Lease for more than one month, except that Mortgagor may, at the time of the execution of any Lease, accept rent security deposits, which shall be held by Mortgagor in accordance with Subsection 2.12(b) hereof.

(b) Mortgagor shall at all times fully and promptly comply with, keep and perform all of the terms, covenants, provisions and conditions of any and all Leases on the part of the landlord thereunder to be complied with, kept and performed, and will not do or permit anything to be done which will constitute a breach of any of the terms, covenants, provisions and conditions of any of such Leases. Mortgagor shall enforce the performance and observance of each and every term, covenant, provision and condition of each and every Lease to be performed or observed on the part of the tenant thereunder. Mortgagor shall give prompt notice to Mortgagee of: (i) any notice received by Mortgagor of any default by the landlord or the lessee under any Lease; (ii) the commencement of any action or proceeding by any tenant or lessor the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder; or (iii) the interposition by any tenant of any defense or counterclaim in any action or proceeding brought by Mortgagor against such tenant; and Mortgagor will cause a copy of any process, pleading or notice received or served by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee. Mortgagor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. Mortgagor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

Section 2.13 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to each Lease whether now existing or hereafter entered into, together with the room revenues, occupancy charges, issues and profits ("Rents") of each such Lease as further security for the payment and performance of the Obligations, and Mortgagor grants to Mortgagee the right to enter the Property for the purpose of collecting the same and to let the Property, or any part thereof, and to apply said Rents after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are fully paid and performed. Mortgagee hereby waives the right to enter the Property for the purpose of collecting Rents, and Mortgagor shall be entitled to collect, receive and use said Rents until the occurrence of a Default under this Mortgage. Mortgagor shall, from time to time after request by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form satisfactory to Mortgagee, separate assignments confirming the foregoing assignment. Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any Lease or other agreement affecting all or any part of the Property, and Mortgagor hereby agrees to indemnify Mortgagee for and save it harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Property upon Mortgagee, nor make Mortgagee liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Property resulting in injury, death or property damage. Mortgagee or the receiver shall be liable to account only for rents and profits actually received by Mortgagee or the receiver as the case may be.

Section 2.14 No Claims Against Mortgagee.

(a) Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Mortgagee in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

(b) If Mortgagor shall request Mortgagee's approval or consent to any matter and Mortgagee shall fail or refuse to give such consent or approval, Mortgagor shall not be entitled to any damages for any withholding or delay of such approval or consent by Mortgagee, it being intended that Mortgagor's sole remedy shall be an action for injunction or specific performance and that such remedy shall be available only in those cases where Mortgagee shall have expressly agreed in writing not to unreasonably

withhold its consent or approval or where as a matter of law Mortgagee may not unreasonably withhold its consent or approval.

Section 2.15 Mortgagee's Right to Perform Mortgagor's Covenants.

(a) If Mortgagor shall fail to fully and promptly pay, perform or observe any of the Obligations prior to the expiration of any applicable grace period, then, in any such event, Mortgagee may, at its option, but without any obligation to do so, and without waiving or releasing Mortgagor from any of the Obligations, pay any Obligation or cost or perform any Obligation or act or take such action as Mortgagee deems necessary or desirable in order to cause such Obligation to be paid, performed or observed, as the case may be. Mortgagor hereby expressly grants to Mortgagee, and agrees that Mortgagee shall have, the absolute and immediate right to enter in and upon the Property or any part thereof to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable for such purpose. Mortgagee may pay and expend such sums of money as Mortgagee, in its sole discretion, deems necessary or desirable for any such purpose, and Mortgagor hereby agrees to pay to Mortgagee, on demand, all such sums so paid or expended by Mortgagee, together with interest thereon from the date of each such payment or expenditure at the Default Rate established in the Note (hereinafter, the "Default Rate"). Any interest which has been paid by Mortgagor to Mortgagee pursuant to this Section 2.15 in excess of the maximum interest rate permitted by law shall be deemed payment in reduction of the principal amount of the Obligations. All sums paid or expended by Mortgagee pursuant to this Section 2.15, and the interest thereon, shall be added to and included in the Obligations and shall be secured by the lien of this Mortgage.

(b) Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney-in-fact in its name or otherwise, to do any and all acts and to execute any and all documents which may be reasonably necessary or, in the opinion of Mortgagee, desirable to preserve any rights of Mortgagor in, to or under the Leases or to effectuate any rights of Mortgagee under this Section 2.15 or contained elsewhere in this Mortgage. The foregoing power of attorney is coupled with an interest.

Section 2.16 Certificates of Mortgagor. Mortgagor, upon request of Mortgagee, shall certify to Mortgagee or to any proposed assignee of this Mortgage, by an instrument in form satisfactory to Mortgagee, duly acknowledged, the amount then owing on the obligations, the date to which any interest thereon has been paid, and whether any offsets or defenses exist against payment thereof or performance of any Obligation, within five (5) days if the request is personally delivered, or within seven (7) days if the request is made by mail. Mortgagee and any proposed assignee of this Mortgage shall have the right to rely on such certification.

Section 2.17 Inspection and Financial Reports. Mortgagee and its authorized agents and employees shall have the right, at Mortgagee's option, to enter into the

Property at all reasonable times for the purpose of inspecting the same. Mortgagor will furnish to Mortgagee, within thirty (30) days after a request therefor, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Property, and all disbursements made in connection therewith, and containing a list of the names of all tenants and occupants of the Property, the portion or portions of the Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

Section 2.18 Accounting and Other Information. Mortgagor will keep books and records of account in accordance with generally accepted accounting principles, in which full, true and correct entries shall be made of all dealings and transactions relative to Mortgagor and the Property. Said books and records of account shall be made available to Mortgagee, at an office of Mortgagor and shall be open to the inspection of Mortgagee and its accountants and its other duly authorized representatives at regular business hours. Mortgagor further covenants that it will, within a reasonable time after any request by Mortgagee, furnish or cause to be furnished to Mortgagee such other information with respect to Mortgagor or the Property as Mortgagee may from time to time reasonably request.

Section 2.19 Assignment. This Mortgage is assignable by Mortgagee without notice to Mortgagor, and any assignment of the same by Mortgagee shall operate to vest in such assignee the same right, title and interest as was vested in Mortgagee and all rights and powers herein conferred, and to release mortgagee from any further obligation or liability hereunder.

Section 2.20 Due on Sale.

(a) To the extent permitted by law, the Property shall not be sold, transferred or conveyed, in whole or in part, whether voluntarily or involuntarily, by operation of law or otherwise, nor shall Mortgagor lease the entire premises, without, in each instance, the prior written consent of Mortgagee. No mortgage, deed of trust, lien or other encumbrance shall be made or filed against or with respect to the Property, without the prior written consent of Mortgagee. No conditional bill of sale or chattel mortgage shall be made or filed against any Accessories without the prior written consent of Mortgagee. If any such conditional bill of sale or chattel mortgage is made or filed with or without Mortgagee's prior written consent, then after the occurrence of a Default all right, title and interest of Mortgagor in and to all deposits and payments made thereon are hereby assigned to Mortgagee.

(b) If Mortgagor enters into an installment sale contract or sells, conveys, alienates, assigns, mortgages or transfers the Property, or any part thereof or interest therein in any manner, or leases all or substantially all of the Property or the Improvements, whether voluntary or involuntary, or by operation of law or otherwise,

then Mortgagee shall have the right, at its option, at any time thereafter to declare the Obligations immediately due and payable. No waiver of this right shall be effective, nor shall any delay in the exercise thereof operate as a waiver thereof, unless Mortgagee shall have executed and delivered to Mortgagor a written waiver of such right.

(c) Any sale, assignment, lease, transfer, pledge, or other disposition, whether voluntary or involuntary, by operation of law or otherwise, of any partnership, membership or other ownership interest or shares of stock in Mortgagor, shall be deemed to be a transfer of the Property for the purposes of this Section.

(d) On the terms and subject to the conditions set forth in this Subsection 2.20(d), within thirty (30) days after (i) receipt by Mortgagee of Mortgagor's written request and (ii) Mortgagor's compliance with the terms and subject to the conditions set forth in this Subsection 2.20(d), portions of the Property (including but not limited to proceeds of any sale permitted under this Subsection 2.20(d) and any other Collateral with respect to the Property encumbered by any other Loan Document) shall be released from the lien of this Mortgage (and UCC-3 partial release statements with respect to such released portion shall be delivered):

(i) As of the time of Mortgagor's request and at the time of such transfer, no Default has occurred hereunder and remains uncured (nothing herein being deemed to extend any cure period established herein), and no event has occurred that would constitute a Default with the giving of notice, the passage of time or both;

(ii) The release is to occur prior to the Maturity Date;

(iii) Mortgagor's delivery to Mortgagee of documentation evidencing a bonafide arms length transaction for the sale of the Property;

(iv) With respect to each portion of the Property to be released, Mortgagor has obtained all subdivision and other consents, permits and approvals necessary to lawfully release or convey such portion;

(v) After giving effect to such release and conveyance, the remainder of the Property will continue to have adequate ingress and egress, and adequate capacity for all utilities necessary for development shall be available at the boundary thereof;

(vi) The instrument to effect such release and conveyance shall be prepared and recorded at no cost to Mortgagee;

(vii) Simultaneous with the delivery of such release, Mortgagor shall pay to Mortgagee release consideration ("Release Price") equal to the greater of: (a) (i) eighty (80%) percent of the net sale price of the Released Property subject to

reasonable and customary closing adjustments and sales commissions (to be approved by Lender in Lender's commercially reasonable discretion); and (ii) seventy-five (75%) percent of the gross sale price of the Released Property, or (b) the minimum release amount agreed to by Mortgagee in its sole discretion. The such Release Price shall be applied, upon payment and receipt thereof, in reduction of the outstanding principal amount of the Obligations;

(viii) Simultaneous with delivery of the Release Price, Mortgagor shall deliver an update endorsement to the policy of title insurance delivered at the closing of the Loan, confirming no change to the Property other than the release of the parcel(s) and

(ix) Unless the Property is sold in its entirety, simultaneous with delivery of such release, Mortgagor shall deliver an update endorsement to the policies of title insurance delivered at closing of the Loan confirming no change other than the release of such portion of the Property and the release of any other portions previously released pursuant to this Subsection 2.20(d).

ARTICLE III. **RESPECTING DEFAULTS AND REMEDIES OF MORTGAGEE**

Section 3.1 Default. The term "default," and the term "Event of Default," as used herein, shall mean the occurrence of any one or more of the following events:

- (a) a default in the payment of any installment of principal or interest under the Note; or
- (b) a default in the payment of any other sum under the Note; or
- (c) a default in the payment of any other sum when due hereunder or under any other Loan Document; or
- (d) default in the payment of any of the Impositions; any Assessment, or
- (e) default in keeping in force the insurance which Mortgagor is required to maintain under Section 2.6 hereof or in delivering or assigning the insurance policies or renewals or certificates thereof, or in reimbursing Mortgagee for premiums paid by it on such insurance; or
- (f) upon the actual or threatened waste, removal, alteration or demolition of any part of the Property; or
- (g) default in complying with Mortgagor's obligations under Section 2.12 hereof or upon the assignment by Mortgagor of any Lease or of the whole or

any part of the rents, income or profits arising from the Property without the prior written consent of Mortgagee; or

(h) if Mortgagor or any guarantor of all or part of the Obligations becomes insolvent; or

(i) if Mortgagor or any guarantor generally does not pay its debts as they become due; or

(j) if Mortgagor or any guarantor makes an assignment for the benefit of creditors; or

(k) if Mortgagor or any guarantor calls or causes to be called a meeting of creditors for the composition of debts; or

(l) if there shall be filed by or with the consent or authorization of Mortgagor a petition in bankruptcy for liquidation or for reorganization, or a custodian, receiver or agent is appointed or authorized to take charge of its properties, or Mortgagor authorizes any such action; or

(m) if there shall be filed against Mortgagor or any guarantor a petition in bankruptcy, for liquidation, or for reorganization, or a custodian, receiver, or agent is appointed or authorized to take charge of its properties and Mortgagor or such guarantor, as the case may be, has not consented to or authorized such action and such action is not dismissed within sixty (60) days; or

(n) the exercise of the right of condemnation or eminent domain in respect of all or a substantial part of the Property; or

(o) upon Mortgagor directly or indirectly creating, suffering or permitting to be created or to stand against the Property or any portion thereof or against the rents, issues and profits therefrom, any other lien, charge, mortgage, deed of trust or other encumbrance, without in each instance obtaining Mortgagee's prior written consent thereto; or

(p) upon the filing of a lien by the United States so as to affect all or any part of the Property and such lien not being discharged (by bond or otherwise) within ten (10) days of the filing thereof; or

(q) upon the merger, consolidation, liquidation or dissolution or sale or lease or transfer of all or substantially all of the assets of Mortgagor or the filing of any notice of intention to do so; or

(r) upon Mortgagor entering into an installment sales contract or selling, conveying, transferring, mortgaging, leasing or otherwise alienating or encumbering the

Property or any portion thereof or any interest therein in any manner, whether voluntary or involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee, or upon the title or equity of redemption in the Property being acquired, in whole or in part, by voluntary or involuntary transfer, grant or assignment by any person, firm, corporation or entity other than Mortgagor or Mortgagee; or

(s) if any representation or warranty of the Mortgagor set forth in this Mortgage or in any other Loan Document or in any other writing given to Mortgagee in connection with the Obligations shall have been incorrect in any material respect as of the time when the same shall have been made; or

(t) default in the performance of Mortgagor's obligations under Section 2.16 hereof; or

(u) upon the closing of, or the altering of the grade of, any street on or adjoining the Land if such closing or alteration materially affects access to the Property or any part thereof; or

(v) upon the occurrence of a breach, default or an Event of Default under the Loan Documents; or

(w) upon the failure of Mortgagor to comply with, satisfy or perform or observe any other term, covenant, condition or agreement of such party contained in the Note or any other Loan Document within the applicable cure period, if any, provided therefor in such document; or

(x) upon the failure of Mortgagor to comply with, satisfy, perform or observe any other term, covenant, condition or agreement of Mortgagor herein; or

(y) Except as otherwise expressly permitted herein or under the Loan and Security Agreement, any transfer of any ownership interest in Mortgagor occurs in violation of Subsection 2.20(c) hereof; or

(z) any material breach or acceleration or commencement of proceedings (whether non-judicial, judicial, public or private) to foreclose any lien upon the Collateral or any other collateral pledged by Mortgagor, whether or not such liens are permitted hereunder or prior or subordinate to the lien of this Mortgage; or

(aa) Mortgagor shall at any time deliver or cause to be delivered to Mortgagee a notice electing to limit the indebtedness secured by this Mortgage.

All notices and cure periods described herein shall not be applicable to any event which with the giving of notice, the passage of time or both would constitute an Event of Default, if such event has occurred as of the date on which Mortgagee commences a

nonjudicial foreclosure proceeding with respect to another Event or Events of Default. Such event shall constitute an independent Event of Default hereunder.

Upon the occurrence of an Event of Default, at the option of Mortgagee, the Indebtedness shall become immediately due and payable without notice to Mortgagor and Mortgagee shall be entitled to all of the rights and remedies provided herein, in the Loan Documents or at law or in equity. Each and every remedy of Mortgagee whatsoever is distinct and cumulative to all other rights or remedies hereunder, under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

Section 3.2 Remedies Upon Default.

(a) Surrender Possession. Upon the occurrence of an Event of Default, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property, or to the extent permitted by law, Mortgagee or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Mortgagee, Mortgagee or such receiver may obtain a judgment or decree conferring on Mortgagee or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Mortgagee or such receiver, and Mortgagor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Mortgagee or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Mortgagee or such receiver may take any action required by applicable law or which Mortgagee or such receiver believes necessary to enforce compliance with the environmental provisions contained herein or in the other Loan Documents, and negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures in connection therewith. Mortgagee and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

(b) Pursue Remedies. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (i) enforce payment of the Note or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Loan Documents; (ii) foreclose the lien hereof for the Indebtedness or part thereof by power of sale, commencement of action or otherwise, as more particularly described below or otherwise and sell the Property as an entirety or

otherwise, as Mortgagee may determine; (iii) exercise its rights under Subsection (o) of this Section with respect to all or any portion of the Accessories in accordance with the provisions of the UCC; and/or (iv) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (v) the Indebtedness, or any part thereof, or (vi) any deficiency remaining unpaid after foreclosure and sale of the Property.

(c) Mortgagee's Sale. Should Mortgagee elect to foreclose by exercise of the power of sale contained herein, Mortgagee shall cause to be recorded and delivered to Mortgagor such notice of default as may then be required by law and by this Mortgage. Mortgagee shall, without demand on Mortgagor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Mortgagee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Mortgagor or Mortgagee, may purchase at such sale, and Mortgagor hereby covenants to warrant and defend the title of such purchaser or purchasers.

Mortgagee may postpone the sale of all or any portion of the Property from time to time in accordance with the laws of the State in which the Land is located.

To the fullest extent allowed by law, Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant to this Mortgage.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part to the Indebtedness as a credit to the purchase price.

Mortgagee may from time to time rescind any notice of default or notice of sale before any Mortgagee's sale as provided above in accordance with the laws of the State in which the Land is located. The exercise by Mortgagee of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Mortgagee to execute and deliver to Mortgagee, as above provided, other declarations or notices of default to satisfy the obligations of this Mortgage, or

otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Mortgagee hereunder or thereunder.

(d) Rights and Remedies Cumulative. Mortgagee shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees under mortgages in the State in which the Land is located. Mortgagee shall be entitled to enforce the payment and performance of the Indebtedness or the Obligations and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Indebtedness and the Obligations may now or hereafter be otherwise secured, whether by Mortgage, mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other rights or security now or hereafter held by Mortgagee. Mortgagee shall be entitled to enforce this Mortgage and any other rights or security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Mortgagee shall not be deemed to have waived any provision hereof or to have released Mortgagor from any of the obligations secured hereby unless such waiver or release is in writing and signed by Mortgagee.

(e) If an Event of Default is continuing or if Mortgagee shall have accelerated the Indebtedness, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment, to the appointment, at its option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Property, and to collect and apply the Rents.

(f) Expenditures and Expenses. In any action to foreclose the lien hereof or otherwise enforce Mortgagee's rights and remedies hereunder, there shall be allowed and included as additional Indebtedness all Costs (as defined in the Loan Agreement) which may be paid or incurred by or on behalf of Mortgagee. All Costs and

such other costs, expenses and fees as may be incurred by Mortgagee in the protection of the Property and the maintenance of the lien of this Mortgage, including, attorneys' fees, expenses and costs in any litigation or proceeding affecting this Mortgage, the Note, the other Loan Documents, the Property or the Accessories, including probate, appellate, and bankruptcy proceedings, any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage or the other Loan Documents, to obtain any court order or the appointment of a receiver to enforce Mortgagee's rights or in preparation for the commencement or defense of any action or proceeding, shall be immediately due and payable to Mortgagee, with interest thereon at the Default Rate, and shall be secured by this Mortgage. This provision is separate and several and shall survive the merger of this provision into any judgment.

(g) From time to time upon written request of Mortgagee and presentation of this Mortgage for endorsement and without affecting the personal liability of any person for payment of the indebtedness or performance of the Obligations, Mortgagee may, without liability therefor and without notice: reconvey all or any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Mortgagee may from time to time apply in any court of competent jurisdiction for aid and direction in the enforcement of the rights and remedies available hereunder, and Mortgagee or Mortgagee may obtain orders or decrees directing or confirming or approving acts in the enforcement of such remedies. Mortgagee has no obligation to notify any party of any pending sale or any action or proceeding unless held or commenced and maintained by Mortgagee under this Mortgage. Mortgagor shall pay to Mortgagee reasonable compensation and reimbursement for services and expenses in the enforcement of the security created hereunder, including reasonable attorneys' fees. Mortgagor shall indemnify Mortgagee against all losses, claims, demands and liabilities which Mortgagee may incur, suffer or sustain in the execution of the security created hereunder or in the performance of any act required or permitted hereunder or by law.

(h) In addition to the rights and powers of sale granted under the preceding provisions of this Subsection, if default is made in the payment of any installment of the Obligation, Mortgagee may at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Obligation to be due and payable, orally or in writing enforce this Mortgage and sell the Property subject to such unmatured indebtedness and to the rights, powers, liens, security interests and assignments securing or providing recourse for payment of such unmatured indebtedness, in the same manner, all as provided in the preceding provisions of this Subsection. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Subsection, the unmatured balance of the Obligation or the rights, powers, liens.

security interests and assignments securing or providing recourse for payment of the Obligation.

(i) Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid and performed in full. It is intended by each of the foregoing provisions of this Subsection that Mortgagee may sell not only the Land and the Improvements, but also the Accessories and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(j) It is agreed that, in any deeds, assignments or other conveyances given by Mortgagee, any and all statements of fact or other recitals therein made as to the occurrence or existence of any default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, and, without being limited by the foregoing, as to any other act or thing having been duly done by or on behalf of Mortgagee shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Mortgagor does hereby ratify and confirm any and all acts that Mortgagee may lawfully do in the premises by virtue hereof.

(k) Mortgagee may proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(l) Mortgagee may require Mortgagor to assemble the Accessories or any part thereof, and make them available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to Mortgagor and Mortgagee.

(m) After notification, if any, hereafter provided in this Subsection, Mortgagee may sell, lease or otherwise dispose of, at the office of Mortgagee or on the Land or elsewhere, as chosen by Mortgagee, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any sale, lease, or other disposition made pursuant to this Subsection) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale it shall not be necessary to exhibit the Accessories or part thereof being sold. The Sale of any part of the Accessories shall not exhaust Mortgagee's power of sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection, or

reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection, shall be sent to Mortgagor and to any other person entitled under the Uniform Commercial Code in the jurisdiction in which the Property is located (the "Code") to notice; provided that if the Accessories or part thereof being sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Mortgagee may sell, lease or otherwise dispose of the Accessories, or part thereof, without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates, is reasonable notification and notice for the purposes of this Subsection.

(n) Mortgagee may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Mortgagee is entitled to do so under the Code.

(o) Mortgagee may buy the Accessories or any part thereof at any private sale, if the Accessories or part thereof being sold are a type customarily sold in a recognized market or a type subject to widely distributed standard price quotations.

(p) If any payment under this Mortgage shall not be received by Mortgagee when due, a late charge of ten cents for each dollar of such payment shall become due to Mortgagee. Such charge shall be payable with the payment next due and shall be added to the Obligations and be secured by this Mortgage.

(q) Mortgagee shall have and may exercise any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document, or under the Code, or otherwise.

(r) Confession of Judgment in Ejectment. To the extent permissible under South Carolina law, at any time after an Event of Default, regardless of whether Mortgagee has asserted any other right or exercised any other remedy under this Mortgage or any of the other Loan Documents, it shall be lawful for any attorney of any court to confess judgment in ejectment against Mortgagor and all persons claiming under Mortgagor for the recovery by Mortgagee of possession of all or any part of the Property, for which this Mortgage shall be sufficient warrant. If for any reason after such action shall have commenced the same shall be discontinued and the possession of the Property shall remain in or be restored to Mortgagor, Mortgagee shall have the right upon subsequent default or defaults to bring one or more action or actions as hereinabove set forth to recover possession of all or any part of the Property.

Section 3.3 Mortgagee as Purchaser. If Mortgagee is the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale hereinabove vested in Mortgagee or upon any other foreclosure of the liens and security interests hereof, or otherwise, Mortgagee shall, upon any such purchase, acquire

good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Obligation and Mortgagee elects that no merger occur.

Section 3.4 Other Rights of Mortgagee. Should any part of the Property come into the possession of Mortgagee, whether before or after default, Mortgagee may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Property. Mortgagor covenants promptly to reimburse and pay to Mortgagee on demand, at the place where the Obligation is payable, the amount of all reasonable expenses (including the cost of any insurance, taxes or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Mortgagee at the rate provided in the Note for past-due principal, and all such expenses, costs, taxes, interest and other charges shall be and become a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured.

Section 3.5 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of Mortgagee's sale, by judicial action or otherwise, the purchaser at any such sale shall receive, as an incident to Mortgagee's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof, subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied), and anyone occupying such portion of the Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

Section 3.6 Application of Proceeds. The proceeds from any sale, lease or other disposition made pursuant to this Article, or the proceeds from the surrender of any insurance policies required to be maintained hereunder, or any rental collected by Mortgagee from the Property, or sums received pursuant to Section 5.1 hereof, or proceeds from insurance which Mortgagee elects to apply to the Obligation pursuant to Section 5.2 hereof, shall be applied by Mortgagee as follows: first, to the payment of all expenses of advertising, selling and conveying the Property or part thereof, including reasonable attorneys' fees and a reasonable commission to Mortgagee not to exceed Five (5%) percent of the proceeds of the sale; second, to accrued interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the

unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation to the person or persons legally entitled thereto.

Section 3.7 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Mortgagee in accordance with Subsection 3.2(c) hereof, Mortgagee may, at any time before the sale, abandon the sale, and may then institute suit for the collection of the Obligation and for the foreclosure of the liens and security interests hereof. If Mortgagee should institute a suit for the collection of the Obligation and for a foreclosure of the liens and security interests hereof, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Property or any part thereof in accordance with the provisions of this Mortgage.

Section 3.8 Payment of Fees. If any part of the Obligation shall be collected or enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the beneficiary to mature same, or if Mortgagee becomes a party to any suit where this Mortgage or the Property or any part thereof is involved, Mortgagor agrees to pay Mortgagee's reasonable attorneys' and collection fees, and such fees shall be and become a part of the Obligation.

Section 3.9 Indemnification of Mortgagee. Except for gross negligence or willful misconduct, Mortgagee shall not be liable for any act or omission or error of judgment. Mortgagee may rely on any document believed by Mortgagee in good faith to be genuine. All money received by Mortgagee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Mortgagee shall not be liable for interest thereon. Mortgagor shall indemnify Mortgagee against all liability and expenses which Mortgagee may incur in the performance of Mortgagee's duties hereunder.

Section 3.10 Release of Collateral. Mortgagee may release, regardless of consideration, the obligation of any Person or Persons liable for payment of any of the Obligations secured hereby, or may release any part of the Property or any other collateral now or hereafter given to secure the payment of the Obligations or any part thereof, without impairing, reducing or affecting the obligations of Mortgagor under the Loan Documents, the remainder of the security of this Mortgage or the priority of the rights created by this Mortgage.

