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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-002251

Timothy Wade Long and Clyde Ksier, individually and on behalf of TnW and More, LLC, Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and More, Inc., d/b/a Crab Catcher on the Waterfront, Defendants,

of which Timothy D. Kettner and TNT and More, Inc., d/b/a Crab Catchers on the Waterfront, areAppellants.

RECORD ON APPEAL
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	Civil Action No.: 2021-CP-26-01512
Thomas Wade Long and Clyde Kiser,	)	
individually and on behalf of TnW and	)	
More, LLC	)	
	)	
Plaintiffs,	)	EMERGENCY TEMPORARY
	)	RESTRAINING ORDER
v.	)	PURSUANT TO RULE 65(b)
	)	
Timothy D. Kettner, Donald Kattner, and	)	
TNT and More, Inc. d/b/a Crab Catchers on	)	
the Waterfront,	)	
	)	
Defendants,	)	
_____	)	

THIS MATTER comes before the Honorable William H. Seals, Jr., for an Emergency Temporary Restraining Order pursuant to Rule 65(b) and is based upon the filed Verified Summons and Complaint, Plaintiffs' Motion for Temporary Injunction and Memorandum, Affidavit of Thomas Wade Long, and the Affidavits of Eric Rolf.

I FIND AS FOLLOWS:

1. Plaintiffs, their tenant, Eric Rolf, and their customers are being blocked from use of the parking lot in which they utilize and in which their customers need to utilize.
2. Defendants are also blocking access to Plaintiffs' sales office, blocking access to the fuel tank in which both Plaintiffs and their tenant need to utilize in order to operate their businesses.
3. Defendants have contacted regulatory government agencies regarding the Plaintiffs and posted a sign indicating DHEC is requiring the dock to be shut down on Saturday, the busiest day for Plaintiffs' tenant.

4. According to the Affidavits of Thomas Wade Long and Eric Rolf, Defendants are engaging in hostile and verbally abusive actions toward the jet ski and boat slip customers and their employees which can cause irreparable harm to their business.

5. It appears from the Verified Complaint and Affidavits of Thomas Wade Long and Eric Rolf that immediate and irreparable injury, loss or damage will result to the Plaintiffs and their tenant if the Defendants are not restrained before notice can be served and a hearing had thereon.

IT IS THEREFORE ORDERED THAT THE DEFENDANTS, THEIR AGENTS AND EMPLOYEES, ARE RESTRAINED FROM THE FOLLOWING:

1. Blocking the parking lot, including but not limited to locking the gate to the parking lot during the Plaintiffs' hours of operation and/or the jet ski rental company's hours of operation.
2. Interfering with the business operations of the jet ski rental company, the boat slips, and the dock.
3. Blocking the fuel tanks so that Plaintiffs and their tenant are allowed to utilize access to the tanks.
4. Removing or taking steps that would harm the dock and/or the marina where Plaintiffs' tenants' camera equipment is located.
5. Harassing Plaintiffs' and their tenants' customers and engaging in hostile and verbally abusive actions toward the jet ski and boat slip customers and the employees.
6. Posting signage on the dock and/or marina indicating DHEC or other governmental agencies are requiring that the dock and/or marina be shut down.

IT IS FURTHER ORDERED THAT any actions taken today by Defendants on the dock and at the marina, Defendants must immediately restore and compensate Plaintiffs for any damage caused as a result of their actions.

This Order is entered this 16th day of July, 2021 at _____ am/pm. A bond of \$500.00 shall be submitted as security for this Order.

The Motion for a Temporary Injunction shall be held July 26, 2021 at 9:30 a.m. before the Honorable Judge William P. Keasley.

The Honorable William H. Seals, Jr.



Horry Common Pleas

Case Caption: Thomas Wade Long , plaintiff, et al VS Timothy D Kettner , defendant,
et al
Case Number: 2021CP2601512
Type: Order/Temporary Restraining Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	CIVIL ACTION NO.: 2021-CP-26-01512
	)	
Thomas Wade Long and Clyde Kiser,	)	
Individually and on behalf of TnW and	)	
More, LLC,	)	
	)	CONSENT ORDER
Plaintiffs,	)	
	)	
Vs.	)	
	)	
Timothy D. Kettner, Donald Kettner, and	)	
TNT and More, Inc. d/b/a Crab Catchers	)	
On the Waterfront,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Thomas Wade Long and Clyde Kiser, individually and on behalf of TnW and More, LLC (hereinafter collectively as “TNW”) and Defendants Donald Kettner and TNT and More, Inc. d/b/a Crab Catchers On the Waterfront (hereinafter as “Crab Catchers”) consent to this Order on Plaintiffs’ Motion for Temporary Injunction and Memorandum and Emergency Temporary Restraining Order Pursuant to Rule 65(b), as well as Defendants’ Reply in Opposition to Plaintiff’s Motion for a Temporary Restraining Order and Notice of and Motion to Dissolve Pursuant to Rule 65(b)(4). This Court finds the following:

- 1) On June 29, 2021, Plaintiffs filed a Motion for Temporary Injunction and Memorandum.
- 2) On July 16, 2021, Plaintiffs filed an Emergency Temporary Restraining Order Pursuant to Rule 65(b).
- 3) On July 19, 2021, Judge Seals signed Plaintiffs’ Emergency Temporary Restraining Order Pursuant to Rule 65(b).

4) On July 21, 2021 Defendants filed a Notice of Motion and Memorandum in Support of Motion to Reconsider, Alter or Amend the Court's Order Granting the Plaintiffs' Motion for a Temporary Restraining Order.

5) On July 23, 2021, Judge Seals denied Defendants' Notice of Motion and Memorandum in Support of Motion to Reconsider, Alter or Amend the Court's Order Granting the Plaintiffs' Motion for a Temporary Restraining Order.

6) A hearing was set before the Honorable Judge William P. Keesley for July 26, 2021 at 9:30 a.m. but prior to the hearing the parties resolved the outstanding motions for temporary injunction.

7) The parties agree to the following with respect to the parking lot located 4412 Waterfront Avenue, Little River, South Carolina:

- A) Crab Catchers use a combination lock for the main gate of the parking lot;
- B) The combination will be given to the members of Crab Catchers, Thomas Wade Long, Clyde Kiser, Danny Juell and Danny Brown only;
- C) The combination is not to be shared with any other persons not named herein;
- D) TNW, Danny Juell and/or Danny Brown be responsible for accessing the parking lot for their clients/customers prior to 9 am each morning;
- E) TNW, Danny Juell and/or Danny Brown will monitor the parking lot until 9 a.m. for the purpose of not permitting parking to any third parties;
- F) TNW and all of its clients will refrain from parking in parking spaces which are currently posted with signs for Crab Catcher parking, being approximately 20 such spaces;
- G) Crab Catchers will not prevent any of Plaintiffs' customers, clients, including their employees in any other spaces other than those designated by the existing signage

for Crab Catchers only nor will Crab Catchers block access to the watersports building and the fuel lines and tank;

H) Crab Catchers will take over monitoring the parking lot at 9 a.m. each day and will monitor the remainder of the day until the close of business being approximately by 10 p.m. or later;

I) Crab Catchers will lock the combination lock to the parking lot at night; and

J) As to the fish-cleaning table and the roof, the parties agree that there is a need for certain government approval for any restoration, which means the Defendants are not now capable of any restoration. During the pendency of this action, the Defendants agree that they shall undertake no further actions to remove, repair, assemble or disassemble any portion of the marina utilized by the Plaintiffs and TnW and More, LLC unless necessary to comply with the law and/or any regulatory agency, in which event written consent shall be sought from the Plaintiffs. In the event Plaintiffs fail to respond within 7-days' notice of a request for written consent without justification provided, then Defendant may comply with any lawful order or directive from any court of competent jurisdiction or any regulatory agency. Written notice must be emailed to counsel for the Plaintiffs and the Defendants simultaneously along with written notice to the Plaintiffs.

8) Plaintiffs withdraw the remaining allegations contained in both the Motion for Temporary Injunction and Memorandum and Emergency Temporary Restraining Order Pursuant to Rule 65(b) at this time without prejudice.

9) Defendants withdraw their reply and motion similarly without prejudice.

10) Nothing in this Order prevents any future legal action to the Court by either party on any matter that may need assistance from the Court. .

11) This is a *pendente lite* Order and shall expire at the resolution of this case. Nothing in this Order is meant to be interpreted as a permanent resolution to the matter at hand or the case itself.

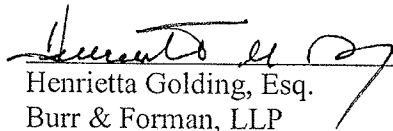
12) Neither party admits or concedes to any allegations contained in the above-referenced documents as factual, and nothing in this Order is meant to stipulate to either party's version of the facts in this case.

13) All findings by Judge Seals are set to expire and shall not be a part of the record upon expiration of his Order.

IT IS SO ORDERED this 26th day of July, 2021.

The Honorable William P. Keesley
Presiding Judge

WE DO SO CONSENT:



Henrietta Golding, Esq.
Burr & Forman, LLP
Counsel for Plaintiffs Thomas Wade Long and
Clyde Kiser



Michael S. Harrison, Esq.
Murray Law Firm, PA
Counsel for Defendants TNT and More, Inc.
d/b/a Crab Catchers On the Waterfront



Horry Common Pleas

Case Caption: Thomas Wade Long , plaintiff, et al VS Timothy D Kettner , defendant,
et al
Case Number: 2021CP2601512
Type: Order/Consent Order

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Thomas Wade Long and Clyde Kiser,	)	Civil Action No. 2021-CP-26-01512
Individually and on Behalf of TnW and	)	
More, LLC,	)	
	)	
Plaintiffs,	)	
	)	ORDER DENYING DEFENDANTS'
Timothy D. Kettner, Donald Kettner and	)	MOTIONS FOR JNOV
TNT and More, Inc. d/b/a Crab Catchers	)	
on the Waterfront,	)	
	)	
Defendants.	)	
_____	)	

A jury trial in this matter was conducted between June 10, 2024 and June 20, 2024. The jury returned a verdict for Plaintiff and all defendants made post-trial motions for judgment notwithstanding the verdict. The parties requested this Court delay its ruling on this motion in order to engage in some post-trial negotiations and mediation. Those attempts failed and an in person hearing was held on July 21, 2025 at which Defendant TNT & more, Inc. and Plaintiffs Wade Long, Clyde Kiser and TNW & More LLC were present. Attorneys for Tim Kettner appeared remotely but presented argument to the Court. After a careful review of the law and evidence presented at trial, this Court denies the motions for JNOV. Each motion will be addressed in turn.

Standard of Review

"In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Id.* The appellate court "will reverse the trial court's rulings on these motions only [when] there is no evidence to support the rulings or [when] the rulings are controlled by an error of law." *Hinkle v. Nat'l Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

"When considering a JNOV, 'neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.'" *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (quoting *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998), *abrogated on other grounds* by *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 653, 615 S.E.2d 440, 448 (2005)). A "JNOV should not be granted unless only one reasonable inference can be drawn from the evidence." *Reiland*, 330 S.C. at 634, 500 S.E.2d at 154.

Background

Plaintiffs Wade Long and Clyde Kiser were in business with Defendant Timothy Kettner by virtue of Plaintiff TNW & More, LLC. TNW was formed to operate a marina next door to Defendant TNT & More, Inc., also known as Crabcatchers. A dispute arose between all the various parties concerning the operation of the marina and the real estate of the respective companies. Plaintiffs brought this action against Defendant TNT, Defendant Kettner, along with several other individuals, for breach of a joint venture agreement, interference with contractual relations, and promissory estoppel. Plaintiff brought an additional claim for breach of fiduciary duty against Mr. Kettner. A jury trial was conducted between June 10, 2024 and June 20, 2024, at the conclusion of which the jury returned a verdict in favor of Plaintiff.

Defendant Kettner's Motion For JNOV

1. All defendants ask this Court to direct a verdict as to cause of action for Breach of the Joint Venture Contract. The arguments made by Defendants focus on two elements of a joint venture to argue they are entitled to a dismissal as a matter of law. However, Defendants misconstrue the joint venture presented by Plaintiff at trial. All defendants argue that each member of the joint venture must be able to control all aspects of the other businesses in the joint venture. This is simply not the law. A joint venture is a partnership between entities that is not formally created under any statutory scheme. Defendants are correct that to

constitute a joint venture, each party must enjoy an equal right to control the conduct of the other party. But that control is limited to the common purpose of the joint venture, not the separate businesses of the members to the joint venture. *Spradley v. Houser*, 247 S.C. 208, 146 S.E. (2d) 621 (1966). The joint venture presented at trial was the use of the docks built by TNW and the parking lot owned by TNT. Thus, the purpose of the joint venture was to use each other's property to allow both separate businesses to enjoy the benefits and make more profits through those separate companies. The evidence of this joint venture was more than just a scintilla:

- TNW claimed the bathrooms in the TNT building as its own, which were required to obtain the marina permit;
- TNW used the offices in the TNT building as its own with the full approval of TNT;
- All of TNW's records were kept in the TNT building;
- Wade Long and Clyde Kiser testified that without the use of the parking lot, TNW could not operate a marina under the current applicable regulations;
- The Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1) unambiguously stated that TNT needed the parking lot constructed by TNW to continue its operation as a restaurant;
- The joint venture was the use of the parking lot by TNW in exchange for the use of two boat slips in the marina by TNT for its customers;
- The joint venture was never to combine the businesses, control the businesses jointly, or allow either business to assert control over the core functions of the others' business;

- The testimony was clear that both businesses operated in accordance with this joint venture agreement for three years;
- The evidence demonstrated that TNW was one of two entities that could control the parking lot as the signs placed by TNT stated that to the public;
- TNT used, and continues to use, the boat slips in the marina;
- Steve Crosson testified that TNT controlled the fuel operations of TNW whenever there were no employees of TNW present;
- Steve Crosson testified that credit cards for ski rentals were run on TNT credit card machines when TNT employees controlled the jet ski operations;
- Steve Crosson testified that TNT employees used the jet skis free of charge in the off season; and
- The parties jointly obtained a \$1.1 million loan to build the marina and pay off the loans on the real property where the parking lot was built.

The second element Defendants argued was lacking from Plaintiffs' proof was the sharing of profits. However, Defendants argued, repeatedly, that TNW never made a profit. Now they seek a dismissal for the failure of TNW to share those non-existent profits. This cannot be the law as it would require "profit" before any relationship can be deemed a joint venture. The testimony and evidence at trial demonstrated that both TNW and TNT needed the parking lot to stay in compliance with the regulatory requirements of each business. Plaintiffs presented evidence that TNW paid for the development of the parking lot, not TNT. Construing all of this in the light most favorable to Plaintiffs, there was more than enough evidence to support the jury's verdict with regards to the existence of a joint venture.

2. Defendants Timothy D. Kettner, Donald Kettner and TNT and More, Inc. all argue that the Plaintiffs' claims should be dismissed as they are barred by the Statute of Frauds. The

South Carolina Statute of Frauds requires that certain contracts must be in writing, and to remove an oral contract from the Statute of Frauds, a party must show part performance of the oral contract. *Settlemyer v. McCluney*, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004). In the context of real estate transactions, partial performance may be proven by evidence of the following: (1) improvements to the real estate; (2) possession of the real estate; or (3) payment of the purchase price. *Bradshaw v. Ewing*, 297 S.C. 242, 376 S.E.2d 264, (1989). In this case, Plaintiffs presented proof of all three. Wade Long improved the real estate to be combined by filling in a pond, tearing down a house, providing fill dirt and rock, and grading the entirety of the parking lot area owned by TNT & More, Inc. *Deposition of Wade Long*, pp. 216-219. Kettner and Long paid for full architectural plans for the construction of a harbormaster building on the land owned by TNT & More, Inc. *Id.* at pp. 285-289. Kettner and Long paid for the drafting of recombination plats joining the real properties of TNT & More, Inc. and TNW & More, LLC. *Id.* at pp. 208-209. Long placed a temporary hut and a fuel tank on the land owned by TNT & More, Inc., *Id.* at p.286. Both TNT & More, Inc. and TNW & More, LLC jointly executed a loan for \$1.1 million, pledging the real estate owned by both entities as collateral for that loan. *Id.* pp.165-181. Finally, all parties operated under and in accordance with this agreement for three years. There is additional evidence of partial performance in the record of this case, including Donald Kettner representing TNW & More, LLC as its risk manager for purposes of insurance, the use of the Crabcatcher's restaurant building as the home office for TNW & More, LLC, *Deposition of Wade Long*, pp. 162-163, and the use of TNT & More, Inc. employees to help operate the ski and fuel business of TNW & More, LLC. *Id.* at pp. 112-113. All of these acts remove this case and the agreement between the parties from the Statute of Frauds and support the jury's verdict.

3. Defendants claim there is no evidence of damages from the breach of the joint venture agreement. However, both Wade Long and Clyde Kiser testified that without having access to the TNT real property located in the parking lot, they could not operate their business. This is sufficient to affirm the jury's verdict.
4. Defendants claim that there was no evidence of the value of the enhancement to the parking lot. The Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1) stated that TNT needed the parking lot constructed by TNW to continue its operation as a restaurant. In addition, the text messages from Tim Kettner submitted into evidence placed the cost of filling and grading the pond at \$70,000.00. Finally, TNT still owed \$284,000.00 for the real estate where the parking lot was built. Under the terms of the mortgage executed by all defendants and their principals, TNW pledged its own real estate to secure repayment of the loans TNT used to purchase the parking lot. The testimony was that the land where the parking lot exists was unusable prior to the work performed by TNW. This evidence demonstrates the value of the improvements to the parking lot real estate and is sufficient to affirm the jury's verdict.
5. Defendants claim that Plaintiffs "could have argued to the jury that the loan payments constituted contract damages. They chose not to do so." This argument was specifically made in closing when Plaintiffs told the jury TNW had already paid \$334k in loan payments, still owed \$800k in November on the balloon payments. In addition, Plaintiffs Long and Kiser testified that they paid \$280k of their own money into TNW. Counsel argued to the jury that this \$1.4 million number was the out of pocket loss before looking at the value of the real estate. I find there was sufficient evidence to affirm the jury's verdict on this issue.
6. Defendants both make the same argument regarding the damages for tortious interference with contract. Defendants claim the only evidence of damages was the value of the contract with Eric Rolf. Plaintiffs agree that this is the only measure of special damages introduced

by Plaintiffs. However, as I charged the jury (without objection from any party) the measure of damages for interference with contract include:

- Unforeseen expenses
- Damage to reputation
- Damage for loss of employees
- Damage for loss of customers
- Damage for loss of goodwill

The testimony from Wade Long, Clyde Kiser, and Eric Rolf contained several examples of bullying, hostility, and property destruction conducted by Defendants between 2020 and 2022. While no mathematical calculation was provided, general damages are not typically susceptible to such reduction. The tax returns of TNW were in evidence and so were the projections from the Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1). While this Court expressed some concern over the projections provided in that memorandum, Geoff Hopkins testified that those projections were not pure speculation and were important to the decision by the bank to loan the \$1.1. million. More importantly, Defendants agreed that those projections were submitted on their behalf in applying for the loan. The jury was charged regarding speculative damages and gave the evidence the weight they deemed appropriate in their deliberations. I find there was sufficient evidence to support the jury's verdict.

7. Defendant argues that there is no evidence that anyone took action at the direction of Tim Kettner to interfere with customers. The evidence submitted at trial demonstrated that Tim Kettner sent a text message that stated Wade Long was the enemy and that Robert Benoit should act as an "incognito infiltrator" to wage war against Plaintiffs. There was no evidence to dispute this from Mr. Benoit as he chose not to testify. But there was evidence of Robert

Benoit calling the regulatory authorities to self-report violations to shut down TNW, attempting to pull over a 10,000 gallon fuel tank with a tractor and a chain, and filing a false report of a fuel spill of “hundreds of gallons” of fuel. There was testimony that Benoit repeatedly stated that he owned the dock and attempted to intimidate and threaten the customers of TNW while they were on the dock. Finally, Mr. Benoit climbed on the tractor of Wade Long to stop him from following an Order of this Court to place the Ski Shed back in its lawful place, which lead directly to Wade Long being “arrested” for calling 911. We do not know why Mr. Benoit took these actions, but the evidence in the record can be reasonably construed that the encouragement of Mr. Kettner was a contributing factor. The evidence in the Record is more than sufficient for the jury to infer that Mr. Kettner’s texts constituted proof of coordination to interfere with TNW’s business.

8. Defendants claim that there was no evidence of Tim Kettner’s financial status and that precludes an award of punitive damages. There is no caselaw that requires Defendant to introduce evidence of a Defendant’s ability to pay. This is a factor to be considered, but it is not a pleading or evidentiary requirement of the party seeking punitive damages. Moreover, there was evidence in the record of Mr. Kettner’s wealth. The financial declaration of Tim Kettner, which was provided by Mr. Kettner in relation to the \$1.1 million loan, was introduced into evidence and discussed during his direct testimony. Mr. Kettner was specifically asked about his \$4 million valuation and said some things had changed since it was introduced. The only thing he could point out was the sale of some real estate, but he could not state a current value of his net worth. Defendants want this Court to rule Mr. Kettner can completely avoid punitive damages by simply refusing to answer a question about his financial condition. This is not the law and I find there was sufficient evidence to affirm the jury’s verdict.