Section 3.11 Partial Foreclosure. Mortgagee may from time to time, to the extent permitted by law, take action to recover any sums, whether interest, principal or any other sums required to be paid under the Loan Documents, as the same become due, without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing when such earlier action was commenced. Mortgagee may, to the extent permitted by law, at the Mortgagee's option,

cause this Mortgage to be foreclosed for any portion of the Obligations or any other sums secured hereby which are then due and payable subject to the continuing lien of this Mortgage for the balance of the secured Obligations not then due.

ARTICLE IV. **SECURITY AGREEMENT**

Section 4.1 Security Agreement. This Mortgage is also a security agreement between Mortgagor, as debtor, and Mortgagee, as secured party. The security interest created hereby is specifically intended to cover and include all leases of the Property, if any, presently existing or hereafter entered into (herein, together with all amendments and supplements thereto made as provided therein, called the "Leases"), between Mortgagor (or parties acting on behalf of Mortgagor), as lessor or as successor to or assignee from the lessor, and tenants which occupy the Property under the Leases, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said Leases, together with all the right, title and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, charges and other revenues, rents, income, revenues, issues and profits and moneys payable as damages or in lieu of rent and moneys payable as the purchase price of the Property or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases, provided, that this provision shall not impair or diminish any obligation of Mortgagor under the Leases, nor shall any obligation be imposed upon Mortgagee. Mortgagor, from time to time, upon each request of Mortgagee, promptly shall (a) execute and deliver to Mortgagee all financing statements as required by Mortgagee in order to establish or maintain the validity, perfection or priority of the security interest with respect to the Accessories or fixtures; (b) pay to Mortgagee on demand all costs of preparation and filing of financing statements pursuant hereto and all costs of Code searches reasonably required by Mortgagee; and (c) give to Mortgagee a certificate in form satisfactory to Mortgagee listing all trade names of Mortgagor and under which Mortgagor operates or intends to operate the Property or any part thereof, and give to Mortgagee advance written notice of any proposed change of any such trade name and of any change of name (or trade name or assumed name), identity or structure of Mortgagor.

ARTICLE V. **SPECIAL PROVISIONS**

Section 5.1 Condemnation Proceeds. Mortgagee shall be entitled to receive any and all sums which may be awarded or become payable to Mortgagor for the condemnation of the Property or any part thereof, for public or quasi-public use, or by

virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Mortgagee and Mortgagor shall, upon request of Mortgagee, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Mortgagee as a result of condemnation shall be applied to installments on the Obligation in inverse order of maturity.

Section 5.2 Insurance Proceeds. The proceeds of any and all insurance upon the Property shall be collected by Mortgagee and Mortgagee shall have the option, in Mortgagee's sole discretion, to apply any proceeds so collected either to the restoration of the Property or to the liquidation of the Obligation.

Section 5.3 Right to Accelerate Upon Transfer. If Mortgagor shall sell, convey, assign or transfer all or any part of the Property or any interest therein or (except as expressly otherwise provided in Section 2.20) any beneficial interest in Mortgagor, Mortgagee may, at Mortgagee's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner on the Obligation, declare the Obligation to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, lease or transfer, and upon such declaration the entire unpaid balance of the Obligation shall be immediately due and payable. Mortgagee may, in Mortgagee's sole discretion and at Mortgagor's request, decide not to exercise said option, in which event Mortgagee's forbearance may be predicated on such terms and conditions as Mortgagee may, in Mortgagee's sole discretion, require, including, but not limited to, Mortgagee's approval of the transferee's credit worthiness and management ability, the execution and delivery to Mortgagee by transferee prior to the sale, transfer, assignment, lease or conveyance of an assumption agreement containing such terms as Mortgagee may require, including, but not limited to, a payment of a part of the principal amount of the Obligation, an increase in the rate of interest payable on the Obligation, the payment of an assumption fee, a modification of the terms of the Obligation and such other terms as Mortgagee may require, or Mortgagee may require any of such modifications of the terms of the Obligation without requiring an assumption thereof by the transferee. Should the Property be sold, traded, transferred, assigned, exchanged, leased or otherwise disposed of without the prior consent of Mortgagee and should payment of any portion of the Obligation thereafter be accepted by Mortgagee, such acceptance shall not be deemed a waiver of the requirement of Mortgagee's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, lease or other disposition.

Section 5.4 Subordinate Financing. If Mortgagor, without the prior written consent of Mortgagee, executes or delivers any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Property (hereinafter called "Unauthorized Subordinate Mortgage"), Mortgagee may, at Mortgagee's option, which option may be exercised at any time following such pledge, security agreement, mortgage or deed of trust, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner on the Obligation, declare the Obligation to be immediately due and payable. In the event of consent by Mortgagee to the granting of a subordinate mortgage, or in the event the above-described right of Mortgagee to declare the Obligation to be immediately due and payable upon the granting of a Unauthorized Subordinate Mortgage without the prior written consent of Mortgagee is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Mortgagor will not execute or deliver any subordinate mortgage unless (i) it shall contain express covenants to the effect: (a) that the subordinate mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Mortgage and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the subordinate mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Property will be named as a party defendant, nor will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior consent of Mortgagee; (c) that the rents and profits, if collected through a receiver or by the holder of the subordinate mortgage, shall be applied first to the obligations secured by this Mortgage, including principal and interest due and owing on or to become due and owing under the Loan Agreement and the other indebtedness secured hereby, and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and maintenance of the Property; and (d) that if any action or proceeding shall be brought to foreclose the subordinate mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Mortgagee not less than ten (10) days prior to the date of the execution of such subordinate mortgage. Notwithstanding anything contained herein to the contrary, this provisions shall only be enforceable to the extent permitted under the laws of the State.

Section 5.5 Intentionally Deleted.

Section 5.6 Taxes Imposed on Mortgagee. Mortgagor shall pay any taxes (except any federal, state, or local income taxes measured by the income of Mortgagee from all sources) imposed on Mortgagee by reason of its ownership of this Mortgage and the Note.

Section 5.7 Recording, Filing and Other Fees. Mortgagor shall pay all recording and filing fees, all recording taxes and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of the Loan Documents, and shall reimburse Mortgagee on demand for all costs and expenses of any kind incurred by Mortgagee in connection therewith (including, without limitation, attorneys' fees). Mortgagor will, at any time on request of Mortgagee, execute or cause to be executed financing statements, continuation statements, security agreements, or the like, in respect of any Accessories. Mortgagor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

Section 5.8 No Release. Mortgagor and any other Person now or hereafter obligated for the payment or performance of all or any part of the Obligations shall not be released from paying and performing such Obligations and the lien of this Mortgage shall not be affected by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any of the Obligations secured by this Mortgage; (b) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or performance of the Obligations or any part thereof; or (c) any agreement or stipulation extending the time of payment or modifying the terms of the Note, and in the event of such agreement or stipulation, Mortgagor and all such other Persons shall remain liable under the Loan Documents, as amended by such agreement or stipulation unless expressly released and discharged in writing by Mortgagee.

Section 5.9 Interest After Maturity. The principal amount of the Obligations and any other amounts secured by this Mortgage and, to the extent permitted by law, any accrued interest thereon, shall bear interest from and after maturity, whether or not resulting from acceleration, at the Default Rate, but this shall not constitute an extension of time for payment of the Obligations or such other amounts or accrued interest. In the event that an action to enforce this Mortgage or the other Loan Documents results in the entry of a judgment (in foreclosure or otherwise) against the Mortgagor and/or Guarantor, interest on the judgment shall continue to accrue at the Default Rate through the date of satisfaction of the judgment debt in full, and not at the statutory post-judgment rate of interest. Mortgagor waives any right and/or claim to have the post-judgment interest accrue at the statutory rate.

Section 5.10 Indemnification Against Liabilities. To the extent not caused by the gross negligence or willful misconduct of Mortgagee, Mortgagor will protect, indemnify, save harmless and defend Mortgagee from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee by reason of: (a) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Property

or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (b) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (c) any failure on the part of Mortgagor to perform or comply with any of the terms of the Mortgage; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof made or suffered to be made by or on behalf of Mortgagor; (e) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees; or (f) any work in connection with any alterations, changes, new construction or demolition of the Property. Mortgagor will pay and save Mortgagee harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the Governing Jurisdiction or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Mortgagee in respect of this Mortgage, the Note or the indebtedness secured thereby. All amounts payable to Mortgagee under this Section 5.10 shall be payable on demand and shall be deemed indebtedness secured by this Mortgage and any such amounts which are not paid within ten (10) days after demand therefor by Mortgagee shall bear interest at the Default Rate from the date of such demand. If any action, suit or proceeding is brought against Mortgagee by reason of any such occurrences, Mortgagor, upon request of Mortgagee, will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Mortgagor and approved by Mortgagee, as the case may be.

Section 5.11 Notice of Acceleration. Whenever Mortgagee in this Mortgage is given the option to accelerate the maturity of all or part of the Obligation upon a Default, Mortgagee may, to the extent permitted by law, do so without prior notice or demand to or upon Mortgagor except as otherwise specifically provided herein.

Section 5.12 Mortgagor's Representations. Mortgagor represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of the State of South Carolina, and has the right and power and has obtained all necessary authorization to execute and deliver this Mortgage and the other Loan Documents to which it is a party and to perform its obligations thereunder in accordance with the terms thereof; (b) the consent of any governmental body, agency or entity is not required (or if required has been obtained) in connection with the execution and delivery of this Mortgage; (c) the execution, delivery, and performance by Mortgagor of the Loan Documents does not: (i) violate: (A) any existing provision of law, rule, or regulation; (B) Mortgagor's articles of organization and regulations; (C) any provision of any indenture, agreement or other instrument of which Mortgagor is a party or by which it is bound; or (D) any order of any court or other agency of government binding upon Mortgagor; or (ii) result in the creation of any lien, charge, or encumbrance other than the lien created by this Mortgage; and (d) the Obligations are not also secured, directly or indirectly, by "margin securities" or "stock" as defined, respectively, in Regulation G and Regulation U issued by the Board of Governors of the Federal Reserve System.

Section 5.13 After Acquired Property. To the extent permitted by law, all real or personal property now or hereafter attached to, adjoining or used for or in connection with the Property or any part thereof which is acquired by Mortgagor on or after the date hereof shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment, security agreement or transfer, become subject to the lien of this Mortgage. Mortgagor shall execute, acknowledge and deliver to Mortgagee any documents and instruments which Mortgagee may reasonably request from time to time for better assuring, conveying, assigning, transferring, confirming or perfecting Mortgagee's security and rights under this Mortgage.

Section 5.14 Further Assurances. Mortgagor will, at its sole cost and expense, within ten (10) days of a request by Mortgagee for the same, do, execute, acknowledge and deliver and appropriately file and record, all and every such further acts, conveyances, mortgages, assignments, financing statements, supplemental mortgages, notices, estoppel certificates and assurances as Mortgagee shall, from time to time, require for accomplishing the purposes of this Mortgage and shall pay the expenses of the filing or recording of the same and reimburse Mortgagee for its reasonable legal expenses incurred in connection with the preparation or review thereof. In default of any such execution, acknowledgement, delivery, filing or recording, Mortgagee may, without limitation, exercise the rights conferred upon it in Section 2.15 hereof to execute, acknowledge and file or record any such instrument for and on behalf of Mortgagor, as attorney-in-fact of Mortgagor (which appointment is coupled with an interest and irrevocable), and shall be entitled to reimbursement for its reasonable expenses in connection therewith.

Section 5.15 Compliance with International Trade Control Laws and OFAC Regulations. Mortgagor is not now nor shall it be at any time prior to or at the Closing an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC ("Specially Designated Nationals and Blocked Persons")) or otherwise. Neither Mortgagor nor any Person who owns an interest in Mortgagor (collectively, a "Mortgagor Party") is now nor shall be at any time prior to or at the Closing a Person with whom a U.S. Person, including a

"financial institution" as defined in 31 U.S.C. 5312 (a)(z), as periodically amended ("Financial Institution"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

Section 5.16 Mortgagor's Funds. Mortgagor has taken, and shall continue to take until the Maturity Date on the Note, such measures as are required by applicable law to assure that the funds used to pay to Mortgagee are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

Section 5.17 Anti-Money Laundering Laws. To the best of Mortgagor's knowledge after making due inquiry, neither Mortgagor nor any Mortgagor Party, nor any Person providing funds to Mortgagor: (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti Money Laundering Laws (as hereinafter defined in this Section); (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws. For purposes of this Subsection (i), the term "Anti-Money Laundering Laws" shall mean all applicable laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a Financial Institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "Patriot Act"), the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

Section 5.18 Mortgagor Compliance with Patriot Act. Mortgagor is in compliance with any and all applicable provisions of the Patriot Act.

Section 5.19 Cooperation with Mortgagee. For a period of two (2) years after the Maturity Date on the Note, Mortgagor agrees to cooperate with Mortgagee, and to cause each Mortgagor Party to cooperate with Mortgagee, in providing such additional information and documentation on Mortgagor's and each Mortgagor Party's legal or beneficial ownership, policies, procedures (to the extent required by applicable laws) and sources of funds as Mortgagee deems reasonably necessary or prudent to enable Mortgagee to comply with Anti-Money Laundering Laws now in existence or hereafter enacted or amended.

Section 5.20 Mortgagor's representations, warranties and agreements set forth in this Agreement shall survive the Closing or termination of this Agreement. Mortgagor hereby acknowledges and agrees that it is a requirement of this Agreement and of Mortgagor's obligations hereunder that all of Mortgagor's representations and warranties contained herein shall be true and correct on the date hereof and remain true and correct through and including the Maturity Date of the Note, and that any inaccuracy in Mortgagor's representations and warranties and/or Mortgagor's failure to notify Mortgagee prior to the Maturity Date of the Note of any inaccuracies therein shall be defaults by Mortgagor under this Agreement.

ARTICLE VI MISCELLANEOUS

Section 6.1 Release. If all of Mortgagor's obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents, no event of default then exists under the Loan Documents, and if Mortgagor shall well and truly perform all of Mortgagor's covenants contained herein, then this conveyance shall become null and void and be released at Mortgagor's request and expense.

Section 6.2 Rights Cumulative. Mortgagee shall have all rights, remedies and recourse granted herein, in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Property or any portion thereof), and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated for the Obligation or any part thereof, or against any one or more of them, or against the Property, at the sole discretion of Mortgagee; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Property.

Section 6.3 Waiver. Any and all covenants in this Mortgage may, from time to time, by instrument in writing signed by Mortgagee and delivered to Mortgagor, be

waived to such extent and in such manner as Mortgagee may desire, but no such waiver shall ever affect or impair Mortgagee's rights, remedies, powers, privileges, liens, titles and security interests hereunder except to the extent so specifically stated in such written instrument. No waiver of any default on the part of Mortgagor or a breach of any of the provisions of this Mortgage or of any Loan Document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. No notice to or demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. The granting of any consent or approval by Mortgagee shall be limited to the specific instance and shall not waive or exhaust the requirement of consent or approval in any other instance. Except as otherwise specified herein, in any instance hereunder where Mortgagee's approval or consent is required or the exercise of Mortgagee's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of the request or of Mortgagee's judgment.

Section 6.4 Payments. Acceptance by Mortgagee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default.

Section 6.5 Intentionally Deleted.

Section 6.6 Change of Security. Any part of the Property may be released, regardless of consideration, by Mortgagee from time to time without impairing, subordinating or affecting in any way the lien, security interest and other rights hereof against the remainder. The lien, security interest and other rights granted hereby shall not be affected by any other security taken for the Obligation or any part thereof. The taking of additional security, or the extension, renewal or rearrangement of the Obligation or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal, extension or rearrangement of the Obligation or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Property not expressly released until the Obligation is fully paid and performed.

Section 6.7 Controlling Agreement. The parties hereto intend to conform strictly to the applicable usury laws. All agreements between Mortgagor (and any other party liable for any part of the Obligation) and Mortgagee, whether now existing or

hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged or received by Mortgagee hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced automatically to the maximum amount permitted under applicable law. If Mortgagee shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation in inverse order of maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Mortgagor, or to the maker of the Note or other evidence of indebtedness if other than Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The terms and provisions of this Section shall control and supersede every other provision of all existing and future agreements between Mortgagor, the maker of the Note or other evidence of indebtedness if other than Mortgagor, and Mortgagee.

Section 6.8 Effect of Transfer on Mortgagor's Liability. If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than Mortgagor, or in the event of a change in ownership (legal or beneficial) of any Mortgagor other than an individual, Mortgagee may, without notice to or consent of Mortgagor or Mortgagor's successors, deal with such successor or successors in interest with reference to this Mortgage and the Obligation either by way of forbearance on the part of Mortgagee, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Mortgagee's rights and liens hereunder or the liability of Mortgagor or any other party liable for payment of the Obligation, in whole or in part.

Section 6.9 Waiver of Right to Marshal. Mortgagor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

Section 6.10 Subrogation. To the extent that proceeds of the Obligation are used to renew, extend or pay any outstanding debt or to perform any obligation, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to all liens, security interests, rights, priorities, powers, titles, equities and interests owned or held by any owner or holder of such outstanding debt or obligation, however remote, irrespective of whether the same are released of record, and all of the

hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged or received by Mortgagee hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced automatically to the maximum amount permitted under applicable law. If Mortgagee shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation in inverse order of maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Mortgagor, or to the maker of the Note or other evidence of indebtedness if other than Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The terms and provisions of this Section shall control and supersede every other provision of all existing and future agreements between Mortgagor, the maker of the Note or other evidence of indebtedness if other than Mortgagor, and Mortgagee.

Section 6.8 Effect of Transfer on Mortgagor's Liability. If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than Mortgagor, or in the event of a change in ownership (legal or beneficial) of any Mortgagor other than an individual, Mortgagee may, without notice to or consent of Mortgagor or Mortgagor's successors, deal with such successor or successors in interest with reference to this Mortgage and the Obligation either by way of forbearance on the part of Mortgagee, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Mortgagee's rights and liens hereunder or the liability of Mortgagor or any other party liable for payment of the Obligation, in whole or in part.

Section 6.9 Waiver of Right to Marshal. Mortgagor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

Section 6.10 Subrogation. To the extent that proceeds of the Obligation are used to renew, extend or pay any outstanding debt or to perform any obligation, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to all liens, security interests, rights, priorities, powers, titles, equities and interests owned or held by any owner or holder of such outstanding debt or obligation, however remote, irrespective of whether the same are released of record, and all of the

same are recognized as valid and subsisting and are renewed, continued and preserved in force to secure the Obligation; provided, however, that if and to the extent Mortgagee desires in each case, the terms and provisions hereof and of the other Loan Documents shall govern the rights and remedies of Mortgagee and shall supersede the terms, provisions, rights, and remedies under any lien, security interest, charge or other encumbrance to which Mortgagee is subrogated hereunder.

Section 6.11 Covenant to Perform. Mortgagor and each subsequent owner of the Property, or any part thereof, covenants and agrees that Mortgagor and any subsequent owner will perform or cause to be performed, each and every condition, term, provision and covenant of this Mortgage.

Section 6.12 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Mortgagee: Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer
Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Mortgagor: Pawleys Island North, LLC
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

With a copy to: Gwin Law Office, LLC
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
Attention: Robert H. Gwin, III, Esq.
Facsimile No.: (843) 839-2244

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

Section 6.13 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee pursuant to this Mortgage, including, without limitation, any certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

Section 6.14 Certain Definitions. The following terms shall, for all purposes of this Mortgage, have the respective meanings herein specified unless the context otherwise requires:

- (a) the "Mortgagor" shall mean Mortgagor herein named any and subsequent owner or owners of the Property and its or their respective heirs, legal representatives, successors and assigns;
- (b) the "Mortgagee" shall mean Mortgagee herein named and any subsequent holder or holders of this Mortgage, and its or their respective heirs, legal representatives, successors and assigns;
- (c) "Person" (whether or not capitalized) shall mean an individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization or government, or any agency or political subdivision thereof, or any business or legal entity; and
- (d) "Lease" shall mean every lease, license or occupancy agreement for the use or hire of all or any portion of the Property which shall be in effect at the date hereof, or which shall hereafter be entered into by or on behalf of Mortgagor.

Section 6.15 Miscellaneous.

- (a) This Mortgage and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand on Mortgagor in any case shall entitle Mortgagor to any other or further notice or demand in

similar or other circumstances. No course of dealing between Mortgagor and Mortgagee or any failure or delay on the part of Mortgagee in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Mortgagee and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

(b) Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive.

(c) This Mortgage shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

(d) All terms and words used in this Mortgage, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(e) The paragraph headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

(f) If any words or phrases in this Mortgage have been stricken out or otherwise eliminated, this Mortgage shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Mortgage and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

(g) The words "herein," "hereby," "hereunder," and words of similar import shall be construed to refer to this Mortgage as a whole, and not to any particular Section, unless expressly so stated.

(h) All covenants contained herein shall inure to the benefit of and shall be binding upon the Mortgagor and Mortgagee and shall run with the Property until the Obligations have been satisfied.

(i) Mortgagor is hereby prohibited from exercising against Mortgagee any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting Mortgagee, including, without limitation, any right of set-off or any defense.

Section 6.16 Mortgagor's Waivers. Mortgagor, for itself and its successors and assigns, hereby irrevocably waives and releases to the extent permitted by law, and

whether now or hereafter in force, (a) the benefit of any and all valuation and appraisal laws; (b) any right of redemption after the date of any sale of the Property upon foreclosure, whether statutory, common law or otherwise, in respect of the Property; (c) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of Court in the nature of any one or more of them; and (d) all right and possibility of dower, curtesy and homestead in and to the Property.

Section 6.17 Environmental Matters.

(a) Mortgagor represents and warrants that to the best of its knowledge, there are no Hazardous Substances or Hazardous Materials (hereinafter defined) in or on the Property, other than such as may have been disclosed to Mortgagee in writing prior to the date hereof.

(b) Without Mortgagee's prior consent, which may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall make or permit no use of the Property that would involve the generation, storage, treatment, discharge, handling, refining, release or disposal of any Hazardous Substances.

(c) At its sole cost and expense, Mortgagor shall, and shall cause any tenant or occupant of the Property to, comply with all applicable federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage, treatment and handling of Hazardous Substances, including but not limited to the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, the federal Resource Conservation and Recovery Act, as amended, the Federal Water Pollution Control Act, the Federal Clean Air Act, the federal regulations promulgated pursuant to any of the foregoing, and any and all environmental, health, or safety laws of the State, as amended from time to time, and any regulations promulgated thereunder, pay immediately when due the cost of removal of Hazardous Substances, and keep the Property free and clear of any lien imposed pursuant to such laws, rules, regulations or orders. In the event Mortgagor fails to do so, Mortgagee may declare this Mortgage to be in default.

(d) Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur as a result of or in connection with the assertion against Mortgagee or the Property of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto unless such claim arises solely from Mortgagee's gross negligence or willful misconduct.

(e) The term "Hazardous Substances" or "Hazardous Materials" as used in this Mortgage shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation.

(f) Mortgagor shall notify Mortgagee immediately in writing upon learning of:

(i) any spill, discharge or release of any Hazardous Substances on or near the Property that may involve a cleanup cost of One Thousand and 00/100 (\$1,000.00) Dollars or more;

(ii) any circumstances that may result in a violation of this Section 6.17;

(iii) any governmental inquiry or inspection is undertaken or notice issued by any governmental agency or any source whatsoever with respect to Hazardous Materials on, from, affecting, or used, stored or discharged by any occupant of, the Property.

(g) If any investigation, environmental report or governmental investigation or order indicates that there may exist any damage or risk to the Property, or any liability of Mortgagor relating to any Hazardous Materials, or other environmental conditions with respect to the Property, then Mortgagee may require Mortgagor to furnish immediately an indemnity bond in an amount determined by Mortgagee, in its discretion, to be sufficient to pay all actual and estimated cleanup costs and to protect against any liens that may arise with respect to such potential cleanup costs. Mortgagee's demand that Mortgagor post any bond or other security shall not be a waiver of any default or of any other right or remedy available to Mortgagee.

(h) The obligations and liabilities of Mortgagor under this Section 6.17 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage.

Section 6.18 Asbestos.

(a) Mortgagor represents and warrants that, to the actual knowledge of Mortgagor, there is no friable asbestos or any material containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material ("Asbestos") on the Property.

(b) Mortgagor shall not install or permit to be installed Asbestos in the Property. With respect to any such material currently present in the Property, Mortgagor

shall promptly comply with such federal, state or local laws, rules, regulations or orders at Mortgagor's sole cost and expense. If Mortgagor shall fail to comply with any such law, rule, regulation or order such failure shall constitute an Event of Default.

(c) Mortgagor (x) shall protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur as a result of or in connection with the assertion against Mortgagee or the Property of any claim relating to (i) the presence or removal of any asbestos or asbestos containing substance, including, without limitation, the cost of such removal, or (ii) compliance with any federal, state or local laws, rules, regulations or orders relating thereto, and (y) guarantees to Mortgagee the payment of all costs and expenses which may be incurred by Mortgagee in performing any Asbestos remedial action not performed (or caused to be performed) by Mortgagor as required under this Mortgage.

(d) The obligations and liabilities of Mortgagor under this Section 6.18 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage.

Section 6.19 Modifications. This Mortgage, the Note and all other Obligations are subject to Modification (as defined below). To the extent permitted by law, this Mortgage secures all Modifications from the date upon which this Mortgage was originally recorded, including future loans and extensions of credit and changes in the interest rate, due date, amount or other terms and conditions of any Obligations.

"Modification" shall have the meaning set forth in N.J.S.A. 46:9-8.2 et seq., which statute relates, inter alia, to changes in the interest rate, due date or other terms or conditions of a "mortgage loan," or future advances pursuant to a "line of credit," as defined in that statute.

Section 6.20 No Cooperative or Condominium. Mortgagor shall not operate the Property, or permit same to be operated as a cooperative or condominium building(s) in which the tenants or occupants participate in the ownership, control, or management of the Property or any part thereof, as tenants, stockholders or otherwise.

Section 6.21 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Mortgage nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. If the rights and liens created by this Mortgage shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Obligation, the portion of the Obligation which as the result of such invalidity or unenforceability is no longer secured by the liens and

security interests herein granted shall be completely paid prior to the payment of the portion, if any, of the Obligation which shall continue to be secured hereunder, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

Section 6.22 Headings; Construction. The headings which have been used throughout this Mortgage have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Mortgage. Words of any gender used in this Mortgage shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the words "here" when used in this Mortgage shall refer to the entire Mortgage and not to any particular provision or section.

Section 6.23 Counterparts. This Mortgage has simultaneously been executed in a number of identical counterparts, each of which, for all purposes, shall be deemed an original. If any Mortgagor is a corporation, this instrument is executed, acknowledged and delivered by Mortgagor's officers hereunto duly authorized.

Section 6.24 Joint and Several Liability. Notwithstanding anything contained herein to the contrary, if there is more than one Mortgagor, each Mortgagor shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Mortgage.

Section 6.25 GOVERNING LAW. THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY APPLICABLE TO CONTRACTS MADE AND PERFORMED IN NEW JERSEY, WITHOUT REGARD TO CONFLICTS OF LAWS CONSIDERATIONS AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED IN THE MORTGAGED PROPERTY UNDER THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE, THE LAW OF THE STATE OF NEW JERSEY SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER (BUT THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT LENDER'S RIGHTS WITH RESPECT TO SUCH SECURITY INTEREST CREATED IN THE STATE).

Section 6.26 JURISDICTION. AT MORTGAGEE'S ELECTION, TO BE ENTERED IN ITS SOLE DISCRETION, ANY LEGAL SUIT, ACTION OR

PROCEEDING AGAINST MORTGAGOR OR MORTGAGEE ARISING OUT OF OR RELATING TO THIS MORTGAGE (OTHER THAN AN ACTION FOR JUDICIAL FORECLOSURE OR TO APPOINT A RECEIVER), THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND MORTGAGOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MORTGAGOR DOES HEREBY DESIGNATE AND APPOINT CORPORATION SERVICE COMPANY, LOCATED AT 830 BEAR TAVERN ROAD, SUITE 305, WEST TRENTON, NEW JERSEY 08628-1020 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE OF MORTGAGOR MAILED OR DELIVERED TO MORTGAGOR IN THE MANNER PROVIDED IN THE MORTGAGE, SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW JERSEY. MORTGAGOR SHALL GIVE PROMPT NOTICE TO MORTGAGEE OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW JERSEY (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW JERSEY OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 6.27 WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULL TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

Section 6.28 Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, the maximum amount of the indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the principal sum of NINE HUNDRED SIXTY THOUSAND AND 00/100 (\$960,000.00) DOLLARS, plus interest thereon.

[Remainder of this Page Intentionally Left Blank.]

Section 6.29 Certain Matters Relating to Property Located in the State of South Carolina. With respect to the Property which is located in the State of South Carolina, notwithstanding anything contained herein to the contrary:

Mortgagor understands that upon an Event of Default hereunder, among other remedies set out herein and in the Note, Loan Agreement, and other loan documents, the Mortgagee may foreclose upon the Property and ask for a deficiency judgment pursuant to Section 29-3-660, South Carolina Code of Laws (1976). 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 (30) 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 MORTGAGOR 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 HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED WITHOUT CHARGE A TRUE COPY OF THIS MORTGAGE.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement as of the date first above written.

WITNESSES:

MORTGAGOR:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Witness #1

Signature: [Signature]
Name: ROBERT H. GINN, JR.

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

Witness #2/Notary Public

Signature: [Signature]
Name: Linda M. DeLong

STATE OF SC)
COUNTY OF Horry) ss.:
ACKNOWLEDGMENT

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

Print Name: Linda M. DeLong
My Commission Expires: 10-20-2013

[SEAL]

EXHIBITS:

A - Property Description

B - Permitted Encumbrances

EXHIBIT A
PROPERTY DESCRIPTION

31392/0000-5408928v4

1

KENNEDY_01243

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

EXHIBIT B

PERMITTED ENCUMBRANCES

Those items listed in Schedule B, Part 1 of the title proforma issued by Chicago Title Insurance Company, under Title No. 09-RE-150.

31392/0000-5408928v4

B-1

KENNEDY_01245

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
MICHAEL R. LEIGHTON, ESQ. 201-525-8330
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Cole, Schotz, Meisel, Forman & Leonard, P.A.
Court Plaza North
25 Main Street
Hackensack, New Jersey 07601
Attn: Michael R. Leighton, Esq.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names				
OR				
1a. ORGANIZATION'S NAME Pawleys Island North, LLC				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 334 Myrtle Avenue		CITY Pawleys Island	STATE SC	POSTAL CODE 29585
1d. SEE INSTRUCTIONS 26-4625775		1e. TYPE OF ORGANIZATION Limited Liability Company	1f. JURISDICTION OF ORGANIZATION South Carolina	1g. ORGANIZATIONAL ID#, IF ANY
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names				
OR				
2a. ORGANIZATION'S NAME				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. SEE INSTRUCTIONS		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID#, IF ANY
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)				
OR				
3a. ORGANIZATION'S NAME KENNEDY FUNDING, INC.				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS TWO UNIVERSITY PLAZA, SUITE 402		CITY HACKENSACK	STATE NJ	POSTAL CODE 07601
				COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

SEE SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSOR/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILO ☐ SELLER/BUYER ☐ AGENT ☐ NON-UCC FILING				
6. ☒ This FINANCING STATEMENT is to be filed (or record) in the REAL ESTATE RECORDS. Attach Addendum (if applicable).		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)		
8. OPTIONAL FILER REFERENCE DATA		TO BE FILED IN GEORGETOWN COUNTY, SOUTH CAROLINA		

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC-1) (REV. 05/22/02)

31392/0569-5563369v1

KENNEDY_01246

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OR FIRST DEBTOR (11a or 11b) ON RELATED FINANCING STATEMENT

OR 9a. ORGANIZATION'S NAME Pawleys Island North, LLC		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only org. debtor name (11a or 11b) - do not abbreviate or combine names

OR 11a. ORGANIZATION'S NAME				
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
11d. SEE INSTRUCTIONS	ADD. INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID#, if any ☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR SP'S NAME - Insert only one name (12a or 12b)

OR 12a. ORGANIZATION'S NAME				
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ further to be cut out or ☐ its-extracted collateral, or is filed as a ☒ Status filing.

14. Description of real estate:

SEE ALSO EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

15. Name and address of a RECORD OWNER of above-described real estate (If Debtor does not have a record interest):

16. Additional collateral description

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box

☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured-Home Transaction - effective 30 years
☐ Filed in connection with a Public-Finance Transaction - effective 30 years

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC 145) (REV. 06/22/92)

31392/0509-5583369v1

KENNEDY_01247

SCHEDULE A TO UCC-1 FINANCING STATEMENT

**PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, as
Debtor,
and
KENNEDY FUNDING, INC., as Secured Party**

All Debtor's right, title and interest in and to:

- (i) the real property situated in the County of Georgetown and State of South Carolina, which is more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right, title and interest of Debtor in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (b) any strips or gores between the real property and abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called the "Land");
- (ii) all buildings, structures and other improvements or any part thereof, now or hereafter situated on or under the Land and all restorations and replacements thereof ("Improvements");
- (iii) all fixtures, systems, and articles of personal property, of every kind and character, now owned or hereafter acquired by Debtor (or Debtor's successors or assigns), which are now or hereafter attached to the Land or the Improvements, or which are located on the Land and used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, all of the following items now owned or hereafter acquired by Debtor and located on the Land, any and all fixtures, systems, heating, ventilating, air conditioning, refrigerating, plumbing, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage or serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, rugs and other floor coverings, wall coverings, windows, drapes, window screens and shades, awnings, fans, motors, engines and boilers; decorative items and art objects; and files, records and books of account (all of which are herein sometimes referred to together as the "Accessories");

(iv) all (a) plans and specifications for the Improvements; (b) approvals, entitlements and contracts relating to the Land or the Improvements or the Accessories or any part thereof; (c) deposits including, but not limited to, Debtor's rights in tenants' security deposits (if any), deposits with respect to utility services to the Land or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other document evidencing, securing, or now or hereafter executed in connection with that certain loan from Secured Party to Debtor in the principal sum of \$960,000 (the "Loan") for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, bonds, certificates and other rights and privileges obtained in connection with the Land or the Improvements or the Accessories or any part thereof and assignable without third party consents; (e) leases, rents, room rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, the Improvements and the Accessories; and (f) other properties, rights, titles and interests, if any, specified in any section or any article of that certain Mortgage and Security Agreement made by Debtor in favor of Secured Party and intended to be recorded in the Public Records of Georgetown County, State of South Carolina;

(v) all proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, (a) the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv) above; (b) any sale, lease or other disposition thereof; (c) each policy of insurance relating thereto (including premium refunds); (d) the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and (e) any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused;

(vi) all other interests of every kind and character, and proceeds thereof, which Debtor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii), (iv) and (v) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

EXHIBIT A TO UCC-1 FINANCING STATEMENT

31392/0569-5563369v1

KENNEDY_01250

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

KENNEDY_01251

UCC 1 FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Cole, Schotz, Meisel, Forman & Leonard, P.A.
Court Plaza North
25 Main Street
Hackensack, New Jersey 07601
Attention: Michael R. Leighton, Esq.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

OR
1a. ORGANIZATION'S NAME
Pawleys Island North, LLC

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 334 Myrtle Avenue 26-4625775	CITY Pawleys Island	STATE SC	POSTAL CODE 29585
1d. SEE INSTRUCTIONS ADULT INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Limited Liability Company	1f. JURISDICTION OF ORGANIZATION South Carolina	1g. ORGANIZATIONAL ID#, IF ANY
			USA

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

OR
2a. ORGANIZATION'S NAME
2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
2d. SEE INSTRUCTIONS ADULT INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID#, IF ANY
NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

OR
3a. ORGANIZATION'S NAME
KENNEDY FUNDING, INC., as agent
3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
3c. MAILING ADDRESS TWO UNIVERSITY PLAZA, SUITE 402 HACKENSACK NJ 07601 USA

4. THIS FINANCING STATEMENT covers the following collateral:

ALL ASSETS OF DEBTOR, INCLUDING, WITHOUT LIMITATION, THE COLLATERAL DESCRIBED ON SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSOR/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILEE ☐ SELLER/BUYER ☐ AGENT ☐ NON-UCC FILING
6. ☐ THIS FINANCING STATEMENT is to be filed (for record) in the REAL ESTATE RECORDS. ☐ Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)
7. OPTIONAL FILER REFERENCE DATA
TO BE FILED WITH SOUTH CAROLINA SECRETARY OF STATE
FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

313820589-6583173V1

KENNEDY_01252

SCHEDULE A TO UCC-1 FINANCING STATEMENT

PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, as
Debtor,
and
KENNEDY FUNDING, INC., as Secured Party

All Debtor's right, title and interest in and to:

(i) the real property situated in the County of Georgetown and State of South Carolina, which is more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right, title and interest of Debtor in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (b) any strips or gores between the real property and abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called the "Land");

(ii) all buildings, structures and other improvements or any part thereof, now or hereafter situated on or under the Land and all restorations and replacements thereof "Improvements";

(iii) all fixtures, systems, and articles of personal property, of every kind and character, now owned or hereafter acquired by Debtor (or Debtor's successors or assigns), which are now or hereafter attached to the Land or the Improvements, or which are located on the Land and used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, all of the following items now owned or hereafter acquired by Debtor and located on the Land, any and all fixtures, systems, heating, ventilating, air conditioning, refrigerating, plumbing, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage or serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, rugs and other floor coverings, wall coverings, windows, drapes, window screens and shades, awnings, fans, motors, engines and boilers; decorative items and art objects; and files, records and books of account (all of which are herein sometimes referred to together as the "Accessories");

(iv) all (a) plans and specifications for the Improvements; (b) approvals, entitlements and contracts relating to the Land or the Improvements or the Accessories or any part thereof; (c) deposits including, but not limited to, Debtor's rights in tenants' security deposits (if any), deposits with respect to utility services to the Land or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other document evidencing, securing, or now or hereafter executed in connection with that certain loan from Secured Party to Debtor in the principal sum of \$960,000 (the "Loan") for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, bonds, certificates and other rights and privileges obtained in connection with the Land or the Improvements or the Accessories or any part thereof and assignable without third party consents; (e) leases, rents, room rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, the Improvements and the Accessories; and (f) other properties, rights, titles and interests, if any, specified in any section or any article of that certain Mortgage and Security Agreement made by Debtor in favor of Secured Party and intended to be recorded in the Public Records of Georgetown County, State of South Carolina;

(v) all proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, (a) the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv) above; (b) any sale, lease or other disposition thereof; (c) each policy of insurance relating thereto (including premium refunds); (d) the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and (e) any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused;

(vi) all other interests of every kind and character, and proceeds thereof, which Debtor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii), (iv) and (v) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

EXHIBIT A TO UCC-1 FINANCING STATEMENT

31392/0569-5663173v1

KENNEDY_01255

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

To be Recorded in
Georgetown County, South Carolina

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") made as of April 30, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Assignor"), and KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A of that certain promissory note of even date herewith ("Assignee").

W I T N E S S E T H

FOR VALUE RECEIVED, Assignor does hereby irrevocably grant, sell, assign, transfer, set over and deliver unto Assignee all of the leases covering or affecting all or any part of that certain real property more particularly described in Schedule "A", annexed hereto and made a part hereof, together with the improvements now or hereafter located thereon (hereinafter collectively referred to as the "Property"), together with the immediate and continuing right to collect and receive all of the rents, income, receipt and revenues arising from those certain leases the Property;

TOGETHER WITH all other leases and other rental agreements now or hereafter made covering the Property or any portion thereof, together with any extension or renewal of same, and all present and future leases and present and future rental agreements and rents, income and profits arising therefrom (hereinafter collectively referred to as the "Leases"), being effective without further or supplemental assignment;

TOGETHER WITH all rents, room and occupancy charges, income and profits arising from the leases and renewals thereof and together with all rents, income and profits for the use, enjoyment and occupation of the Property (hereinafter collectively referred to as the "Rents").

This Assignment is intended, and shall be construed and enforced as an absolute, present assignment of the Leases and Rents, not merely as an assignment for security, subject only to the license granted to Assignor in the next paragraph hereof.

Until notice from Assignee, Assignor shall have the right under a temporary, revocable license granted hereby to collect upon all of said Rents arising from or out of the Leases or any renewals or extensions thereof, and Assignor shall receive said Rents, and shall hold same, as a trust fund to be applied in the following priority, and Assignor

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KENNEDY_01257

hereby covenants to so apply same, (1) first, to the payment of all taxes and assessments upon said Property; (2) then, to the payment of the entire cost of all insurance and maintenance and repairs for said Property; (3) then, to the satisfaction of all obligations under the Leases; and (4) then, to the payment (in such order as Assignee determines) of late charges, interest and principal and all other amounts and other obligations becoming due on the Promissory Note from Assignor to Assignee in the principal amount of **NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS** dated the date hereof, (as may be amended, restated or modified from time to time, the "Note") and under that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage") of even date, (together with this Assignment and all other agreements, instruments and documents executed and delivered in connection therewith, collectively, the "Loan Documents") before using any part of the same for any other purpose; and (5) then, the balance, if any, to Assignor's use and enjoyment.

ASSIGNOR WARRANTS that (i) Assignor is the sole owner of the entire Lessor's interest in the Leases; (ii) to the best of Assignor's knowledge, the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever except as herein set forth; (iii) to the best of Assignor's knowledge, none of the Rents reserved in the Leases have been assigned or anticipated; (iv) to the best of Assignor's knowledge, no Rents have been collected more than one (1) month in advance; (v) Assignor has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property; (vi) Assignor is not in default of its obligation under the Leases; and (vii) to the best of Assignor's knowledge, there exist no offsets or defenses to the payment of any portion of the Rents.

ASSIGNOR COVENANTS with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the security thereof; (b) shall not collect any of the Rents more than one (1) month in advance; (c) shall not execute any other assignment of Lessor's interest in the Leases or the Rents; (d) shall not alter, modify or change the terms of the Leases to reduce the rentals earned thereby or Assignee's rights expressed therein without the prior written consent of Assignee, or cancel or terminate the Leases or accept a surrender thereof, or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein; (e) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Assignee; (f) shall not consent to any assignment of or subletting under the Leases not in accordance with its terms, without the prior written consent of Assignee; (g) shall execute and deliver at the request of Assignee all such further assurances, confirmations and assignments in connection with the Property as Assignee shall from time to time require; (h) shall not enter into any new leases without prior

written approval from Assignee and except on a form of lease approved by Assignee. With respect to each of the Leases, Assignor shall (A) fulfill or perform in timely fashion each and every provision thereof on the part of the lessor thereunder to be fulfilled or performed; (B) promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; and (C) enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessor thereunder to be observed or performed, short of termination thereof.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Upon the occurrence of an Event of Default (hereinafter defined), Assignee may, at its option, upon notice, terminate and revoke the license granted hereunder and, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take immediate and unconditional possession of the Property and have, hold, manage, lease and operate the Property on such terms and for such period of time as Assignee may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all reasonable expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the payment of the principal sum, interest and all other sums (hereinafter collectively referred to as the "Debt") evidenced by or arising under the Note and/or other Loan Documents, together with all costs and reasonable attorneys' fees. The aforesaid notice shall be effective retroactively as of the date on which the Event of Default occurs. In addition to the rights which Assignee may have herein, upon the occurrence of a default under the Mortgage or an Event of Default under any other Loan Document ("Event of Default"), Assignee, at its option, may require Assignor to pay monthly in advance to Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Assignor or, at Assignee's option, in lieu thereof may require Assignor to vacate and surrender possession of the Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise (Assignor remaining liable for such use and occupancy charges incurred after an Event of Default and prior to surrender of possession). For purposes of this Paragraph 1, Assignor grants to Assignee

its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this Paragraph 1 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under this Assignment, the Note or any other Loan Document or the Leases. The rights and remedies reserved to Assignee herein are in addition to all other rights and remedies available to Assignee hereunder or under the other Loan Documents or applicable law or equitable principles and all such rights and remedies may, at Assignee's option, be exercised concurrently.

2. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after an Event of Default or from any other act or omission of Assignee in managing the Property after default unless such loss is caused by the gross negligence, willful misconduct or bad faith of Assignee. So long as Assignor's license hereunder remains in effect, Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, Assignor shall reimburse Assignee the amount thereof, including costs, expenses and reasonable attorneys' fees, immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums evidenced by the Note immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

3. Upon payment in full of the Debt and satisfaction of all Assignor's obligations to Assignee hereunder, this Assignment shall become and be void and of no effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any part of the Debt to remain unpaid or any obligation of Assignor hereunder not fully satisfied shall be conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs the lessees named in the Leases or any other or future lessee or occupant of the Property, upon receipt from Assignee of

written notices, to pay over to Assignee all Rents and to continue so to do until otherwise notified by Assignee.

4. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. In the event of any conflict between this Assignment and the Mortgage, the terms of this Assignment shall take precedence and control.

5. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee pursuant to the provisions herein contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

6. This Assignment may not be modified, amended, changed, discharged or terminated orally, but only in writing signed by the person against whom the enforcement of the modification, amendment, change, discharge or termination is sought.

7. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment shall be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and/or any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee or any subsequent holder of the Note," the word "Note" shall mean "the Note or any other evidence of indebtedness," the word "person" shall include an individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated association, government, governmental authority, or other entity, the word "Property" shall include any portion of the Property or interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and all other sums due pursuant to the Note, this Assignment and the other Loan Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

8. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Note or the Loan Documents, or (ii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or

supplementing the terms of this Assignment, the Note or the other Loan Documents. Assignee may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

9. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

10. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

11. This Assignment shall be governed and construed in accordance with the laws of the State of New Jersey without regard to choice of law considerations. This Assignment shall be construed without regard to any presumption or rule requiring construction against the party causing the Assignment or any portion hereof to be drafted.

12. Notwithstanding anything contained herein to the contrary, if there is more than one Assignor, each Assignor shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Assignment.

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and the Loan Documents and shall be binding upon Assignor, its successors and assigns and any subsequent owner of the Property.

JURY TRIAL WAIVER. ASSIGNOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY ASSIGNOR OR ASSIGNEE ON OR WITH RESPECT TO THIS ASSIGNMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. ASSIGNEE AND ASSIGNOR EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS

ASSIGNMENT AND THAT ASSIGNEE WOULD NOT EXTEND CREDIT TO
ASSIGNOR IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE
NOT A PART OF THIS ASSIGNMENT.

SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above set forth.

ASSIGNOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS ASSIGNMENT WITHOUT CHARGE.

WITNESSES:

ASSIGNOR:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Witness #1

Signature: [Signature]
Name: ROBERT H. GWIN, JR.

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

Witness #2 Notary Public

Signature: [Signature]
Name: Joseph M. DeTong

STATE OF SOUTH CAROLINA)
COUNTY OF Horry) ss.:

ACKNOWLEDGEMENT

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

Print Name: Joseph M. DeTong
My Commission Expires: 10 08 2013

[SEAL]

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SCHEDULE "A"
LEGAL DESCRIPTION OF THE PROPERTY

31392/0000-5408674v3

A-1

KENNEDY_01265

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

GUARANTY

\$960,000

April 30, 2009

WHEREAS, PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), has requested from KENNEDY FUNDING, INC., a New Jersey corporation, having its principal place of business at Two University Plaza, Suite 402, Hackensack, New Jersey 07601 ("Agent"), as agent for lenders identified in Schedule A annexed to the Note (as hereinafter defined) (Agent and Lenders identified in Schedule A are hereinafter collectively referred to as "Lender"), a loan in the principal sum of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "Loan"), which Loan will be evidenced by a Promissory Note of even date herewith, (as may be amended, restated or modified from time to time, hereinafter, the "Note") from Borrower to Lender, and secured by, among other things, that certain Loan and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "Loan Agreement") and that certain Mortgage and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "Mortgage") from Borrower to Lender, all of the foregoing being of even date herewith. All capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Loan Agreement:

WHEREAS, Lender is willing to make the Loan to Borrower only if, among other things, the undersigned (sometimes referred to herein individually and collectively as the "Guarantor") executes and delivers this Guaranty of Payment (as may be amended, restated or modified from time to time, "Guaranty") and guarantees payment to Lender of the Debt (as hereinafter defined) in the manner provided herein; and

WHEREAS, the undersigned expects to derive benefit from the Loan.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, the undersigned hereby guarantees absolutely and unconditionally to Lender the payment of the Debt and covenants and agrees with Lender as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Guaranty Clause. The Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Lender the full, prompt and unconditional payment of the Debt, when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each and every term and condition of every transaction to be kept and performed by Borrower under the Note. This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible guaranty. Lender may require Guarantor to pay and perform any or all of the Guarantor's liabilities and obligations under this Guaranty and may

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KENNEDY_01267

proceed immediately against Guarantor without being required or obligated to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto. The liability of each Guarantor hereunder is joint and several with all other Guarantors, if applicable, and all other guarantors, and is independent of and separate from the liability of Borrower, any other guarantor, person or entity, and is independent of the availability of any collateral security for and/or under any documents granting Lender security for the Loan.

(a) The term "Debt" as used in this Guaranty shall mean the principal sum evidenced by the Note and secured by the Mortgage, together with interest thereon at the rate of interest specified in the Note and all other sums which may or shall become due and payable pursuant to the provisions of the Note, Mortgage, Loan Agreement, or any other agreement, document or certificate executed and/or delivered by Borrower to Lender in connection with the Loan, including any and all modifications, amendments, and ratifications thereto (collectively the "Loan Documents").

(b) The undersigned agrees that, upon demand, the undersigned will reimburse Lender, to the extent that such reimbursement is not made by Borrower, for all expenses (including reasonable counsel fees) incurred by Lender in connection with the collection of the Debt or any portion thereof, including any expenses incurred in any post-judgment proceedings to collect and enforce such judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

(c) All moneys available to Lender for application in payment or reduction of the Debt may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of the Debt or other obligations of Borrower as Lender may elect.

(d) This Guaranty is an absolute, continuing, unconditional and unlimited guaranty of payment and not merely of collection and Lender shall be entitled to payment from the undersigned without first commencing any action against Borrower or resorting to any security or to any credit on the books of Lender in favor of Borrower. The undersigned acknowledges and agrees that this Guaranty and any or all other guaranties made to Lender in connection with this Loan are joint and several guaranties.

3. Lender's Rights. The undersigned hereby consents that from time to time, before or after any default by Borrower, with or without further notice to or assent from the undersigned, (i) any security at any time held by or available to Lender for any obligation of Borrower, (ii) any security at any time held by or available to Lender for any obligation of any other person or party secondarily or otherwise liable for all or any portion of the Debt, and/or (iii) any obligation arising under any other guaranty to Lender made in connection with the Loan, may be exchanged, surrendered or released and any

obligation of Borrower may be changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or any default with respect thereto waived, and Lender may fail to set off and may release, in whole or in part, any balance of any credit on its books in favor of Borrower, and may extend further credit in any manner whatsoever to Borrower, and generally deal with Borrower or any such security or obligation and the undersigned shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. No invalidity, irregularity or unenforceability of all or any part of the Debt or the impairment or loss of security or obligation therefor, whether caused by any action or inactions of Lender or otherwise, shall affect or impair this Guaranty.

4. Guarantor Waivers. The undersigned hereby waives and agrees not to assert or take advantage of any defense based upon:

- (a) Notice of acceptance of this Guaranty and of the making of the Loan by Lender to Borrower;
- (b) Presentment and demand for payment of the Debt or any portion thereof;
- (c) Protest and notice of dishonor or default to the undersigned with respect to the Debt or any portion thereof;
- (d) Notice of intent to accelerate, notice of acceleration and all other notices to which the undersigned might otherwise be entitled;
- (e) Any demand for payment under this Guaranty;
- (f) The incapacity, lack of authority, death or disability of Borrower or any other person or entity;
- (g) The failure of Lender to commence an action against Borrower and/or Guarantor or to proceed against or exhaust any security held by Lender at any time, or to pursue any other remedy whatsoever at any time;
- (h) Any duty on the part of Lender to disclose to the undersigned any facts Lender may now or hereafter know regarding Borrower, regardless of whether Lender has reason to believe (i) that any such facts materially increase the risk beyond that which the undersigned intends to assume, or (ii) that such facts are unknown to the undersigned, the undersigned acknowledging that he, she or it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;

(i) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or Borrower's obligations guaranteed hereby;

(j) The consideration for this Guaranty (or lack or inadequacy thereof);

(k) Any acts or omissions of Lender which vary, increase or decrease the risk on the undersigned;

(l) Any rights or defenses based upon an offset by the undersigned against any obligation now or hereafter owed to the undersigned by Borrower;

(m) Any statute of limitations affecting the liability of the undersigned hereunder, the liability of Borrower or Guarantor under the Loan Documents or the enforcement hereof, to the extent permitted by law;

(n) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender and the undersigned or intended or understood by Lender or the undersigned;

(o) An election of remedies by Lender, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of the undersigned or the rights of the undersigned to proceed against Borrower or any guarantor by way of subrogation or for reimbursement or contribution, or all such rights;

(p) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of the principal obligor;

(q) Lender's election, in any proceeding instituted under Title 11 of the United States Code (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code or any successor statute; and

(r) Any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code.