9. All punitive damages awarded in this case were well within the acceptable range under South Carolina law. No punitive award was more than 3 times the actual damages and SC Courts have allowed up to 9.9 times the amount of actuals as punitive damages. *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 143, 584 S.E.2d 120, 130 (Ct. App. 2003) (finding a 9.9 to 1 punitive to actual damage ratio was proper based upon defendant's tortious interference with contract). There are multiple South Carolina cases in which award for punitive damages were upheld for tortious interference with contractual relations claims. See *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 139, 584 S.E.2d 120, 128 (Ct. App. 2003) (finding a 9.9 to 1 ratio was proper); *Collins Music Co. v. Terry*, 303 S.C. 358, 360, 400 S.E.2d 783, 784 (Ct. App. 1991) (finding a 6 to 1 ratio was proper); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 336 S.E.2d 472, 474 (1985) (reinstating a punitive damage award with a ratio of 1.5 to 1). Therefore, the law allowed punitive damages and the punitive damages awarded were well within the established guidelines established by South Carolina law.
10. *Election of remedies* – Plaintiffs agree that they will be required to make an election of remedies upon the resolution of the equitable issues remaining to be decided by the Court. However, Plaintiffs are not required to elect between the damages for breach of fiduciary duty and tortious interference with contract. These were two separate and distinct causes of action based on different duties and different damages. The tortious interference cause of action was based on the overt actions to damage the business of TNW through cutting access to the parking lot, harassing customers on the dock, and destroying TNW property. The breach of fiduciary duty was based on Kettner's breach of loyalty (as demonstrated by the 2020 and 2021 texts), his failure to provide access to the financial records (Wade Long testified that he was shut out of the books after confronting Kettner about the missing cash, Kettner admitted he could not account for the cash received during the summer of 2020) and

his failure to pay his fair share of the capital needed to keep TNW operating since 2020. There is no double recovery by allowing Plaintiffs to recover the \$50,000.00 actual/\$150,000.00 punitive award for the breach of fiduciary duty and the \$120,000 actual/\$120,000.00 punitive award for tortious interference. Therefore, Plaintiffs are not required to elect between the two recoveries.

Waites v. South Carolina Windstorm and Hail Underwriting Association, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013) (Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny)

Defendant TNT'S motion for JNOV

Defendant TNT provided a list of 17 points to summarize their arguments to this Court.

A. *TNW and TNT did not share profits.* – At trial, Defendants argued that TNW never made a profit. Now they seek a dismissal for the failure of TNW to share those non-existent profits. This cannot be the law as it would require “profit” before any relationship can be deemed a joint venture. The testimony and evidence at trial demonstrated that both TNW and TNT needed the parking lot to stay in compliance with the regulatory requirements of each business. Plaintiffs presented evidence that TNW paid for the development of the parking lot, not TNT. Construing all of this in the light most favorable to Plaintiffs, there was more than enough evidence to support the jury's verdict with regards to the existence of a joint venture.

B. *There are no tax filings associated with the joint venture* – The Court is unaware of any testimony that such tax filings were required. The only thing Kim Bryant, the accountant for both TNW and TNT, testified to was that if there was a joint venture that made profits, it would have to issue K-1's to the members who received those profits. Joint ventures are not separate fictional entities under South Carolina law such as limited liability companies, C-Corporations, S-

Corporations, and limited partnerships. No expert testified that such taxes are required for the existence of a joint venture and the Court is unaware of any law that prescribes such tax filings for the existence of a joint venture.

C. *The joint venture never issued a K1 to anyone* – Kim Bryant, the accountant for both TNW and TNT testified to was that if there was a joint venture that made profits, it would have to issue K-1's to the members who received those profits. She further testified that she never issued K-1's for any profit other than TNT and TNW. It seems axiomatic that no profit was made by the joint venture.

D. *Neither TNT nor TNW benefited from or were liable for any taxes associated with the joint venture for more than eight years* – As presented in the Underwriting Memorandum (Exhibit #1) and through testimony, TNT and TNW both required use of the parking lot to remain in operation. This parking lot was developed by TNW. TNT placed signs on the parking lot that specifically stated that TNW was authorized to use and control that parking lot. The testimony of Wade Long demonstrated that TNT enjoyed, as part of the joint venture, the value of using two boat slips at the marina (valued at \$1000.00 per month) since it was built in 2018. While there may not have been a direct monetary benefit from the joint use of the parking lot and the docks, that use was valuable and constitutes sufficient consideration to affirm the jury's verdict.

E. *TNW had no right to control the operations of the restaurant* – As discussed above, this argument is irrelevant. The operation of the Crabcatchers Restaurant was not part of the joint venture. The joint venture was the shared use of the parking lot and the marina docks.

F. *TNT had no right to control the operations of the marina* – As discussed above, this argument is irrelevant. The operation of the Crabcatchers Restaurant was not part of the joint venture. The joint venture was the shared use of the parking lot and the marina docks.

G. *The joint venture could not have been completed in one year* – This argument is based on the Statute of Frauds and as stated above, there was sufficient evidence of partial performance to take this case out of the statute of frauds and affirm the jury's verdict.

H. ***The joint venture involved the transfer and/or use in perpetuity of TNT's land without financial compensation being paid to them in the form of cash*** – The jury found the unambiguous promise which binds TNT was the “shared use of all properties and facilities including docks, parking lot, recombination plat, and TNT’s restrooms and office space.” In exchange for this promise, TNT received the construction of the parking lot by TNW *without cost*. More importantly, TNW pledged its own real estate to secure the loan and paid off the purchase money mortgage for the actual purchase of the real estate. There is no merit to the argument that TNT did not receive compensation and/or consideration for the promise. There is sufficient consideration and benefit to justify the contract and the jury’s verdict.

I. ***Neither TNW nor TNT had any insurance on a joint venture***. During the trial there was no law, regulation, or expert testimony set forth establishing the requirement for insurance to establish the existence of a joint venture. This evidence may support an argument that the failure to file taxes or obtain insurance shows a lack of intent to form a joint venture, but those arguments were rejected by the jury.

J. ***TNT was fined as a result of TNW operating without necessary permitting by Horry County Zoning and Planning***. There was a fair amount of testimony concerning regulatory authorities at trial. However, obtaining a regulatory fine does not deny the existence of a contract or a joint venture. Such a fine does not preclude recovery with regards to the causes of action pled by Plaintiffs.

K. ***There is no written contract associated with the joint venture***. As stated above, there was sufficient evidence of partial performance to take this case out of the statute of frauds and affirm the jury’s verdict

L. ***Despite the terms of TNW and TNT’s operating agreements regarding the necessity of voting for certain acts at issue in this case, no vote took place whatsoever by either company to enter into a joint venture***. The jury was charged with apparent authority. The Record demonstrates that only

one person was required to sign the \$1.1 million note and mortgage to bind TNT. More importantly, the act of every other member of TNT signing a guarantee to that note and mortgage can be construed as acquiescence to Mr. Kettner's authority. Finally, the evidence at trial was that the parties acted in cooperation and compliance with the joint venture for three years before the relationship broke down. There is sufficient evidence to affirm the jury's verdict.

M. ***There is no evidence of a business valuation for TNW*** – At the outset of trial, this Court made it clear that Plaintiff would not be able to present a business valuation without an expert witness. The Court ruled that Plaintiffs could testify regarding the money invested and lost. The Court also ruled that Plaintiffs could present their own testimony concerning the valuation of real estate, as is allowed in South Carolina law. *Waites v. South Carolina Windstorm and Hail Underwriting Association*, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013)(Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny). During the motion in Limine, Defendants were most concerned with the income projections found in **Exhibit 1** and any testimony from the individual plaintiffs as to the value of TNW's business. Yet, the very first exhibit from Defendant Kettner was the unredacted Underwriting Memorandum that contained the income projections. When the banker, Geoff Hopkins, testified he stated those projections were not pure speculation and played an important role in the bank's decision to issue the \$1.1 million loan. More importantly, Defendants read the portions of Wade Long's deposition transcript in which he specifically stated he believed the value of the business was "ten million dollars." Defendant Kettner did it again during his cross examination. When he was asked by counsel about that ten million dollar valuation, he did not reject it. He stated he would have to see some "appraisals." It does not appear that the jury used the \$10 million valuation from Mr. Long in reaching their verdict, but Defendants cannot claim there was no evidence of valuation.

N. ***There is no expert testimony as to the value of TNW's land.*** The law in South Carolina is that an owner of real or personal property can testify concerning his opinion of value as to that property. *Waites v. South Carolina Windstorm and Hail Underwriting Association*, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013)(Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny). Our Courts allow the opinion of an owner as to the value of stolen property, alone, to establish an essential element of a felony in this State. Under South Carolina law, the evidence was properly admitted and supports the jury's verdict.

O. ***TNW has not, will not, and was never under any threat of losing their land.*** If the parties default on the joint \$1.1 million loan and mortgage, they would all lose their real estate to a foreclosure. In the context of Defendant's argument, the zero valuation made by Clyde Kiser was based on the sale value of the land. The market value of the land is directly attributable to the highest and best use of property. The testimony at trial was that the highest and best use of that real property was as a marina. The elimination of access to the parking lot destroyed that highest and best use, rendering the property useless and worthless, according to its owner. This is the evidence presented at trial and is sufficient to affirm the jury's verdict.

P. ***TNW has been continuously operating since 2016 with only minor interruptions.*** TNW was forced to obtain a TRO by this Court to maintain its operations. The jury awarded over \$1 million in actual and punitive damages for the interference with business between 2020 and 2022. The contempt motions focus on the interference between 2022 and the current date.

Q. ***There is no evidence in the record of profits lost by TNW as a direct and proximate result of any actions by TNT.*** Wade Long and Clyde Kiser testified that the inference and destruction of property was a major reason TNW did not turn a profit during the years between 2020 and 2024. Plaintiffs presented testimony that the destruction of the ski hut and the harassment of Eric Rolf was

directly related to the loss of his rental agreement that paid TNW \$10,000.00 for over two years. Both of these are sufficient in and of themselves to establish the casual link between the actions of TNT and the loss of profits for TNW. It is sufficient to affirm the jury's verdict.

TNT makes several other arguments in the body of its brief. TNT complains that Plaintiffs are barred by unclean hands. However, the jury was charged with that defense and rejected it. TNT argues that because Tim Kettner did not comply with the operating agreement for TNT, TNT cannot be bound by his agreement. Again, the jury was specifically charged on apparent authority and found that his actions did bind TNT. Moreover, there is still a third-party complaint seeking redress from Mr. Kettner for these actions. TNT argues that TNW was allowed to use the parking lot for three years was under a license and not a joint venture. This argument was presented to the jury and rejected. The evidence was sufficient to support the jury's verdict that it was not a license but a joint venture and an unambiguous promise to TNW. TNT argues that there is no evidence to support the specific language of the unambiguous promise used by the jury in its verdict. While TNT continues to cite to the deposition transcript of Wade Long in support of this argument, the trial testimony was clear. The parties agreed to combine their real estate for the operation of a ships store, an ice cream shop, a jet ski rental business, fishing charters, and an eventual restaurant. Every finding of the jury's verdict was sufficiently supported by the evidence presented at trial. It is the province of the jury to accept or reject any, all or merely portions of the testimony presented.

TNT argues that Rule 23(b), SCRCF argument precludes recovery by Plaintiffs. This argument is without merit. It does not apply, and it never applied. As stated above, a joint venture is an essentially a partnership that is not officially registered with the Secretary of State. There is no derivative action between partners in a general partnership. South Carolina law specifically grants the right to bring a derivative action against (1) corporations (S.C. Code 33-7-400); (2) limited liability companies (S.C. Code 33-44-1101) (3) non-profit corporations S.C. Code Corporations (S.C. Code 33-31-630) (4) and limited partnerships (S.C. Code 33-42-1810). There is no statute

within the Uniform Partnership Act authorizing a derivative action. Even if there was such a statute, Plaintiffs made a Rule 15(b), SCRCF Motion to amend to state the obvious: consultation was a fruitless endeavor and was not required to bring a direct claim against TNT. Finally, the Court would like to point out an obvious inconsistency in Defendants' argument. Derivative suits are necessary to protect minority shareholders from tyranny of the majority by giving them rights that may not be accessible within the entity itself. However, as Defendants argued in this case, there are no minority shareholders in a joint venture as all parties must have equal rights to control the purpose of the joint venture. Plaintiffs never sued a fictional entity that was the joint venture. Plaintiffs sued the other partner in the joint venture to satisfy its obligations according to the joint venture agreement and the unambiguous promise made by that partner.

The Court intends to conduct additional hearings on Defendant Kettner's motion to dissolve TNW and will address any additional arguments on this point at that time.

CONCLUSION

After reviewing the arguments and written submissions of all the parties, applying the appropriate standard of review, and applying the governing law of South Carolina, I find that there was sufficient evidence submitted to the jury to support the verdict of the jury. Therefore, the motions to set aside the verdict are denied.

IT IS SO ORDERED.

Honorable B. Alex Hyman



Horry Common Pleas

Case Caption: Thomas Wade Long , plaintiff, et al VS Timothy D Kettner , defendant,
et al
Case Number: 2021CP2601512
Type: Order/JNOV

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2025-09-29 17:39:12 page 17 of 17

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2601512

Thomas Wade Long et al
PLAINTIFF(S)

Timothy D Kettner et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful consideration, Defendant TNT and More, Inc.'s Motion for Reconsideration is respectfully DENIED.

After careful consideration, Defendant Timothy D, Kettner's Motion Pursuant to Rule 59(e), SCRPC is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/05/2025 .

Robert Benoit
Casey Kuznik
Jose Bernardino Morales
Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Thomas Wade Long , plaintiff, et al VS Timothy D Kettner , defendant,
et al
Case Number: 2021CP2601512
Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2025-11-05 13:36:46 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP2601512

Thomas Wade Long Clyde Kiser	TNW And More LLC	Timothy D Kettner Donald Kettner Jose Bernardino Morales Robert Benoit	TNT And More Inc Crab Catchers On The Waterfront Casey Kuznik
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

As to the Special Interrogatories, we, the jury, unanimously find that a joint venture was created by TnW and Moore LLC and TNT and Moore Inc d/b/a Crab Catchers on the Waterfront. We find by a clear and convincing evidence that a clear and unambiguous promise was made between TNT and Moore Inc and TnW and Moore LLC. The promise was cooperation between TNT and TnW through consolidation of debt via the loan, guarantee of the loan, shared use of all properties and facilities including the docks, parking lot, recombination plat, and Crab Catcher's restrooms and office space, and future economic benefit to all parties. We find the promise did involve the transfer of an interest in real property and could not have been completed within one (1) year of the time it was made.

As to the Plaintiff's claim for breach of fiduciary duty against Defendant Timothy Kettner, we, the jury, unanimously find for the Plaintiff in the amount of \$50,000.00 actual damages and \$100,000.00 punitive damages, for a total of \$150,000.00.

As to the Plaintiff's claim for economic interference against Defendants, we, the jury, find for the Plaintiffs against the Defendants TNT and Moore Inc d/b/a Crab Catchers on the Waterfront in the amount of \$480,000.00 actual damages and \$480,000.00 punitive damages for a total of \$960,000.00 and against Timothy Kettner in the amount of \$120,000.00 actual damages and \$120,000.00 punitive damages for a total of \$240,000.00.

As to the Plaintiff's claim for breach of the joint venture agreement against the Defendants, we the jury, find for the Plaintiffs against the Defendant TNT and Moore Inc d/b/a Crab Catchers on the Waterfront in the amount of \$3,100,000.00 actual damages.

As to the Defendant Timothy Kettner's claim for claims against Plaintiff TnW and Moore LLC, we, the jury, do not find that Defendant Timothy Kettner is entitled to reimbursement for advances made to TnW and Moore LLC.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

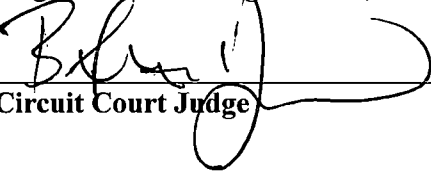
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Thomas Wade Long, Clyde Kiser individually and on behalf of TnW and Moore LLC	Timothy Kettner	\$390,000.00
Thomas Wade Long, Clyde Kiser individually and on behalf of TnW and Moore LLC	TNT and Moore Inc d/b/a Crab Catchers on the Waterfront	\$4,060,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2776

Judge Code

6/21/2024

Date

For Clerk of Court Office Use Only

This judgment was entered on **06/24/2024**, and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Tucker S. Player 512 Village Church Drive Chapin, SC
29036

Stanley E. Barnett 305 North Civitas Street Mt. Pleasant, SC
29464

Michael S Harrison 1297 Professional Drive Suite 202
Myrtle Beach, SC 29577

Scott Michael Mongillo 18 Broad St., Ste. Mezz Charleston,
SC 29401-3010

Eric Steven Bland 105 West Main Street Suite D Lexington,
SC 29072

Ronald L. Richter Jr. 18 Broad St., Ste. Mezz Charleston, SC
29401-3010

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC
29578

Mary M Caskey PO Box 11889 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Natalie Dahl

Renee N. Elvis - Clerk of Court

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CIVIL ACTION NO.: 2021-CP-26-01512

Thomas Wade Long and Clyde Kiser,
 individually and on behalf of TnW and
 More, LLC,

Plaintiffs,

vs.

Timothy D. Kettner, Donald Kettner, and
 TNT and Moore, Inc. d/b/a Crab Catchers
 on the Waterfront,

Defendants.

VERDICT FORM

Special Interrogatories

1. Was a joint venture created by any of the parties?

☒ Yes OR ☐ No

If you answer to the question above was "Yes" please go to question number two.
 If you answer to the question was "No" please go to question number three.

2. If you find a joint venture was created who were the parties in the joint venture?

TnW and More, LLC
TNT and Moore, Inc. d/b/a Crab Catchers on the Waterfront

3. Do you find by clear and convincing evidence that a clear and unambiguous promise was made between TNT and More, Inc. and TNW and More, LLC?

☒ Yes OR ☐ No

- If your answer to the question above was "No", please go to the next question.
- If your answer to the question above was "Yes", please write down the exact promise that was made:

THE PROMISE WAS COOPERATION BETWEEN TNT AND TNW
THROUGH CONSOLIDATION OF DEBT VIA THE LOAN GUARANTEE
OF THE LOAN, SHARED USE OF ALL PROPERTIES AND
FACILITIES INCLUDING THE DOCKS, PARKING LOT, RECOMBINATION
PLAT, AND CRAB CATCHERS' RESTROOMS AND OFFICE SPACE,
AND FUTURE ECONOMIC BENEFIT TO ALL PARTIES.

- If your answer to the question above was "Yes", did the promise involve the transfer of an interest in real property?

✓ Yes OR _____ No

- If your answer to the question above was "Yes", could the promise have been completed within one (1) year of the time that it was made?

_____ Yes OR ✓ No

Verdict

A. On Plaintiffs' claim for breach of fiduciary duty against Defendant Timothy Kettner, we, the jury, find for

✓ Plaintiffs OR _____ Defendant Timothy Kettner

If you found for Plaintiffs, please list the amount of damages to be awarded to Plaintiffs:

Actual Damages \$50,000⁰⁰
Punitive Damages (if any) \$100,000⁰⁰

B. On Plaintiffs' claim for economic interference against Defendants, we, the jury, find for

✓ Plaintiffs OR _____ Defendants

If you found for Plaintiffs, please place a check mark for which Defendant engaged in economic interference against Plaintiffs, list the amount of damages to be assigned to each Defendant:

_____ TNT & More, Inc.
Actual Damages \$480,000⁰⁰
Punitive Damages (if any) \$480,000⁰⁰

_____ Timothy Kettner
Actual Damages \$120,000⁰⁰
Punitive Damages (if any) \$120,000⁰⁰

C. On Plaintiffs' claim for breach of the joint venture agreement against Defendants, we, the jury, find for

✓ Plaintiffs OR _____ Defendants

If you found for Plaintiffs, please place a check mark for which Defendant breached the joint venture agreement and list the amount of damages to be assigned to each Defendant:

____ TNT & More, Inc.
Actual Damages \$ 3,100,000⁰⁰

____ Timothy Kettner
Actual Damages \$ Ø

D. On Defendant Timothy Kettner's claim for claims against Plaintiff TNW and More, LLC, do you find that Defendant Timothy Kettner is entitled to reimbursement for advances made to TNW and More, LLC?

____ Yes OR ✓ No

- If your answer to the question above was "No", please skip to the next question.
- If your answer to the question above was "Yes", please state the amount of advances, *if any*, to which Defendant Timothy Kettner is entitled to reimbursement:
\$ _____

James I. Bigato
FOREPERSON

WHEN YOU HAVE COMPLETED THIS FORM, PLEASE NOTIFY THE BAILIFF

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

Plaintiffs,

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc. d/b/a Crab Catchers on the Waterfront,

Defendants.