THIS IS AN UNCONDITIONAL AND IRREVOCABLE WAIVER OF ANY RIGHTS AND DEFENSES THE UNDERSIGNED MAY HAVE BECAUSE BORROWER'S DEBT IS SECURED BY INTERESTS IN REAL PROPERTY.

5. Collection and Enforcement.

(a) LENDER MAY COLLECT FROM THE UNDERSIGNED WITHOUT FIRST FORECLOSING ON ANY REAL OR PERSONAL PROPERTY COLLATERAL PLEDGED BY BORROWER; AND

(b) IF LENDER FORECLOSES ON ANY REAL PROPERTY COLLATERAL PLEDGED BY BORROWER:

i. THE AMOUNT OF THE DEBT MAY BE REDUCED ONLY BY THE PRICE FOR WHICH THAT COLLATERAL IS SOLD AT A FORECLOSURE SALE, EVEN IF THE COLLATERAL IS WORTH MORE THAN THE SALE PRICE; AND

ii. LENDER MAY COLLECT FROM THE UNDERSIGNED EVEN IF LENDER, BY FORECLOSING ON THE REAL PROPERTY COLLATERAL, HAS DESTROYED ANY RIGHT THE UNDERSIGNED MAY HAVE TO COLLECT FROM BORROWER.

6. Successors and Assigns. Each reference herein to Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of the undersigned, all of whom shall be bound by the provisions of this Guaranty.

7. No Waiver. No delay on the part of Lender in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of Lender to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which such waiver is given.

8. Representations and Warranties. To further induce Lender to make the Loan to Borrower, the Guarantor makes the following warranties and representations, with the knowledge that Lender will rely on the veracity thereof:

(a) The execution and delivery by the Guarantor of this Guaranty and any other document executed and/or delivered by the Guarantor to Lender in connection therewith (collectively, the "Guaranty Documents"), and the performance of the obligations thereunder, do not and will not: (a) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Guarantor; or (b) result in any breach of or constitute any default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Guarantor is a party or by which the Guarantor or his/her/their/its properties may be bound or affected, and the Guarantor is not in default

under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(b) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, or before any court, governmental instrumentality, public board or arbitrator pending or threatened against or affecting the Guarantor or any of his properties or rights, wherein an unfavorable decision, ruling or finding would (i) to the extent not covered by insurance as to which the insurer has not disclaimed coverage, result in any material adverse change in the financial condition, business, properties or operations of the Guarantor; (ii) materially or adversely effect the Guaranty; or (iii) adversely effect the validity or enforceability of the Guaranty Documents.

(c) The Guarantor is in compliance with all applicable laws.

(d) Borrower is a pre-existing entity actively engaged in the operation of its business and has not been created as a vehicle to obtain the Loan. The proceeds of the Loan will be used by Borrower solely to (a) discharge or release liens upon the real property encumbered by the Mortgage (the "Property") or for other business purposes directly related to the Property, and (b) pay fees and other amounts related thereto or to the making of the Loan.

(e) On the date hereof, (i) the assets of the Guarantor exceed his liabilities, and (b) the Guarantor is paying his debts as they become due.

9. No Subrogation. Notwithstanding any payments made by the undersigned pursuant to the provision of this Guaranty, the undersigned shall have no right of subrogation in and to the Note, or any other security held by or available to Lender for the Debt or the payment thereof until the Debt has been paid in full to Lender.

10. Limitation of Remedies. The Guarantor is hereby prohibited from exercising against Lender or Agent any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting Lender, including, without limitation, any right of set-off or any defense.

11. Miscellaneous.

(a) Governing Law. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of New Jersey and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said state without regard to conflicts of laws considerations; and this Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted; and no defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of

New Jersey. The undersigned agrees to submit to personal jurisdiction in the State of New Jersey in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by registered mail to or by personal service at the last known address of the undersigned, whether such address be within or without the jurisdiction of any such court.

(b) Waivers. The Guarantor hereby waives any claim, right or remedy which the Guarantor may now have or hereafter acquire against Borrower that arises hereunder and/or from the performance by the Guarantor hereunder, including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Lender against Borrower or any security which Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. The foregoing waiver by the Guarantor shall terminate and be of no further force or effect at such time as the entire Debt has been fully and indefeasibly paid to and received by Lender.

(c) Severability. A determination that any portion of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other circumstances.

(d) Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer
Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Guarantor: Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Will Darwin Wheeler
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

With a copy to: Gwin Law Office, LLC
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
Attention: Robert H. Gwin, III, Esq.
Facsimile No.: (843) 839-2244

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

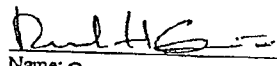
(c) Jury Trial Waiver. THE UNDERSIGNED AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE UNDERSIGNED OR LENDER ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. LENDER AND THE UNDERSIGNED EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE UNDERSIGNED WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS GUARANTY.

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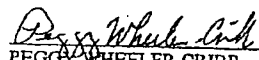
31992/0000-3408651v4

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date first above set forth.

WITNESS:


Name: ROBERT H. GWIN, JR.

GUARANTOR:

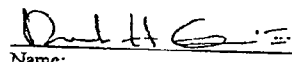

PEGGY WHEELER-CRIBB

Residence Address:

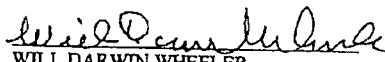
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 248-60-0536

WITNESS:


Name: ROBERT H. GWIN, III

GUARANTOR:


WILL DARWIN WHEELER

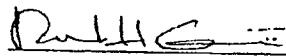
Residence Address:

334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Social Security Number: 249-11-5370

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Peggy Wheeler-Cribb, who being by me duly sworn, did depose and say that she signed this instrument as her voluntary act and deed.

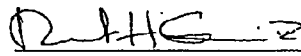

NOTARY PUBLIC

31392/0000-5408651v4

KENNEDY_01276

STATE OF SC)
) ss.:
COUNTY OF Horry)

On the 28 day of April, 2009, before me personally came Will Darwin
Wheeler, who being by me duly sworn, did depose and say that he signed this instrument
as his voluntary act and deed.



NOTARY PUBLIC

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (the "Agreement"), made on this 30th day of April, 2009, by PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), and PEGGY WHEELER-CRIBB residing at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 and WILL DARWIN WHEELER residing at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (jointly and severally, the "Guarantor") (Borrower and Guarantor are collectively referred to herein as the "Indemnitors"), in favor of KENNEDY FUNDING, INC., a New Jersey corporation, having an address at Two University Plaza, Suite 402, Hackensack, New Jersey 07601 ("Agent"), as agent for the lenders identified on Schedule A annexed to the Note (as hereinafter defined) (Agent and the lenders identified in Schedule A are hereinafter collectively referred to as "Lender").

WITNESSETH

WHEREAS, pursuant to a certain Promissory Note, of even date herewith, in the original principal amount of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (as may be amended, restated or modified from time to time, the "Note"), Lender made a loan to Borrower (the "Loan"); and

WHEREAS, on the date hereof, Lender and Borrower have executed that certain Loan and Security Agreement, (as may be amended, restated or modified from time to time, the "Loan Agreement") pursuant to which Lender shall disburse the proceeds of the Loan and upon the terms and conditions set forth therein, and

WHEREAS, the Loan is secured, *inter alia*, by that certain Mortgage and Security Agreement, of even date herewith (as may be amended, restated or modified from time to time, the "Mortgage"), executed by Borrower, and more particularly described in the Loan Agreement on certain real property more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Guarantor has executed and delivered to Lender a Guaranty of the Loan, of even date herewith (as may be amended, restated or modified from time to time, the "Guaranty") guarantying payment and performance of the Loan to Lender; and

WHEREAS, as an inducement to Lender to make the Loan to Borrower, Lender has requested that Indemnitors enter into and execute this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE LOAN MADE TO BORROWER AND WITH KNOWLEDGE THAT LENDER WOULD NOT MAKE THE LOAN BUT FOR THE PROMISES OF INDEMNITORS' HEREUNDER,

INDEMNITORS JOINTLY AND SEVERALLY HEREBY ABSOLUTELY AND UNCONDITIONALLY AGREE AS FOLLOWS:

1. Defined Terms. Except as otherwise provided in this Agreement, all words and terms not defined herein shall have the respective meanings and be construed herein as provided in the Mortgage and the Loan Agreement.

2. Guaranty. Indemnitors absolutely and unconditionally guaranty to Lender that Indemnitors and all other users, as well as all operations at the Property will fully comply with all Environmental Laws and all of the terms, covenants and provisions of the Mortgage and the other Loan Documents. In the event that Indemnitors and all other users, as well as all operations at the Property do not fully comply with all Environmental Laws or the terms, covenants and provisions of the Mortgage and the other Loan Documents, Lender may, but shall be under no obligation to, comply with same. If Indemnitors do not fully comply with all Environmental Laws and all of the terms, covenants and provisions of the Mortgage or the other Loan Documents, Indemnitors shall reimburse Lender, upon demand, for all reasonable costs and expenses incurred by Lender (including, without limitation, counsel and consulting fees and expenses, investigation and laboratory fees and expenses, court costs and litigation expenses) to the extent not otherwise reimbursed to Lender by Indemnitors in connection with Lender performing Indemnitors' obligations as set forth herein or in the Mortgage or the other Loan Documents.

3. Indemnification. Indemnitors absolutely and unconditionally agree to defend, indemnify, and hold harmless Lender, its employees, agents, trustees, attorneys, officers, directors and shareholders from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise, incurred by Lender, its employees, agents, trustees, attorneys, officers or directors (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to: (i) any breach by Indemnitors of the provisions of this Agreement; (ii) any breach by Indemnitors of any of the provisions of the Mortgage or any of the Loan Documents; (iii) any Hazardous Discharge or threat thereof of any Hazardous Material which is at, in, on, under, around, from or affecting the Property, including, without limitation, any violation of any Environmental Law or any damage or injury resulting from any Hazardous Material to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise, whether occurring during or prior to Indemnitor's ownership of the Property; (iv) any personal injury (including wrongful death) and property damages (real or personal) arising out of or related to any such Hazardous Material; (v) any lawsuit brought or threatened, settlement reached, or order

or directive of or by any Governmental Authority relating to such Hazardous Material;
(vi) any remedial action undertaken by Lender in connection with any of the foregoing.

4. Survival. The obligations and liabilities of Indemnitors under this Agreement shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the indebtedness evidenced by the Note and secured by the Mortgage has been paid in full and irrespective of any foreclosure of the Mortgage, release of any collateral, sale of the Property, pursuant to the provisions of the Mortgage, or acceptance by Lender, its wholly-owned subsidiary, assignee or nominee of a deed or assignment in lieu of foreclosure or sale, and irrespective of any other fact or circumstance of any nature whatsoever.

5. Guaranty of Payment and Not Collection. This Agreement is a guaranty of payment and not merely of collection. This Agreement is a primary obligation of Indemnitors.

6. No Marshalling. Indemnitors hereby waive any right or claim of right to cause a marshalling of Borrower's assets or to cause Lender to proceed against any of the security or collateral held by Lender before proceeding against Indemnitors; and, Indemnitors hereby waive any and all legal requirements that Lender shall institute any action at law or in equity against Borrower, or anyone else with respect to the Note, or any other Loan Document, or with respect to any security held by Lender as a condition precedent to bringing any action against Indemnitors under this Agreement.

7. Representations and Warranties of Indemnitors. Each Indemnitor represents and warrants that (i) it has received adequate consideration for the execution, delivery and performance of its obligations under this Agreement; (ii) the making of the Loan to Borrower and the assumption by each Indemnitor of its liabilities and obligations hereunder has or will provide substantial benefit to such Indemnitor; and (iii) Lender would not have made the Loan to Borrower had such Indemnitor not executed and delivered this Agreement to Lender.

8. Subrogation. So long as any of the Note remains unpaid, any liabilities and obligations of Borrower exist under the Loan Documents or Indemnitors under this Agreement, Indemnitors waive any and all rights of indemnification, reimbursement, subrogation or contribution which Indemnitors may otherwise have now or hereafter as a matter of law against Borrower.

9. Obligations Absolute. The liabilities and obligations of Indemnitors hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Note or any other Loan Document; (ii) the insolvency of, or the voluntary or involuntary bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting Borrower any other Indemnitor or any of their assets; or (iii) any other circumstance or claim which otherwise might

constitute a defense available to, or a discharge of, Borrower with respect to its liabilities and obligations under the Loan Documents, or of Indemnitors with respect to this Agreement.

10. Dealing with Borrower and Others. Without incurring responsibility to Indemnitors and without impairing or releasing the liabilities and obligations of Indemnitors hereunder, Lender, may at any time and from time to time, without the consent of or notice to Indemnitors, upon any terms or conditions and in whole or in part shall have the right to:

(i) amend, modify or change the manner, place or terms of payment of the Note or any other Loan Document and/or change or extend the time for payment or renew or alter any liabilities and obligations of Borrower or any security therefor, and the indemnity herein made shall apply to the liabilities and obligations of Borrower as so amended, modified, changed, extended, renewed or altered;

(ii) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, assigned, mortgaged or in which a security interest is given to secure, or howsoever securing, the liabilities and obligations of Borrower;

(iii) exercise or refrain from exercising any rights against Borrower or other persons or entities (including Indemnitors) or against any security given by Borrower or other persons or entities (including Indemnitors), or otherwise act or refrain from acting;

(iv) settle or compromise any liabilities and obligations of Borrower to Lender, dispose of any security therefor, with or without consideration, or any liability incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liabilities and obligations of Borrower (whether due or not) to creditors of Borrower other than Lender and Indemnitors; and

(v) apply any sums by whomsoever paid and howsoever realized for the benefit of Borrower to any liabilities and obligations of Borrower; subject to the provisions of the Loan Documents.

11. No Impairment. No invalidity, irregularity or unenforceability of all or any part of any liabilities and obligations of Borrower or the impairment or loss of any security therefor, whether caused by any actions or inactions of Lender, or otherwise, shall affect, impair or be a defense to this Agreement.

12. Joint and Several Liability. The liability of each Indemnitor under this Agreement shall be joint and several with that of each and every other Indemnitor.

13. No Waiver. No delay on the part of Lender in exercising any of its rights, powers or privileges or partial or single exercise thereof under the Note, this Agreement or any other document made to or with Lender by Borrower shall operate as a waiver of any such privileges, powers or rights. No waiver of any of its rights hereunder and no modification or amendment of this Agreement shall be deemed to be made by Lender unless the same shall be in writing, duly signed on behalf of Lender by a duly authorized officer, and each such waiver, if any, shall apply only with respect to the specific instance involved and shall in no way impair the rights of Lender or the liabilities and obligations of Indemnitors to Lender in any other respect at any other time.

14. Rights Cumulative. All rights, powers and remedies afforded to Lender by reason of this Agreement are separate and cumulative remedies, and no one of such remedies whether or not exercised by Lender shall be deemed to exclude any of the other remedies available to Lender nor prejudice the availability of any other legal or equitable remedy which Lender may have with respect to the Loan.

15. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of New Jersey without regard to choice of law consideration.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

17. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer
Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800

Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Indemnitors: Pawleys Island North, LLC
Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

Will Darwin Wheeler
334 Myrtle Avenue
Pawleys Island, South Carolina 29585

With a copy to: Gwin Law Office, LLC
2105 Cromley Circle, Suite B
Myrtle Beach, South Carolina 29577
Attention: Robert H. Gwin, III, Esq.
Facsimile No.: (843) 839-2244

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

18. Costs and Expenses. In case of any proceedings to collect any liabilities of Indemnitors to Lender, Indemnitors shall pay all costs and expenses of every kind for collection, sale or delivery, including reasonable attorneys' fees, and after deducting such costs and expenses from the proceeds of sale or collection, Lender may apply any residue to the liabilities and obligations of Indemnitors under this Agreement, who shall continue to be liable for any deficiency, with interest at the Default Rate, if any, under the Loan Documents, or if no Default Rate is provided for, then at the interest rate provided for in the Note.

19. JURISDICTION AND VENUE. IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER, INDEMNITORS HEREBY IRREVOCABLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN ANY COUNTY IN THE STATE OF NEW JERSEY WHERE LENDER MAINTAINS AN OFFICE AND AGREES NOT TO RAISE ANY OBJECTION TO SUCH JURISDICTION OR TO THE LAYING OR MAINTAINING OF THE VENUE OF ANY SUCH PROCEEDING IN SUCH COUNTY. INDEMNITORS AGREE THAT SERVICE OF PROCESS IN ANY SUCH PROCEEDING MAY BE DULY EFFECTED UPON THEM BY MAILING A COPY THEREOF, BY REGISTERED MAIL, POSTAGE PREPAID, TO INDEMNITORS.

20. WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER. IT IS INTENDED THAT SAID WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, AND/OR COUNTERCLAIMS IN ANY ACTION OR PROCEEDING. INDEMNITORS ACKNOWLEDGE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

21. CONSEQUENTIAL AND PUNITIVE DAMAGES. NO CLAIM MAY BE MADE BY INDEMNITORS AGAINST LENDER OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS OF LENDER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR, TO THE FULLEST EXTENT PERMITTED BY LAW, FOR ANY PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM OR CAUSE OF ACTION (WHETHER BASED ON CONTRACT, TORT, STATUTORY LIABILITY, OR ANY OTHER GROUND) BASED ON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND INDEMNITORS HEREBY WAIVE, RELEASE, AND AGREE NEVER TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER SUCH CLAIM NOW EXISTS OR HEREAFTER ARISES AND WHETHER OR NOT IT IS NOW KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

22. Gender. In all references herein to any parties, persons, entities or corporations, the use of any particular gender of the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

23. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses, paragraphs or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

24. Headings. Article, section and paragraph headings used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes.

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

26. Interpretation. In the event of any controversy, dispute or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of this Agreement's terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against Lender, Guarantor, or Borrower by virtue of such party having drafted this Agreement or any portion thereof.

27. Additional Guaranty. The obligations and liabilities of Guarantor under this Agreement are in addition to the obligations and liabilities of Guarantor under the Guaranty. The discharge of any Guarantor's obligations and liabilities under the Guaranty or by reason of operation of law or otherwise, in no event or under no circumstance shall constitute or be deemed to constitute a discharge, in whole or in part, of any Guarantor's obligations and liabilities under this Agreement. Conversely, the discharge of any Guarantor's obligations and liabilities under this Agreement or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of any Guarantor's obligations and liabilities under any Agreements of Guaranty.

28. Personal Liability. No exculpatory provisions contained in the Note, the Mortgage, or in any other Loan Document with respect to the Loan in any event or under no circumstances shall be deemed or construed to modify, qualify, or affect in any manner whatsoever the personal recourse obligations and liabilities of Indemnitors under this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Indemnitors have caused this Agreement to be duly executed and delivered on the day and year first above written.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

Robert H. Gwin, Jr.
Name: ROBERT H. GWIN, JR.

By: *Peggy Wheeler-Cribb*
Name: Peggy Wheeler-Cribb
Title: Manager

WITNESS:
Robert H. Gwin, Jr.
Name: ROBERT H. GWIN, JR.

GUARANTOR:
Peggy Wheeler-Cribb
PEGGY WHEELER-CRIBB, an individual

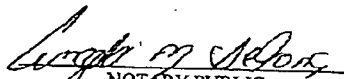
WITNESS:
Robert H. Gwin, Jr.
Name: ROBERT H. GWIN, JR.

GUARANTOR:
Will Darwin Wheeler
WILL DARWIN WHEELER, an individual

STATE OF SC)
COUNTY OF Horry) ss.:

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.


NOTARY PUBLIC

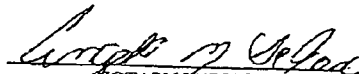
STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Peggy Wheeler-Cribb, who being by me duly sworn, did depose and say that she signed this instrument as her voluntary act and deed.


NOTARY PUBLIC

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Will Darwin Wheeler, who being by me duly sworn, did depose and say that he signed this instrument as his voluntary act and deed.


NOTARY PUBLIC

313720000-9408559v4

KENNEDY_01287

EXHIBIT A
LEGAL DESCRIPTION

31392/0000-5408559+4

A-1

KENNEDY_01288

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

LOT 4

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of the Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

KENNEDY_01289

**ASSIGNMENT OF LICENSES,
CONTRACTS, PLANS, SPECIFICATIONS,
SURVEYS, DRAWINGS AND REPORTS**

THIS ASSIGNMENT ("Assignment"), made as of the 30th day of April, 2009, from PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower" or "Assignor"), to KENNEDY FUNDING, INC., a New Jersey corporation, having an address at Two University Plaza, Suite 402, Hackensack, New Jersey 07601 (hereinafter "Lender" or "Assignee").

WITNESSETH

WHEREAS, Lender has agreed to lend NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "Loan") to Borrower.

WHEREAS, the Loan is evidenced by that certain Promissory Note (as may be amended, restated or modified from time to time, the "Note"), of even date hereof, in the principal amount of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS with interest thereon, and is secured by, among other things, that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage") of even date herewith from Assignor to Lender, upon certain real and personal property located on and more particularly described in the Mortgage (the "Mortgaged Property"). The Loan is guaranteed by the separate Guaranty (as may be amended, restated or modified from time to time, the "Guaranty") of even date herewith, of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor") to Assignee. The Note, Mortgage, the Guaranty and any and all other documents executed and delivered in connection with the Loan, are hereinafter sometimes collectively referred to as the "Loan Documents." Unless otherwise specified herein, capitalized terms used herein shall have the same meanings as defined in the Loan Documents.

WHEREAS, Lender is unwilling to lend funds to Borrower or to accept the Note, the Mortgage and the other Loan Documents, unless this Assignment is executed by Borrower and delivered to Lender.

NOW, THEREFORE, in consideration of the Loan, and intending to be legally bound, Assignor does hereby agree, as follows:

1) Assignor hereby assigns, transfers and sets over unto Lender all of Assignor's right, title, privileges and interest in and to the Additional Collateral (as hereinafter defined) and all rights and benefits therefrom as security for the full, timely and faithful repayment by Assignor of the principal, interest and any and all other sums due under the Loan Documents and performance by Assignor of all of its obligations

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KENNEDY_01290

under the Loan Documents, to the fullest extent permitted by law and by the terms of the Additional Collateral.

2) The following constitute the "Additional Collateral" hereby assigned, transferred and set over to Lender:

(a) All licenses, permits, approvals, certificates and agreements with or from all boards, agencies, departments, governmental or quasi-governmental, relating directly or indirectly to the ownership, use, operation and maintenance of the Mortgaged Property and the construction, use, development, renovation and installation of improvements to the Mortgaged Property, whether heretofore or hereafter issued or executed (collectively the "Licenses"); said boards, agencies, departments, governmental or otherwise being hereinafter collectively referred to as "Governmental Authorities."

(b) All contracts, subcontracts, agreements, service agreements, rights, warranties and purchase orders which have heretofore been or will hereinafter be executed by or on behalf of Assignor, or which have been or will hereafter be assigned to Assignor, as well as all promotional, sales and/or marketing materials, products or documents in connection with or relating to the current or future development, construction, renovation or improvement of the Mortgaged Property or to the use, access, operation, sale and maintenance of the Mortgaged Property. All of the contracts, agreements and other items referred to in subparagraphs (b), (c), (d) and (f) and (g) of this Paragraph are hereinafter referred to as the "Contracts," and the parties with whom or to whom such Contracts have been or are given are hereinafter collectively referred to as the "Contractors."

(c) All other contracts now or hereafter entered into, including, but without limitation, those certain architects' agreements, engineers' agreements, development agreements and management agreements, if any.

(d) All and any agreements of purchase and sale between Assignor and a bona fide third party, now existing or hereafter made, for all or any portion or portions of the Mortgaged Property, as said agreements of purchase and sale may have been, or may from time to time be hereafter, modified or extended.

(e) All rights necessary to provide the Mortgaged Property with utility services including, but not limited to sewer, water, electricity and gas services as approved by those governmental authorities having jurisdiction thereof.

(f) All other agreements now or in the future with respect to the management, maintenance and operation of the Mortgaged Property and the business conducted thereon.

(g) All plans, specifications, surveys, drawings, and reports between the Assignor and any other party, existing as of the date hereof or entered into or created in the future with respect to the Mortgaged Property.

3) Until the occurrence of an Event of Default hereunder or under the Loan Documents as defined therein, Assignor may retain, use and enjoy Assignor's benefits of the Additional Collateral. After the occurrence of an Event of Default as aforesaid, Lender may enforce this Assignment immediately following notice to Assignor subject to any applicable notice and grace provisions herein or under the Loan Documents. The affidavit or written statement of an officer, agent or attorney of Lender stating that there has been an Event of Default shall constitute sufficient evidence thereof, and any of the Governmental Authorities and Contractors or any other person are authorized and directed to rely thereon.

4) Assignor agrees faithfully to observe and perform all of the obligations and agreements imposed upon it under the Licenses and Contracts. From and after the date hereof, no Contract or License may be materially altered, amended or canceled, except by its terms or upon a default thereunder by a party other than Assignor, except with the prior written approval of Assignee and no new Contract may be entered into except with the prior written approval of Lender and as provided for in the Loan Agreement.

5) Lender will not be deemed in any manner to have assumed any of the Additional Collateral, nor shall Lender be liable to Governmental Authorities or Contractors by reason of any default by any party under the Licenses or Contracts unless and until Lender expressly in writing assumes an obligation or obligations. Assignor agrees to indemnify and to hold Lender harmless from and against any and all loss or damage which it may or might incur by reason of any claims or demands against Lender on Lender's alleged assumption or Assignor's duties or obligations to perform and discharge the terms, covenants and agreements in said Licenses and Contracts.