**SUMMONS AND VERIFIED
COMPLAINT
(JURY TRIAL DEMANDED)**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Verified Complaint on the subscriber at Burr & Forman LLP, 2411 N. Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: March 12, 2021

BURR & FORMAN LLP

By /s/ Henrietta U. Golding
Henrietta U. Golding SC Bar #2173
E-mail: hgolding@burr.com
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: 843.444.1107
Facsimile: 843.444.4729
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

Plaintiffs,

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc. d/b/a Crab Catchers on the Waterfront,

Defendants.

**VERIFIED COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs, Thomas Wade Long and Clyde Kiser, individually and on behalf of TnW and More, LLC complaining of the Defendants would respectfully show and allege unto this Honorable Court as follows:

FIRST CAUSE OF ACTION
(Promissory Estoppel)

1. The Plaintiffs Thomas Wade Long (hereinafter “Long”) and Clyde K Kiser (“Kiser”) reside in the County of Horry and State of South Carolina. Long and Kiser are members in TnW and More, LLC, (hereinafter “LLC”) a South Carolina limited liability corporation which owns property and transacts business in the County of Horry, State of South Carolina.

2. Long and Kiser bring this civil action on behalf of themselves and on behalf of the LLC.

3. The Defendants Timothy D. Kettner and Donald Kettner are residents of Horry County, State of South Carolina. Timothy D. Kettner is a member in the LLC and is the father to the Defendant Donald Kettner.

4. The Defendant TNT and More, Inc., (hereinafter "Inc") is a South Carolina corporation which transacts business in the State of South Carolina and operates under the business names of Crab Catchers and Crab Catchers on the Waterfront. The individual Defendants are shareholders in the Defendant Inc., have been, and continue to be officers and managers of Inc.

5. In 2016, the Plaintiff Wade and the Defendant Timothy Kettner formed the "LLC" in order to enter into a joint venture with the Defendants. The joint venture, created by the LLC and Inc, was the development and operation of business activities on the real properties owned by the Parties for which the Parties combined their respective real properties for the operation of water sports rentals, ice cream shop, fishing charters and other business activities.

6. In the creation of the joint venture, the Kettner Defendants, individually and on behalf of Inc, promised that the business activities of the LLC were entitled to use the real properties of Inc, including the parking lot, the land for the Dock Master's office, the ticket building and retail area, the land for the fuel tank, and ingress and egress to the areas needed for the business operations.

7. In reliance upon the representations of the Defendants, the Plaintiffs and the LLC undertook and completed the following:

- a. Purchased 1.5 acres for \$150,000.00 for the use of the joint venture with the Defendants;
- b. Enlarged and improved a parking lot for the joint use of the LLC and Inc;
- c. Constructed the Master Dock office, the ticket building, and the retail store area for the business operations of the LLC;
- c. Purchased a fuel tank and fuel lines, installed the fuel tank and the fuel lines, and obtained the permits;
- d. Constructed the docking areas, and floating docks, for jet skis;
- e. Built boat slips to be used by both the LLC and Inc;

f. Purchased jet skis, fuel pumps, fixtures, and equipment for the business operation of the LLC;

g. Permitted Inc and Donald Kettner to regularly use at least one boat slip, owned by the LLC, for the restaurant operations of Crab Catchers as well as other portions of the LLC's property for Inc's guests.

8. In order to accomplish the above activities and in additional reliance on the representations of the Defendants, the Plaintiff Long and the LLC agreed to become borrowers with the Defendants for the purpose of borrowing from United Community Bank the sum of \$1,100,000.00. The loan documents were completed in November, 2017, and as security for the aforesaid loan, the LLC and Inc permitted the Bank to place mortgages on their real properties located on the joint venture site. A copy of the Promissory Note is attached as Exhibit A and the Mortgages as Exhibit B.

9. In addition to jointly borrowing funds, the Plaintiff LLC and the Defendants engaged the services of consultants and experts such as an architect, engineers, and legal counsel. With the engagement of consultants and experts, the joint venture was successful in obtaining from the County of Horry an approved Plat combining the properties of the LLC and Inc by the removal of the boundary lines.

10. In reliance upon the joint venture, the LLC commenced its business operations in the summer of 2018 and continued thereafter until its business operations were interfered with by the Defendants.

11. The reliance on the Defendants' promises was expected and foreseeable especially in light of the Plaintiffs' commitments to the joint venture and their participation therein.

12. The Defendant Timothy Kettner managed the LLC until September 2020 when it was discovered that he was converting LLC funds and its assets without the individual Plaintiffs' knowledge or consent. When the Plaintiffs first discovered the self-serving activities of the

Defendant Timothy Kettner, they requested complete documentation from said Defendant but said Defendant refused to provide needed LLC business information and now has moved across country.

13. Shortly after the discovery of the misfeasance of the Defendant Timothy Kettner, the Defendant Donald Kettner, on behalf of Inc, commenced a legal action in Magistrate Court seeking an eviction of the LLC by falsely representing to the Magistrate's Court the existence of a landlord relationship between the LLC and Inc when none ever existed. A copy of the Eviction Application is attached as Exhibit C.

14. In addition to falsely representing to a State court that a landlord relationship exists between Inc and the LLC, the Defendant Donald Kettner interfered with the business activities of the LLC by blocking access to the parking lot, blocking access to the buildings constructed by the LLC denying ingress and egress to the floating docks and the boat docks used for charter boats even though the docks are located on the real property owned by the LLC, all the time while continuing to use portions of the LLC's property.

15. The actions of the Defendants have significantly harmed the LLC and the Plaintiffs for they cannot operate the LLC's business activities, nor even care for the LLC properties.

16. The Defendants have breached their duties to the Plaintiffs by refusing to continue to participate in the joint venture even though over \$1,000,000.00 has been expended as well as many hours of equity sweat by the individual Plaintiffs.

17. The Defendants have taken actions to intentionally harm the Plaintiffs and their actions were calculated to only benefit their own interests all being contrary to their representations.

18. As a result of the representations of the Defendants and their other misleading actions, the Plaintiffs are entitled to a temporary and permanent injunctive order of the Court prohibiting the Defendants from continuing to interfere in the business operations of the LLC both during the pendency of this action and thereafter permanently.

19. In addition, the Plaintiffs are entitled to an award of actual and punitive damages against the Defendants for their interference into the business operations of the LLC.

SECOND CAUSE OF ACTION AGAINST THE
DEFENDANT TIMOTHY KETTNER
(Breach of Fiduciary Duty)

20. The allegations of the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

21. The Defendant LLC is governed by an Operating Agreement, which was signed by the Plaintiffs and the Defendant Timothy Kettner.

22. According to the terms of the Operating Agreement, the Defendant Timothy Kettner had fiduciary obligations of good faith, preserving and protecting the assets of the LLC, providing business information including business records, and not engage in the misappropriation of the assets of the LLC.

23. The Defendant Timothy Kettner breached his fiduciary duties by absconding with the cash collected from the LLC customers, diverting LLC funds to himself, his son, and the Defendant Inc, and permitting his son to interfere in the business operations of the LLC.

24. As a result of the breach of fiduciary duties by the Defendant Timothy Kettner, the Plaintiffs, individually and on behalf of the LLC, are entitled to an award of actual damages, punitive damages, and attorney's fees and costs.

THIRD CAUSE OF ACTION
(Breach of Joint Venture Agreement)

25. The allegations of the First and Second Cause of Action are incorporated herein and made a part and parcel of the Third Cause of Action.

26. The Defendants breached the aforesaid Joint Venture Agreement by refusing to permit the Plaintiffs to continue the operations of the LLC and reneging on their promises.

27. As a result of the breach, the Plaintiff LLC has been damaged for which the Plaintiff LLC is entitled to actual damages together with legal interest thereon.

FOURTH CAUSE OF ACTION
(Economic Interference)

28. The allegations of the First, Second and Third Cause of Action are incorporated herein and made a part and parcel of the Fourth Cause of Action.

29. The Defendants Donald Kettner and Inc have interfered in the economic relations of the Plaintiffs by blocking access to the parking lot and the buildings constructed by the Plaintiffs and by blocking water sports business activities. In addition, the said Defendants, with the consent of the Defendant Timothy Kettner, has prevented charter fishing customers access to the boats. These actions of the Defendants have caused damage in that significant sales were lost and caused harm to the business reputations of the Plaintiffs.

30. As a result, the Plaintiffs have been harmed and therefore the Plaintiffs are entitled to actual and punitive damages from the Defendants.

WHEREFORE, the Plaintiffs pray for the following:

1. A temporary and permanent injunction against the Defendants;
2. An award of actual damages against the Defendants;
3. An award of punitive damages against the Defendants;

4. An Order requiring the defendants to pay the Plaintiffs' attorneys fees and costs;
and
5. For such other and further relief as the court deems just and proper.

Dated: March 12, 2021

BURR & FORMAN LLP

By /s/ Henrietta U. Golding
Henrietta U. Golding SC Bar #2173
E-mail: hgolding@burr.com
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: 843.444.1107
Facsimile: 843.444.4729
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-26-

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

Plaintiffs,

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc. d/b/a Crab Catchers on the Waterfront,

Defendants.

VERIFICATION TO COMPLAINT

PERSONALLY appeared before me, Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC in the above captioned action, being first duly sworn,
deposes and says that each has read the foregoing Summons and Verified Complaint and that the
information contained therein is true and correct to the best of their knowledge.

Sworn to and subscribed before
me, by Thomas Wade Long,
on this 11th day of MARCH, 2021,

Lynn E. Buckley

LYNN E. BUCKLEY
Notary Public - State of South Carolina
My Commission Expires November 13, 2028

Thomas Wade Long

Thomas Wade Long, individually and
on behalf of TnW and More, LLC

Clyde Kiser

Clyde Kiser, individually and on
behalf of TnW and More, LLC

Sworn to and subscribed
before me this 11 day of March, 2021
Kunshu Emery (LS)

Notary Public for South Carolina
My Commission Expires: 10-12-2022

45183554 v1

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
208001	TNW And More, LLC		11/29/17	408/MB
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$1,100,000.00	First Phase - Not Applicable	First Phase - 4.600%	11/29/24	Commercial
	Second Phase - Not Applicable	Second Phase - 4.600%		
		Creditor Use Only		

PROMISSORY NOTE

(Commercial - Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 29, 2017. The parties and their addresses are:

LENDER:

UNITED COMMUNITY BANK
3210 Hwy 701 Bypass
Loris, SC 29569
Telephone: (910) 653-3222

BORROWER:

TNW AND MORE, LLC
a South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

TNT & MORE, INC.
a South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts. All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of \$1,100,000.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

On November 29, 2017 I will receive an initial advance of \$275,170.17.

All advances made will be made subject to all other terms and conditions of the Loan.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note during the first phase at the rate of 4.600 percent (Interest Rate) until November 29, 2018. After that time, interest will accrue on the unpaid Principal balance during the second phase at a rate of 4.600 percent.

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

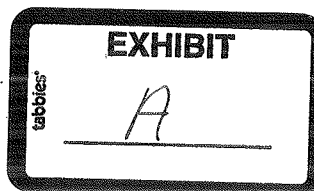
- A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Processing Fee. A(n) Processing Fee fee of \$250.00 payable from separate funds on or before today's date.

TNW And More, LLC
South Carolina Promissory Note
SC/4HARDWICA0000000001094061N

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Page 1



Loan Origination. A(n) Loan Origination fee of \$5,500.00 payable from separate funds on or before today's date.

Flood Insurance Determination Charge. A(n) Flood Insurance Determination Charge fee of \$14.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment. I will pay this late charge promptly but only once for each late payment.

B. Returned Check Charge. I agree to pay a fee not to exceed \$5.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

6. GOVERNING AGREEMENT. This Note is further governed by the Commercial Loan Agreement executed between you and me as a part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

7. PAYMENT. I agree to pay this Note in 84 installment payments. During the first phase of the Loan I will make 12 payments of accrued interest beginning December 29, 2017, and then on the 29th day of each month thereafter, until November 29, 2018.

Then, I agree to make 72 installment payments during the second phase of the Loan. The second phase of this Note is amortized over 240 payments. I will make 71 payments of \$7,058.28 beginning on December 29, 2018, and on the 29th day of each month thereafter. A single "balloon payment" of the entire unpaid balance of Principal and Interest will be due November 29, 2024.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, and finally to late charges that are due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is Real Estate Improvement.

10. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document	Date of Security Document
Mortgage - 4474 Waterfront Dr, Little River, SC 29566	TNT & More, Inc.	11/29/2017
Mortgage - 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, SC 29566	TNW And More, LLC	11/29/2017

11. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

12. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take; and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

16. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not effect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

18. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

19. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

20. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

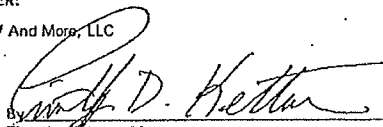
21. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

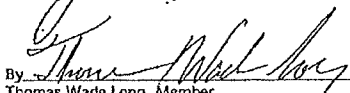
22. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

Signed, sealed, and delivered:

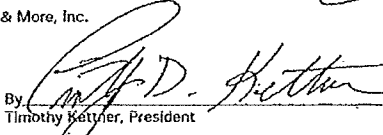
BORROWER:

TNW And More, LLC

By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

#208001

Instrument#: 2017000139116, MTG BK:
 5941 PG: 2631 DOCTYPE: 002 11/30/2017
 at 02:23:34 PM, 1 OF 13
 MARION D. FOXWORTH III, Horry
 COUNTY, SC REGISTRAR OF DEEDS

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This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNT & MORE, INC.
 A South Carolina Corporation
 D/B/A Crab Catchers On The Waterfront
 4474 Waterfront Dr
 Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
 Organized and existing under the laws of Georgia
 3210 Hwy 701 Bypass
 Loris, SC 29569

1. **DEFINITIONS.** For the purposes of this document, the following term has the following meaning.
- A. **Loan.** "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.
2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

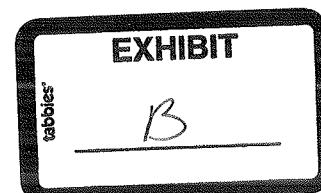
SEE EXHIBIT A

The property is located in Horry County at 4474 Waterfront Dr, Little River, South Carolina 29566.
 Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

TNW And More, LLC
 South Carolina Mortgage
 SC74HARDWICA0000000001094061N

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Page 1



future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

TNW And More, LLC
South Carolina Mortgage

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enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if: (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals shall include a standard "mortgage clause" (or "lender loss payable clause") endorsement that names Lender as "mortgagee" and "loss payee". If required by Lender, all insurance policies and renewals will also include an "additional insured" endorsement that names Lender as an "additional insured". If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance

must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

22. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

24. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

25. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

26. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

27. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

28. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

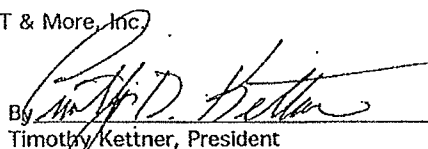
29. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

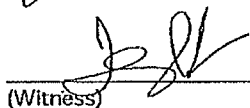
30. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

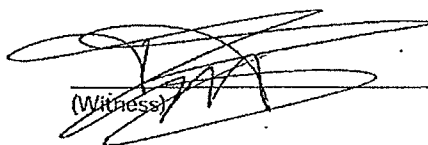
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument..

MORTGAGOR:

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

 Date 11/29/17
(Witness)

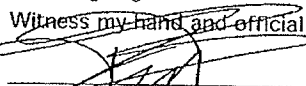
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

State OF South Carolina County OF Horry ss.

I, Roger Roy Jr., a notary public, do hereby certify that Timothy Kettner - President of TNT & More, Inc., a Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.



Signature of Notary Public

Roger Roy Jr.
My commission expires: 7/16/21

Exhibit "A"

Tax Map # 131-03-05-043

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, in the County and State aforesaid, containing 0.158 acres, more or less, and being more particularly described as follows:

BEGINNING at the iron O located on the southeastern corner of LOT 9, being the point of beginning and thence traveling South 30 degrees 30 feet East to the Southwestern corner of Bryan Street and Waterfront Drive (a/k/a Wharf Avenue). Thence, turning in a westerly direction along the mean high tide line of the salt marsh to the southwestern corner of LOT 10, thence turning South 78 degrees 14 feet 38 inches West along the Southern boundary lines of LOT 10 and LOT 9 to the point of BEGINNING.

Said property being bounded on the North by Lots 9 and 10, East by Bryan Street, South and West by the salt marsh along the Intracoastal Waterway and also includes accreted land. ?

Said property is identified as 40 feet road along the Southern boundary lines of Lot 9 and Lot 10, as shown on that certain survey of the W. L. Subdivision of Little River, South Carolina by S. D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Office of the Register of Deeds for Horry County, South Carolina. Said property is also shown as 0.158 acres more or less, on that certain survey by C.B. Berry, R.L.S. prepared for Wayne and Karen Sue Henderson and dated September 23, 1997.

SUBJECT to the Notice of Restriction, that all activities on or over and all uses of any submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. Grantee(s) are liability to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or any other critical areas.

Said property is also SUBJECT to the life estate of Karen Sue Henderson and James Wayne Faircloth.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Sourdough, LLC dated November 20, 2015 and recorded December 17, 2015 in Book 3878 at Page 3376 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-013

All and singular, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being shown and designated as 1.23 +/- as shown on Recombination Plat creating Lots 35 thru 39 Combined W.L. Bryan Property ?Subdivision +/- 53,337 Sq. Ft.- 1.23 Acres Total, recorded February 15, 2013 in Plat Book 257 at Page 27, Office of the Register of Deeds for Horry County, South Carolina.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Timothy D. Kettner dated September 15, 2017 and recorded September 15, 2017 in Deed Book 4043 at Page 790 in the Office of the Register of Deed for Horry County, South Carolina.

Tax Map #131-03-05-024

All and singular, all that certain piece, parcel or tract of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, Village of Little River, designated as Parcel 7C7 of lands formerly of Vance Kinlaw shown on a map prepared by S.D. Cox, Jr., R.L.S., dated the 13th day of February 1962, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 39 at Page 55, including all docks, piers, pilings, slips, and other improvements thereon and/or extending therefrom near, into and also all docking rights and dock and improvement permits relating thereto.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Willie S. Smith, Trustee dated September 21, 2009 and recorded September 24, 2017 in Book 3422 at Page 228 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-019

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT NINE (9) of the W. L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S. D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, referenced to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-018

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT TEN (10) of the W.L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S.D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, reference to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-020

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina and being shown and designated as 0.68 acre, more or less,

TMS 131-03-03-020, as appears upon plat prepared for Sourdough, LLC by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, dated March 15, 1996, reference to which is made a part and parcel hereof.

A portion of the herein described property may contain submerged land and notice is hereby given that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the Coastal Council, including but not limited to, the requirement that any activities or use must be authorized by the South Carolina Coastal Council. Any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical areas.

THIS CONVEYANCE is also made subject to the conditions and requirements of the permits issued by the U. S. Army Corps of Engineers and South Carolina Coastal Council.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Map #131-03-05-025

And singular, that certain piece, parcel or lot of land, with the improvements situate thereon, lying and being in Little River Village, Little River Township, Horry County, South Carolina, shown and described on a map made for Donnie Mintz by C.B. Berry, R.L.S., dated August 10, 1972, reference to which said map is craved as forming a part and parcel thereof; and further, referencing the description found in that certain Contract of Sale from Donnie Mintz, Seller to Wayne Henderson, buyer, dated January 6th, 1981 and recorded in the records of Horry County in Deed Book 697 at Page 672.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Wayne D. Henderson and Karen Sue Henderson dated April 4, 2002 and recorded April 8, 2002 in Book 2468 at Page 647 in the Office of the Register of Deeds for Horry County, South Carolina.

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This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNW AND MORE, LLC
A South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

- A. Power.** Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.
- B. Authority.** The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.
- C. Name and Place of Business.** Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

23. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

24. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in

the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

25. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

26. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

27. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

28. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

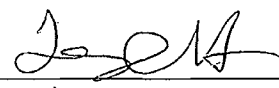
29. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

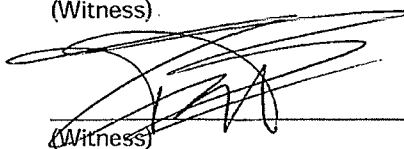
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNW And More, LLC

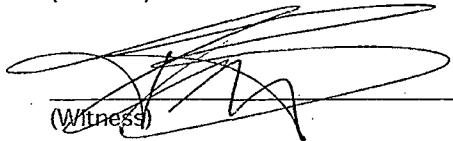
By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

 Date 11/29/17
(Witness)

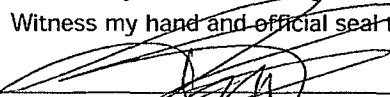
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

STATE OF SOUTH CAROLINA COUNTY OF Horry ss.

I, ROBERT D. ROY JR a notary public, do hereby certify that Timothy Kettner - Manager and Thomas Wade Long - Member of TNW And More, LLC, a Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.


Signature of Notary Public

ROBERT D. ROY JR
My commission expires:

7/6/21

Exhibit "A"

Tax Map #131-03-05-023

ALL THAT CERTAIN piece, parcel or lot of land lying, situate and being in Little River Township, Horry County, designated as Tax Parcel 131-03-05-023 as shown on the records of the Horry County Tax Assessor, together with the dock which extends from said lot into and over a portion of the Intracoastal Waterway.

Derivation: This being the identical property conveyed to TNW and More, LLC by deed of Freddie McGinn a/k/a Addis S. McGinn, III dated September 15, 2017 and recorded September 15, 2017 in Book 4043 at Page 793 in the Office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TNT and More Inc.)

PLAINTIFF(S))

VS.)

TNW and More, LLC)

DEFENDANT(S))

2021CV261040034
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

I, TNT and More, Inc., Plaintiff in this action, state that I am the Landlord-Lessor of the premises within the jurisdiction of the Magistrate Manuela A. Clayton which is described as: (address and description of premises – apartment, house, etc.)

4412 Water Front Avenue, Little River, South Carolina
Commercial Parking Lot

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the Defendant, TNW and More, LLC, the tenant-lessee, as evidenced by the following: (attach lease papers or other written proof)

N/A

Grounds for this ejectment are on or more of the following:

- ☐ The tenant fails or refuses to pay the rent when due or when demanded; or
☒ The term of tenancy or occupancy has ended; or
☒ The terms or conditions of the lease have been violated as follows: _____

Defendant is operating dangerous and hazardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

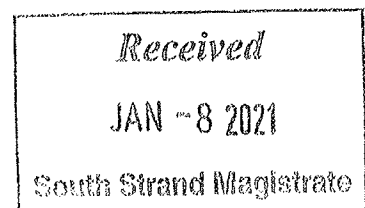
Sworn to before me
this 7th day of January, 2021.

T. M. ...
Magistrate or Notary Public for South Carolina

My Commission expires 6/18/2024

[Signature]
Plaintiff (or his attorney or agent)

SCCA/732 (Amended 05/2008)



MURRAY LAW OFFICES, PA

Legal Services Division • Michael S. Harrison, Managing Attorney

4214 Mayfair Street, Suite B, Myrtle Beach, SC 29577 • 843-445-9933 • 843-839-7397 (facsimile)

- Civil Litigation
- Family Law/Divorce
- Wills/Estate Planning
- Property Litigation
- Child Custody/Support
- Business Formation
- Construction Law
- Contract Disputes
- Tenant/Landlord
- Probate Law
- Criminal Law
- Personal Injury

November 22, 2020

VIA U.S. MAIL

TNW & More, LLC
Attn: Timothy Ketner
3522 Golf Avenue
Little River, SC 29566

RE: 4412 Waterfront Avenue

Dear Mr. Ketner:

I represent TNT & More, LLC. I am writing to address several issues that have arisen from the use of my client's property for your business interests. It is our understanding that you continue to operate your fuel and watersports businesses to my client's detriment.

My client has observed several dangerous and hazardous practices by your company on their property. Fuel pumps have been left on overnight. Equipment has not been stored safely and properly. Your customers are parking in areas that take up the limited immediately available parking for their customers. Your employees have continually failed to properly dispose of waste. The shed you are using to operate your watersports business is the source of my client receiving a fine from the county, as it is not compliant with county codes. That matter is pending before the Horry County Code Enforcement office. We do not believe your business is properly licensed nor are your properly insured. Most importantly, you have no valid lease to operate on the property at all.

As the owners of the land on which you are conducting business, we are very concerned about the foregoing issues. We are asking you to cease operations of both your fueling and watersport rental business immediately so that we can come to an agreement on a lease and on the operation of your business on our property.

In an effort to resolve the issues between the companies, we are offering you a 12-month commercial lease subject to certain conditions. If you do not wish to enter into the agreement, then we ask that you cease operations and remove any and all equipment that you own that is located on my client's property within 30 days of receipt of this letter.

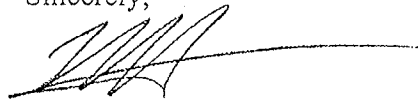
If you do not respond, we will assume that you do not wish to enter into a lease agreement. If you do not wish to enter into a lease and you do not remove your equipment, we will be forced to take action to resolve the matter through the county and through the court.

We hope to avoid further complications, and we hope that you will review our enclosed proposed lease agreement and sign it within 30 days of receipt of this letter. Again, my client is only willing to enter into the agreement upon your acquiescence to certain conditions outlined in the lease.

Prior to entering into the lease you will need to provide proof of insurance and all required licensing to my client for review.

If you have any questions, please feel free to contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Harrison', with a long horizontal line extending to the right.

Michael S. Harrison, Esq.

Enclosure(s) as stated

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261040034

CIVIL CASE NUMBER

MAGISTRATE'S COURT

RULE TO VACATE OR SHOW CAUSE (EVICTION)

TNT and More, Inc
c/o Murray Law Offices, PA
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577

Phone: (843) 455-9933

PLAINTIFF(S)

Vs

TNW and More, LLC
4412 Water Front Avenue
Little River, SC 29566

Phone:

DEFENDANT(S)

TO TNW and More, LLC : TNT and More, Inc is asking this Court to evict you from the property located at because they claim that:

- ☐ You have failed to pay rent when due or demanded in the amount of \$.
- ☒ The terms of your tenancy or occupancy have ended.
- ☒ You have violated the terms or conditions of your lease by: Defendant is operating dangerous & harzardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

You the defendant(s) and lessee(s) of the premises listed at the address listed above, **and all others**, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 **OR** contact the:

Surfside Beach Magistrate Court
9630 Scipio Lane
Myrtle Beach, SC 29588
(843) 915-5291

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

01/08/2021

M. Clayt
Judge, Surfside Beach Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, , says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on TNW and More, LLC on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	SETTLED/DATE _____	VACANT/DATE _____
2. _____	_____	_____	PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT	
3. _____	_____	_____	_____	

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON 1-8-21 DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

Denise Hall

MAGISTRATE'S CLERK

MV220

SCCA/733A (Amended 11/2019)

2021CV261040034

TNT and More, Inc VS TNW and More, LLC

INSTRUCTIONS FOR EVICTION HEARINGS

1. Both plaintiff and defendant have the right to come to court and give his/her side of the case.
2. If either party desires a jury trial, s/he must request one in writing at least 5 business days before the date originally scheduled for the hearing.
3. Parties may come to court and speak for themselves, or they may have a lawyer represent them. If you want a lawyer, you should get one right away.
4. Parties may call the South Carolina Lawyer Referral Service at (800) 868-2284 and ask them to refer you to a lawyer if you do not have one.
5. If the defendant cannot afford a lawyer, you may call South Carolina Legal Services at (888) 346-5592 to see if you qualify for free legal assistance.
6. It is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones.
7. The Court will not telephone a witness to take testimony.
8. The Court cannot reschedule a case because a witness is not present *unless* the witness is under subpoena.
9. The Court will issue subpoenas to any witnesses if you advise the Court at least 10 days before trial of the name, address, and phone number of the witness. If you wish to subpoena a witness in your county, you will have to mail or deliver a fee of \$8.00 to the magistrate's court for preparing and serving a subpoena. The party requesting the subpoena is required to pay to the subpoenaed witness a fee of \$25.00 plus mileage for each day's attendance. (See Rule 45(b)(1) of the South Carolina Rules of Civil Procedure.)
10. If an emergency arises (not a mere inconvenience or a conflict) and you cannot be in Court at your scheduled time, you must notify the Court immediately.
11. If you are an active member of the Armed Services of the United States, please advise the Court immediately upon receipt of this notice.
12. If you are a business and are going to be represented by someone who is not an attorney, a Non-Lawyer Authorization Form *must* be on file at the Magistrate's Office before trial. (See Rule 21 of the South Carolina Civil Rules of Magistrate Court, Business Representation.)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

) CASE NO.: 2021-CP-26-01512

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

)

)

)

Plaintiffs,

)

)

)

)

)

)

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc. d/b/a Crab Catchers on the Waterfront,

)

)

)

Defendants.

**AMENDED SUMMONS AND AMENDED
VERIFIED COMPLAINT
(JURY TRIAL DEMANDED)**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Verified Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended Verified Complaint on the subscriber at Burr & Forman LLP, 2411 N. Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Verified Complaint.

Dated: April 29, 2021

BURR & FORMAN LLP

By /s/ Henrietta U. Golding

Henrietta U. Golding SC Bar #2173

E-mail: hgolding@burr.com

2411 N. Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578

Telephone: 843.444.1107

Facsimile: 843.444.4729

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-01512

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

Plaintiffs,

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc. d/b/a Crab Catchers on the Waterfront,

Defendants.

AMENDED VERIFIED COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Thomas Wade Long and Clyde Kiser, individually and on behalf of TnW and More, LLC complaining of the Defendants would respectfully show and allege unto this Honorable Court as follows:

FIRST CAUSE OF ACTION
(Promissory Estoppel)

1. The Plaintiffs Thomas Wade Long (hereinafter “Long”) and Clyde K Kiser (“Kiser”) reside in the County of Horry and State of South Carolina. Long and Kiser are members in TnW and More, LLC, (hereinafter “LLC”) a South Carolina limited liability corporation which owns property and transacts business in the County of Horry, State of South Carolina.

2. Long and Kiser bring this civil action on behalf of themselves and on behalf of the LLC.

3. The Defendants Timothy D. Kettner and Donald Kettner are residents of Horry County, State of South Carolina. Timothy D. Kettner is a member in the LLC and is the father to the Defendant Donald Kettner.

4. The Defendant TNT and More, Inc., (hereinafter "Inc") is a South Carolina corporation which transacts business in the State of South Carolina and operates under the business names of Crab Catchers and Crab Catchers on the Waterfront. The individual Defendants are shareholders in the Defendant Inc., have been, and continue to be officers and managers of Inc.

5. In 2016, the Plaintiff Wade and the Defendant Timothy Kettner formed the "LLC" in order to enter into a joint venture with the Defendants. The joint venture, created by the LLC and Inc, was the development and operation of business activities on the real properties owned by the Parties for which the Parties combined their respective real properties for the operation of water sports rentals, ice cream shop, fishing charters and other business activities.

6. In the creation of the joint venture, the Kettner Defendants, individually and on behalf of Inc, promised that the business activities of the LLC were entitled to use the real properties of Inc, including the parking lot, the land for the Dock Master's office, the ticket building and retail area, the land for the fuel tank, and ingress and egress to the areas needed for the business operations.

7. In reliance upon the representations of the Defendants, the Plaintiffs and the LLC undertook and completed the following:

- a. Purchased 1.5 acres for \$150,000.00 for the use of the joint venture with the Defendants;
- b. Enlarged and improved a parking lot for the joint use of the LLC and Inc;
- c. Constructed the Master Dock office, the ticket building, and the retail store area for the business operations of the LLC;
- c. Purchased a fuel tank and fuel lines, installed the fuel tank and the fuel lines, and obtained the permits;
- d. Constructed the docking areas, and floating docks, for jet skis;
- e. Built boat slips to be used by both the LLC and Inc;

f. Purchased jet skis, fuel pumps, fixtures, and equipment for the business operation of the LLC;

g. Permitted Inc and Donald Kettner to regularly use at least one boat slip, owned by the LLC, for the restaurant operations of Crab Catchers as well as other portions of the LLC's property for Inc's guests.

8. In order to accomplish the above activities and in additional reliance on the representations of the Defendants, the Plaintiff Long and the LLC agreed to become borrowers with the Defendants for the purpose of borrowing from United Community Bank the sum of \$1,100,000.00. The loan documents were completed in November, 2017, and as security for the aforesaid loan, the LLC and Inc permitted the Bank to place mortgages on their real properties located on the joint venture site. A copy of the Promissory Note is attached as Exhibit A and the Mortgages as Exhibit B.

9. In addition to jointly borrowing funds, the Plaintiff LLC and the Defendants engaged the services of consultants and experts such as an architect, engineers, and legal counsel. With the engagement of consultants and experts, the joint venture was successful in obtaining from the County of Horry an approved Plat combining the properties of the LLC and Inc by the removal of the boundary lines.

10. In reliance upon the joint venture, the LLC commenced its business operations in the summer of 2018 and continued thereafter until its business operations were interfered with by the Defendants.

11. The reliance on the Defendants' promises was expected and foreseeable especially in light of the Plaintiffs' commitments to the joint venture and their participation therein.

12. The Defendant Timothy Kettner managed and controlled the LLC until September 2020 when it was discovered that he was converting LLC funds and its assets without the individual Plaintiffs' knowledge or consent. When the Plaintiffs first discovered the self-serving

activities of the Defendant Timothy Kettner, they requested complete documentation from said Defendant but said Defendant refused to provide needed LLC business information and now has moved across country. In addition, Defendant Timothy Kettner was requested by the Plaintiffs to return the misappropriated funds to the LLC, but he refused. Since the Defendant Timothy Kettner controlled the LLC, the demands by the Plaintiffs were refused by the LLC not undertaking any action against the Defendant Timothy Kettner.

13. Shortly after the discovery of the misfeasance of the Defendant Timothy Kettner, the Defendant Donald Kettner, on behalf of Inc, commenced a legal action in Magistrate Court seeking an eviction of the LLC by falsely representing to the Magistrate's Court the existence of a landlord relationship between the LLC and Inc when none ever existed. A copy of the Eviction Application is attached as Exhibit C.

14. In addition to falsely representing to a State court that a landlord relationship exists between Inc and the LLC, the Defendant Donald Kettner interfered with the business activities of the LLC by blocking access to the parking lot, blocking access to the buildings constructed by the LLC denying ingress and egress to the floating docks and the boat docks used for charter boats even though the docks are located on the real property owned by the LLC, all the time while continuing to use portions of the LLC's property.

15. The actions of the Defendants have significantly harmed the LLC and the Plaintiffs for they cannot operate the LLC's business activities, nor even care for the LLC properties.

16. The Defendants have breached their duties to the Plaintiffs by refusing to continue to participate in the joint venture even though over \$1,000,000.00 has been expended as well as many hours of equity sweat by the individual Plaintiffs.

17. The Defendants have taken actions to intentionally harm the Plaintiffs and their actions were calculated to only benefit their own interests all being contrary to their representations.

18. The misrepresentations of the Defendants were individually relied upon by the Plaintiffs in entering into the joint venture and in permitting the Defendant Timothy Kettner to control the LLC, to the detriment of the Plaintiffs.

19. As a result of the representations of the Defendants and their other misleading actions, the Plaintiffs are entitled to a temporary and permanent injunctive order of the Court prohibiting the Defendants from continuing to interfere in the business operations of the LLC both during the pendency of this action and thereafter permanently.

20. In addition, the Plaintiffs are entitled to an award of actual and punitive damages against the Defendants for their interference into the business operations of the LLC.

SECOND CAUSE OF ACTION AGAINST THE
DEFENDANT TIMOTHY KETTNER
(Breach of Fiduciary Duty)

21. The allegations of the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

22. The Defendant LLC is governed by an Operating Agreement, which was signed by the Plaintiffs and the Defendant Timothy Kettner.

23. According to the terms of the Operating Agreement, the Defendant Timothy Kettner had fiduciary obligations of good faith, preserving and protecting the assets of the LLC, providing business information including business records, and not engage in the misappropriation of the assets of the LLC.

24. The Defendant Timothy Kettner breached his fiduciary duties by absconding with the cash collected from the LLC customers, diverting LLC funds to himself, his son, and the Defendant Inc, permitting his son to interfere in the business operations of the LLC, as well as personally attempting to ouster the LLC from the joint business.

25. As a result of the breach of fiduciary duties by the Defendant Timothy Kettner, the Plaintiffs, individually and on behalf of the LLC, are entitled to an award of actual damages, punitive damages, and attorney's fees and costs.

THIRD CAUSE OF ACTION
(Breach of Joint Venture Agreement)

26. The allegations of the First and Second Cause of Action are incorporated herein and made a part and parcel of the Third Cause of Action.

27. The Defendants breached the aforesaid Joint Venture Agreement by refusing to permit the Plaintiffs to continue the operations of the LLC and reneging on their promises.

28. As a result of the breach, the Plaintiff LLC has been damaged for which the Plaintiff LLC is entitled to actual damages together with legal interest thereon.

FOURTH CAUSE OF ACTION
(Economic Interference)

29. The allegations of the First, Second and Third Cause of Action are incorporated herein and made a part and parcel of the Fourth Cause of Action.

30. The Defendants Donald Kettner and Inc have interfered in the economic relations of the Plaintiffs by blocking access to the parking lot and the buildings constructed by the Plaintiffs and by blocking water sports business activities. In addition, the said Defendants, with the consent of the Defendant Timothy Kettner, has prevented charter fishing customers access to the boats.

These actions of the Defendants have caused damage in that significant sales were lost and caused harm to the business reputations of the Plaintiffs.

31. As a result, the Plaintiffs have been harmed and therefore the Plaintiffs are entitled to actual and punitive damages from the Defendants.

WHEREFORE, the Plaintiffs pray for the following:

1. A temporary and permanent injunction against the Defendants;
2. An award of actual damages against the Defendants;
3. An award of punitive damages against the Defendants;
4. An Order requiring the defendants to pay the Plaintiffs' attorneys fees and costs;
and
5. For such other and further relief as the court deems just and proper.

Dated: April 29, 2021

BURR & FORMAN LLP

By /s/ Henrietta U. Golding
Henrietta U. Golding SC Bar #2173
E-mail: hgolding@burr.com
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: 843.444.1107
Facsimile: 843.444.4729
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2021-CP-26-01512

Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC

Plaintiffs,

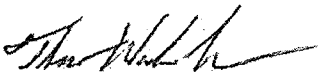
v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, Inc, d/b/a Crab Catchers on the Waterfront,

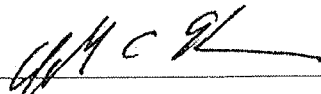
Defendants.

VERIFICATION TO
AMENDED COMPLAINT

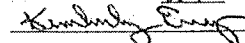
PERSONALLY appeared before me, Thomas Wade Long and Clyde Kiser, individually
and on behalf of TnW and More, LLC in the above captioned action, being first duly sworn,
deposes and says that each has read the foregoing Amended Summons and Amended Verified
Complaint and that the information contained therein is true and correct to the best of their
knowledge.



Thomas Wade Long, individually and
on behalf of TnW and More, LLC



Clyde Kiser, individually and on
behalf of TnW and More, LLC

Sworn to and subscribed
before me this 29 day of April, 2021
 (LS)

Notary Public for South Carolina
My Commission Expires: 10-12-2022

45456414 v1

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
208001	TNW And More, LLC		11/29/17	408/MB
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$1,100,000.00	First Phase - Not Applicable	First Phase - 4.600%	11/29/24	Commercial
	Second Phase - Not Applicable	Second Phase - 4.600%		
		Creditor Use Only		

PROMISSORY NOTE

(Commercial - Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 29, 2017. The parties and their addresses are:

LENDER:

UNITED COMMUNITY BANK
3210 Hwy 701 Bypass
Loris, SC 29569
Telephone: (910) 653-3222

BORROWER:

TNW AND MORE, LLC
a South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

TNT & MORE, INC.
a South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts. All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of \$1,100,000.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

On November 29, 2017 I will receive an initial advance of \$275,170.17.

All advances made will be made subject to all other terms and conditions of the Loan.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note during the first phase at the rate of 4.600 percent (Interest Rate) until November 29, 2018. After that time, interest will accrue on the unpaid Principal balance during the second phase at a rate of 4.600 percent.

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual. Interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

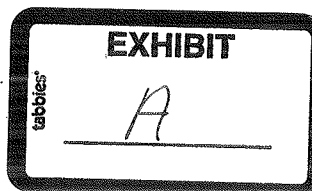
- A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Processing Fee. A(n) Processing Fee fee of \$250.00 payable from separate funds on or before today's date.

TNW And More, LLC
South Carolina Promissory Note
SC/4HARDWICA0000000001094061N

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Page 1



Loan Origination. A(n) Loan Origination fee of \$5,500.00 payable from separate funds on or before today's date.

Flood Insurance Determination Charge. A(n) Flood Insurance Determination Charge fee of \$14.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment. I will pay this late charge promptly but only once for each late payment.

B. Returned Check Charge. I agree to pay a fee not to exceed \$5.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

6. GOVERNING AGREEMENT. This Note is further governed by the Commercial Loan Agreement executed between you and me as a part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

7. PAYMENT. I agree to pay this Note in 84 installment payments. During the first phase of the Loan I will make 12 payments of accrued interest beginning December 29, 2017, and then on the 29th day of each month thereafter, until November 29, 2018.

Then, I agree to make 72 installment payments during the second phase of the Loan. The second phase of this Note is amortized over 240 payments. I will make 71 payments of \$7,058.28 beginning on December 29, 2018, and on the 29th day of each month thereafter. A single "balloon payment" of the entire unpaid balance of Principal and Interest will be due November 29, 2024.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, and finally to late charges that are due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is Real Estate Improvement.

10. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document	Date of Security Document
Mortgage - 4474 Waterfront Dr, Little River, SC 29566	TNT & More, Inc.	11/29/2017
Mortgage - 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, SC 29566	TNW And More, LLC	11/29/2017

11. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

12. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take; and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

16. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not effect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

18. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

19. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

20. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

21. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

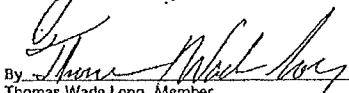
22. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

Signed, sealed, and delivered:

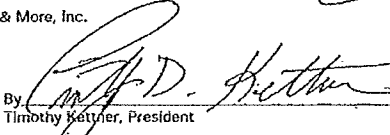
BORROWER:

TNW And More, LLC

By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

#208001

Instrument#: 2017000139116, MTG BK:
 5941 PG: 2631 DOCTYPE: 002 11/30/2017
 at 02:23:34 PM, 1 OF 13
 MARION D. FOXWORTH III, HORRY
 COUNTY, SC REGISTRAR OF DEEDS

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This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNT & MORE, INC.
 A South Carolina Corporation
 D/B/A Crab Catchers On The Waterfront
 4474 Waterfront Dr
 Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
 Organized and existing under the laws of Georgia
 3210 Hwy 701 Bypass
 Loris, SC 29569

1. **DEFINITIONS.** For the purposes of this document, the following term has the following meaning.
 - A. **Loan.** "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.
2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

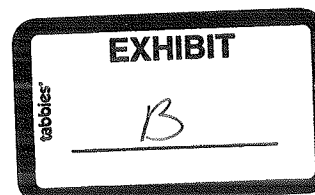
SEE EXHIBIT A

The property is located in Horry County at 4474 Waterfront Dr, Little River, South Carolina 29566.
 Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

TNW And More, LLC
 South Carolina Mortgage
 SC74HARDWICA00000000001094061N

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Page 1



future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

TNW And More, LLC
South Carolina Mortgage

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enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if: (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals shall include a standard "mortgage clause" (or "lender loss payable clause") endorsement that names Lender as "mortgagee" and "loss payee". If required by Lender, all insurance policies and renewals will also include an "additional insured" endorsement that names Lender as an "additional insured". If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance

must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

22. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

24. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

25. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

26. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

27. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

28. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

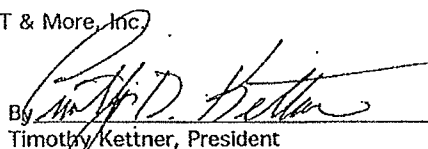
29. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

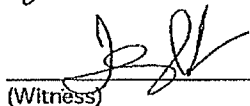
30. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

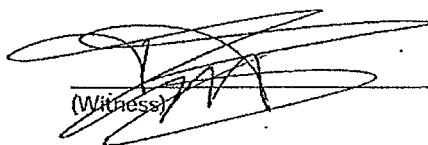
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

 Date 11/29/17
(Witness)

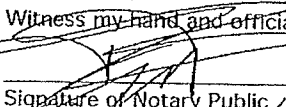
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

State OF South Carolina County OF Horry ss.

I, Roger Roy Jr., a notary public, do hereby certify that Timothy Kettner - President of TNT & More, Inc., a Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.


Signature of Notary Public

Roger Roy Jr.
My commission expires: 7/16/21

Exhibit "A"

Tax Map # 131-03-05-043

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, in the County and State aforesaid, containing 0.158 acres, more or less, and being more particularly described as follows:

BEGINNING at the iron O located on the southeastern corner of LOT 9, being the point of beginning and thence traveling South 30 degrees 30 feet East to the Southwestern corner of Bryan Street and Waterfront Drive (a/k/a Wharf Avenue). Thence, turning in a westerly direction along the mean high tide line of the salt marsh to the southwestern corner of LOT 10, thence turning South 78 degrees 14 feet 38 inches West along the Southern boundary lines of LOT 10 and LOT 9 to the point of BEGINNING.

Said property being bounded on the North by Lots 9 and 10, East by Bryan Street, South and West by the salt marsh along the Intracoastal Waterway and also includes accreted land. ?

Said property is identified as 40 feet road along the Southern boundary lines of Lot 9 and Lot 10, as shown on that certain survey of the W. L. Subdivision of Little River, South Carolina by S. D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Office of the Register of Deeds for Horry County, South Carolina. Said property is also shown as 0.158 acres more or less, on that certain survey by C.B. Berry, R.L.S. prepared for Wayne and Karen Sue Henderson and dated September 23, 1997.

SUBJECT to the Notice of Restriction, that all activities on or over and all uses of any submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. Grantee(s) are liability to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or any other critical areas.

Said property is also SUBJECT to the life estate of Karen Sue Henderson and James Wayne Faircloth.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Sourdough, LLC dated November 20, 2015 and recorded December 17, 2015 in Book 3878 at Page 3376 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-013

All and singular, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being shown and designated as 1.23 +/- as shown on Recombination Plat creating Lots 35 thru 39 Combined W.L. Bryan Property ?Subdivision +/- 53,337 Sq. Ft.- 1.23 Acres Total, recorded February 15, 2013 in Plat Book 257 at Page 27, Office of the Register of Deeds for Horry County, South Carolina.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Timothy D. Kettner dated September 15, 2017 and recorded September 15, 2017 in Deed Book 4043 at Page 790 in the Office of the Register of Deed for Horry County, South Carolina.

Tax Map #131-03-05-024

All and singular, all that certain piece, parcel or tract of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, Village of Little River, designated as Parcel 7C7 of lands formerly of Vance Kinlaw shown on a map prepared by S.D. Cox, Jr., R.L.S., dated the 13th day of February 1962, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 39 at Page 55, including all docks, piers, pilings, slips, and other improvements thereon and/or extending therefrom near, into and also all docking rights and dock and improvement permits relating thereto.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Willie S. Smith, Trustee dated September 21, 2009 and recorded September 24, 2017 in Book 3422 at Page 228 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-019

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT NINE (9) of the W. L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S. D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, referenced to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-018

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT TEN (10) of the W.L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S.D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, reference to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-020

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina and being shown and designated as 0.68 acre, more or less,

TMS 131-03-03-020, as appears upon plat prepared for Sourdough, LLC by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, dated March 15, 1996, reference to which is made a part and parcel hereof.

A portion of the herein described property may contain submerged land and notice is hereby given that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the Coastal Council, including but not limited to, the requirement that any activities or use must be authorized by the South Carolina Coastal Council. Any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical areas.

THIS CONVEYANCE is also made subject to the conditions and requirements of the permits issued by the U. S. Army Corps of Engineers and South Carolina Coastal Council.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Map #131-03-05-025

And singular, that certain piece, parcel or lot of land, with the improvements situate thereon, lying and being in Little River Village, Little River Township, Horry County, South Carolina, shown and described on a map made for Donnie Mintz by C.B. Berry, R.L.S., dated August 10, 1972, reference to which said map is craved as forming a part and parcel thereof; and further, referencing the description found in that certain Contract of Sale from Donnie Mintz, Seller to Wayne Henderson, buyer, dated January 6th, 1981 and recorded in the records of Horry County in Deed Book 697 at Page 672.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Wayne D. Henderson and Karen Sue Henderson dated April 4, 2002 and recorded April 8, 2002 in Book 2468 at Page 647 in the Office of the Register of Deeds for Horry County, South Carolina.

Space Above This Line For Recording Data

This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNW AND MORE, LLC
A South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

- A. Power.** Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.
- B. Authority.** The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.
- C. Name and Place of Business.** Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

23. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

24. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in

the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

25. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

26. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

27. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

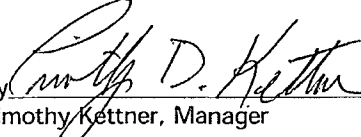
28. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

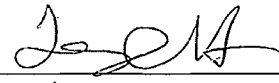
29. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

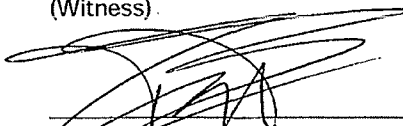
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNW And More, LLC

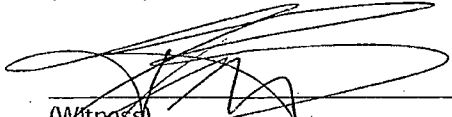
By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

 Date 11/29/17
(Witness)

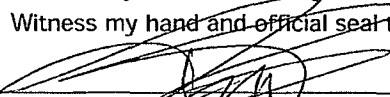
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

STATE OF SOUTH CAROLINA COUNTY OF Horry ss.

I, ROBERT D. ROY JR a notary public, do hereby certify that Timothy Kettner - Manager and Thomas Wade Long - Member of TNW And More, LLC, a Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.


Signature of Notary Public

ROBERT D. ROY JR
My commission expires: 7/6/21

Exhibit "A"

Tax Map #131-03-05-023

ALL THAT CERTAIN piece, parcel or lot of land lying, situate and being in Little River Township, Horry County, designated as Tax Parcel 131-03-05-023 as shown on the records of the Horry County Tax Assessor, together with the dock which extends from said lot into and over a portion of the Intracoastal Waterway.

Derivation: This being the identical property conveyed to TNW and More, LLC by deed of Freddie McGinn a/k/a Addis S. McGinn, III dated September 15, 2017 and recorded September 15, 2017 in Book 4043 at Page 793 in the Office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TNT and More Inc.)

PLAINTIFF(S))

VS.)

TNW and More, LLC)

DEFENDANT(S))

2021CV261040034
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

I, TNT and More, Inc., Plaintiff in this action, state that I am the Landlord-Lessor of the premises within the jurisdiction of the Magistrate Manuela A. Clayton which is described as: (address and description of premises – apartment, house, etc.)

4412 Water Front Avenue, Little River, South Carolina
Commercial Parking Lot

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the Defendant, TNW and More, LLC, the tenant-lessee, as evidenced by the following: (attach lease papers or other written proof)

N/A

Grounds for this ejectment are on or more of the following:

- ☐ The tenant fails or refuses to pay the rent when due or when demanded; or
☒ The term of tenancy or occupancy has ended; or
☒ The terms or conditions of the lease have been violated as follows: _____

Defendant is operating dangerous and hazardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

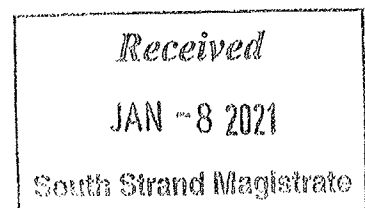
Sworn to before me
this 7th day of January, 2021.

T. M. [Signature]
Magistrate or Notary Public for South Carolina

My Commission expires 6/18/2024

[Signature]
Plaintiff (or his attorney or agent)

SCCA/732 (Amended 05/2008)



MURRAY LAW OFFICES, PA

Legal Services Division • Michael S. Harrison, Managing Attorney

4214 Mayfair Street, Suite B, Myrtle Beach, SC 29577 • 843-445-9933 • 843-839-7397 (facsimile)

- | | | | |
|-------------------------|-------------------------|---------------------|-------------------|
| • Civil Litigation | • Property Litigation | • Construction Law | • Probate Law |
| • Family Law/Divorce | • Child Custody/Support | • Contract Disputes | • Criminal Law |
| • Wills/Estate Planning | • Business Formation | • Tenant/Landlord | • Personal Injury |

November 22, 2020

VIA U.S. MAIL

TNW & More, LLC
Attn: Timothy Ketner
3522 Golf Avenue
Little River, SC 29566

RE: 4412 Waterfront Avenue

Dear Mr. Ketner:

I represent TNT & More, LLC. I am writing to address several issues that have arisen from the use of my client's property for your business interests. It is our understanding that you continue to operate your fuel and watersports businesses to my client's detriment.

My client has observed several dangerous and hazardous practices by your company on their property. Fuel pumps have been left on overnight. Equipment has not been stored safely and properly. Your customers are parking in areas that take up the limited immediately available parking for their customers. Your employees have continually failed to properly dispose of waste. The shed you are using to operate your watersports business is the source of my client receiving a fine from the county, as it is not compliant with county codes. That matter is pending before the Horry County Code Enforcement office. We do not believe your business is properly licensed nor are your properly insured. Most importantly, you have no valid lease to operate on the property at all.

As the owners of the land on which you are conducting business, we are very concerned about the foregoing issues. We are asking you to cease operations of both your fueling and watersport rental business immediately so that we can come to an agreement on a lease and on the operation of your business on our property.

In an effort to resolve the issues between the companies, we are offering you a 12-month commercial lease subject to certain conditions. If you do not wish to enter into the agreement, then we ask that you cease operations and remove any and all equipment that you own that is located on my client's property within 30 days of receipt of this letter.

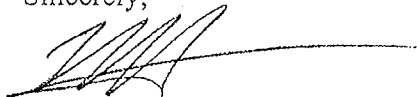
If you do not respond, we will assume that you do not wish to enter into a lease agreement. If you do not wish to enter into a lease and you do not remove your equipment, we will be forced to take action to resolve the matter through the county and through the court.

We hope to avoid further complications, and we hope that you will review our enclosed proposed lease agreement and sign it within 30 days of receipt of this letter. Again, my client is only willing to enter into the agreement upon your acquiescence to certain conditions outlined in the lease.

Prior to entering into the lease you will need to provide proof of insurance and all required licensing to my client for review.

If you have any questions, please feel free to contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Harrison', with a long horizontal flourish extending to the right.

Michael S. Harrison, Esq.

Enclosure(s) as stated

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261040034

CIVIL CASE NUMBER

MAGISTRATE'S COURT

RULE TO VACATE OR SHOW CAUSE (EVICTION)

TNT and More, Inc
c/o Murray Law Offices, PA
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577

Phone: (843) 455-9933

PLAINTIFF(S)

Vs
TNW and More, LLC
4412 Water Front Avenue
Little River, SC 29566

Phone:

DEFENDANT(S)

TO TNW and More, LLC : TNT and More, Inc is asking this Court to evict you from the property located at because they claim that:

- ☐ You have failed to pay rent when due or demanded in the amount of \$.
- ☒ The terms of your tenancy or occupancy have ended.
- ☒ You have violated the terms or conditions of your lease by: Defendant is operating dangerous & harzardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

You the defendant(s) and lessee(s) of the premises listed at the address listed above, **and all others**, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 **OR** contact the:

Surfside Beach Magistrate Court
9630 Scipio Lane
Myrtle Beach, SC 29588
(843) 915-5291

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

01/08/2021

M. Clayt
Judge, Surfside Beach Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, , says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on TNW and More, LLC on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	SETTLED/DATE _____	VACANT/DATE _____
2. _____	_____	_____	PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT	
3. _____	_____	_____	_____	

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON 1-8-21 DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

Denise Hall
MAGISTRATE'S CLERK

MV220

SCCA/733A (Amended 11/2019)

2021CV261040034

TNT and More, Inc VS TNW and More, LLC

INSTRUCTIONS FOR EVICTION HEARINGS

1. Both plaintiff and defendant have the right to come to court and give his/her side of the case.
2. If either party desires a jury trial, s/he must request one in writing at least 5 business days before the date originally scheduled for the hearing.
3. Parties may come to court and speak for themselves, or they may have a lawyer represent them. If you want a lawyer, you should get one right away.
4. Parties may call the South Carolina Lawyer Referral Service at (800) 868-2284 and ask them to refer you to a lawyer if you do not have one.
5. If the defendant cannot afford a lawyer, you may call South Carolina Legal Services at (888) 346-5592 to see if you qualify for free legal assistance.
6. It is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones.
7. The Court will not telephone a witness to take testimony.
8. The Court cannot reschedule a case because a witness is not present *unless* the witness is under subpoena.
9. The Court will issue subpoenas to any witnesses if you advise the Court at least 10 days before trial of the name, address, and phone number of the witness. If you wish to subpoena a witness in your county, you will have to mail or deliver a fee of \$8.00 to the magistrate's court for preparing and serving a subpoena. The party requesting the subpoena is required to pay to the subpoenaed witness a fee of \$25.00 plus mileage for each day's attendance. (See Rule 45(b)(1) of the South Carolina Rules of Civil Procedure.)
10. If an emergency arises (not a mere inconvenience or a conflict) and you cannot be in Court at your scheduled time, you must notify the Court immediately.
11. If you are an active member of the Armed Services of the United States, please advise the Court immediately upon receipt of this notice.
12. If you are a business and are going to be represented by someone who is not an attorney, a Non-Lawyer Authorization Form *must* be on file at the Magistrate's Office before trial. (See Rule 21 of the South Carolina Civil Rules of Magistrate Court, Business Representation.)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and)
 on behalf of TnW and More, LLC, and TnW and)
 More, LLC,)

Plaintiffs,

v.

**SECOND AMENDED SUMMONS AND
 SECOND AMENDED VERIFIED
 COMPLAINT
 (JURY TRIAL DEMANDED)**

Timothy D. Kettner, Donald Kettner, Jose)
 Bernardino Morales, Casey Kuznik, Robert Benoit)
 and TNT and More, Inc. d/b/a Crab Catchers on the)
 Waterfront,)

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Verified Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Second Amended Verified Complaint on the subscriber at Burr & Forman LLP, 2411 N. Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Verified Complaint.

Dated: July 6, 2022

BURR & FORMAN LLP

By s/Henrietta U. Golding
 Henrietta U. Golding SC Bar #2173
 E-mail: hgolding@burr.com
 2411 N. Oak Street, Suite 206 (29577)
 Post Office Box 336
 Myrtle Beach, SC 29578
 Telephone: 843.444.1107
 Facsimile: 843.444.4729
 Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and)
on behalf of TnW and More, LLC, and TnW and)
More, LLC,)

Plaintiffs,)

v.)

Timothy D. Kettner, Donald Kettner, Jose)
Bernardino Morales, Casey Kuznik, Robert Benoit)
and TNT and More, Inc. d/b/a Crab Catchers on the)
Waterfront,)

Defendants.)

**SECOND AMENDED VERIFIED
COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs, TnW and More, LLC, Thomas Wade Long and Clyde Kiser, both on behalf of TnW and More, LLC complaining of the Defendants would respectfully show and allege unto this Honorable Court as follows:

FIRST CAUSE OF ACTION
(Promissory Estoppel)

1. The Plaintiffs Thomas Wade Long (hereinafter “Long”) and Clyde K Kiser (“Kiser”) reside in the County of Horry and State of South Carolina. The Plaintiff TnW and More, LLC is a South Carolina Limited Liability Corporation. Long and Kiser are members in the Plaintiff TnW and More, LLC, (hereinafter “LLC”) a South Carolina limited liability corporation which owns property and transacts business in the County of Horry, State of South Carolina.

2. The individual Defendants Timothy D. Kettner, Donald Kettner, Jose Bernadino Morales, Casey Kuznik, and Robert Benoit, upon information and belief, are residents of Horry County, State of South Carolina.

3. The Defendant Timothy D. Kettner is a member in the LLC owning a 1/3 interest therein, and is the father to the Defendant Donald Kettner.

4. The Defendant TNT and More, Inc., (hereinafter "Inc") is a South Carolina corporation which transacts business in the State of South Carolina and operates under the business name of Crab Catchers on the Waterfront. The individual Defendants are shareholders in the Defendant Inc., with the Kettners having been, or currently are, officers and/or managers of Inc.

5. In 2016, the Plaintiff Wade and the Defendant Timothy Kettner formed the Plaintiff LLC in order to enter into a joint venture with the Defendant Inc. The joint venture, created by the Plaintiff LLC and Defendant Inc, was the development and operation of business activities on the real properties owned by the corporate Parties for which the corporate Parties combined their respective real properties for the operation of water sports rentals, ice cream shop, fishing charters and other related business activities.

6. In the creation of the joint venture, the Kettner Defendants, individually and on behalf of Inc, represented that the business activities of the LLC could use and possess the real properties of Inc, including the parking lot, the land for the Dock Master's office, the ticket building and retail area, the land for the fuel tank, and ingress and egress to the areas needed for its business operations.

7. In reliance upon the above representations, the Plaintiffs undertook and completed the following:

- a. Purchased 1.5 acres for \$150,000.00 for the use of the joint venture with the Defendants;
- b. Enlarged and improved a parking lot for the joint use of the LLC and Inc;
- c. Constructed the Master Dock office, the ticket building, and the retail store area for the business operations of the LLC;

- c. Purchased a fuel tank and fuel lines, installed the fuel tank and the fuel lines, and obtained the permits;
- d. Constructed the docking areas, and floating docks, for jet skis;
- e. Built boat slips to be used by the LLC;
- f. Purchased jet skis, fuel pumps, fixtures, and equipment for the business operation of the LLC;
- g. Permitted Inc and Donald Kettner to regularly use at least one boat slip, owned by the LLC, for the restaurant operations of Crab Catchers as well as other portions of the LLC's property for Inc's guests.

8. In order to accomplish the above activities and in additional reliance on the representations of the aforesaid Defendants, the Plaintiff Long and the LLC agreed to become borrowers with the aforesaid Defendants for the purpose of borrowing from United Community Bank the sum of \$1,100,000.00. The loan documents were completed in November, 2017, and as security for the aforesaid loan, the LLC and Inc permitted the Bank to place mortgages on their real properties located on the joint venture site. A copy of the Promissory Note is attached as Exhibit A and the Mortgages as Exhibit B.

9. In addition to jointly borrowing funds and encumbering their properties, the Plaintiff LLC, Timothy Kettner and Inc. engaged the services of consultants and experts such as an architect, engineers, and legal counsel. With the engagement of consultants and experts, the joint venture was successful in obtaining from the County of Horry an approved Plat combining the properties of the LLC and Inc by the removal of the boundary lines.

10. In reliance upon the joint venture, the LLC commenced its business operations in the summer of 2018 and continue its business operations to the present in spite of the recent interference by the Defendants.