6) (a) After the occurrence of an Event of Default, Lender may elect to exercise any and all of the rights and remedies of Assignor under the Additional Collateral, without any interference or objection from Assignor, and Assignor shall cooperate in causing the Contractors to comply with all the terms conditions of the Contract.

(b) After the occurrence of an Event of Default, if and to the extent permitted by law, Lender may, with or without entry upon the Mortgaged Property, at its option, take over and enjoy the benefits of any one or more of the Licenses and Contracts, exercise the rights of Assignor under the Additional Collateral, and perform all acts in the same manner and to the same extent as Assignor might do. In connection with any and all of the foregoing powers, and without limiting the same, Lender may effect new Contracts and Licenses, cancel or surrender existing Contracts and Licenses, alter and amend the terms of and renew existing contracts and Licenses, and make concessions to

Governmental Authorities and Contractors. Assignor hereby releases any and all claims which it has or might have against Lender arising out of such performance by Lender, unless arising from a willful default or violation under such Contract or License caused by Lender.

7) All of the foregoing powers herein granted Lender shall be liberally construed. Lender need not expend its own funds in the exercise of power, but if it does, such amounts shall be considered as advances for and on behalf of Assignor evidenced and secured by the Note, Mortgage and other Loan Documents. Any amounts so advanced shall bear interest at the default rate prescribed in the Note.

8) In addition to the deliveries made at the closing of the Loan, Assignor shall, within fifteen (15) days of any request by Lender, furnish Lender with a complete list of all Contracts and Licenses entered into or obtained by it. Further, Assignor shall, within fifteen (15) days of any request by Lender, deliver to Lender executed or certified copies of all Contracts and Licenses and other written agreements, correspondence and memoranda between Assignor and Contractors and Governmental Authorities setting forth the contractual arrangements between them. To the extent that Assignor does not have executed or certified copies of the foregoing in its possession, it shall deliver copies of those of the foregoing which are in its possession, with a certification that to the best of its knowledge and belief, the documents actually delivered are true and correct copies of the aforesaid original documents. Such requests may be made at any time.

9) Nothing herein contained shall be construed as making Lender a mortgagee in possession, or as constituting a waiver of suspension by Lender of its right to enforce payment of the debts under the terms of the Loan Documents. Lender is not the agent, partner, or joint venturer of Assignor or of any of the Contractors or Governmental Authorities.

10) This Assignment may be enforced from time to time by Lender in its discretion, with or without order of any court and with or without appointment of a receiver, as Lender shall determine, provided an Event of Default has occurred. Lender may also at any time cease to enforce this Assignment. Any failure on the part of Lender promptly to exercise any option hereby given or reserved shall not prevent the exercise of such option hereunder or under any Loan Document at any time thereafter. Lender may pursue and enforce any remedy or remedies accorded it herein independently of, in conjunction or concurrently with, or subsequent to its pursuit and enforcement of any remedy or remedies which it may have under the Loan Documents.

11) In furtherance of this Assignment, Assignor shall cause its Contractors to execute and deliver to Lender the letters substantially in the form annexed hereto as Exhibit A.

12) It shall be an Event of Default hereunder if:

(a) Assignor shall default in the performance of any of its covenants or agreements hereunder after Lender has given notice in writing of such default to Assignor and Assignor has failed to cure such default within ten (10) days of such notice;

(b) Assignor has made or hereafter makes a material misrepresentation under this Agreement; or

(c) There shall be an Event of Default under any of the Loan Documents. Any Event of Default hereunder shall constitute an Event of Default under the Loan Documents.

13) Assignor warrants and represents:

(a) that it has the right to execute and deliver this Assignment;

(b) that it has made no prior assignments of the Additional Collateral;

(c) that to the best of its knowledge and belief, after due inquiry, all Additional Collateral are in full force and effect on the date hereof, subject to no defenses, set-offs or counterclaim whatsoever; and

(d) as of the date hereof, there exists no event, condition or occurrence which constitutes, or which with notice and/or the passage of time would constitute, a breach of or default under any term or condition of any of the Additional Collateral. Assignor also hereby covenants and agrees not to do any act which would destroy or impair the security to Lender of this Assignment.

14) This Assignment and Lender's and Assignor's rights, liabilities, duties and disabilities hereunder shall be governed and construed in accordance with the laws of the State of New Jersey without regard to choice of law considerations. Assignor consents to the jurisdiction of the courts of the State of New Jersey or the United States District Court for the District of New Jersey in any action brought to enforce any of the rights granted to the Lender hereunder. Assignor waives the right to trial by jury. Assignor agrees that service of process in any such action or proceeding may be duly effected upon it by service at the address set forth herein by the United States Certified or Registered Mail, Return Receipt Requested, postage prepaid.

15) All notices, consents, approvals and requests required or permitted hereunder shall be given in accordance with the terms of Section 16 of that certain Loan and Security Agreement of even date herewith by and between Assignor and Lender.

16) A determination that any portion of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any

determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

17) This Assignment shall terminate and be null and void without further action upon payment in full or other satisfaction in full of the Loan. Notwithstanding the foregoing, the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee, showing any part of the Loan to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may and is hereby authorized to rely thereon.

18) The Assignee may take or release other security for the repayment of Loan; may release any party primarily or secondarily liable thereon and may apply any other security held by it to the satisfaction of the Loan without prejudice to any of its rights under this Assignment.

19) In case of any conflict between the terms of this Assignment and the terms of the Mortgage, the terms of the Mortgage shall prevail.

20) This Assignment together with the covenants and warranties herein contained, shall inure to the benefit of the Assignee and any subsequent holder of the Note and the Mortgage and shall be binding upon the Assignor, its successors and assigns and any subsequent owner of the Mortgaged Property.

21) Notwithstanding anything contained herein to the contrary, if there is more than one Assignor, each Assignor shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Assignment.

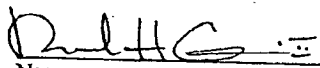
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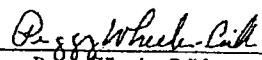
IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on the day and year first above written.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company


Name: Robert H. Gwin, Jr.

By: 
Name: Peggy Wheeler-Cribb
Title: Manager

ACKNOWLEDGEMENT

STATE OF SC)
COUNTY OF Horry) ss.:

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

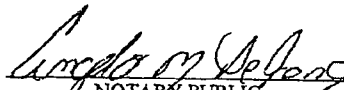

NOTARY PUBLIC

EXHIBIT A

**CONSENT TO ASSIGNMENT OF LICENSES,
CONTRACTS, PLANS AND SPECIFICATIONS,
SURVEYS, DRAWINGS AND REPORTS**

The Undersigned hereby consents to the above assignment and agrees that, in the event of default by Borrower under the terms of this Assignment or any other Loan Documents referred to herein, the Undersigned will continue, at the request of Kennedy Funding, Inc., to perform all of its/his obligations under said Contracts from and after any such default, provided all sums coming due under the terms of such contracts for work performed by the Undersigned after such request shall be paid by Lender. The Undersigned further consents to the unrestricted use by Lender of all plans, specifications and construction drawings in the event of a default as aforesaid.

DATED: _____, 200_____

By: _____

By: _____

A-1

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KENNEDY_01297

DOCUMENT RE-EXECUTION AGREEMENT

In consideration of the loan in the principal amount of NINE HUNDRED SIXTY THOUSAND and 00/100 (\$960,000) DOLLARS (the "Loan") made by KENNEDY FUNDING, INC., as agent for the lenders identified in the below defined Note (the aforesaid lenders, their successors and assigns are hereinafter collectively referred to as "Lender") to the undersigned Borrower as of the 30th day of April, 2009, and to induce the Lender to make said loan evidenced by a Loan and Security Agreement (as may be amended, restated or modified from time to time, "Loan Agreement") of even date herewith, a Promissory Note (as may be amended, restated or modified from time to time, the "Note") of even date herewith, and secured by, inter alia, that certain Mortgage and Security Agreement of even date herewith, (as may be amended, restated or modified from time to time, the "Security Instrument") and guaranteed by separate Guaranty of even date herewith, (as may be amended, restated or modified from time to time, the "Guaranty") of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor"), of even date herewith, executed by Guarantor, and such other documents as have been executed and/or delivered by Borrower or Guarantor to Lender in connection with the Loan (as may be amended, restated or modified from time to time, the "Loan Documents"), the undersigned Borrower and Guarantor do hereby represent and promise as follows:

1. The undersigned parties will re-execute any document or instrument signed in connection with the Loan, or will execute any document or instrument that should have been signed at or before the closing of the Loan, or which was incorrectly drafted and/or signed.
2. In the event of any miscalculation, misapplication or error in payment or collections of monies at closing, the Borrower and Guarantor agree to correct the same upon request.
3. Borrower and Guarantor, as the case may be, shall execute and deliver, or cause to be executed and delivered to Lender, all other instruments, certificates and agreements as Lender or Lender's counsel may reasonably require, including, but not limited to, an estoppel certificate stating that the Loan is in full force and effect and that there are no defenses or offsets thereto, or any document, certificate, instrument or agreement reasonably required by Lender or Lender's counsel to effect, confirm or assure the rights, remedies and liens intended to be granted or conveyed to Lender under the Note, the Loan Agreement, the Security Instrument or any other Loan Document.
4. Each request by Lender pursuant to Paragraph 1, 2 or 3 above shall receive full cooperation and compliance by the undersigned Borrower and Guarantor by execution or re-execution (as the case may be) and delivery at Lender's office located in Hackensack, New Jersey or such other location within the State of New Jersey as Lender may designate within seven (7) days of Lender's making such request. Failure to so

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KENNEDY_01298

comply shall constitute an event of default under said Note, Security Instrument,
Guaranty and Loan Documents.

[Remainder of this Page Intentionally Left Blank]

The undersigned hereby executes this Document Re-Execution Agreement as of the day set forth above.

WITNESS:

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a
South Carolina limited liability company

[Signature]
Name: ROBERT H. GWIN, Jr.

By: [Signature]
Name: Peggy Wheeler-Cribb
Title: Manager

WITNESS:
[Signature]
Name: ROBERT H. GWIN, Jr.

GUARANTOR:
[Signature]
PEGGY WHEELER-CRIBB, an
individual

WITNESS:
[Signature]
Name: ROBERT H. GWIN, Jr.

GUARANTOR:
[Signature]
WILL DARWIN WHEELER, an
individual

STATE OF SC)
COUNTY OF HURRY) ss:

I certify that on April 26, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

[Signature]
NOTARY PUBLIC

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KENNEDY_01300

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Peggy Wheeler-Cribb, who being by me duly sworn, did depose and say that she signed this instrument as her voluntary act and deed.

[Signature]
NOTARY PUBLIC

STATE OF SC)
COUNTY OF Horry) ss.:

On the 28 day of April, 2009, before me personally came Will Darwin Wheeler, who being by me duly sworn, did depose and say that he signed this instrument as his voluntary act and deed.

[Signature]
NOTARY PUBLIC

PAWLEYS ISLAND NORTH, LLC

CERTIFICATE
OF
MANAGER

In connection with that certain Loan and Security Agreement (the "Loan Agreement") by and between Kennedy Funding, Inc., as agent, and Pawleys Island North, LLC, a South Carolina limited liability company (the "Company") dated April 30, 2009, the undersigned hereby certifies that she is the Manager of the Company. The undersigned further certifies to Kennedy Funding, Inc., as agent, in connection with the Loan Agreement as follow:

1. Attached hereto as Exhibit A is a true, complete and correct copy of the Articles of Organization of the Company and all amendments thereto, which is in full force and effect on and as of the date hereof and which has not been amended, modified or repealed, and no proceedings for the amendment, modification or rescission thereof are pending or contemplated, and no amendment or other document relating to or affecting such Articles of Organization has been filed in the office of the Secretary of State of the State of South Carolina since such date and no action has been taken by the Company, its members or managers in contemplation of the filing of any such amendment or other document or in contemplation of the liquidation or dissolution of the Company.
2. Attached hereto as Exhibit B is a true, complete and correct copy of the Operating Agreement of the Company as in full force and effect on and as of the date hereof, which has not been amended, modified or repealed, and no proceedings for the amendment, modification or rescission thereof are pending or contemplated.
3. Attached hereto as Exhibit C is a true, complete and correct copies of all resolutions adopted by the Member(s) and/or Manager(s) of the Company, adopted by written consent in accordance with applicable law, relating to, among other things, the authorization, execution, delivery and performance of the Loan Agreement and all other agreements, certificates, documents and instruments to be executed in connection therewith (collectively, the "Documents") and the consummation of the transactions contemplated thereby and therein. All such resolutions are in full force and effect on the date hereof in the form in which adopted without amendment, modification or revocation, and no other resolutions or action by the members or managers of the Company have been adopted relating to the authorization, execution, delivery and performance of the Documents and the consummation of the transactions contemplated thereby and therein.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of
Manager of Pawleys Island North, LLC on this 30 day of April, 2009.

Peggy Whetler-Cribb
Peggy Whetler-Cribb, Manager

313970000-1529088v1

KENNEDY_01303

Exhibit A

Articles of Organization

See Attached

31392/0000-1528088v1

KENNEDY_01304

THIS IS TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAR 04 2009

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is Pawleys Island North, LLC
2. The address of the initial designated office of the Limited Liability Company in South Carolina is 334 Myrtle Avenue

Pawleys Island, South Carolina Street Address
City 29585
Zip Code

3. The initial agent for service of process of the Limited Liability Company is Peggy Wheeler-Cribb
Name Mark Hammond Signature
and the street address in South Carolina for this initial agent for service of process is

334 Myrtle Avenue
Street Address
Pawleys Island, South Carolina City 29585
Zip Code

4. The name and address of each organizer is

(a) Peggy Wheeler-Cribb
Name
334 Myrtle Avenue Street Address Pawleys Island City
South Carolina State 29585 Zip Code

(b) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

5. ☒ Check this box only if the company is to be a term company. If so, provide the term specified:
Fifty (50) years from date of filing with Secretary

000006-0028 FILED: 03/04/2009
PAWLEYS ISLAND NORTH, LLC
Filing Fee: \$110.00 GRIG
Mark Hammond South Carolina Secretary of State

KENNEDY_01305

Pawleys Island North, LLC
Name of Limited Liability Company

6. ☒ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(a) Peggy Wheeler-Cribb
Name
334 Myrtle Avenue
Street Address Pawleys Island
South Carolina City
State 29585
Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

KENNEDY_01306

Pawleys Island North, LLC

Name of Limited Liability Company

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:
9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

Peggy McEachern Smith

(Add Additional lines if necessary)

Date 3/5/14

FILING INSTRUCTIONS

1. File two copies of this form, the original and either a duplicate original or a conformed copy.
2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this filing a computer disk which will allow for expansion of the space on the form.
3. This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.

Return to: Secretary of State
P.O. Box 11550
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1124.

Form Revised by South Carolina
Secretary of State, January 2009

KENNEDY_01307

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

PAWLEYS ISLAND NORTH, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on March 4th, 2009, with a duration that is until March 4th, 2059, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
5th day of March, 2009.

Mark Hammond
Mark Hammond, Secretary of State

KENNEDY_01308

FIRST AMENDMENT TO THE
ARTICLES OF ORGANIZATION
OF
PAWLEYS ISLAND NORTH, LLC

THIS FIRST AMENDMENT TO THE ARTICLES OF ORGANIZATION (this "Amendment") of Pawleys Island North, LLC (the "Company"), a South Carolina limited liability company is entered into as of this 28 day of April, 2009, by the signatories hereto as all of the members and managers of the Company.

WHEREAS, the date of filing of the original Articles of Organization of the Company is March 4, 2009 (the "Formation Document"); and

WHEREAS, the Company's members and managers desire to amend the Formation Document for the purposes set forth herein.

NOW, THEREFORE, the Formation Document is hereby amended as set forth herein as contemplated by the South Carolina Limited Liability Company Law (the "Act").

1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Formation Document.

2. Amendment. The Formation Document is hereby amended by adding thereto a new Section 9 as follows:

Section 9.0. Purpose. The nature of the business and of the purposes to be conducted and promoted by the Company is to engage solely in the following activities:

(a) To own, hold, sell, assign, transfer, operate, improve, lease, mortgage, pledge and otherwise deal with certain real property pledged to Kennedy Funding, Inc. as collateral pursuant to that certain Mortgage and Security Agreement, dated on or about the date hereof (the "Property").

(b) To exercise all powers enumerated in the Act necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth in this Section 9.

Section 9. SPECIAL PURPOSE ENTITY PROVISIONS

9.1. Duration of Amendments. For so long as the Company has a mortgage loan with Kennedy Funding, Inc., its successors or assigns (the "Loan"), the terms and conditions set forth in this Amendment shall apply notwithstanding any contrary provisions set forth in the Formation Document or the Operating Agreement of the Company, as amended.

9.2. Certain Prohibited Activities. The Company shall only incur indebtedness in an amount necessary to operate and maintain the Property. For so long as any mortgage lien in favor of Kennedy Funding, Inc., its successors or assigns (the "First Mortgage") exists on any portion of the Property, the Company shall not incur, assume, or guaranty any other indebtedness other than in an amount necessary to operate and maintain the Property. Subject to the terms and conditions of this Amendment, for so long as the First Mortgage exists on any portion of the Property, the Company shall not dissolve or liquidate. For so long as the First Mortgage exists on any portion of the Property, the Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Company) formed or surviving such consolidation or merger or that acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall be acceptable to the mortgagee holding the First Mortgage, in its sole discretion, and (c) shall expressly assume the due and punctual performance of the Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Company and be continuing. In addition to the provisions set forth herein, for so long as the First Mortgage exists on any portion of the Property, no material amendment to the Formation Document may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

No transfer of any direct or indirect ownership interest in the Company may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Company, more than a 49% interest in the Company, unless such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage and to any applicable rating agency concerning, as applicable, the Company, the new transferee and/or their respective owners.

9.3. Indemnification. Any indemnification of the Company's members and/or managers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

9.4. Separateness Covenants. For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate

identity, in addition to the other provisions set forth in the Operating Agreement, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of any affiliate(s) or, if it shares office space with any affiliate(s), it shall allocate fairly and reasonably any overhead and expense for shared office space.

(ii) It shall not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership or operation of the Property.

(iii) It will not engage, directly or indirectly, in any business other than the ownership, management and operation of the Property and it will conduct and operate its business as presently conducted and operated. It shall conduct its business and hold its assets in its own name.

(iv) It will not enter into any contract or agreement with any affiliate of the Company, any constituent party of the Company or any affiliate of any constituent party of the Company, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party (or where the benefit flows to the Company).

(v) It has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the First Mortgage and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the Property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the First Mortgage may be secured (subordinate or pari passu) by the Property.

(vi) It has not made and will not make any loans or advances to any third party, including any affiliate of the Company or constituent party of the Company and shall not acquire obligations or securities of its affiliate(s).

(vii) It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(viii) It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the Formation Document or the Operating Agreement without the prior written consent of the First Mortgage holder or, after the

securitization of the Loan, only if the Company receives approval of such amendment by the mortgagee holding the First Mortgage.

(ix) It will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliate(s) and any constituent party. It shall maintain its books, records, resolutions and agreements as official records.

(x) It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(xi) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(xii) Neither the Company nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

(xiii) It will not commingle the funds and other assets of the Company with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xiv) It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xv) It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity.

(xvi) It shall pay any liabilities out of its own funds, including salaries of any employees.

(xvii) The Company shall maintain a sufficient number of employees in light of its contemplated business operations.

(xviii) The Company shall not guarantee or become obligated for the debts of any other entity or person.

(xix) It shall not have any of its obligations guaranteed by any members, except the guarantor of the First Mortgage.

(xx) It shall have at least one (1) Independent Manager.

9.5 The members and/or managers, shall not, so long as the Loan is outstanding, amend, alter, change or repeal the definitions set forth below or any provision of this or adopt any provision in conflict therewith without the unanimous written consent of Kennedy Funding, Inc., its successors or assigns, the Independent Manager, and all of the members and managers of the Company.

9.6 Notwithstanding anything contained herein to the contrary and any provision of law that otherwise so empowers the Company, the members, the managers, any officer or any other Person, neither the members nor the managers nor any officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the members, the managers, Kennedy Funding, Inc., its successors or assigns, and the Independent Manager, to take any Material Action, provided, however, that neither the members nor the managers may vote on, or authorize the taking of, any Material Action, unless there is at least one (1) Independent Manager then serving in such capacity.

9.7 **Independent Manager.** As long as the Loan is outstanding, the members and managers shall cause the Company at all times to have at least one (1) Independent Manager who will be appointed by the members and is acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. The Independent Manager shall be, and is hereby designated as a "manager" within the meaning of the Act, and shall have only those powers in management of the business and affairs of the Company as shall be specifically provided in this Amendment. To the fullest extent permitted by law, the Independent Manager shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 9.6. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Manager by written instrument, and (ii) shall have executed a counterpart to this Amendment. In the event of a vacancy in the position of Independent Manager, the members shall, as soon as practicable, appoint a successor Independent Manager acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Amendment. Except as provided in the third sentence of this Section 9.7, in exercising their rights and performing their duties under this Amendment, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the laws of the state in which the Company is organized. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. The initial Independent

Manager shall be Michelle A. Dreyer, an individual having an address at C/O Corporation Service Corporation, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Any notice given to the Independent Manager shall be deemed effective if delivered to the address set forth in the preceding sentence.

For purpose of this Section 9, the following terms shall have the following meanings:

"Affiliate" of any Person (as hereinafter defined) shall mean any other Person which, directly or indirectly, controls or is controlled by, or is under common control with such Person. For the purposes of this definition, "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Independent Director" or "Independent Manager" shall mean a Person who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager), officer, employee, partner, member, manager, contractor or attorney of the Company or any Affiliate of any of them; (b) a customer, creditor or other person who derives any of its purchases or revenues from its activities with the Company or any Affiliate; (c) a Person controlling or under common control with any such stockholder, director, officer, partner, member, manager, contractor, customer, creditor, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, contractor, customer, creditor or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

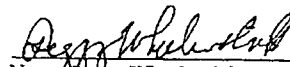
"Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

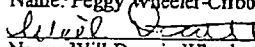
"Person" or "Persons" shall mean any one or more individuals, partnerships, corporations (including a business trust), joint stock companies, limited liability company, trusts, unincorporated associations, joint ventures or other entities, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

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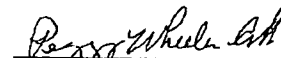
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby,
have duly executed this First Amendment to the Articles of Organization of Pawleys
Island North, LLC as of the date first above written.

MEMBERS:


Name: Peggy Wheeler-Cribb


Name: Will Darwin Wheeler

MANAGERS:


Name: Peggy Wheeler-Cribb

INDEPENDENT MANAGER:

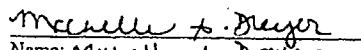

Name: Michelle A. Dreyer

Exhibit B
Operating Agreement
See Attached

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Pawleys Island North, LLC

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NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA.

Pawleys Island North, LLC

OPERATING AGREEMENT

MEMBERSHIP SHARES IN Pawleys Island North, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. MEMBERSHIP SHARES MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED TO PERSONS WHO ARE NOT BONA FIDE RESIDENTS OF THE STATE OF SOUTH CAROLINA FOR A PERIOD OF AT LEAST NINE MONTHS FROM THE COMPLETION OF THE OFFERING IN WHICH THE TRANSFEROR ACQUIRED SUCH MEMBERSHIP SHARES. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.

Operating Agreement
of .

Pawleys Island North, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 11th day of MARCH, 2009 by Will Darwin Wheeler and Peggy Wheeler-Cribb ("Member" or "Members"); and Pawleys Island North, LLC, ("Company").

WITNESSETH:

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I
Definitions

1.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- (b) "Agreement" shall mean this Operating Agreement, together with any amendments hereto.
- (c) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.
- (d) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.
- (e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.

- (f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (g) "Company" shall mean Pawleys Island North, LLC.
- (h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.
- (j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty (50%) percent of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.
- (k) "Dissociation" shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to ARTICLE X, and shall not have the meaning given it in the Act.
- (l) "Family" shall mean (1) the spouse, lineal descendants and ancestors of an individual; (2) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) herein; and (3) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (1) or (2) herein.
- (m) "Financial Rights" shall mean the right to share in the Profits and Losses of the Company and the right to share in distributions.
- (n) "Losses" shall mean the losses of the Company as determined under ARTICLE VIII hereof.
- (o) "Management Committee" shall mean the Managers, collectively, who are elected from time to time pursuant to ARTICLE V.
- (p) "Manager" shall mean those individuals elected to serve as Managers from time to time pursuant to ARTICLE V.
- (q) "Member" shall mean the parties to this Agreement from time to time.
- (r) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.
- (s) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.
- (t) "Profits" shall mean the profits of the Company as determined under ARTICLE VIII hereof.

(u) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(v) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II Formation, Purposes and Powers

2.1 **Formation.** The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

2.2 **Name.** The name of the Company shall be Pawleys Island North, LLC. The Company's name may only be changed by an amendment to the Articles of Organization.

2.3 **Articles of Organization.** The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

2.4 **Designated Office.** The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.

2.5 **Registered Agent and Address.** The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.

2.6 **Term Company.** The Company shall be a term company within the meaning of the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization, and the existence of the Company shall terminate on the date specified in the Articles of Organization, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement.

2.7 **Purposes.** The character of business and purposes of the Company shall be to invest in real estate and develop real estate, and all services ancillary to such activities, including but not limited to managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Managers or Members deem necessary or appropriate to the foregoing purposes.

2.8 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the Option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;
- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;
- (j) Pay pensions and establish qualified and non-qualified retirement plans, bonus plans, Option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents, if otherwise permitted by law;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;
- (m) Perform any act and execute and deliver any documents required by any governmental authority; and
- (n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

2.9 Construction. Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

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ARTICLE III
Membership and Capitalization

3.1 **Members.** Each Member's Capital Contribution to the Company, Financial Rights and Voting Rights are shown on EXHIBIT A attached hereto.

3.2 **Admission of New Members.** Except as otherwise provided in ARTICLE XI, additional Members (including transferees) may be admitted to the Company only with the consent of the Members. The Members shall indicate their consent to the admission of a new Member by executing with the new Member and the Company an amendment to EXHIBIT A of this Agreement setting forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person completes and executes an Admission Agreement with the Company in the form of EXHIBIT B attached hereto.

Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.3 **Transferee of Membership Share Admitted as a Member.** Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.4 **Transferee of Membership Share not Admitted as a Member.** If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Managers written notice of the transfer, proof of the transfer deemed sufficient by the Managers, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Managers may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

3.6 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Managers. Any such power of attorney may be changed or revoked at any time by the Member who gave such power by giving notice of its change or revocation to the Managers.

3.7 Mandatory Capital Calls. The Members owing a majority of the voting rights of the company may make a mandatory capital call, in whatever amount the Members deem appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

If any Member fails to make his required Capital Contribution within thirty (30) days after notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this Section may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original 30 day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. The Defaulting Member shall have one hundred (100) days after notice of a mandatory capital call, which he has failed to make, to repay in full the amount of such capital call paid by other members, to such members together with interest at the prime rate as reported in the Wall Street Journal, plus 3% interest. If the full amount is not repaid with interest by the Defaulting Member within 180 days, then any Member that makes additional Capital Contributions hereunder to the Company shall have his Membership Share increased so that, when compared to all other Member's Capital Contributions, it is equal to a fraction, the numerator of which is the sum of such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by all Members. The Membership Share of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly.

3.8 Representations and Warranties of Members. Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:

(a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;

(b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;

(c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;

(d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;

(e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;

(f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation, and that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company;

(g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;

(h) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

3.9 Indemnification. Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE IV
Member Meetings

4.1 **Place of Meetings.** All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own a majority of the Voting Rights in the Company.

4.2 **Time of Meeting.** Meetings of the Members may be called at any time by the Managers or any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 **Member Voting and Quorum.** Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. A majority of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own a majority of the Voting Rights in the Company shall constitute a valid decision of the Members.

4.4 **Voting by Certain Members.** Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.

Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.

Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.

4.5 **Proxies.** Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

4.6 **Waiver of Notice.** A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 **Manner of Meetings.** Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.

4.8 *Action without Meeting.* The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.

4.9 *Personal Services.* No Member shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

ARTICLE V Management and Control

5.1 *General Authority.* The Company shall be manager managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by the Managers. The Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Managers shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to mortgage, hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company and the Members;
- (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, Options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain and manage the same;
- (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property;
- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;
- (j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber develop, improve, subdivide or otherwise deal with any property, including Company Property;

(k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company; and

(l) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 **Members' Approval Required for Certain Major Decisions.** Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own a majority of the Voting Rights in the Company.

(b) The Company shall not make any capital call without the consent of those Members who own a majority of the Voting Rights in the Company.

(c) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own a majority of the Voting Rights in the Company.

(d) The Company shall not hire anyone who is a member of a Member's Family without the approval of those Members who own a majority of the Voting Rights in the Company.

(e) The Company shall not file a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court without the approval of those Members who own a majority of the Voting Rights in the Company.

5.3 **No Authority of Members.** Except as otherwise provided in this Agreement, or as authorized by the Managers, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

5.4 **Managers.**

(a) **Number and Qualifications.** The number of Managers on the Management Committee shall be at least one (1), but not more than Three (3). As of the date of this Agreement, the number of Managers on the Management Committee shall be one (1), and the following individual is hereby elected to the Management Committee:

Peggy Wheeler-Cribb

The number of Managers on the Management Committee may be changed by those Members who own a majority of the Voting Rights in the Company. Each Manager shall hold office until his successor shall have been elected and qualified, or until his earlier death, resignation or removal from office. Managers need not be residents of the State of South Carolina or Members in the Company. All Managers must be natural persons.

(b) **Election of Managers.** The Managers shall be elected by the affirmative vote of those Members who own a majority of the Voting Rights in the Company.

(c) **Removal.** Managers may be removed from office with or without cause by a vote of those Members who own a majority of the Voting Rights in the Company.

(d) **Vacancies.** A vacancy occurring in the Management Committee may be filled by

a vote of a majority of the remaining Managers, or by the sole remaining Manager. Notwithstanding the foregoing, a vacancy created by an increase in the authorized number of Managers shall be filled only by the Members. The Members may elect a Manager at any time to fill any vacancy not filled by the Management Committee.

5.5 Management Committee Meetings.

(a) **Quorum.** A majority of the Managers constitutes a quorum. Except as otherwise provided in this Agreement, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy.

(b) **Voting.** Each Manager shall be entitled to one (1) vote. Once a quorum is established, the affirmative vote of a majority of the Managers represented at the meeting shall constitute a valid decision of the Management Committee.

(c) **Place.** All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by a majority of the Managers.

(d) **Notice.** Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least two (2) business days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

(e) **Waiver of Notice.** A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

(f) **Proxy.** Managers may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Managers before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

(g) **Manner of Meetings.** Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.

5.6 **Action without Meeting.** The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.7 **Delegation of Powers.** From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

5.8 **Ratification.** The Management Committee may ratify and adopt any and all acts of any Person done on behalf of the Company.

5.9 **Personal Services.** No Manager shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

5.10 **Compensation for Services.** The Managers shall be entitled to reasonable compensation for services to the Company in an amount to be determined by the subject to the approval of those Members who own a majority of the Voting Rights in the Company. Also, the Managers shall be

entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

ARTICLE VI

Fiduciary Duties; Right to Rely; Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

With the consent of a majority of the Members, Members may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. With the consent of a majority of the Members, Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.3 Duty of Care. In carrying out his duties and exercising his powers hereunder, each Manager shall exercise reasonable skill and care, use his best judgment and act at all times in what he deems to be the best interests of the Company. Subject to the preceding sentence, no Manager shall be liable, responsible or accountable in damages or otherwise to the Company or the Members for any acts performed or omitted by him in good faith and within the scope of this Agreement. Neither the Members nor the Managers are required to devote their full time and efforts to the Company.

6.4 Fiduciary Duties. The Managers shall discharge their duties and exercise any of their rights consistently with the obligation of good faith and fair dealing which they owe to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the other Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believes are within such other

Person's professional or expert competence.

6.6 **Indemnification of Managers.** To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, reckless conduct, intentional misconduct, or knowing violation of the law.

ARTICLE VII Capital Accounts and Accounting

7.1 **Capital Accounts.** The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

7.2 **Compliance with Section 704(b) of the Code.** The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.3 **Tax Matters Partner.** Peggy Wheeler-Cribb is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Managers may designate a new tax matters partner from time to time without amending this Agreement.

ARTICLE VIII Interim Distributions and Allocations

8.1 **Interim Distributions.** Interim distributions to the Members shall be made from time to time, when the Managers determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, payments under Section 707(c) of the Code, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the Members. Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

8.2 **Restrictions on Distributions.** Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of

the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation

between the adjusted basis of such property and the fair market value at the time of contribution.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's nonrecourse liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company minimum gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company minimum gain. A Member's share of the net decrease in Company minimum gain is the amount of the total net decrease multiplied by the Member's percentage share of Company minimum gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(f)(2)), any Member with a share of that Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member nonrecourse debt minimum gain. A Member's share of the net decrease in Member nonrecourse debt minimum gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member nonrecourse debt minimum gain arises because the liability ceases to be Member nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the member nonrecourse minimum gain chargeback is added to the Member's share of Company minimum gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in

an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This Section will be interpreted, applied, and if necessary modified to constitute a "qualified income officer" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, and Termination

9.1 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

- (a) The written consent of all those Members owning the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;
- (c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act;
- (d) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own a majority of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, or his heirs, legal representatives, personal representatives, successors or permitted assigns, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Except as otherwise provided herein, following dissolution of the Company, the Managers shall serve or may appoint one or more Members or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs. The liquidator shall:

- (a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in the Act;
- (b) Publish notice of the Company's dissolution as provided in the Act;

(c) Make final liquidating distributions as provided below, and distribute any Company Property discovered after any such final liquidating distributions in the manner described below; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Managers, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in the manner described below.

9.5 Distribution in Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire an independent appraiser to determine the fair market value of the asset in question. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors, including the liquidator if the liquidator is not a Member, for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, to Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this Section.

9.7 Deficit Capital Account Balances. Any deficit in a Member's Capital Account shall not be an asset of the Company, and no Member or transferee of all or any part of a Membership Share shall be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member or transferee has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this Article shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

9.9 Duties During Winding Up. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business.

ARTICLE X Dissociation

10.1 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

- (a) Withdrawing, retiring or resigning from the Company with the consent of those Members who own a majority of the Voting Rights in the Company; or
- (b) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
- (c) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
 - (1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
 - (2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
 - (3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member; or
- (d) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement; or
- (e) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
- (f) The death of the Member; or

10.2 Effect of Member's Dissociation. Unless otherwise provided in ARTICLE IX, the Dissociation of a Member does not dissolve the Company. A Dissociating Member does not cease to be a Member by reason of his Dissociation. Subject to SECTION 10.5, the right of a Dissociating Member to be compensated for his Membership Share shall be governed exclusively by ARTICLE XI and not the Act. The parties waive any right they may have to assert that the Act or any other provision of law supercedes or modifies the provisions of this Agreement relating to the cessation of a Member's participation in the Company, withdrawal, or Dissociation.

10.3 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any Dissociating Member, other than those which relate to unrealized receivables and substantially appreciated inventory of the Company, shall be treated as payments described in Section 736(b) of the Code.

10.4 Statement of Dissociation. A Dissociated Member or the Company may file a Statement of Dissociation in accordance with the Act.

10.5 Wrongful Dissociation. Notwithstanding anything herein to the contrary, if a Member Dissociates by reason of the occurrence of any of the following events, then such Dissociation shall be a wrongful Dissociation by such Member in contravention of this Agreement:

- (a) Dissociation under SECTION 10.1(b);
- (b) Dissociation under SECTION 10.1(c);
- (c) Dissociation under SECTION 10.1(e);

The provisions of this Agreement governing the rights of a Dissociating Member shall apply to a Member who wrongfully Dissociates, except that any damages sustained by the Company as a result of the Member's wrongful Dissociation shall be offset against any distributions otherwise payable to the Member, and the purchase price (if any) to be paid to a wrongfully Dissociating Member pursuant to ARTICLE XI shall be reduced by the greater of (a) the amount of any out of pocket costs and expenses and damages sustained by the Company and the other Members (or any of the other Members) as a result of the Member's wrongful Dissociation, or (b) twenty five (25%) percent of the Appraised Value of the Member's Membership Share, determined pursuant to ARTICLE XI.

ARTICLE XI

Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer.

(a) Except for Permitted Transfers as set forth in SECTION 11.5, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of the Managers. If such consent is obtained, the provisions of ARTICLE III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

(b) Notwithstanding anything herein to the contrary, each Member acknowledges that his Membership Share has not been registered under the Securities Act of 1933, as amended ("1933 Act"), in reliance on applicable exemptions. Therefore, the Members hereby agree that Membership Shares in the Company shall be nontransferable, except in compliance with the 1933 Act and applicable state securities laws, and any attempted transfer not in compliance therewith shall be null, void, and without effect. As an additional condition precedent to the transfer of any Membership Share, the Managers may require an opinion of counsel satisfactory to the Managers that such transfer will be made in compliance with the 1933 Act and applicable state securities laws, and such transferor shall be responsible for paying any attorneys' fees incurred in connection with the opinion. The transferor may be required to indemnify the Company for any damages resulting from failure to comply with said securities laws, if the Managers so require.

11.2 Right to Buy.

(a) Dissociation For Reasons Other Than Death. If a Member Dissociates within the meaning of ARTICLE X (a "Triggering Event") other than by reason of death, then such Member ("Dissociating Member") is deemed to have offered to the Company all of his

Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members (the "Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by delivering written notice to the Dissociating Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeror accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If none of the Remaining Members accept the offer to purchase the Dissociating Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third Person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' Option to purchase, the Membership Share or any portion thereof may not be transferred unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms herein provided.

(b) Death. Upon the death of a Member, if the Membership Share is transferred to the deceased Member's Family, the recipient shall be a full member. However, if upon the death of a member the Membership Share is transferred to anyone other than the deceased Member's Family, the Company shall purchase, and the estate of the decedent, or his successor in interest by operation of law shall sell all of the decedent's Membership Share in the Company now owned or hereafter acquired. The purchase price of such Membership Share shall be computed in accordance with the provisions of SECTION 11.3 and paid in accordance with the provisions of SECTION 11.4.

11.3 Purchase Price. Unless the Member offering or selling his Membership Share hereunder and the Managers on behalf of the Company agree otherwise, the purchase price shall be determined in accordance with the following:

The purchase price of the Membership Share shall be the Appraised Value of the Company (as defined herein) multiplied by the Financial Rights associated with the Membership Share being offered hereunder. The Appraised Value of the Company shall be the Fair Market Value (as defined below) of all Company Property less the Fair Market Value of all Company Liabilities obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by the Managers on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value of the Company within thirty (30) days after the last of them is appointed,

then within five (5) days, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value of the Company within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

11.4 **Payment of Purchase Price.** The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon fifteen (15) days default of any payment of interest or principal, the note shall become due and payable immediately, at the Option of the holder of the note.

Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note.

Further, if a selling Member has personally guaranteed payment of any debt, obligation or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation or liability.

11.5 **Permitted Transfers.** Notwithstanding anything herein to the contrary, but subject to SECTION 11.1(b), a Member may transfer all or any portion of his Membership Share without obtaining consent or first offering his Membership Share to the Company and the other Members pursuant to this Article if such transfer is a Permitted Transfer. For purposes of this Agreement, the following transfers are Permitted Transfers:

- (a) The transfer of a Member's Membership Share to a Person who is a Member of the

Company at the time of the transfer.

(b) Any transfer of all or any portion of a Member's Membership Share to or for the benefit of a member of the Member's Family.

The Members hereby consent to the admission of any transferee of a Membership Share pursuant to a Permitted Transfer as a full Member in the Company, provided such transferee completes and executes an Admission Agreement with the Company in the form of EXHIBIT B attached hereto.

ARTICLE XII Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers and the Company at the Company's principal place of business and to a Member at the address on EXHIBIT A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

12.5 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business.

Except as otherwise required by law, the parties consent to venue in Georgetown County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of,

and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.15 Equitable Remedies. The rights and remedies of the Members, Managers and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any aggrieved party against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.17 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.18 Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ("SCUAA"). All arbitration proceedings shall be conducted in Georgetown, South Carolina. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. If any party to this Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section, within thirty (30) days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party, and the decision of the arbitrators shall be binding upon all the parties to the dispute, their personal representatives, legal representatives, heirs, successors and assigns. Each party to an arbitration proceeding under this Section shall pay

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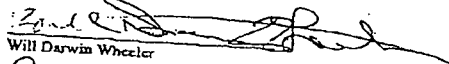
an equal portion of all arbitrators' expenses and fees, together with other expenses of arbitration, except that the parties shall bear their own respective expert witness, professional and attorneys' fees.

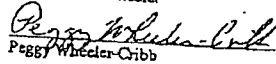
12.19 Conflict of Interest. The parties all acknowledge that:

- (a) The parties are aware that a conflict exists among their individual interests; and
- (b) The parties have had the opportunity to seek the advice of independent counsel.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

MEMBERS:


Will Darwin Wheeler


Peggy Wheeler-Cribb

COMPANY:

Pawleys Island North, LLC

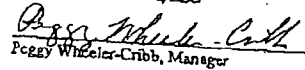

Peggy Wheeler-Cribb, Manager

EXHIBIT A

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Membership Shares of Pawleys Island North, LLC

Member's Name and Address	Capital Contribution	Financial Rights	Voting Rights
Will Darwin Wheeler 334 Myrtle Ave. Pawleys Island, SC 29585		99 %	99%
Peggy Wheeler-Cribb 334 Myrtle Ave. Pawleys Island, SC 29585		1 %	1%

EXHIBIT B

Pawleys Island North, LLC
ADMISSION AGREEMENT

THIS ADMISSION AGREEMENT is made and entered into this ____ day of _____, 20____, by and between Pawleys Island North, LLC, a South Carolina limited liability company ("Company"), and the Person whose signature appears below ("New Member") in consideration of the admission of the New Member as a Member of the Company, the mutual promises and covenants contained herein, and for other good and valuable consideration.

(1) **Agreement to Be Bound By Operating Agreement.** The New Member acknowledges receipt of a copy of the Operating Agreement as currently amended (the "Operating Agreement"). The New Member hereby agrees to be bound by all the terms and conditions of the Operating Agreement.

(2) **Representations and Warranties.** The New Member represents and warrants to the Company and the other Members in the Company that:

- (a) the New Member has complied with all of the requirements for becoming a Member in the Company set forth in the Operating Agreement and under applicable law, and
- (b) that the address and social security or tax identification number set forth below are true and correct as of the date hereof.

(3) **Securities Laws.** The New Member understands and agrees that Membership Shares in the Company have not been registered under any federal or state securities law as more fully set forth in the Operating Agreement.

(4) **Counterparts.** This Admission Agreement may be executed in multiple counterparts.

(5) **Terms.** All capitalized terms not otherwise defined herein shall have the meanings given them in the Operating Agreement.

This Admission Agreement is executed as of the date first above written.

Witnesses:

Pawleys Island North, LLC

By: _____
Manager

NEW MEMBER:

Address: _____

Social Security or Tax Identification Number: _____

FIRST AMENDMENT TO THE
OPERATING AGREEMENT
OF
PAWLEYS ISLAND NORTH, LLC

THIS FIRST AMENDMENT TO THE OPERATING AGREEMENT (this "Amendment") of Pawleys Island North, LLC (the "Company"), a South Carolina limited liability company is entered into as of this 28 day of April, 2009, by the signatories hereto as all of the members and managers of the Company.

WHEREAS, the members and managers of the Company entered into a Operating Agreement as of March 11, 2009 (the "Operating Agreement"); and

WHEREAS, the Company's members and managers desire to amend the Operating Agreement for the purposes set forth herein.

NOW, THEREFORE, the Operating Agreement is hereby amended as set forth herein as contemplated by the South Carolina Limited Liability Company Law (the "Act").

1. Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.
2. Amendment. The Operating Agreement is hereby amended by adding thereto a new Article XIII as follows:

ARTICLE XIII SPECIAL PURPOSE ENTITY PROVISIONS

13.1. Duration of Amendments. For so long as the Company has a mortgage loan with Kennedy Funding, Inc., its successors or assigns (the "Loan"), the terms and conditions set forth in this Amendment shall apply notwithstanding any contrary provisions set forth in the Operating Agreement.

13.2. Purpose. The nature of the business and the purposes to be conducted and promoted by the Company is to engage solely in the following activities:

- (a) To own, hold, sell, assign, transfer, operate, improve, lease, mortgage, pledge and otherwise deal with certain real property pledged to Kennedy Funding, Inc. as collateral pursuant to that certain Mortgage and Security Agreement, dated on or about the date hereof (the "Property").
- (b) To exercise all powers enumerated in the Act necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth in this Article XIII.

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13.3. Certain Prohibited Activities. The Company shall only incur indebtedness in an amount necessary to operate and maintain the Property. For so long as any mortgage lien in favor of Kennedy Funding, Inc., its successors or assigns (the "First Mortgage") exists on any portion of the Property, the Company shall not incur, assume, or guaranty any other indebtedness other than in an amount necessary to operate and maintain the Property. Subject to the terms and conditions of this Amendment, for so long as the First Mortgage exists on any portion of the Property, the Company shall not dissolve or liquidate. For so long as the First Mortgage exists on any portion of the Property, the Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Company) formed or surviving such consolidation or merger or that acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall be acceptable to the mortgagee holding the First Mortgage, in its sole discretion, and (c) shall expressly assume the due and punctual performance of the Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Company and be continuing. For so long as the First Mortgage exists on any portion of the Property, no material amendment to this Operating Agreement may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

No transfer of any direct or indirect ownership interest in the Company may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Company, more than a 49% interest in the Company, unless such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage and to any applicable rating agency concerning, as applicable, the Company, the new transferee and/or their respective owners.

13.4. Indemnification. Any indemnification of the Company's members and/or managers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

13.5. Separateness Covenants. For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate

identity, in addition to the other provisions set forth in the Operating Agreement, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of any affiliate(s) or, if it shares office space with any affiliate(s), it shall allocate fairly and reasonably any overhead and expense for shared office space.

(ii) It shall not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership or operation of the Property.

(iii) It will not engage, directly or indirectly, in any business other than the ownership, management and operation of the Property and it will conduct and operate its business as presently conducted and operated. It shall conduct its business and hold its assets in its own name.

(iv) It will not enter into any contract or agreement with any affiliate of the Company, any constituent party of the Company or any affiliate of any constituent party of the Company, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party (or where the benefit flows to the Company).

(v) It has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the First Mortgage and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the Property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the First Mortgage may be secured (subordinate or pari passu) by the Property.

(vi) It has not made and will not make any loans or advances to any third party, including any affiliate of the Company or constituent party of the Company and shall not acquire obligations or securities of its affiliate(s).

(vii) It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(viii) It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the Operating Agreement (as hereby amended) without the prior written consent of the First Mortgage holder or, after the securitization

of the Loan, only if the Company receives approval of such amendment by the mortgagee holding the First Mortgage.

(ix) It will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliate(s) and any constituent party. It shall maintain its books, records, resolutions and agreements as official records.

(x) It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(xi) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(xii) Neither the Company nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

(xiii) It will not commingle the funds and other assets of the Company with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xiv) It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xv) It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity.

(xvi) It shall pay any liabilities out of its own funds, including salaries of any employees.

(xvii) The Company shall maintain a sufficient number of employees in light of its contemplated business operations.

(xviii) The Company shall not guarantee or become obligated for the debts of any other entity or person.

(xix) It shall not have any of its obligations guaranteed by any members, except the guarantor of the First Mortgage.

(xx) It shall have at least one (1) Independent Manager.

13.6 The members and/or managers, shall not, so long as the Loan is outstanding, amend, alter, change or repeal the definitions set forth below or any provision of this Article XIII or adopt any provision in conflict therewith without the unanimous written consent of Kennedy Funding, Inc., its successors or assigns, the Independent Manager, and all of the members and managers of the Company.

13.7 Notwithstanding anything contained herein to the contrary and any provision of law that otherwise so empowers the Company, the members, the managers, any officer or any other Person, neither the members nor the managers nor any officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the members, the managers, Kennedy Funding, Inc., its successors or assigns, and the Independent Manager, to take any Material Action, provided, however, that neither the members nor the managers may vote on, or authorize the taking of, any Material Action unless there is at least one (1) Independent Manager then serving in such capacity.

13.8 Independent Manager. As long as the Loan is outstanding, the members and managers shall cause the Company at all times to have at least one (1) Independent Manager who will be appointed by the members and is acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. The Independent Manager shall be, and is hereby designated as a "manager" within the meaning of the Act, and shall have only those powers in management of the business and affairs of the Company as shall be specifically provided in this Amendment. To the fullest extent permitted by law, the Independent Manager shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Article 13.7. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Manager by written instrument, and (ii) shall have executed a counterpart to this Amendment. In the event of a vacancy in the position of Independent Manager, the members shall, as soon as practicable, appoint a successor Independent Manager acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Amendment. Except as provided in the third sentence of this Article 13.8, in exercising their rights and performing their duties under this Amendment, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the laws of the state in which the Company is organized. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. The initial Independent

Manager shall be Michelle A. Dreyer, an individual having an address at C/O Corporation Service Corporation, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Any notice given to the Independent Manager shall be deemed effective if delivered to the address set forth in the preceding sentence.

For purpose of this Article XIII, the following terms shall have the following meanings:

"Affiliate" of any Person (as hereinafter defined) shall mean any other Person which, directly or indirectly, controls or is controlled by, or is under common control with such Person. For the purposes of this definition, "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Independent Director" or "Independent Manager" shall mean a Person who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager), officer, employee, partner, member, manager, contractor or attorney of the Company or any Affiliate of any of them; (b) a customer, creditor or other person who derives any of its purchases or revenues from its activities with the Company or any Affiliate; (c) a Person controlling or under common control with any such stockholder, director, officer, partner, member, manager, contractor, customer, creditor, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, contractor, customer, creditor or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

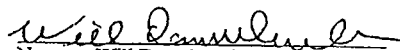
"Person" or "Persons" shall mean any one or more individuals, partnerships, corporations (including a business trust), joint stock companies, limited liability company, trusts, unincorporated associations, joint ventures or other entities, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this First Amendment to the Operating Agreement of Pawleys Island North, LLC as of the date first above written.

MEMBER:


Name: Peggy Wheeler-Cribb


Name: Will Darwin Wheeler

MANAGER:


Name: Peggy Wheeler-Cribb

INDEPENDENT MANAGER:

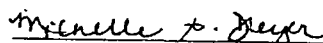

Name: Michelle A. Dreyer

Exhibit C

Resolution

See Attached

31392A0000-1526088v1

KENNEDY_01355

CERTIFICATE OF WRITTEN CONSENT OF
THE MEMBERS AND MANAGER OF
PAWLEYS ISLAND NORTH, LLC

The undersigned, being all of the members and the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Borrower"), hereby consent in writing and take the following actions as of the 28 day of April, 2009.

WHEREAS, the Borrower has entered into negotiations with Kennedy Funding, Inc., as agent (the "Lender") with respect to the extension by the Lender to the Borrower of a loan in the principal amount of \$960,000.00 (the "Loan") which is to be evidenced by a Promissory Note and secured by a Mortgage and Security Agreement on that certain real property located in the Town of Pawleys Island, County of Georgetown, State of South Carolina, and all improvements located thereon, as more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, the Borrower seeks the consent of its member and its Manager to enter into the Loan.