11. The reliance on the aforesaid Defendants' promises and representations was expected and foreseeable especially in light of the Plaintiffs' commitments to the joint venture,

their participation therein, and prior to September 11, 2020, the Defendants Inc., and Timothy Kettner' participation in the joint venture.

12. The Defendant Timothy Kettner managed and controlled the LLC until September 2020 when it was discovered that he was converting LLC funds, and its assets, without the individual Plaintiffs' knowledge or consent. When the Plaintiffs first discovered the self-serving activities of the Defendant Timothy Kettner, they requested complete documentation from said Defendant but said Defendant refused to provide and now has moved across country. In addition, Defendant Timothy Kettner was requested by the Plaintiffs to return the misappropriated funds to the LLC, but he refused.

13. Shortly after the discovery of the misfeasance on the part of the Defendant Timothy Kettner, the Defendant Donald Kettner, on behalf of Inc., commenced a legal action in Magistrate Court seeking an eviction of the LLC by falsely representing to the Magistrate's Court the existence of a landlord relationship between the LLC and Inc when none ever existed. A copy of the Eviction Application is attached as Exhibit C.

14. In addition to falsely representing to a State court that a landlord relationship exists between Inc and the LLC, the Defendants interfered, and continue to interfere, with the business activities of the LLC by blocking access to the parking lot, blocking access to the buildings constructed by the LLC, denying ingress and egress to the floating docks and the boat docks used for charter boats even though the docks are located on the real property owned by the LLC, harassing customers and employees of the Plaintiff LLC, threatening customers and employees of Plaintiff LLC, as well as the threatening individual Plaintiffs.

15. The actions of the Defendants have significantly harmed the Plaintiffs for they cannot operate the LLC's business activities as had been done in the past four (4) years, nor even properly care for the LLC properties.

16. The Defendants Kettners and Inc., have breached their duties to the Plaintiffs by refusing to continue to participate in the joint venture even though over \$1,000,000.00 has been expended as well as many hours of equity sweat by the individual Plaintiffs.

17. The Defendants have taken actions to intentionally harm the Plaintiffs and their actions were calculated and continue to be calculated to only benefit their own interests all being contrary to the representations of Defendants Kettners and Inc.

18. The misrepresentations of the Defendants Kettners and Inc. were relied upon by the Plaintiffs in entering into the joint venture, participating in the joint venture, and in permitting the Defendant Timothy Kettner to manage the LLC, to the detriment of the Plaintiffs.

19. As a result of the representations as set forth above and their other misleading actions, the Plaintiffs are entitled to a temporary and permanent injunctive order of the Court prohibiting the Defendants from continuing to interfere in the business operations of the LLC both during the pendency of this action and thereafter permanently.

20. In addition, the Plaintiffs are entitled to an award of actual and punitive damages against the Defendants for their interference into the business operations of the LLC.

SECOND CAUSE OF ACTION AGAINST THE
DEFENDANT TIMOTHY KETTNER
(Breach of Fiduciary Duty)

21. The allegations of the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

22. The Plaintiff LLC is governed by an Operating Agreement, which was signed by the individual Plaintiffs and the Defendant Timothy Kettner.

23. According to the terms of the Operating Agreement, the Defendant Timothy Kettner has fiduciary obligations of good faith toward the LLC, preserving and protecting the assets of the LLC, providing business information including business records when request, not engage in the misappropriation of the assets of the Plaintiff LLC, and not actively work against the LLC with respect to the joint venture.

24. The Defendant Timothy Kettner breached his fiduciary duties by absconding with the cash collected from the LLC customers, diverting LLC funds to himself, his son, and the Defendant Inc., taking LLC property with any consent, permitting the individual Defendants to interfere in the business operations of the LLC, conspiring with the Defendants to interfere in the business operations of the Plaintiff LLC, as well as personally attempting to ouster the LLC from the joint business.

25. As a result of the breach of fiduciary duties by the Defendant Timothy Kettner, the Plaintiff LLC is entitled to an award of actual damages, punitive damages, and attorney's fees and costs.

THIRD CAUSE OF ACTION
(Breach of Joint Venture Agreement)

26. The allegations of the First and Second Cause of Action are incorporated herein and made a part and parcel of the Third Cause of Action.

27. The Defendants Timothy Kettner, Donald Kettner and Inc. breached the aforesaid Joint Venture by refusing to permit the Plaintiffs to continue the operations of the LLC and reneging on their commitments and obligations.

28. As a result of the breach, the Plaintiff LLC has been damaged for which the Plaintiff LLC is entitled to actual damages, and consequential damages together with legal interest thereon.

FOURTH CAUSE OF ACTION
(Economic Interference)

29. The allegations of the First, Second and Third Cause of Action are incorporated herein and made a part and parcel of the Fourth Cause of Action.

30. The Defendants have interfered in the economic relations of the Plaintiff LLC by blocking access to the parking lot and its buildings by blocking water sports business activities, including the sale of fuel, and threatening and harassing the Plaintiffs, customers, and employees. The actions of the Defendants have caused damage in that significant sales were lost and caused harm to the business reputations of the Plaintiffs.

31. As a result, the Plaintiff LLC is entitled to actual and punitive damages from the Defendants.

FIFTH CAUSE OF ACTION
(Assault)

32. The allegations of the First, Second, Third and Fourth Cause of Action are incorporated herein and made a part and parcel of the Fifth Cause of Action.

33. The individual Defendants, Donald Kettner, Jose Bernardino Morales, Casey Kuzmik and Robert Benoit, have engaged in egregious conduct toward the Plaintiffs which conduct has been threatening and extremely abusive, causing the individual Plaintiffs concern as to their personal safety and well-being as well as that of others.

34. As a result of the assaults by the aforesaid individual Defendants, the Plaintiffs are entitled to actual and punitive damages.

SIXTH CAUSE OF ACTION
(Misappropriation)

35. The allegations of the First, Second, Third, Fourth and Fifth Cause of Action are incorporated herein and made a part and parcel of the Sixth Cause of Action.

36. The Defendant Timothy Kettner, has misappropriated Plaintiff LLC's corporate assets including its funds.

37. The Plaintiff LLC is entitled to a judgment against the Defendant Timothy Kettner for actual and punitive damages.

SEVENTH CAUSE OF ACTION
(Nuisance)

38. The allegations of the First, Second, Third, Fourth, Fifth and Sixth Cause of Action are incorporated herein and made a part and parcel of the Seventh Cause of Action.

39. The acts of the Defendants toward the Plaintiffs have seriously disrupted the Plaintiffs' rights to use their property.

40. The Defendants by engaging in unreasonable conduct toward the Plaintiffs for the purpose of hindering and interfering with the use of their property rights, have created a nuisance.

41. The Defendants acts of nuisance have harmed the Plaintiffs for which the Plaintiffs are entitled to actual and punitive damages.

WHEREFORE, the Plaintiffs pray for the following:

1. A temporary and permanent injunction against the Defendants;
2. For the First Cause of Action, an award of actual damages against the Defendants Timothy Kettner, Donald Kettner, and Inc.;
3. For the Second Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;

4. For the Third Cause of Action, an award of actual damages against, the Defendant Timothy Kettner and Inc.;
5. For the Fourth Cause of Action, an award of actual and punitive damages against the Defendants;
6. For the Fifth Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;
7. For the Sixth Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;
8. For the Seventh Cause of Action, an award of actual and punitive damages against the Defendants;
9. An Order requiring the defendants to pay the Plaintiffs' attorneys fees and costs; and
10. For such other and further relief as the court deems just and proper.

Dated: July 6, 2022

BURR & FORMAN LLP

By s/Henrietta U. Golding
Henrietta U. Golding SC Bar #2173
E-mail: hgolding@burr.com
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: 843.444.1107
Facsimile: 843.444.4729
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and
on behalf of TnW and More, LLC, and TnW and
More, LLC,

Plaintiffs,

v.

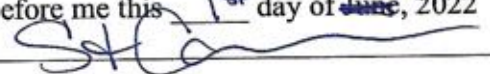
Timothy D. Kettner, Donald Kettner, Jose
Bernardino Morales, Casey Kuznik, Robert Benoit
and TNT and More, Inc. d/b/a Crab Catchers on the
Waterfront,

Defendants.

**VERIFICATION TO SECOND
AMENDED COMPLAINT**

PERSONALLY appeared before me, Thomas Wade Long, individually and on behalf of
TnW and More, LLC in the above captioned action, being first duly sworn, deposes and says that
he has read the foregoing Second Amended Summons and Second Amended Verified Complaint
and that the information contained therein is true and correct to the best of his knowledge.


Thomas Wade Long, individually and
on behalf of TnW and More, LLC

Sworn to and subscribed July
before me this 1st day of June, 2022
 (LS)

Notary Public for South Carolina
My Commission Expires: 9-29-2026

STARLA CANNON
Notary Public, State of South Carolina
My Commission Expires 9/29/2026

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
208001	TNW And More, LLC		11/29/17	408/MB
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$1,100,000.00	First Phase - Not Applicable	First Phase - 4.600%	11/29/24	Commercial
	Second Phase - Not Applicable	Second Phase - 4.600%		
Creditor Use Only				

PROMISSORY NOTE

(Commercial - Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 29, 2017. The parties and their addresses are:

LENDER:

UNITED COMMUNITY BANK
3210 Hwy 701 Bypass
Loris, SC 29569
Telephone: (910) 653-3222

BORROWER:

TNW AND MORE, LLC
a South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

TNT & MORE, INC.
a South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent.** Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts.** All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of **\$1,100,000.00 (Principal)**, plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

On November 29, 2017 I will receive an initial advance of \$275,170.17.

All advances made will be made subject to all other terms and conditions of the Loan.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note during the first phase at the rate of **4.600 percent (Interest Rate)** until November 29, 2018. After that time, interest will accrue on the unpaid Principal balance during the second phase at a rate of 4.600 percent.

- A. Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual.** Interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

- A. Nonrefundable Fees and Charges.** The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.
Processing Fee. A(n) Processing Fee fee of \$250.00 payable from separate funds on or before today's date.

TNW And More, LLC
South Carolina Promissory Note
SC/4HARDWICA0000000001094061N

Wolters Kluwer Financial Services ©1996, 2017 Bankers Systems™

Page 1

Loan Origination. A(n) Loan Origination fee of \$5,500.00 payable from separate funds on or before today's date.

Flood Insurance Determination Charge. A(n) Flood Insurance Determination Charge fee of \$14.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment. I will pay this late charge promptly but only once for each late payment.

B. Returned Check Charge. I agree to pay a fee not to exceed \$5.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

6. GOVERNING AGREEMENT. This Note is further governed by the Commercial Loan Agreement executed between you and me as a part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

7. PAYMENT. I agree to pay this Note in 84 installment payments. During the first phase of the Loan I will make 12 payments of accrued interest beginning December 29, 2017, and then on the 29th day of each month thereafter, until November 29, 2018.

Then, I agree to make 72 installment payments during the second phase of the Loan. The second phase of this Note is amortized over 240 payments. I will make 71 payments of \$7,058.28 beginning on December 29, 2018, and on the 29th day of each month thereafter. A single "balloon payment" of the entire unpaid balance of Principal and interest will be due November 29, 2024.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, and finally to late charges that are due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is Real Estate Improvement.

10. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document	Date of Security Document
Mortgage - 4474 Waterfront Dr, Little River, SC 29566	TNT & More, Inc.	11/29/2017
Mortgage - 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, SC 29566	TNW And More, LLC	11/29/2017

11. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

12. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

16. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

18. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

19. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

20. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

21. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

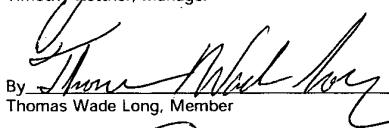
22. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

Signed, sealed, and delivered:

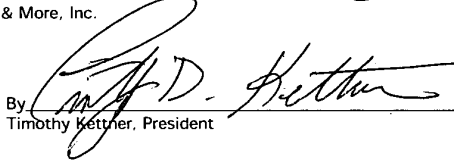
BORROWER:

TNW And More, LLC

By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

#208001

Instrument#: 2017000139116, MTG BK:
5941 PG: 2631 DOCTYPE: 002 11/30/2017
at 02:23:34 PM, 1 OF 13
MARION D. FOXWORTH III, HORRY
COUNTY, SC REGISTRAR OF DEEDS

Space Above This Line For Recording Data

This document was prepared by

MORTGAGE
(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNT & MORE, INC.
A South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 4474 Waterfront Dr, Little River, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

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future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

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South Carolina Mortgage

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enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

TNW And More, LLC
South Carolina Mortgagor

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Page 6

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals shall include a standard "mortgage clause" (or "lender loss payable clause") endorsement that names Lender as "mortgagee" and "loss payee". If required by Lender, all insurance policies and renewals will also include an "additional insured" endorsement that names Lender as an "additional insured". If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance

must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

22. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

24. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

25. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

26. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

27. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

28. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

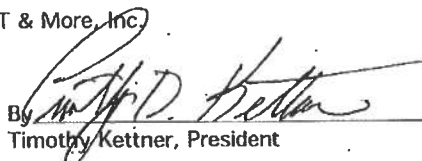
29. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

30. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

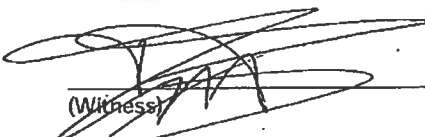
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

JOHN OF Santa Rosa County OF MOORE ss.

I, ROBERT D. JONES, JR. a notary public, do hereby certify that Timothy Kettner - President of TNT & More, Inc., a Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.

Signature of Notary Public

ROBERT D. JONES, JR.
My commission expires: 7/1/21

Exhibit "A"

Tax Map # 131-03-05-043

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, in the County and State aforesaid, containing 0.158 acres, more or less, and being more particularly described as follows:

BEGINNING at the iron O located on the southeastern corner of LOT 9, being the point of beginning and thence traveling South 30 degrees 30 feet East to the Southwestern corner of Bryan Street and Waterfront Drive (a/k/a Wharf Avenue). Thence, turning in a westerly direction along the mean high tide line of the salt marsh to the southwestern corner of LOT 10, thence turning South 78 degrees 14 feet 38 inches West along the Southern boundary lines of LOT 10 and LOT 9 to the point of BEGINNING.

Said property being bounded on the North by Lots 9 and 10, East by Bryan Street, South and West by the salt marsh along the Intracoastal Waterway and also includes accreted land. ?

Said property is identified as 40 feet road along the Southern boundary lines of Lot 9 and Lot 10, as shown on that certain survey of the W. L. Subdivision of Little River, South Carolina by S. D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Office of the Register of Deeds for Horry County, South Carolina. Said property is also shown as 0.158 acres more or less, on that certain survey by C.B. Berry, R.L.S. prepared for Wayne and Karen Sue Henderson and dated September 23, 1997.

SUBJECT to the Notice of Restriction, that all activities on or over and all uses of any submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. Grantee(s) are liability to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or any other critical areas.

Said property is also SUBJECT to the life estate of Karen Sue Henderson and James Wayne Faircloth.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Sourdough, LLC dated November 20, 2015 and recorded December 17, 2015 in Book 3878 at Page 3376 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-013

All and singular, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being shown and designated as 1.23 +/- as shown on Recombination Plat creating Lots 35 thru 39 Combined W.L. Bryan Property ?Subdivision +/- 53,337 Sq. Ft.- 1.23 Acres Total, recorded February 15, 2013 in Plat Book 257 at Page 27, Office of the Register of Deeds for Horry County, South Carolina.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Timothy D. Kettner dated September 15, 2017 and recorded September 15, 2017 in Deed Book 4043 at Page 790 in the Office of the Register of Deed for Horry County, South Carolina.

Tax Map #131-03-05-024

All and singular, all that certain piece, parcel or tract of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, Village of Little River, designated as Parcel 7C7 of lands formerly of Vance Kinlaw shown on a map prepared by S.D. Cox, Jr., R.L.S., dated the 13th day of February 1962, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 39 at Page 55, including all docks, piers, pilings, slips, and other improvements thereon and/or extending therefrom near, into and also all docking rights and dock and improvement permits relating thereto.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Willie S. Smith, Trustee dated September 21, 2009 and recorded September 24, 2017 in Book 3422 at Page 228 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-019

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT NINE (9) of the W. L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S. D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, referenced to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-018

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT TEN (10) of the W.L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S.D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, reference to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-020

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina and being shown and designated as 0.68 acre, more or less,

TMS 131-03-03-020, as appears upon plat prepared for Sourdough, LLC by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, dated March 15, 1996, reference to which is made a part and parcel hereof.

A portion of the herein described property may contain submerged land and notice is hereby given that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the Coastal Council, including but not limited to, the requirement that any activities or use must be authorized by the South Carolina Coastal Council. Any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical areas.

THIS CONVEYANCE is also made subject to the conditions and requirements of the permits issued by the U. S. Army Corps of Engineers and South Carolina Coastal Council.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-05-025

All and singular, that certain piece, parcel or lot of land, with the improvements situate thereon, lying and being in Little River Village, Little River Township, Horry County, South Carolina, shown and described on a map made for Donnie Mintz by C.B. Berry, R.L.S., dated August 10, 1972, reference to which said map is craved as forming a part and parcel thereof; and further, referencing the description found in that certain Contract of Sale from Donnie Mintz, Seller to Wayne Henderson, buyer, dated January 6th, 1981 and recorded in the records of Horry County in Deed Book 697 at Page 672.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Wayne D. Henderson and Karen Sue Henderson dated April 4, 2002 and recorded April 8, 2002 in Book 2468 at Page 647 in the Office of the Register of Deeds for Horry County, South Carolina.

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This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNW AND MORE, LLC
A South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

- A. Power.** Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.
- B. Authority.** The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.
- C. Name and Place of Business.** Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

23. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

24. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in

the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

25. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

26. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

27. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

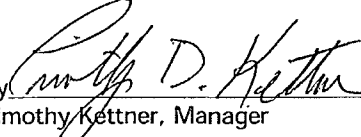
28. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

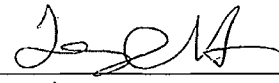
29. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

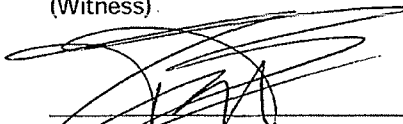
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNW And More, LLC

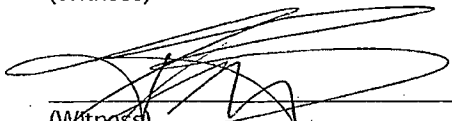
By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

 Date 11/29/17
(Witness)

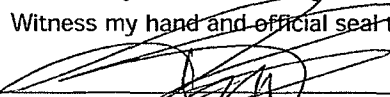
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

STATE OF SOUTH CAROLINA COUNTY OF Horry ss.

I, ROBERT D. ROY JR. a notary public, do hereby certify that Timothy Kettner - Manager and Thomas Wade Long - Member of TNW And More, LLC, a Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.


Signature of Notary Public

ROBERT D. ROY JR.
My commission expires:

7/6/21

Exhibit "A"

Tax Map #131-03-05-023

ALL THAT CERTAIN piece, parcel or lot of land lying, situate and being in Little River Township, Horry County, designated as Tax Parcel 131-03-05-023 as shown on the records of the Horry County Tax Assessor, together with the dock which extends from said lot into and over a portion of the Intracoastal Waterway.

Derivation: This being the identical property conveyed to TNW and More, LLC by deed of Freddie McGinn a/k/a Addis S. McGinn, III dated September 15, 2017 and recorded September 15, 2017 in Book 4043 at Page 793 in the Office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TNT and More Inc.)

PLAINTIFF(S))

VS.)

TNW and More, LLC)

DEFENDANT(S))

2021CV261040034
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

I, TNT and More, Inc., Plaintiff in this action, state that I am the Landlord-Lessor of the premises within the jurisdiction of the Magistrate Manuela A. Clayton which is described as: (address and description of premises apartment, house, etc.)

4412 Water Front Avenue, Little River, South Carolina
Commercial Parking Lot

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the Defendant, TNW and More, LLC, the tenant-lessee, as evidenced by the following: (attach lease papers or other written proof)

N/A

Grounds for this ejectment are on or more of the following:

- ☐ The tenant fails or refuses to pay the rent when due or when demanded; or
☒ The term of tenancy or occupancy has ended; or
☒ The terms or conditions of the lease have been violated as follows: _____

Defendant is operating dangerous and hazardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

Sworn to before me)

this 7th day of January, 2021.)

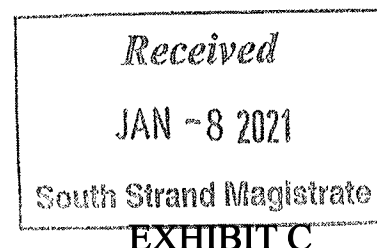
T. M. Clayton
Magistrate or Notary Public for South Carolina)

My Commission expires 6/11/2024)

[Signature]
Plaintiff (or his attorney or agent)

SCCA/732 (Amended 05/2008)

R-162



MURRAY LAW OFFICES, PA

Legal Services Division • Michael S. Harrison, Managing Attorney

4214 Mayfair Street, Suite B, Myrtle Beach, SC 29577 • 843-445-9933 • 843-839-7397 (facsimile)

- Civil Litigation
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- Child Custody/Support
- Business Formation

- Construction Law
- Contract Disputes
- Tenant/Landlord

- Probate Law
- Criminal Law
- Personal Injury

November 22, 2020

VIA U.S. MAIL

TNW & More, LLC
Attn: Timothy Ketner
3522 Golf Avenue
Little River, SC 29566

RE: 4412 Waterfront Avenue

Dear Mr. Ketner:

I represent TNT & More, LLC. I am writing to address several issues that have arisen from the use of my client's property for your business interests. It is our understanding that you continue to operate your fuel and watersports businesses to my client's detriment.

My client has observed several dangerous and hazardous practices by your company on their property. Fuel pumps have been left on overnight. Equipment has not been stored safely and properly. Your customers are parking in areas that take up the limited immediately available parking for their customers. Your employees have continually failed to properly dispose of waste. The shed you are using to operate your watersports business is the source of my client receiving a fine from the county, as it is not compliant with county codes. That matter is pending before the Horry County Code Enforcement office. We do not believe your business is properly licensed nor are your properly insured. Most importantly, you have no valid lease to operate on the property at all.

As the owners of the land on which you are conducting business, we are very concerned about the foregoing issues. We are asking you to cease operations of both your fueling and watersport rental business immediately so that we can come to an agreement on a lease and on the operation of your business on our property.

In an effort to resolve the issues between the companies, we are offering you a 12-month commercial lease subject to certain conditions. If you do not wish to enter into the agreement, then we ask that you cease operations and remove any and all equipment that you own that is located on my client's property within 30 days of receipt of this letter.

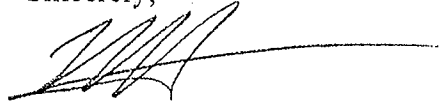
If you do not respond, we will assume that you do not wish to enter into a lease agreement. If you do not wish to enter into a lease and you do not remove your equipment, we will be forced to take action to resolve the matter through the county and through the court.

We hope to avoid further complications, and we hope that you will review our enclosed proposed lease agreement and sign it within 30 days of receipt of this letter. Again, my client is only willing to enter into the agreement upon your acquiescence to certain conditions outlined in the lease.

Prior to entering into the lease you will need to provide proof of insurance and all required licensing to my client for review.

If you have any questions, please feel free to contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Harrison', with a long horizontal line extending to the right.

Michael S. Harrison, Esq.

Enclosure(s) as stated

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261040034

CIVIL CASE NUMBER

MAGISTRATE'S COURT

RULE TO VACATE OR SHOW CAUSE (EVICTION)

TNT and More, Inc
c/o Murray Law Offices, PA
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577

Phone: (843) 455-9933

PLAINTIFF(S)

Vs

TNW and More, LLC
4412 Water Front Avenue
Little River, SC 29566

Phone:

DEFENDANT(S)

TO TNW and More, LLC : TNT and More, Inc is asking this Court to evict you from the property located at because they claim that:

- ☐ You have failed to pay rent when due or demanded in the amount of \$.
- ☒ The terms of your tenancy or occupancy have ended.
- ☒ You have violated the terms or conditions of your lease by: Defendant is operating dangerous & harzardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

You the defendant(s) and lessee(s) of the premises listed at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 OR contact the:

Surfside Beach Magistrate Court
9630 Scipio Lane
Myrtle Beach, SC 29588
(843) 915-5291

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

01/08/2021

M. Clayton
Judge, Surfside Beach Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, , says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on TNW and More, LLC on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	SETTLED/DATE _____	VACANT/DATE _____
2. _____	_____	_____	PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT	
3. _____	_____	_____	_____	

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON 1-8-21 DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

Renae Hall MAGISTRATE'S CLERK

MV220

SCCA/733A (Amended 11/2019)

2021CV261040034

TNT and More, Inc VS TNW and More, LLC

INSTRUCTIONS FOR EVICTION HEARINGS

1. Both plaintiff and defendant have the right to come to court and give his/her side of the case.
2. If either party desires a jury trial, s/he must request one in writing at least 5 business days before the date originally scheduled for the hearing.
3. Parties may come to court and speak for themselves, or they may have a lawyer represent them. If you want a lawyer, you should get one right away.
4. Parties may call the South Carolina Lawyer Referral Service at (800) 868-2284 and ask them to refer you to a lawyer if you do not have one.
5. If the defendant cannot afford a lawyer, you may call South Carolina Legal Services at (888) 346-5592 to see if you qualify for free legal assistance.
6. It is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones.
7. The Court will not telephone a witness to take testimony.
8. The Court cannot reschedule a case because a witness is not present *unless* the witness is under subpoena.
9. The Court will issue subpoenas to any witnesses if you advise the Court at least 10 days before trial of the name, address, and phone number of the witness. If you wish to subpoena a witness in your county, you will have to mail or deliver a fee of \$8.00 to the magistrate's court for preparing and serving a subpoena. The party requesting the subpoena is required to pay to the subpoenaed witness a fee of \$25.00 plus mileage for each day's attendance. (See Rule 45(b)(1) of the South Carolina Rules of Civil Procedure.)
10. If an emergency arises (not a mere inconvenience or a conflict) and you cannot be in Court at your scheduled time, you must notify the Court immediately.
11. If you are an active member of the Armed Services of the United States, please advise the Court immediately upon receipt of this notice.
12. If you are a business and are going to be represented by someone who is not an attorney, a Non-Lawyer Authorization Form *must* be on file at the Magistrate's Office before trial. (See Rule 21 of the South Carolina Civil Rules of Magistrate Court, Business Representation.)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and)
 on behalf of TnW and More, LLC, and TnW and)
 More, LLC,)

Plaintiffs,

v.

**SECOND AMENDED SUMMONS AND
 SECOND AMENDED VERIFIED
 COMPLAINT
 (JURY TRIAL DEMANDED)**

Timothy D. Kettner, Donald Kettner, Jose)
 Bernardino Morales, Casey Kuznik, Robert Benoit)
 and TNT and More, Inc. d/b/a Crab Catchers on the)
 Waterfront,)

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Verified Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Second Amended Verified Complaint on the subscriber at Burr & Forman LLP, 2411 N. Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Verified Complaint.

Dated: July 6, 2022

BURR & FORMAN LLP

By s/Henrietta U. Golding
 Henrietta U. Golding SC Bar #2173
 E-mail: hgolding@burr.com
 2411 N. Oak Street, Suite 206 (29577)
 Post Office Box 336
 Myrtle Beach, SC 29578
 Telephone: 843.444.1107
 Facsimile: 843.444.4729
 Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and)
on behalf of TnW and More, LLC, and TnW and)
More, LLC,)

Plaintiffs,)

v.)

Timothy D. Kettner, Donald Kettner, Jose)
Bernardino Morales, Casey Kuznik, Robert Benoit)
and TNT and More, Inc. d/b/a Crab Catchers on the)
Waterfront,)

Defendants.)

**SECOND AMENDED VERIFIED
COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs, TnW and More, LLC, Thomas Wade Long and Clyde Kiser, both on behalf of TnW and More, LLC complaining of the Defendants would respectfully show and allege unto this Honorable Court as follows:

FIRST CAUSE OF ACTION
(Promissory Estoppel)

1. The Plaintiffs Thomas Wade Long (hereinafter “Long”) and Clyde K Kiser (“Kiser”) reside in the County of Horry and State of South Carolina. The Plaintiff TnW and More, LLC is a South Carolina Limited Liability Corporation. Long and Kiser are members in the Plaintiff TnW and More, LLC, (hereinafter “LLC”) a South Carolina limited liability corporation which owns property and transacts business in the County of Horry, State of South Carolina.

2. The individual Defendants Timothy D. Kettner, Donald Kettner, Jose Bernadino Morales, Casey Kuznik, and Robert Benoit, upon information and belief, are residents of Horry County, State of South Carolina.

3. The Defendant Timothy D. Kettner is a member in the LLC owning a 1/3 interest therein, and is the father to the Defendant Donald Kettner.

4. The Defendant TNT and More, Inc., (hereinafter "Inc") is a South Carolina corporation which transacts business in the State of South Carolina and operates under the business name of Crab Catchers on the Waterfront. The individual Defendants are shareholders in the Defendant Inc., with the Kettners having been, or currently are, officers and/or managers of Inc.

5. In 2016, the Plaintiff Wade and the Defendant Timothy Kettner formed the Plaintiff LLC in order to enter into a joint venture with the Defendant Inc. The joint venture, created by the Plaintiff LLC and Defendant Inc, was the development and operation of business activities on the real properties owned by the corporate Parties for which the corporate Parties combined their respective real properties for the operation of water sports rentals, ice cream shop, fishing charters and other related business activities.

6. In the creation of the joint venture, the Kettner Defendants, individually and on behalf of Inc, represented that the business activities of the LLC could use and possess the real properties of Inc, including the parking lot, the land for the Dock Master's office, the ticket building and retail area, the land for the fuel tank, and ingress and egress to the areas needed for its business operations.

7. In reliance upon the above representations, the Plaintiffs undertook and completed the following:

- a. Purchased 1.5 acres for \$150,000.00 for the use of the joint venture with the Defendants;
- b. Enlarged and improved a parking lot for the joint use of the LLC and Inc;
- c. Constructed the Master Dock office, the ticket building, and the retail store area for the business operations of the LLC;

- c. Purchased a fuel tank and fuel lines, installed the fuel tank and the fuel lines, and obtained the permits;
- d. Constructed the docking areas, and floating docks, for jet skis;
- e. Built boat slips to be used by the LLC;
- f. Purchased jet skis, fuel pumps, fixtures, and equipment for the business operation of the LLC;
- g. Permitted Inc and Donald Kettner to regularly use at least one boat slip, owned by the LLC, for the restaurant operations of Crab Catchers as well as other portions of the LLC's property for Inc's guests.

8. In order to accomplish the above activities and in additional reliance on the representations of the aforesaid Defendants, the Plaintiff Long and the LLC agreed to become borrowers with the aforesaid Defendants for the purpose of borrowing from United Community Bank the sum of \$1,100,000.00. The loan documents were completed in November, 2017, and as security for the aforesaid loan, the LLC and Inc permitted the Bank to place mortgages on their real properties located on the joint venture site. A copy of the Promissory Note is attached as Exhibit A and the Mortgages as Exhibit B.

9. In addition to jointly borrowing funds and encumbering their properties, the Plaintiff LLC, Timothy Kettner and Inc. engaged the services of consultants and experts such as an architect, engineers, and legal counsel. With the engagement of consultants and experts, the joint venture was successful in obtaining from the County of Horry an approved Plat combining the properties of the LLC and Inc by the removal of the boundary lines.

10. In reliance upon the joint venture, the LLC commenced its business operations in the summer of 2018 and continue its business operations to the present in spite of the recent interference by the Defendants.

11. The reliance on the aforesaid Defendants' promises and representations was expected and foreseeable especially in light of the Plaintiffs' commitments to the joint venture,

their participation therein, and prior to September 11, 2020, the Defendants Inc., and Timothy Kettner' participation in the joint venture.

12. The Defendant Timothy Kettner managed and controlled the LLC until September 2020 when it was discovered that he was converting LLC funds, and its assets, without the individual Plaintiffs' knowledge or consent. When the Plaintiffs first discovered the self-serving activities of the Defendant Timothy Kettner, they requested complete documentation from said Defendant but said Defendant refused to provide and now has moved across country. In addition, Defendant Timothy Kettner was requested by the Plaintiffs to return the misappropriated funds to the LLC, but he refused.

13. Shortly after the discovery of the misfeasance on the part of the Defendant Timothy Kettner, the Defendant Donald Kettner, on behalf of Inc., commenced a legal action in Magistrate Court seeking an eviction of the LLC by falsely representing to the Magistrate's Court the existence of a landlord relationship between the LLC and Inc when none ever existed. A copy of the Eviction Application is attached as Exhibit C.

14. In addition to falsely representing to a State court that a landlord relationship exists between Inc and the LLC, the Defendants interfered, and continue to interfere, with the business activities of the LLC by blocking access to the parking lot, blocking access to the buildings constructed by the LLC, denying ingress and egress to the floating docks and the boat docks used for charter boats even though the docks are located on the real property owned by the LLC, harassing customers and employees of the Plaintiff LLC, threatening customers and employees of Plaintiff LLC, as well as the threatening individual Plaintiffs.

15. The actions of the Defendants have significantly harmed the Plaintiffs for they cannot operate the LLC's business activities as had been done in the past four (4) years, nor even properly care for the LLC properties.

16. The Defendants Kettners and Inc., have breached their duties to the Plaintiffs by refusing to continue to participate in the joint venture even though over \$1,000,000.00 has been expended as well as many hours of equity sweat by the individual Plaintiffs.

17. The Defendants have taken actions to intentionally harm the Plaintiffs and their actions were calculated and continue to be calculated to only benefit their own interests all being contrary to the representations of Defendants Kettners and Inc.

18. The misrepresentations of the Defendants Kettners and Inc. were relied upon by the Plaintiffs in entering into the joint venture, participating in the joint venture, and in permitting the Defendant Timothy Kettner to manage the LLC, to the detriment of the Plaintiffs.

19. As a result of the representations as set forth above and their other misleading actions, the Plaintiffs are entitled to a temporary and permanent injunctive order of the Court prohibiting the Defendants from continuing to interfere in the business operations of the LLC both during the pendency of this action and thereafter permanently.

20. In addition, the Plaintiffs are entitled to an award of actual and punitive damages against the Defendants for their interference into the business operations of the LLC.

SECOND CAUSE OF ACTION AGAINST THE
DEFENDANT TIMOTHY KETTNER
(Breach of Fiduciary Duty)

21. The allegations of the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

22. The Plaintiff LLC is governed by an Operating Agreement, which was signed by the individual Plaintiffs and the Defendant Timothy Kettner.

23. According to the terms of the Operating Agreement, the Defendant Timothy Kettner has fiduciary obligations of good faith toward the LLC, preserving and protecting the assets of the LLC, providing business information including business records when request, not engage in the misappropriation of the assets of the Plaintiff LLC, and not actively work against the LLC with respect to the joint venture.

24. The Defendant Timothy Kettner breached his fiduciary duties by absconding with the cash collected from the LLC customers, diverting LLC funds to himself, his son, and the Defendant Inc., taking LLC property with any consent, permitting the individual Defendants to interfere in the business operations of the LLC, conspiring with the Defendants to interfere in the business operations of the Plaintiff LLC, as well as personally attempting to ouster the LLC from the joint business.

25. As a result of the breach of fiduciary duties by the Defendant Timothy Kettner, the Plaintiff LLC is entitled to an award of actual damages, punitive damages, and attorney's fees and costs.

THIRD CAUSE OF ACTION
(Breach of Joint Venture Agreement)

26. The allegations of the First and Second Cause of Action are incorporated herein and made a part and parcel of the Third Cause of Action.

27. The Defendants Timothy Kettner, Donald Kettner and Inc. breached the aforesaid Joint Venture by refusing to permit the Plaintiffs to continue the operations of the LLC and reneging on their commitments and obligations.

28. As a result of the breach, the Plaintiff LLC has been damaged for which the Plaintiff LLC is entitled to actual damages, and consequential damages together with legal interest thereon.

FOURTH CAUSE OF ACTION
(Economic Interference)

29. The allegations of the First, Second and Third Cause of Action are incorporated herein and made a part and parcel of the Fourth Cause of Action.

30. The Defendants have interfered in the economic relations of the Plaintiff LLC by blocking access to the parking lot and its buildings by blocking water sports business activities, including the sale of fuel, and threatening and harassing the Plaintiffs, customers, and employees. The actions of the Defendants have caused damage in that significant sales were lost and caused harm to the business reputations of the Plaintiffs.

31. As a result, the Plaintiff LLC is entitled to actual and punitive damages from the Defendants.

FIFTH CAUSE OF ACTION
(Assault)

32. The allegations of the First, Second, Third and Fourth Cause of Action are incorporated herein and made a part and parcel of the Fifth Cause of Action.

33. The individual Defendants, Donald Kettner, Jose Bernardino Morales, Casey Kuzmik and Robert Benoit, have engaged in egregious conduct toward the Plaintiffs which conduct has been threatening and extremely abusive, causing the individual Plaintiffs concern as to their personal safety and well-being as well as that of others.

34. As a result of the assaults by the aforesaid individual Defendants, the Plaintiffs are entitled to actual and punitive damages.

SIXTH CAUSE OF ACTION
(Misappropriation)

35. The allegations of the First, Second, Third, Fourth and Fifth Cause of Action are incorporated herein and made a part and parcel of the Sixth Cause of Action.

36. The Defendant Timothy Kettner, has misappropriated Plaintiff LLC's corporate assets including its funds.

37. The Plaintiff LLC is entitled to a judgment against the Defendant Timothy Kettner for actual and punitive damages.

SEVENTH CAUSE OF ACTION
(Nuisance)

38. The allegations of the First, Second, Third, Fourth, Fifth and Sixth Cause of Action are incorporated herein and made a part and parcel of the Seventh Cause of Action.

39. The acts of the Defendants toward the Plaintiffs have seriously disrupted the Plaintiffs' rights to use their property.

40. The Defendants by engaging in unreasonable conduct toward the Plaintiffs for the purpose of hindering and interfering with the use of their property rights, have created a nuisance.

41. The Defendants acts of nuisance have harmed the Plaintiffs for which the Plaintiffs are entitled to actual and punitive damages.

WHEREFORE, the Plaintiffs pray for the following:

1. A temporary and permanent injunction against the Defendants;
2. For the First Cause of Action, an award of actual damages against the Defendants Timothy Kettner, Donald Kettner, and Inc.;
3. For the Second Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;

4. For the Third Cause of Action, an award of actual damages against, the Defendant Timothy Kettner and Inc.;
5. For the Fourth Cause of Action, an award of actual and punitive damages against the Defendants;
6. For the Fifth Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;
7. For the Sixth Cause of Action, an award of actual and punitive damages against the Defendant Timothy Kettner;
8. For the Seventh Cause of Action, an award of actual and punitive damages against the Defendants;
9. An Order requiring the defendants to pay the Plaintiffs' attorneys fees and costs; and
10. For such other and further relief as the court deems just and proper.

Dated: July 6, 2022

BURR & FORMAN LLP

By s/Henrietta U. Golding
Henrietta U. Golding SC Bar #2173
E-mail: hgolding@burr.com
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: 843.444.1107
Facsimile: 843.444.4729
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2021-CP-26-01512

Thomas Wade Long, Clyde Kiser, individually and
on behalf of TnW and More, LLC, and TnW and
More, LLC,

Plaintiffs,

v.

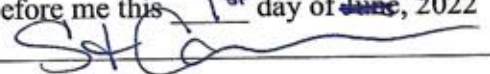
Timothy D. Kettner, Donald Kettner, Jose
Bernardino Morales, Casey Kuznik, Robert Benoit
and TNT and More, Inc. d/b/a Crab Catchers on the
Waterfront,

Defendants.

**VERIFICATION TO SECOND
AMENDED COMPLAINT**

PERSONALLY appeared before me, Thomas Wade Long, individually and on behalf of
TnW and More, LLC in the above captioned action, being first duly sworn, deposes and says that
he has read the foregoing Second Amended Summons and Second Amended Verified Complaint
and that the information contained therein is true and correct to the best of his knowledge.


Thomas Wade Long, individually and
on behalf of TnW and More, LLC

Sworn to and subscribed July
before me this 1st day of June, 2022
 (LS)

Notary Public for South Carolina
My Commission Expires: 9-29-2026



LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
208001	TNW And More, LLC		11/29/17	408/MB
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$1,100,000.00	First Phase - Not Applicable	First Phase - 4.600%	11/29/24	Commercial
	Second Phase - Not Applicable	Second Phase - 4.600%		
		Creditor Use Only		

PROMISSORY NOTE

(Commercial - Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 29, 2017. The parties and their addresses are:

LENDER:

UNITED COMMUNITY BANK
3210 Hwy 701 Bypass
Loris, SC 29569
Telephone: (910) 653-3222

BORROWER:

TNW AND MORE, LLC
a South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

TNT & MORE, INC.
a South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent.** Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts.** All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of **\$1,100,000.00 (Principal)**, plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

On November 29, 2017 I will receive an initial advance of \$275,170.17.

All advances made will be made subject to all other terms and conditions of the Loan.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note during the first phase at the rate of **4.600 percent (Interest Rate)** until November 29, 2018. After that time, interest will accrue on the unpaid Principal balance during the second phase at a rate of 4.600 percent.

- A. Post-Maturity Interest.** After maturity or acceleration, interest will accrue on the unpaid Principal balance of this Note at the Interest Rate in effect from time to time, until paid in full.
- B. Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by applicable law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.
- D. Accrual.** Interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

- A. Nonrefundable Fees and Charges.** The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.
Processing Fee. A(n) Processing Fee fee of \$250.00 payable from separate funds on or before today's date.

TNW And More, LLC
South Carolina Promissory Note
SC/4HARDWICA0000000001094061N

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Page 1

Loan Origination. A(n) Loan Origination fee of \$5,500.00 payable from separate funds on or before today's date.

Flood Insurance Determination Charge. A(n) Flood Insurance Determination Charge fee of \$14.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 10 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment. I will pay this late charge promptly but only once for each late payment.