NOW, THEREFORE, be it

RESOLVED, that it is in the best interests of the Borrower to enter into the Promissory Note in the original principal amount of \$960,000.00 (the "Note"), a Mortgage and Security Agreement (the "Mortgage") granting the Lender a first priority mortgage lien on the Property, and such other Transaction Documents (the "Transaction Documents") as are necessary to effectuate the Loan; and be it further

RESOLVED, that the forms of the Note and the Mortgage be, and hereby are, approved in all respects and that the Borrower is authorized to enter into such documents and the Transaction Documents and consummate the transactions contemplated thereby; and be it further

RESOLVED, that Peggy Wheeler-Cribb, in his capacity as Manager of the Borrower, be, and hereby is, authorized and directed to execute the Note, the Mortgage and the Transaction Documents in the name of and on behalf of the Borrower with such changes as he in his sole discretion shall deem necessary and/or advisable; and be it further

RESOLVED, that Peggy Wheeler-Cribb, in his capacity as Manager of the Borrower, be, and hereby is, authorized to perform all actions, including, without limitation, the execution and delivery to the Lender of the Transaction Documents and all other necessary documents, agreements, certificates, writings, closing statements, applications, and any other instruments, in the name of and on behalf of the Borrower deemed necessary and/or advisable by him in connection with the implementation and/or

consummation of the transactions contemplated by the foregoing resolutions and/or the Note, the Mortgage and the Transaction Documents; and for the purpose, intent and implementation of this resolution and the foregoing resolutions, the taking of any action, including the execution of the Note, the Mortgage, the Transaction Documents or any other documents or instruments by Peggy Wheeler-Cribb shall be deemed conclusive evidence of the exercise of the authority so conferred by these resolutions; and be it further

RESOLVED, that all action heretofore taken and all documentation heretofore delivered by the Borrower in connection with the Loan is hereby ratified, adopted, approved and confirmed and declared to be binding and enforceable obligations of the Borrower in accordance with the respective terms and provisions thereof.

Exhibit A

KENNEDY_01358

EXHIBIT "A"
PROPERTY DESCRIPTION

LOT 3

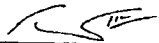
ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April ____, 2009 and recorded in Mortgage Book ____ at page ____ of the public records of Horry County, South Carolina.

LOT 4

ALL THAT CERTAIN, piece, parcel or lot of land lying, being, and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April ____, 2009 and recorded in Mortgage Book ____ at page ____ of the public records of Horry County, South Carolina.

CERTIFICATE OF INSURANCE				ISSUE DATE		
PRODUCER USI Insurance Solutions, LLC 1309 Highmarket Street Georgetown, SC 29440			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED PAWLEYS ISLAND NORTH LLC PO BOX 3727 Pawleys Island, SC 29585			COMPANIES AFFORDING COVERAGE			
			COMPANY LETTER A Scottsdale Insurance Company			
			COMPANY LETTER B N/A			
			COMPANY LETTER C N/A			
			COMPANY LETTER D N/A			
			COMPANY LETTER E N/A			
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	BINDER ID	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
A	GENERAL LIABILITY	ENHMU-G	4/30/2009	4/30/2010	GENERAL AGGREGATE	2,000,000
					PRODUCTS-COM/OP AGG.	Excluded
					PERSONAL & ADV. INJURY	1,000,000
					EACH OCCURRENCE	1,000,000
					DAMAGE PRE-RENTED TO YOU	50,000
					MED EXPENSE (Any one person)	5,000
B	PERSONAL LIABILITY				COMBINED SINGLE LIMIT	
					MEDICAL PAYMENTS TO OTHERS	
C	EXCESS LIABILITY				EACH OCCURRENCE	
					AGGREGATE	
D						
E	PROPERTY				BUILDING	
					CONTENTS	
					LOSS OF USE	
DESCRIPTION OF OPERATIONS / VEHICLES / SPECIALTY ITEMS Vacant Land Not-For-Profit only 334 MYRTLE AVE, PAWLEYS ISLAND SC 29585						
CERTIFICATE HOLDER ADDITIONAL INSURED - KENNEDY FUNDING INC - FINANCE CO TWO UNIVERSITY PLAZA STE 402 Hackensack, NJ 07601				Should any of the above described policies be cancelled before the expiration date, the company shall endeavor to mail 30 days written notice to the certificate holder as provided to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives. AUTHORIZED SIGNATURE 		

14382

KENNEDY_01360



800 THIRD AVENUE, 16TH FLOOR
NEW YORK, NY 10022-4738
212-752-9000 212-752-9752 FAX

Tara Duggan Ryan
ASSOCIATE

NEW JERSEY

DELAWARE

MARYLAND

800 Third Avenue, 16th Floor
New York, NY 10022-4738
212-752-9000 212-752-9752 FAX
WWW.COLE-SCHOTZ.COM

April 21, 2009

VIA EMAIL

Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577
Attention: Robert H. Gwin, III

Chicago Title Insurance Company
3700 Forest Drive, Suite 201
Columbia, SC 29204
Attention: Claire T. Manning

Gwin Law Office, LLC
2105-B Cromley Circle
Myrtle Beach, SC 29577
Attention: Robert H. Gwin, III

Re: Loan in the Principal Amount of \$960,000.00 (the "Loan") from
Kennedy Funding, Inc., as agent ("Lender"), to Pawleys Island
North, LLC ("Borrower") secured by certain real property located
on Pawleys Island (the "Town"), County of Georgetown (the
"County"), State of South Carolina (the "State", together with the
Town and County, the "Property")
Title Insurance Company Proforma No.: 7230740-77433097

Dear Mr. Gwin and Ms. Manning:

This firm ("Lender's Counsel") represents Lender in connection with the above-
referenced transaction. This letter constitutes Lender's instructions to Gwin Law Office,
LLC ("Attorney"), Oleander Title Agency (the "Agent"), authorized agent of Chicago Title
Insurance Company (the "Underwriter").

Attorney hereby anticipates receipt, on behalf of Lender, of monies in accordance
with Lender's Closing Statement (the "Lender Funds") and the following documents (the
"Loan Documents") executed by Borrower and agree to hold same in escrow for the benefit
of Lender pending satisfaction of all conditions in the manner set forth herein:

3 (12/20/08)-333 (7/1/12)

KENNEDY_01361

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.
COUNSELLORS AT LAW

April 21, 2009

Page 2

1. One (1) original copy of a Mortgage and Security Agreement, dated as of the closing date for the transaction as confirmed by Lender's Counsel ("Closing Date"), executed by Borrower for the benefit of Lender and covering the Property ("Mortgage");
2. One (1) original Assignment of Leases and Rents, dated as of the Closing Date, executed by Borrower in favor of Lender (the "Assignment of Leases");
3. Two UCC-1 Financing Statements (herein so called) (one for the State and one for the County);
4. One (1) original Assignment of Declarant's Rights, dated the 30 day of April, 2009.

Agent agrees to issue to Lender the Underwriter's ALTA Lenders' Policy of Title Insurance (the "Lender's Policy") in the same form and substance as the marked up Specimen Policy attached hereto as Exhibit A ("Specimen Policy"), showing Lender as the insured in the amount of the Loan, insuring the lien of the Mortgage as a valid first lien on the Property (with the legal description of the land in the Lender's Policy exactly the same as that of the Mortgage), subject to no title exceptions other than those specified in Schedule B of the Specimen Policy attached hereto (the "Permitted Encumbrances") insuring that indefeasible fee simple title to the Property is vested in Borrower, and containing all of the endorsements contained in the Specimen Policy attached hereto as Exhibit A.

Upon Attorney's (i) delivery to Lender's Counsel by facsimile transmission or by email of a copy of this instruction letter fully executed by a duly authorized signatory of Attorney, Agent and the Underwriter, and (ii) receipt of (a) final signed Loan Documents, by Lender's counsel, and (b) oral or written authorization from Lender's Counsel to proceed with recording, Attorney is hereby directed to record the Loan Documents in the following order:

- (i) in the appropriate real property records of the County and State:
 - (A) one original of the Mortgage;
 - (B) one original of the Assignment of Leases,
 - (C) one original of Assignment of Declarant's Rights; and
 - (D) one original of the Financing Statement in the County (county form) and one original of the Financing Statement in the uniform commercial code records of the Office of the Secretary of the State (state form).

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COLE, SCHOTE, MEISEL, FORMAN & LEONARD, P.A.
COUNSELLORS AT LAW

April 21, 2009
Page 3

Attorney hereby represents and warrants to Lender and to Lender's Counsel (a) that all title matters and information have been checked by Attorney prior to the execution of this closing instructions letter (and will be checked by Attorney prior to the time of recording and/or filing, as applicable, of the Loan Documents for recordation as instructed herein), (b) that all prior mortgages, deeds of trust, liens and other title exceptions, including all taxes due and payable as of date hereof, other than the Permitted Encumbrances, have been or will be properly released or terminated of record in the appropriate real property records wherein the Property is located and (c) that the Lender's Policy has been authorized by the Underwriter, and written and issued exactly as required hereby with no additional exceptions (regardless of rank or priority) in the Lender's Policy.

The Lender Funds are being disbursed to Attorney to be applied toward, inter alia, (a) costs, expenses, charges and premiums in connection with the issuance of the Lender's Policy, including recordation of the Loan Documents and all transfer, stamp, intangibles or mortgage tax; (b) the payment of Borrower's legal fees; and (c) other uses authorized by the Loan and Security Agreement approved by Lender and executed by Borrower.

Attorney shall only retain one (1) original of the Mortgage, Assignment of Leases, and County and State Financing Statements in order to record same. If Attorney is in possession of original signed Loan Documents, then Attorney shall immediately deliver ALL such original Loan Documents to Lender's Counsel by overnight delivery upon (a) Lender's Counsel instruction and/or (b) the disbursement of Lender's Funds, together with a photocopy of the recorded original Mortgage, Assignment of Leases, and County Financing Statement, and a photocopy of the State Financing Statement to be recorded. Upon receipt by Attorney of the recorded original Mortgage, Assignment of Leases, and County and State Financing Statements showing the recording information, such originals shall promptly be delivered to Lender's Counsel.

Please send the Lender's Policy and the recorded Loan Documents to the undersigned at the address shown above on the letterhead.

Upon the request of Lender's counsel for any reason or no reason, Attorney shall promptly return immediately to Lender's Counsel without delay the Lender's Funds and the Loan Documents delivered to Attorney on behalf of Lender at any time prior to the recording of the Mortgage, Assignment of Leases, and County and State Financing Statements.

Upon satisfaction of all of the closing conditions set forth herein, please return an executed copy of this letter to the undersigned via fax or email with an original to follow by overnight delivery.

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COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.
COUNSELLORS AT LAW

April 21, 2009

Page 4

The services of Attorney requested herein are to be performed without further cost or expense to Lender or to Lender's Counsel. Please express your agreement to comply with the instructions and agreements contained herein and acknowledge receipt of the Loan Documents and the Lender's Funds by executing this letter and, prior to the release of any portion of the Lender's Funds, returning the same to the undersigned via fax or email with an original to follow by overnight delivery.

Thank you for your assistance with this transaction. Please contact the undersigned with any concerns you may have.

Very truly yours,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

Tara Duggan Ryan

Enclosure(s)

cc: Mr. Kevin Wolfer
Jon Hornik, Esq.
Evan Bell, Esq.
Michael R. Leighton, Esq.

AGREED and ACCEPTED this 24th day of April, 2009:

GWIN LAW OFFICE, LLC
CLEANER TITLE AGENCY: RHC

Signature: [Signature]
Name: ROBERT H. GWIN, II
Title: PRINCIPAL / MEMBER

Signatures continued on next page

31392/0369-3536781 v2

KENNEDY_01364

COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.
COUNSELLORS AT LAW

April 21, 2009
Page 5

AGREED and ACCEPTED this 24th day of April, 2009:

OLEANDER TITLE AGENCY:

Signature: [Signature]
Name: ROBERT H. GWIN, Jr.
Title: PRESIDENT

AGREED and ACCEPTED this 24th day of April, 2009:

CHICAGO TITLE INSURANCE COMPANY

Signature: [Signature]
Name: CLARET KENNEDY
Title: VP

JUDICIAL-333898112

KENNEDY_01365



PRO-FORMA

Chicago Title Insurance Company

POLICY NO.: SC2130-46-09-RE-150-2009.7230740-77433097

LOAN POLICY OF TITLE INSURANCE

Issued by
Chicago Title Insurance Company

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 1, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - (a) A defect in the Title caused by:
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection.
 If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title:
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

7230 MO (6/06)

ALTA Loan Policy with South Carolina modifications (6/17/06)

KENNEDY_01366

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assigns free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

- (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
- (i) to be timely, or
- (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

CHICAGO TITLE INSURANCE COMPANY

At:

PRO-FORMA

Countersigned:

Authorized Signatory
Robert H. Gwin, III



Robert H. Gwin, III
ATTEST
President
[Signature]
Secretary

SC2330 09-RE-150
Oleander Title Agency
2105-B Cromley Circle
Myrtle Beach, SC 29577
Tel: (843) 839-2239
Fax: (843) 839-2244

EXCLUSIONS FROM COVERAGE

- The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:
1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, requiring, prohibiting, or relating to:
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 6.
 3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) resulting in loss or damage to the Insured Claimant (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
 4. Unenforceability of the lien of the Insured Mortgage because of the insolvency or failure of an insured to comply with applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or credit-referencing law.
 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

- The following terms when used in this policy mean:
- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
 - (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
 - (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
 - (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the insured was and continued to be obligated to advance at Date of Policy and as the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and
 - (ix) the reasonable expenses expended to prevent deterioration of improvements, but the indebtedness is reduced by the total of all payments and by any amount forgiven by an insured.
 - (e) "Insured": The insured named in Schedule A.
 - (A) The term "Insured" also includes:
 - (i) the owner of the indebtedness and each successor in ownership of the indebtedness, whether the owner or successor owns the indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(a) of these Conditions;
 - (ii) the person or Entity who has "control" of the "transferable record," if the indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - (iii) successors to an insured by dissolution, merger, reorganization, distribution, or reorganization;
 - (iv) successors to an insured by its conversion to another kind of Entity;
 - (v) a grantor of an insured under a deed delivered without payment of actual valuable consideration conveying the Title.
 - (B) If the stock, shares, memberships, or other equity interests of the grantor are wholly-owned by the named insured.
 - (f) If the grantor wholly owns the named insured, or
 - (g) If the grantor is wholly-owned by an affiliated Entity of the named insured, provided the affiliated Entity and the named insured are both wholly-owned by the same person or Entity;
 - (h) Any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the Insured Mortgage, or any part of it, whether named as an insured or not;
 - (i) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.
 - (j) "Insured Claimant": An insured claiming loss or damage.
 - (k) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
 - (l) "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
 - (m) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - (n) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 - (o) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection laws filed in the records of the clerk of the United States District Court for the district where the Land is located.
 - (p) "Title": The estate or interest described in Schedule A.
 - (q) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured after acquisition of the Title by an insured or after conveyance by an insured, but only so long as the insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of warranties in title.

ALTA Loan Policy with 3rd party modification (01/2006)

transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the insured or either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 3(a) of these Conditions, (ii) in case knowledge shall come to an insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the insured Claimant to provide prompt notice, the Company's liability to the insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim covered by this policy adverse to the insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to initiate and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may use any appropriate act under the terms of this policy, whether or not it shall be liable to the insured. The exercise of these rights shall not be an admission of liability or violation of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeal, the insured shall assist the Company to the extent of its ability to provide defense. In the action or proceeding, including the right to sue, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, procuring or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the insured Claimant provided to the Company pursuant to this section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to search reasonably necessary information from third parties or records in

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this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the insured shall transfer, assign, and convey to the Company the indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the insured under this policy, other than to make the payment required in these subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance covered or guaranty.

(b) If the Company purchases its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the insured Claimant or as of the date it is settled and paid.

(c) In the event the insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 3(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to this matter and shall not be liable for any loss or damage caused to the insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until that

ALTA Loan Policy with South Carolina modification (4/19/05)

has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover
Whenever the Company shall have paid or paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The payment of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has knowledge of any claim adverse in the Title or the lien of the Insured Mortgage insured against by this policy, the Insured shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Right Against Noninsured Obligors
The Company's right of subrogation includes the Insured's rights against noninsured obligors including the rights of the Insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in these instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 16(X)(T) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Should the Company or the Insured demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the

American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its insurance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage due, which is out of the scope of the Title or Lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the Lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In either case shall the court or arbitrator apply its conflict of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Chicago Title Insurance Company, Attn: Claims Department, P. O. Box 45023, Jacksonville, Florida 32217-5023.

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

PRO-FORMA

SCHEDULE A

OFFICE FILE NUMBER: 09-RE-150
POLICY NUMBER: 7230740-77433097
DATE OF POLICY: April ____, 2009 or the date of recording, whichever is later.
AMOUNT OF INSURANCE: \$960,000.00

1. Name of Insured:
Kennedy Funding, Inc., its successors and/or assigns as their interests may appear
2. The estate or interest in the land which is encumbered by the insured mortgage is:
Fee Simple
3. Title to the estate or interest in the land is vested in:
Pawleys Island North, LLC
4. The insured mortgage and assignments thereof, if any, are described as follows:
Mortgage from Pawleys Island North, LLC to Kennedy Funding, Inc. dated April ____, 2009, and recorded in the Land Records of Georgetown County, South Carolina.
5. The land referred to in this Policy is described as follows:

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 3 on a plat prepared by The Earthworks Group, dated July 8, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Side 625 at page 10.

Countersigned

Oleander Title Agency
2106-B Cromley Circle
Myrtle Beach, SC 29577

PRO-FORMA

Authorized Signatory

SCHEDULE A
Loan Form (Rev. 1/89)

This Policy valid only if Schedule B is attached.

KENNEDY_01371

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE A
(continued)

Policy Number: 7230740-77433097

LOT 4

ALL THAT CERTAIN, piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as LOT 4 on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

SCHEDULE A continued
Loan Form (Rev. 1/85)

This Policy valid only if Schedule B is attached.

KENNEDY_01372

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B

Policy Number: 7230740-77433097

Exceptions from Coverage

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Special Exceptions:

1. Taxes and assessments for the year 2009, and subsequent years, which are a lien but are not yet due and payable.
2. Distribution Right-of-Way from Will D. Wheeler to the South Carolina Public Service Authority dated May 11, 2004 and recorded in Deed Book 1519 at page 00128 and re-recorded in Deed Book 1562 at page 0038 of the public record of Georgetown County, South Carolina.
3. Restrictive covenants and easements contained therein appearing of record in Deed Book 305 page 205 and amended and recorded in Deed Book 334 at page 49 aforesaid records. NOTE: ON MORTGAGEE POLICY ONLY: This policy insures that as of the date hereof said restrictions have not been violated and that a future violation thereof will not result in a reversion or forfeiture of title to the premises.
4. This policy does not insure any portion of subject property which is located within a marsh area.
5. Plat of survey prepared for Will Darwin Wheeler by Earthworks Group, dated July 9, 2006, discloses the following:
 - (a) overhead power line easement
6. Rights of adjoining owners on the east in and to the use of the joint driveway situated partly on insured premises and partly on the property adjoining on the east and west shown as the shaded area designated as "Driveway" on the survey prepared for Will Darwin Wheeler by Earthworks Group, dated July 9, 2006

Schedule B of this Policy consists of 1 page(s).

SCHEDULE B
Loan Form (Rev. 1/85)

KENNEDY_01373

LOAN FORM
CHICAGO TITLE INSURANCE COMPANY

SCHEDULE B
(continued)

Policy Number: 7230740-77433097

PART II

In addition to the matters set forth in Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

None

Schedule B of this Policy consists of 2 page(s).

SCHEDULE B - Continued
Loan Form (Rev. 1/58)

KENNEDY_01374

ENDORSEMENT
Attached to Policy No.

Issued by
Chicago Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The existence at Date of Policy of any of the following:

- (a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
- (b) Unless expressly excepted in Schedule B:
 - (1) Present violations on the land of any enforceable covenants, conditions or restrictions, and any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
 - (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
 - (3) Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.

KENNEDY_01375

- (4) Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
 - (5) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
2. Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the insured, provided the violation results in:
- (a) invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or
 - (b) loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
3. Damage to existing improvements, including lawns, shrubbery or trees:
- (a) which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
 - (b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words 'covenants, conditions or restrictions' appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words 'covenants, conditions or restrictions' shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Chicago Title Insurance Company

BY: _____

ALTA Endorsement - Form 9 (Restrictions, Encroachments, Minors) (3/27/02)

KENNEDY_01377

ENDORSEMENT

Attached to and forming a part of

Policy No. _____

Issued by

CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of:

the entry of any court order or judgment which constitutes a final determination and adjudges that the lien of the mortgage referred to in Schedule A is invalid or unenforceable on the ground that the loan evidenced by the note or notes secured thereby is usurious under the laws of the state of South Carolina, exclusive of its conflict of law's principles.

Nothing herein contained shall be construed as extending or changing the effective date of said policy.

The total liability of the Company under said policy and any endorsement therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated to pay under the Conditions and Stipulations.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date:

CHICAGO TITLE INSURANCE COMPANY

Authorized Signatory

Note: This endorsement shall not be valid or binding until signed by an authorized signatory.

KENNEDY_01378

ENDORSEMENT

Attached to Policy No.

Issued by

Chicago Title Insurance Company

The Company insures the Insured against loss which said Insured shall sustain by reason of:

- (a) any defect in the execution of the document entitled Assignment of Leases and Rents referred to in paragraph (TBD) of Schedule B; and
- (b) the existence, as shown by the Public Records, of any prior assignment of the lessor's interest in the lease or leases specified in such document, including any assignments of rents thereunder, other than as set forth in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

CHICAGO TITLE INSURANCE COMPANY

BY: _____
Authorized Signatory

Assignment of Rents (Separate Document)
To be used with the ALTA 2006 Policy

KENNEDY_01379

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company hereby insures the Insured against loss or damage sustained in the event that, at Date of Policy:

1. According to applicable zoning ordinances and amendments thereto, the land is not classified Zone R-1 as per the Town of Pawleys Island Unified Development Ordinance.
2. The following use or uses are not allowed under that classification:
SINGLE FAMILY DWELLING AND CUSTOMARY ACCESSORY USES.

There shall be no liability under this endorsement based on:

- (a) Lack of compliance with any conditions, restrictions or requirements contained in the zoning ordinances and amendments thereto mentioned above, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses.
- (b) The invalidity of the ordinances and amendments thereto mentioned above until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
- (c) The refusal of any person to purchase, lease or lend money on the estate or interest covered by this policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

ALTA Endorsement - Form 3 (Zoning) (6/1/87)

KENNEDY_01380

terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

KENNEDY_01381

ENDORSEMENT

Attached to and forming a part of

Loan Policy No. _____

Issued by
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

The following, as it appears in this policy, is hereby deleted in its entirety:

Paragraph 13, of the Conditions and Stipulations, titled "Arbitration", and

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION
PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 16 (SEC. 16-48-10 ET
SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

This endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amounts of the commitment or policy and prior endorsements are not changed.

DATE:

CHICAGO TITLE INSURANCE COMPANY

Authorized Signatory

*Note: This endorsement shall not be valid or binding
until signed by an authorized signatory.*

Form 3594 R 12/82

KENNEDY_01382

ENDORSEMENT
Attached to Policy No.

Issued by
Chicago Title Insurance Company

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

any assessments for street improvements under construction or completed at Date of Policy not excepted in Schedule B which now have gained or hereafter may gain priority over the lien of the insured mortgage.

This endorsement is made part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Chicago Title Insurance Company

BY: _____

ALTA Endorsement - Form 1 (Street Assessments) (6/1/67)

KENNEDY_01383

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

SURVEY ENDORSEMENT

The Company insures the Insured against loss or damage sustained by the Insured by reason of the failure of the insured property to be the same as that delineated on the plat of survey prepared by Earthworks Group, dated July 9, 2006, designated as Job No. 035EE03.

The total liability of the Company under said policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.
Blank Endorsement

KENNEDY_01384

ENDORSEMENT

Issued by
Chicago Title Insurance Company

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Chicago Title Insurance Company

BY: _____

ALTA Endorsement - Form 8.1 (Environmental Protection Lien) (3/12/88)

KENNEDY_01385

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

Land Abuts Physically Open Street Endorsement

The Company insures the Insured against loss or by reason of the failure of the land to abut a physically open street known as Myrtle Ave. Pawleys Island, South Carolina.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.
Blank Endorsement

KENNEDY_01386

ENDORSEMENT
Attached to and forming a part of

Loan Policy No.

Issued by
CHICAGO TITLE INSURANCE COMPANY
3700 Forest Drive, Suite 201, Columbia, SC 29204

DOING BUSINESS ENDORSEMENT

The Company hereby insures the name insured at date of policy against loss or damage which the insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and denies the right to enforce the lien of the mortgage referred to in Schedule A on the ground that making the loan secured thereby constituted a violation of the "doing business" laws of the state of South Carolina.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

April 13, 2009

CHICAGO TITLE INSURANCE COMPANY

Authorized Signatory

*Note: This endorsement shall not be valid or binding
until signed by an authorized signatory.*

Form 3594 R 12/82

KENNEDY_01387

SUBDIVISION ENDORSEMENT

Attached to Policy No.
710740-193103

Issued by
CHICAGO TITLE INSURANCE COMPANY

Notwithstanding any of the provisions, terms, conditions, limitations, stipulations, exceptions and exclusions contained in or arising under the Policy or any endorsement thereto, the Company hereby insures the insured against any loss or damage resulting from any violation of any Subdivision Requirement (as defined below), including, without limitation, any violation of the Subdivision Requirements caused by the present owner's or its predecessor's acquisition of the land, the size and configuration of the land, or the present uses of the land. "Subdivision Requirements" refers to any laws, ordinances, resolutions, regulations or rules relating to or governing (I) subdivisions, (II) separation of ownership of any parcel or parcels of which the land is or was a part, or (III) any change in the area or dimension of any parcel or parcels of which the land is or was a part.

This endorsement is made a part of the policy and is subject to all of the terms and provisions hereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CHICAGO TITLE INSURANCE COMPANY

PROFORMA

Authorized Signatory

Note: This endorsement shall not be valid or binding until signed by an authorized signatory.

KENNEDY_01388

ENDORSEMENT.

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

Separate Tax Parcel

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of the failure of the Insured property to be taxed separately as Tax map Number: 42-167-0420300 and 42-167-0420200

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.
Blank Endorsement

KENNEDY_01389

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss or damage which the insured shall sustain in the event that the owner of the easement referred to in exception 2 of Schedule B shall, for the purpose, maintaining and repairing overhead power lines. Compel the removal of any portion of the improvements on the land which encroach upon said easement.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.
Blank Endorsement

KENNEDY_01390

ENDORSEMENT

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

Contiguity Endorsement

The Company insures the Insured against loss or damage sustained by the Insured by reason of the failure of the land described in Parcel Two and the land described in Parcel One to be contiguous to each other and, taken as a tract, constitute one parcel of land.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.
Blank Endorsement

KENNEDY_01391

ENDORSEMENT

Attached to Policy No. 7230740-77433097

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

ALTA Endorsement - Form 5 (Variable Rate Mortgage) (8/1/87)

KENNEDY_01392

ENDORSEMENT

Attached to Policy No. 7230740-77433087

Issued by

CHICAGO TITLE INSURANCE COMPANY

The Company insures the insured against loss or damage sustained by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the land, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
2. The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any Insured mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be affixed hereto by its duly authorized officers.

Countersigned:

OLEANDER TITLE AGENCY

By _____
Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

ALTA ENDORSEMENT - Form 5 (Planned Unit Development) (3/27/82)

KENNEDY_01393

GWYN LAW OFFICE, LLC
ATTORNEY AT LAW

ROBERT H. GWYN, III

843 530-2230
Fax 843 530-2244

2105 CROMLIN CIRCLE
SUITE B
MYRTLE BEACH, SC 29577

April 30, 2009

Kennedy Funding, Inc., as agent for co-lenders
Two University Plaza
Suite 402
Hackensack New Jersey 07601

Re: Pawleys Island North, LLC (the "Borrower")

Ladies and Gentlemen:

We have acted as counsel to the above identified Borrower and to Peggy Wheeler-Cribb (the "Guarantor"), in connection with the negotiation and closing of a \$960,000.00 loan (the "Loan") made by Kennedy Funding, Inc. (the "Lender") to Borrower.

The loan is evidenced and secured by the instruments, agreements and documents identified in the Schedule of Principal Loan Documents attached hereto and made a part hereof, hereinafter referred to collectively as the "Loan Documents". All initially capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms under the Loan and Security Agreement.

Based upon the foregoing, we are of the opinion that:

1. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, and in each other jurisdiction in which Borrower conducts business or operations.
2. Borrower has full right, power and authority to own its property and assets, to carry on the business in which it is currently engaged, to execute and deliver the Loan Documents to which it is a party, and to perform all of its obligations thereunder.
3. Guarantors have the full right, power and authority to own their respective property and assets, to carry on their respective businesses, to execute and deliver the

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Loan Documents to which they are a party, and to perform all of their obligations thereunder.

4. The Loan and Loan Documents to which Borrower is a party have been duly authorized, executed and delivered by Borrower and constitute the valid and legally binding obligations of Borrower, enforceable against the Borrower in accordance with their respective terms.

5. The Guaranty and each other Loan Document to which any of the Guarantors are a party have been duly executed and delivered by such Guarantors and constitute the valid and legally binding obligations of such Guarantors, enforceable against such Guarantors in accordance with their terms.

6. No approval, consent, order, authorization, permit, license, exemption of, or registration, declaration or filing with, any federal, state or local governmental, regulatory or public agency, authority or court is or will be required in connection with the execution, delivery and performance by Borrower and Guarantors of their respective obligations under the Loan Documents to which each of them is a party.

7. The execution and delivery of the Loan Documents do not, and performance by Borrower of its obligations thereunder will not violate, conflict with or constitute a default under (i) any provision of Borrower's Articles of Organization and Operating, (ii) any provision of law, rule or regulation or, to the best of our knowledge, any order of any court or other agency of government to which Borrower is subject, or (iii) any indenture, agreement or other instrument to which Borrower is a party or by which it or its property is bound. The execution and delivery of, and performance by Borrower of its obligations under, the Loan Documents will not result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents.

8. The execution and delivery of the Guaranty and each other Loan Document to which Guarantors are a party does not, and performance by the Guarantors of their obligations thereunder will not violate, conflict with or constitute a default under (i) any provision of law, rule or regulation or, to the best of our knowledge, any order of any court or other agency of government to which any of the Guarantors are subject, (ii) any indenture, agreement or other instrument to which any of the Guarantors are a party or by which they or their properties are bound. The execution and delivery of, and performance by any of the Guarantors of their respective obligations under, the Guaranty and each other Loan Document to which any of the Guarantors are a party will not result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents.

9. There is no action, suit, proceeding or investigation at law or in equity by or before any court, governmental instrumentality or other agency now pending or, to the

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best of our knowledge, threatened against the Borrower or the Guarantors or any of the Borrower's or the Guarantors' properties or rights which, if determined adversely to the Borrower or the Guarantors, would impair or materially affect (i) such entity's right to carry on its business substantially as now conducted, (ii) the value of the collateral securing the Loan Documents, (iii) such entity's ability to carry out its obligations under the Loan Documents to which it is a party, or (iv) the validity or enforceability of each of the Loan Documents executed by the Borrower or the Guarantors. Neither Borrower nor Guarantors are in default with respect to any order, judgment, writ, injunction, decree or demand of any court or governmental authority.

10. To our best knowledge, after due inquiry, all of the representations and warranties of Borrowers and of Guarantors contained in the Loan Documents are true and accurate.

11. Without limitation to any preceding opinions herein, the interest rate, default interest rate, fees, late charge and/or attorneys' fees as set forth in the Loan Documents, whether individually or in the aggregate, are not prohibited by and are not usurious under applicable state and federal law.

12. The zoning and use of the Mortgaged Property is governed by the laws and regulations of the Town of Pawleys Island which has zoned the premises as R-1 as per the Town of Pawleys Island Unified Development Ordinance. The aforesaid zoning permits the use of the Mortgaged Property as single family dwelling and customary accessory uses and such zoning is not subject to appeal. The Mortgaged Property has been duly subdivided in accordance with, and otherwise the Mortgaged Property and Borrower are in strict compliance with, all applicable land use, environmental, building, health, safety and other Federal, state and local governmental laws, ordinances, rules, regulations and restrictions (collectively, the "Governing Laws") and the Mortgaged Property constitutes an independent tract of land for all zoning, subdivision and taxing purposes. All permits, consents, licenses, certificates, bonds and other approvals required to be obtained under the Governing Laws in order to develop, construct, mortgage, sell, operate and otherwise deal with the Mortgaged Property have been obtained, all conditions contained therein have been complied with and remain in full force and effect. All such permits, licenses, consents, certificates, bonds and approvals are freely and fully assignable to the Lender, as contemplated and provided in the Loan Documents.

13. The Mortgage and the Assignment of Leases and Reats are each in proper form for recording in the real property records of the Register of Deeds Office for Georgetown, South Carolina in which the real property described in the Mortgage is located.

14. The Mortgage is fully enforceable under the laws of the State of South Carolina and creates a valid lien against the property described therein under the laws of the State of South Carolina.

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15. Upon due recordation of the Mortgage, together with payment of all applicable recording and filing fees in the real property records of Georgetown County, South Carolina in which such Mortgage is to be filed, the Mortgage will constitute a valid perfected and enforceable lien on the interest of the Mortgagor in the Mortgaged Property (including fixtures). After the recording and filing as specified in the foregoing paragraph have been effected, no instruments need to be recorded, registered, filed, re-recorded, or re-filed in any public office, and no other act need be performed in order to create, perfect or maintain perfection of the liens and security interests created by the Mortgage.

16. The Mortgage creates a valid and perfected security interest in the interest of the Mortgagor thereunder in that portion of the Mortgaged Property which (i) constitutes personal property (other than fixtures); (ii) is owned by the Mortgagor thereunder; (iii) is located on or used in connection with the Mortgaged Property. The UCC-1 Financing Statements are in the proper form for recording in the locations described thereon. Upon the filing of the UCC-1 Financing Statements in the locations described thereon, Lender will have a valid and perfected security interest in the property of Borrower described thereon.

17. The Mortgaged Property has not been taken, in whole or in part, in condemnation or other eminent domain proceedings and no such proceedings to the knowledge of the undersigned, are pending or threatened.

18. A South Carolina Circuit Court, or a federal court in South Carolina applying local choice of law rules, should give effect to the application of New Jersey law to the Loan Documents with respect to issues that the parties have resolved by an explicit provision in such Loan Documents which is directed to the choice of law issue, except however, that matters related to the Loan Documents involving the creation, validity and/or perfection of security interests, and all procedural matters including those related to enforceability will be governed by the laws of the State of South Carolina.

19. It is not necessary for the Lender to be licensed in or to qualify to do business in South Carolina by virtue of making the Loan or in the event it becomes necessary to enforce liens and security interests granted in the Loan Documents or to seek recourse against Borrower or Guarantors or any collateral given to secure the obligations of Borrower under the Loan Documents.

20. The Collateral is in compliance with land use, zoning, wetland, environmental, occupational safety and health care, Americans with Disabilities Act, intellectual property, employee benefit, ERISA, labor relations, antitrust or securities laws or any other rules, regulations, laws or statutes. All permits, consents, licenses, certificates, bonds, and other approvals required to be obtained under any applicable law in order to develop, construct, mortgage, sell, operate or otherwise deal with the Collateral have been obtained, all conditions contained therein have been complied with and remain in full force and effect. All such permits, licenses, consents, certificates,

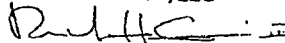
bonds and approvals are freely and fully assignable to the Lender, as contemplated and provided for in the Loan Documents.

Our opinion is strictly limited to federal law and the laws of the State of South Carolina and we express no opinion concerning the laws of any other jurisdiction or compliance therewith by any party.

This opinion is given as of the date hereof, is given solely for your benefit and the benefit of your counsel, and may not be relied upon by any other person or entity, except for any assignee, participant, co-agent or co-lender of the Loan.

Very truly yours,

Gwin Law Office, LLC



Robert H. Gwin, III

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SCHEDULE OF PRINCIPAL LOAN DOCUMENTS

1. Loan Commitment dated February 12, 2009, as amended;
2. Loan and Security Agreement dated as of the date hereof;
3. Promissory Note dated as of the date hereof;
4. Mortgage and Security Agreement dated as of the date hereof;
5. Document Re-Execution Agreement dated as of the date hereof;
6. Environmental Indemnity Agreement dated as of the date hereof;
7. Assignment of Leases and Rents dated as of the date hereof;
8. Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports dated as of the date hereof;
9. Guaranty dated as of the date hereof;
10. Loan Closing Statement dated as of the date hereof;
11. UCC-1 Financing Statements.

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ARONSOHN WEINER & SALERNO

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263 MAIN STREET
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CRAIG L. LEVINSOHN†
LISA CLARE
MARTIN SHELL†
LUTHER G. JONES, IV

April 30, 2009

Kennedy Funding, Inc.
As Agent For The Co-Lenders
Two University Plaza, Suite 402
Hackensack, New Jersey 07601

RE: Kennedy Funding, Inc. to Pawleys Island North, LLC
Loan Amount: \$960,000.00

Ladies and Gentlemen,

This opinion is being rendered to you (the "Agent") and to the lenders set forth and identified on Schedule "A" appended to the "Note", as hereinafter defined (collectively, "Lenders") (Agent and Lenders are hereinafter collectively referred to as "Lender"), in connection with a loan (the "Loan") in the principal sum of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars made by Lender today to Pawleys Island North, LLC, a South Carolina Limited Liability Company (the "Borrower"), pursuant to a Loan and Security Agreement dated as of the date hereof (the "Loan and Security Agreement"). The Loan is evidenced by a Promissory Note, dated as of the date hereof, in the principal amount of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars made by Borrower to Lender (the "Note"). The Loan is guaranteed by way of a Guaranty dated as of the date hereof (the "Guaranty") made by Peggy Wheeler-Cribb and Will Darwin Wheeler (hereinafter "Guarantors").

The Loan is secured by a Mortgage and Security Agreement (the "Mortgage") on land (the "Secured Property" or sometimes the "Property" or sometimes the "Premises") owned by the Borrower comprising the Property identified more specifically in the Mortgage. The Loan is further secured by UCC-1 Financing Statements, (the "UCC-1 Financing Statements"); the Loan and Security Agreement, Assignment of Leases and Rents on the Security Property and Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports.

Each of the above documents is dated as of the date hereof, except as otherwise noted herein.

All initially capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms under the Loan and Security Agreement.

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We are acting solely as special New Jersey counsel to the Borrower and Guarantors in connection with the Loan.

In connection with the opinions rendered herein, we have examined the following documents:

1. Promissory Note;
2. Loan Commitment dated February 12, 2009;
3. Loan and Security Agreement;
4. Mortgage and Security Agreement;
5. Assignment of Leases and Rents;
6. Document Re-Execution Agreement;
7. Guaranty;
8. Environmental Indemnity Agreement;
9. Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports;
10. Loan Closing Statement;
11. Opinion Letter of Robert H. Gwin III, Esq. (the "Gwin Opinion Letter"); and
12. UCC-1 Financing Statements.

(Hereinafter collectively the "Loan Documents").

We have also examined such other documents as we have deemed necessary, so as to provide this opinion letter.

a. We have relied as to factual matters on the representation and warranties contained in the Documents referenced in this opinion letter only.

b. The enforceability of the rights and remedies created by the Loan Documents is subject to:

(a) Bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws from time to time in effect of general application affecting the rights and remedies of creditors or secured or responsible parties as such term may be defined and resulting obligations imposed by any authority exercising jurisdiction thereof; and

(b) General principles of equity or the exercise of judicial discretion (whether asserted in an action at law or in equity); and

(c) In addition, certain remedies provided in such documents, if any, may be restricted or unenforceable under the laws of South Carolina (sometimes referred to as the "Collateral State") and judicial decisions therein. In particular, the New Jersey "choice of law provision" contained in the Loan Documents would not apply if the application of the law of the State of New Jersey would be contrary to a fundamental policy of the Collateral State, where the Collateral State was found to have materially greater interest in the determination of the issue of election of remedies. The inclusion of such provisions in the Loan Documents, and the application of such laws and judicial decisions, however, do not render any of the Loan Documents invalid as a whole, and there exists in the Loan Documents or pursuant to applicable law, adequate remedies for realization of the principal benefit and/or security intended to be provided by the Loan Documents.

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Pg. 3

(iii) We express no opinion concerning the law of any jurisdiction other than Federal laws and the laws of the State of New Jersey.

(iv) We express no opinion whatsoever on the status of title to the Secured Property or any personal property or the priority of the lien of any mortgage or any security agreement or of the Loan and Security Agreement.

(v) Based solely on the Gwin Opinion Letter, we have assumed that the Borrower validly exists and that all signatures of Borrower and Guarantors are authorized, and the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified conformed or photo static (or similarly reproduced) copies of facsimiles. If any changes or additions are made to any document referenced herein, the opinion herein provided shall apply only to the extent of such documents without alteration.

(vi) We express no opinion with respect to the enforceability of the rights and remedies created by the Loan Documents in the Collateral State, nor do we express an opinion on the effect of the pendency of a New Jersey action on the right of the Lender to institute a foreclosure action in the Collateral State.

(vii) We express no opinion as to the validity of any documents or action not provided to us.

(viii) Based on the Gwin Opinion Letter, we assume under South Carolina law that the Loan is not deemed usurious and that the South Carolina courts will honor the "choice of laws" provision in the Note and apply New Jersey law in determining issues of usury.

Based upon and subject to the foregoing, we are of the opinion that:

1. No interest, or other payment, fee or charge, whether individually or in the aggregate, provided for in the Note or any other Loan Document (without regard to any provision thereof limiting the payment of interest or any other sums to the maximum rate permitted by applicable law) is violative of any civil or criminal usury law of the State of New Jersey. No opinion is expressed as to the law in the Collateral State.

2. Based solely on the Gwin Opinion Letter with respect to authorization and execution, upon execution of the Loan Documents referred to herein and delivery thereof by the Borrower and Guarantors to the Lender, the Loan Documents shall constitute the legal, valid and binding obligations of the Borrower and Guarantors enforceable in accordance with their terms.

3. The aforementioned limitations do not render any of the Loan Documents invalid as a whole, and there exists in the Loan Documents or pursuant to applicable law, adequate enforceable remedies for realization of the principal benefit and/or security intended to be provided by the Loan Documents; and

4. Subject to the limitations set forth in this opinion letter and except with regard to all legal issues respecting foreclosure of the Lender's lien and security interest under the Mortgage pertaining to the Property identified therein, as to which we offer no opinion, and based upon the fact that the Loan was negotiated in part in New Jersey, the proceeds of the Note were distributed in New Jersey, that independent New Jersey counsel was retained to represent the Borrower and Guarantors,

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and that the Note specifically provides that New Jersey law shall apply in determining any issue of usury, which State the parties have agreed has a substantial relationship to the Loan, and assuming that in making such determination a Court does not find that the laws of South Carolina provide an overwhelming public policy reason for the application of South Carolina law, it is more likely than not that the courts of New Jersey, after weighing all of the factors to determine which State's laws are applicable to the Loan, will apply New Jersey law and will enforce the choice of laws provisions in the Loan Documents.

5 To the best of our actual knowledge no approval, permit, license or registration of any Federal or New Jersey governmental authority is required in connection with the execution, delivery and performance by the Borrower and Guarantors of the respective obligations under the Loan Documents.

6. The execution, delivery and performance by the Borrower and the Guarantors of the Loan Documents do not conflict with any provision of applicable Federal or New Jersey law, rule or regulation.

Our opinion is (i) limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated; and (ii) given exclusively for your use and benefit only, and may not be copied, quoted or otherwise relied upon by any other parties (except your co-agents, co-lenders, assigns or participants in the Loan) or in any opinion of counsel or accountant without any prior express written consent from the undersigned. As of the date hereof we undertake no responsibility to advise you of changes hereafter occurring.

Very truly yours,

ARONSOHN WEINER & SALERNO

By: RICHARD H. WEINER, ESQ.

RHW/med

cc: Pawleys Island North, LLC
cc: Robert H. Gwin, III, Esq.

KENNEDY_01403



COURT PLAZA NORTH
25 MAIN STREET
P.O. BOX 900
HACKENSACK, NJ 07601-0800
201-489-3000 201-489-1516 FAX
—
NEW YORK
—
DELAWARE
—
MARYLAND

Reply to New Jersey Office

April 30, 2009

Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601

Gentlemen:

We have acted as counsel to Kennedy Funding, Inc., a New Jersey corporation (collectively, the "Lender") in connection with the making of a loan in the amount of Nine Hundred Sixty Thousand and 00/100 (\$960,000.00) Dollars (the "Loan"), which Loan is evidenced and/or secured by a Promissory Note, Mortgage and Security Agreement, (the "Mortgage") and Assignment of Leases and Rents on land located on Pawleys Island in the State of South Carolina (the "Property"), and certain other loan documents entered into between the parties (the Mortgage and all other documentation entered into in connection therewith being herein called the "Loan Documents"), to Pawleys Island North, LLC, as borrower, (the "Borrower"). The obligations of Borrower under all of the Loan Documents have been guaranteed by Will Darwin Wheeler and Peggy Wheeler-Cribb (collectively, the "Guarantor").

In connection with these opinions, we have examined a copy of the Loan Documents, certificates of public officials and of officers and other representatives of Borrower, and such other documents and records, and those matters of law, as we have deemed appropriate as a basis for the opinions hereinafter expressed, including without limitation, the opinions rendered to you today by Gwin Law Office, LLC, and Aronsohn Weiner & Salerno, as counsel to Borrower (the "Borrower's Opinions"). As to questions of fact material to our opinions, we have, when relevant facts were not independently established by us, relied solely upon information provided by Borrower or Lender or public officials and on the representations and warranties of Borrower contained in the Loan Documents.

We have, in giving these opinions, assumed the matters, assumed and make the same qualifications which are made and rely upon the truth and accuracy of all the matters set forth in, the Borrower's Opinions, including, without limitations, all matters relating to Lender. We have in giving these opinions relied upon each of the opinions opined in the Borrower's Opinions. In addition, the opinions expressed below are subject to the limitations and qualifications that:

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ATTORNEYS AT LAW

Kennedy Funding, Inc.
April 30, 2009
Page 2

(i) we have assumed that none of the representations or warranties contained in the Loan Documents contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they are made, not misleading;

(ii) we express no opinion as to whether any right to redeem may be waived or released by a stipulation to that effect in the Loan Documents, and we express no opinion as to whether any waiver of the potential benefit of any present or future laws will be enforceable; and

(iii) we have assumed that Borrower as "debtor", as defined in the UCC and as borrower has rights in the premises over which Lender has been granted a security interest or which is described in the Mortgage and each item of collateral, respectively, as described in the Loan Documents, which it purports to own; that value has been given to Borrower as "debtor" (as defined in the UCC) and as grantor of the security interests contemplated in the Loan Documents; and, that such collateral is accurately described in the Financing Statements or Mortgage, respectively.

For purposes of these opinions, we are members only of the Bar of the State of New Jersey, do not purport to be expert in the law of any other jurisdiction, and we express no opinion as to the laws of any jurisdiction other than the laws of the State of New Jersey and all applicable federal laws. Except as is expressly set forth herein, no opinion is expressed as to the effect the laws of any other jurisdiction might have upon the subject matter of the opinions expressed herein under conflict of laws principles or otherwise, or on the choice of laws made by the parties to the Loan.

Our opinions are based upon information furnished to us and on the facts, circumstances and state of the law as of the date hereof.

Based upon the foregoing and subject to the exceptions and qualifications set forth herein, we are of the opinion that:

1. The terms and conditions of the Loan Documents are valid and enforceable against Borrower and Guarantor in accordance with their respective terms and do not contravene the laws of the State of New Jersey or any applicable federal laws.

2. Without limitation to paragraph 1 immediately preceding, the interest rate, default interest rate, late charge and/or attorney's fees as set forth in the Loan Documents are not prohibited by applicable law.

3. Based upon the fact that the Loan was negotiated in New Jersey, that Borrower and Guarantor obtained the advice of independent New Jersey counsel, that

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Kennedy Funding, Inc.
April 30, 2009
Page 3

closing of the Loan occurred in New Jersey, that the proceeds of the Loan were disbursed in New Jersey and that the Loan is repayable in New Jersey, which State the parties have agreed has a substantial relationship to the Loan, and assuming that in making such determination a Court does not find that the laws of the State of South Carolina provide an overwhelming public policy reason for the application of South Carolina law, it is more likely than not that a Court, after weighing all of the factors to determine which State's laws are applicable to the Loan, will enforce the choice of laws provisions in the Loan Documents.

The foregoing opinions are qualified in their entirety to the extent that the same may be: (i) limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally (including, without limitation, any law pertaining to preferences and fraudulent transfers); (ii) subject to the limitation that the availability of any right or remedy, including, without limitation, specific performance or injunctive relief, is subject to the discretion of the court before which any proceeding therefor may be brought; or (iii) subject to general legal and equitable principles of public policy, good faith, fair dealing, commercial reasonableness and equity, as the same may be construed in the context of emerging judicial doctrines of lender liability or otherwise.

These opinions have been rendered solely for your benefit in connection with the funding of the Loan and may not be used, circulated, quoted, relied upon or otherwise referred to for any other purpose without our prior written consent.

Very truly yours,
Cole Schotz Meisel Forman & Leonard P.A.
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

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KENNEDY_01406

TITLE REVIEW MEMORANDUM

TO: Kennedy Funding, Inc.
CC: Michael R. Leighton
Roger Iorio
FROM: Cole, Schotz, Meisel, Forman & Leonard, P.A.
DATE: April 30, 2009
RE: Kennedy Funding, Inc.
Proposed Loan to Pawley's Island North, LLC (South Causeway)

CLIENT/MATTER NO: 31392-0569

The following is a summary of the commitment for title insurance issued by Chicago Title Insurance Company (File No: 09-RE-150) with an original effective date of March 30, 2009 ("Commitment") and the pro forma policy with an effective date of April __, 2009 or the date of recording, whichever is later.

PREMISES: Lots 3 and 4 on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court of Georgetown County, South Carolina in Plat Side 625 at page 10.

TITLE: Title is vested in Will D. Wheeler. A deed is to be delivered transferring title to the Borrower - Pawley's Island North, LLC.

TAX/MUNICIPAL SEARCH:

Taxes show paid through 2008.

SCHEDULE B-I EXCEPTIONS:

(Numbers correspond to exceptions on Schedule B except as indicated)

SPECIAL EXCEPTIONS

1. Taxes and assessments for the year 2009, and subsequent years, which are a lien and are not yet due and payable.

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KENNEDY_01407

2. Distribution Right of Way from Will D. Wheeler to the South Carolina Public Service Authority dated May 11, 2004 and recorded in Deed Book 1519 at page 00128 and re-recorded in Deed Book 1562 at page 0036 of the public record of Georgetown, South Carolina.

Will Wheeler granted the South Carolina Public Service Authority a 10 foot wide right of way, parallel and adjacent to the northern property line. South Carolina Public Service Authority was granted the right to enter upon, construct, extend, inspect, operate, replace, relocate, repair and maintain upon, over, along, across, through and under any and all property lines and land surfaces on the property various electric lines with such poles, wires, cross arms, guy wires, push brace, underground cables, conduits, manholes, transformer pads and other usual structures as may from time to time be or become convenient to the transaction of its business or that of municipal, public or private systems for communication of intelligence, together with the right of ingress, egress and access to and from such rights of way across and upon the property as may be necessary or convenient for the purposes connected therewith.

This document was re-recorded because the execution on the original document was improper

3. Restrictive covenants and easements contained therein appearing of record in Deed Book 305 page 205 and amended and recorded in Deed Book 334 at page 49 aforesaid records. NOTE ON MORTGAGEE POLICY ONLY: This policy insures that as of the date hereof said restrictions have not been violated and that a future violation thereof will not result in a reversion or forfeiture of title to the premises.

See abstract sent on March 17th.

4. This policy does not insure any portion of the subject property which is located within a marsh area.

Approximately 0.31 +/- acres, a small portion of which is located on Lot 4 and the majority on Lot 3, is located in the tieline to marsh area. This area is all wetlands.

5. Plat of survey prepared for Will Darwin Wheeler by Earthworks Group, dated July 9, 2006, discloses the following,

(a) overhead power line easement

6. Rights of adjoining owners on the east in and to the use of the joint driveway situated partly on insured premises and partly on the property adjoining on the east and west shown as the shaded area designated as "Driveway" on the

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survey prepared for Will Darwin Wheeler by Earthworks Group, dated July 9, 2006.

This is the driveway access from Myrtle Avenue to Lots 1, 3 and 4.

Title Endorsements:

The following title endorsements were provided:

1. ALTA 9
2. Usury
3. Zoning
4. Waiver of Arbitration
5. Street Assessments
6. Contiguity
7. Environmental Protection Lien
8. Access
9. Doing Business
10. Subdivision
11. Planned Unit Development
12. Separate Tax Parcel
13. Survey
14. Easements – Use/Maintenance
15. Assignment of Rents
16. Variable Rate

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