B. Returned Check Charge. I agree to pay a fee not to exceed \$5.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

6. GOVERNING AGREEMENT. This Note is further governed by the Commercial Loan Agreement executed between you and me as a part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

7. PAYMENT. I agree to pay this Note in 84 installment payments. During the first phase of the Loan I will make 12 payments of accrued interest beginning December 29, 2017, and then on the 29th day of each month thereafter, until November 29, 2018.

Then, I agree to make 72 installment payments during the second phase of the Loan. The second phase of this Note is amortized over 240 payments. I will make 71 payments of \$7,058.28 beginning on December 29, 2018, and on the 29th day of each month thereafter. A single "balloon payment" of the entire unpaid balance of Principal and interest will be due November 29, 2024.

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, and finally to late charges that are due. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is Real Estate Improvement.

10. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document	Date of Security Document
Mortgage - 4474 Waterfront Dr, Little River, SC 29566	TNT & More, Inc.	11/29/2017
Mortgage - 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, SC 29566	TNW And More, LLC	11/29/2017

11. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

12. DUE ON SALE OR ENCUMBRANCE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

(7) I agree that you may inform any party who guarantees this Loan of any Loan accommodations, renewals, extensions, modifications, substitutions or future advances.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

15. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

16. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

17. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or fail to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

18. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

19. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

20. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

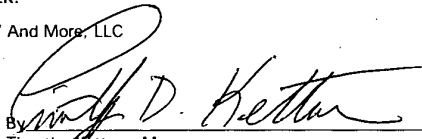
21. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

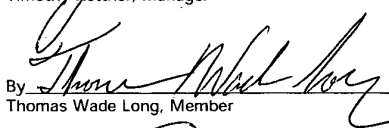
22. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

Signed, sealed, and delivered:

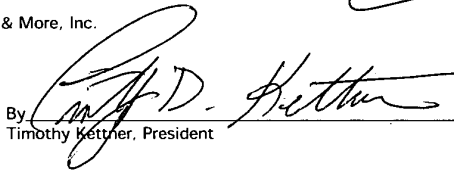
BORROWER:

TNW And More, LLC

By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

#208001

Instrument#: 2017000139116, MTG BK:
5941 PG: 2631 DOCTYPE: 002 11/30/2017
at 02:23:34 PM, 1 OF 13
MARION D. FOXWORTH III, HORRY
COUNTY, SC REGISTRAR OF DEEDS

Space Above This Line For Recording Data

This document was prepared by

MORTGAGE
(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNT & MORE, INC.
A South Carolina Corporation
D/B/A Crab Catchers On The Waterfront
4474 Waterfront Dr
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 4474 Waterfront Dr, Little River, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

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future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

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enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

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has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals shall include a standard "mortgage clause" (or "lender loss payable clause") endorsement that names Lender as "mortgagee" and "loss payee". If required by Lender, all insurance policies and renewals will also include an "additional insured" endorsement that names Lender as an "additional insured". If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance

must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include lesser or greater coverages than originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

22. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

24. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

25. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

26. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

27. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

28. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

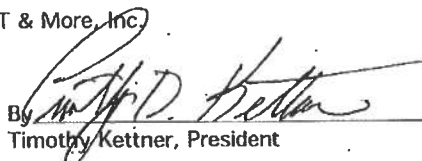
29. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

30. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

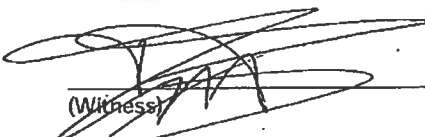
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNT & More, Inc.

By  Date 11/29/17 (Seal)
Timothy Kettner, President

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

John OF South Carolina County OF Horry ss.

I, Robert J. Jr., a notary public, do hereby certify that Timothy Kettner - President of TNT & More, Inc., a Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.

Signature of Notary Public

Robert J. Jr.
My commission expires: 7/1/21

Exhibit "A"

Tax Map # 131-03-05-043

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Little River Township, in the County and State aforesaid, containing 0.158 acres, more or less, and being more particularly described as follows:

BEGINNING at the iron O located on the southeastern corner of LOT 9, being the point of beginning and thence traveling South 30 degrees 30 feet East to the Southwestern corner of Bryan Street and Waterfront Drive (a/k/a Wharf Avenue). Thence, turning in a westerly direction along the mean high tide line of the salt marsh to the southwestern corner of LOT 10, thence turning South 78 degrees 14 feet 38 inches West along the Southern boundary lines of LOT 10 and LOT 9 to the point of BEGINNING.

Said property being bounded on the North by Lots 9 and 10, East by Bryan Street, South and West by the salt marsh along the Intracoastal Waterway and also includes accreted land. ?

Said property is identified as 40 feet road along the Southern boundary lines of Lot 9 and Lot 10, as shown on that certain survey of the W. L. Subdivision of Little River, South Carolina by S. D. Cox dated August 30, 1920 and recorded in Plat Book 1 at Page 37, Office of the Register of Deeds for Horry County, South Carolina. Said property is also shown as 0.158 acres more or less, on that certain survey by C.B. Berry, R.L.S. prepared for Wayne and Karen Sue Henderson and dated September 23, 1997.

SUBJECT to the Notice of Restriction, that all activities on or over and all uses of any submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. Grantee(s) are liability to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or any other critical areas.

Said property is also SUBJECT to the life estate of Karen Sue Henderson and James Wayne Faircloth.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Sourdough, LLC dated November 20, 2015 and recorded December 17, 2015 in Book 3878 at Page 3376 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-013

All and singular, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina, and being shown and designated as 1.23 +/- as shown on Recombination Plat creating Lots 35 thru 39 Combined W.L. Bryan Property ?Subdivision +/- 53,337 Sq. Ft.- 1.23 Acres Total, recorded February 15, 2013 in Plat Book 257 at Page 27, Office of the Register of Deeds for Horry County, South Carolina.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Timothy D. Kettner dated September 15, 2017 and recorded September 15, 2017 in Deed Book 4043 at Page 790 in the Office of the Register of Deed for Horry County, South Carolina.

Tax Map #131-03-05-024

All and singular, all that certain piece, parcel or tract of land situate, lying and being in the County of Horry, State of South Carolina, Little River Township, Village of Little River, designated as Parcel 7C7 of lands formerly of Vance Kinlaw shown on a map prepared by S.D. Cox, Jr., R.L.S., dated the 13th day of February 1962, and recorded in the Office of the Clerk of Court for Horry County in Plat Book 39 at Page 55, including all docks, piers, pilings, slips, and other improvements thereon and/or extending therefrom near, into and also all docking rights and dock and improvement permits relating thereto.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Willie S. Smith, Trustee dated September 21, 2009 and recorded September 24, 2017 in Book 3422 at Page 228 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-019

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT NINE (9) of the W. L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S. D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, referenced to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, Inc., by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-018

All and singular, all that certain piece, parcel or lot of land situate, lying and being in the County and States aforesaid, Little River Township, Horry County, South Carolina, and being more particularly described as LOT TEN (10) of the W.L. Bryan Subdivision at Little River, South Carolina, said lot being more particularly shown on that certain map by S.D. Cox dated August 30, 1920 and recorded in Plat Book I at Page 37, Horry County records.

For a more recent and up-to-date survey, reference is made to that certain plat prepared for Sourdough, LLC dated March 15, 1996 by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, reference to which is made a part and parcel hereof.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-03-020

ALL AND SINGULAR, all that certain piece, parcel or tract of land, situate, lying and being in Little River Township, County of Horry, State of South Carolina and being shown and designated as 0.68 acre, more or less,

TMS 131-03-03-020, as appears upon plat prepared for Sourdough, LLC by Atlantic Land Surveying Co., Inc., Joel F. Floyd, RLS, dated March 15, 1996, reference to which is made a part and parcel hereof.

A portion of the herein described property may contain submerged land and notice is hereby given that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the Coastal Council, including but not limited to, the requirement that any activities or use must be authorized by the South Carolina Coastal Council. Any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical areas.

THIS CONVEYANCE is also made subject to the conditions and requirements of the permits issued by the U. S. Army Corps of Engineers and South Carolina Coastal Council.

Derivation: This being the identical property conveyed to TNT and More, LLC by deed of Sourdough, LLC dated July 3, 2015 and recorded July 10, 2015 in Book 3835 at Page 924 in the Office of the Register of Deeds for Horry County, South Carolina.

Tax Map #131-03-05-025

All and singular, that certain piece, parcel or lot of land, with the improvements situate thereon, lying and being in Little River Village, Little River Township, Horry County, South Carolina, shown and described on a map made for Donnie Mintz by C.B. Berry, R.L.S., dated August 10, 1972, reference to which said map is craved as forming a part and parcel thereof; and further, referencing the description found in that certain Contract of Sale from Donnie Mintz, Seller to Wayne Henderson, buyer, dated January 6th, 1981 and recorded in the records of Horry County in Deed Book 697 at Page 672.

Derivation: This being the identical property conveyed to TNT and More, Inc. by deed of Wayne D. Henderson and Karen Sue Henderson dated April 4, 2002 and recorded April 8, 2002 in Book 2468 at Page 647 in the Office of the Register of Deeds for Horry County, South Carolina.

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This document was prepared by

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 29, 2017. The parties and their addresses are:

MORTGAGOR:

TNW AND MORE, LLC
A South Carolina Limited Liability Company
3522 Golf Ave
Little River, SC 29566

LENDER:

UNITED COMMUNITY BANK
Organized and existing under the laws of Georgia
3210 Hwy 701 Bypass
Loris, SC 29569

1. DEFINITIONS. For the purposes of this document, the following term has the following meaning.

A. Loan. "Loan" refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction.

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

SEE EXHIBIT A

The property is located in Horry County at 1.5 ACRES LOCATED ADJACENT TO 4474 WATERFRONT DR, LITTLE RIVER, South Carolina 29566.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber including timber to be cut now or at any time in the

future, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$1,100,000.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. SECURED DEBTS AND FUTURE ADVANCES. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 208001, dated November 29, 2017, from TNW And More, LLC and TNT & More, Inc. (Borrower) to Lender, with a loan amount of \$1,100,000.00 and maturing on November 29, 2024.

B. Future Advances. All future advances from Lender to TNW And More, LLC and TNT & More, Inc. under the Specific Debts executed by TNW And More, LLC and TNT & More, Inc. in favor of Lender after this Security Instrument. If more than one person signs this Security Instrument, each agrees that this Security Instrument will secure all future advances that are given to TNW And More, LLC and TNT & More, Inc. either individually or with others who may not sign this Security Instrument. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All Debts. All present and future debts from TNW And More, LLC and TNT & More, Inc. to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities. This Security Instrument will not secure any other debt if Lender, with respect to that other debt, fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act (Regulation Z) or the Real Estate Settlement Procedures Act (Regulation X) that are required for loans secured by the Property.

D. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. LIMITATIONS ON CROSS-COLLATERALIZATION. The cross-collateralization clause on any existing or future loan, but not including this Loan, is void and ineffective as to this Loan, including any extension or refinancing.

The Loan is not secured by a previously executed security instrument if a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Real Estate Settlement Procedures Act, (Regulation X), that are required for loans secured by the Property or if, as a result, the other debt would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

The Loan is not secured by a previously executed security instrument if Lender fails to fulfill any necessary requirements or fails to conform to any limitations of the Truth in Lending Act, (Regulation Z), that are required for loans secured by the Property.

6. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

7. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

8. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

9. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law, as applicable.

11. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation, partnership, limited liability company or other organization), Lender may demand immediate payment if:

- A. A beneficial interest in Mortgagor is sold or transferred.
- B. There is a change in either the identity or number of members of a partnership or similar entity.
- C. There is a change in ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

12. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

13. PROPERTY CONDITION, ALTERATIONS, INSPECTION, VALUATION AND APPRAISAL. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious

weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time and frequency for the purpose of inspecting, valuating, or appraising the Property. Lender will give Mortgagor notice at the time of or before an on-site inspection, valuation, or appraisal for on-going due diligence or otherwise specifying a reasonable purpose. Any inspection, valuation or appraisal of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection, valuation or appraisal for its own purpose, except as otherwise provided by law.

14. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting, valuating, appraising and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to

enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

17. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement, valuation, appraisal or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect, value, appraise and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor

has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

23. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument constitutes a financing statement and is to be recorded in the real estate records.

24. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in

the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property (all of which shall also be included in the term Property). The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.

25. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

26. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

27. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

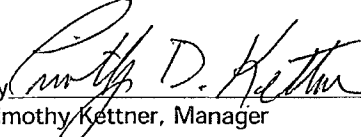
28. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

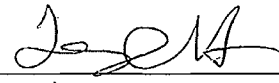
29. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

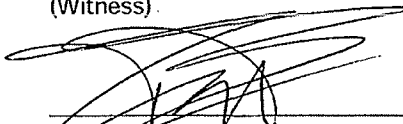
SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

TNW And More, LLC

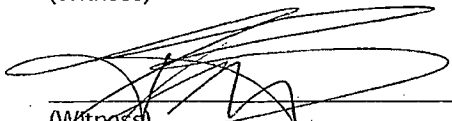
By  Date 11/29/17 (Seal)
Timothy Kettner, Manager

 Date 11/29/17
(Witness)

 Date 11/29/17
(Witness)

By  Date 11/29/17 (Seal)
Thomas Wade Long, Member

 Date 11/29/17
(Witness)

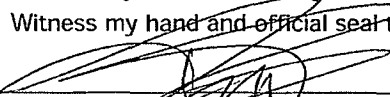
 Date 11/29/17
(Witness)

ACKNOWLEDGMENT.

STATE OF SOUTH CAROLINA COUNTY OF Horry ss.

I, ROBERT D. ROY JR. a notary public, do hereby certify that Timothy Kettner - Manager and Thomas Wade Long - Member of TNW And More, LLC, a Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29th day of November, 2017.


Signature of Notary Public

ROBERT D. ROY JR.
My commission expires: 7/6/21

Exhibit "A"

Tax Map #131-03-05-023

ALL THAT CERTAIN piece, parcel or lot of land lying, situate and being in Little River Township, Horry County, designated as Tax Parcel 131-03-05-023 as shown on the records of the Horry County Tax Assessor, together with the dock which extends from said lot into and over a portion of the Intracoastal Waterway.

Derivation: This being the identical property conveyed to TNW and More, LLC by deed of Freddie McGinn a/k/a Addis S. McGinn, III dated September 15, 2017 and recorded September 15, 2017 in Book 4043 at Page 793 in the Office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TNT and More Inc.)

PLAINTIFF(S))

VS.)

TNW and More, LLC)

DEFENDANT(S))

2021CV261040034
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR
EJECTMENT

I, TNT and More, Inc., Plaintiff in this action, state that I am the Landlord-Lessor of the premises within the jurisdiction of the Magistrate Manuela A. Clayton which is described as: (address and description of premises apartment, house, etc.)

4412 Water Front Avenue, Little River, South Carolina
Commercial Parking Lot

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the Defendant, TNW and More, LLC, the tenant-lessee, as evidenced by the following: (attach lease papers or other written proof)

N/A

Grounds for this ejectment are on or more of the following:

- ☐ The tenant fails or refuses to pay the rent when due or when demanded; or
☒ The term of tenancy or occupancy has ended; or
☒ The terms or conditions of the lease have been violated as follows: _____

Defendant is operating dangerous and hazardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

Sworn to before me)

this 7th day of January, 2021.)

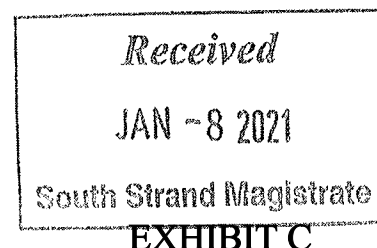
T. M. Clayton
Magistrate or Notary Public for South Carolina)

My Commission expires 6/11/2024)

[Signature]
Plaintiff (or his attorney or agent)

SCCA/732 (Amended 05/2008)

R-205



MURRAY LAW OFFICES, PA

Legal Services Division • Michael S. Harrison, Managing Attorney

4214 Mayfair Street, Suite B, Myrtle Beach, SC 29577 • 843-445-9933 • 843-839-7397 (facsimile)

- Civil Litigation
- Family Law/Divorce
- Wills/Estate Planning

- Property Litigation
- Child Custody/Support
- Business Formation

- Construction Law
- Contract Disputes
- Tenant/Landlord

- Probate Law
- Criminal Law
- Personal Injury

November 22, 2020

VIA U.S. MAIL

TNW & More, LLC
Attn: Timothy Ketner
3522 Golf Avenue
Little River, SC 29566

RE: 4412 Waterfront Avenue

Dear Mr. Ketner:

I represent TNT & More, LLC. I am writing to address several issues that have arisen from the use of my client's property for your business interests. It is our understanding that you continue to operate your fuel and watersports businesses to my client's detriment.

My client has observed several dangerous and hazardous practices by your company on their property. Fuel pumps have been left on overnight. Equipment has not been stored safely and properly. Your customers are parking in areas that take up the limited immediately available parking for their customers. Your employees have continually failed to properly dispose of waste. The shed you are using to operate your watersports business is the source of my client receiving a fine from the county, as it is not compliant with county codes. That matter is pending before the Horry County Code Enforcement office. We do not believe your business is properly licensed nor are your properly insured. Most importantly, you have no valid lease to operate on the property at all.

As the owners of the land on which you are conducting business, we are very concerned about the foregoing issues. We are asking you to cease operations of both your fueling and watersport rental business immediately so that we can come to an agreement on a lease and on the operation of your business on our property.

In an effort to resolve the issues between the companies, we are offering you a 12-month commercial lease subject to certain conditions. If you do not wish to enter into the agreement, then we ask that you cease operations and remove any and all equipment that you own that is located on my client's property within 30 days of receipt of this letter.

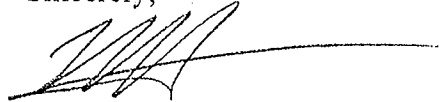
If you do not respond, we will assume that you do not wish to enter into a lease agreement. If you do not wish to enter into a lease and you do not remove your equipment, we will be forced to take action to resolve the matter through the county and through the court.

We hope to avoid further complications, and we hope that you will review our enclosed proposed lease agreement and sign it within 30 days of receipt of this letter. Again, my client is only willing to enter into the agreement upon your acquiescence to certain conditions outlined in the lease.

Prior to entering into the lease you will need to provide proof of insurance and all required licensing to my client for review.

If you have any questions, please feel free to contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Harrison', with a long horizontal line extending to the right.

Michael S. Harrison, Esq.

Enclosure(s) as stated

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261040034

CIVIL CASE NUMBER

MAGISTRATE'S COURT

RULE TO VACATE OR SHOW CAUSE (EVICTION)

TNT and More, Inc
c/o Murray Law Offices, PA
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577

Phone: (843) 455-9933

PLAINTIFF(S)

Vs

TNW and More, LLC
4412 Water Front Avenue
Little River, SC 29566

Phone:

DEFENDANT(S)

TO TNW and More, LLC : TNT and More, Inc is asking this Court to evict you from the property located at because they claim that:

- ☐ You have failed to pay rent when due or demanded in the amount of \$.
- ☒ The terms of your tenancy or occupancy have ended.
- ☒ You have violated the terms or conditions of your lease by: Defendant is operating dangerous & harzardous business practices on Plaintiff's property; Defendant is trespassing on Plaintiff's property and Defendant has become a nuisance. A Cease and Desist letter dated November 22, 2020 is attached.

You the defendant(s) and lessee(s) of the premises listed at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 OR contact the:

Surfside Beach Magistrate Court
9630 Scipio Lane
Myrtle Beach, SC 29588
(843) 915-5291

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

01/08/2021

m. clayt
Judge, Surfside Beach Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, , says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on TNW and More, LLC on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	SETTLED/DATE _____	VACANT/DATE _____
2. _____	_____	_____	PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT	
3. _____	_____	_____	_____	

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON 1-8-21 DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

Renae Hall
MAGISTRATE'S CLERK

MV220

SCCA/733A (Amended 11/2019)

2021CV261040034

TNT and More, Inc VS TNW and More, LLC

INSTRUCTIONS FOR EVICTION HEARINGS

1. Both plaintiff and defendant have the right to come to court and give his/her side of the case.
2. If either party desires a jury trial, s/he must request one in writing at least 5 business days before the date originally scheduled for the hearing.
3. Parties may come to court and speak for themselves, or they may have a lawyer represent them. If you want a lawyer, you should get one right away.
4. Parties may call the South Carolina Lawyer Referral Service at (800) 868-2284 and ask them to refer you to a lawyer if you do not have one.
5. If the defendant cannot afford a lawyer, you may call South Carolina Legal Services at (888) 346-5592 to see if you qualify for free legal assistance.
6. It is the parties' responsibility to bring any witnesses or other evidence they want the Court to consider because the Court does not accept written witness statements, even notarized ones.
7. The Court will not telephone a witness to take testimony.
8. The Court cannot reschedule a case because a witness is not present *unless* the witness is under subpoena.
9. The Court will issue subpoenas to any witnesses if you advise the Court at least 10 days before trial of the name, address, and phone number of the witness. If you wish to subpoena a witness in your county, you will have to mail or deliver a fee of \$8.00 to the magistrate's court for preparing and serving a subpoena. The party requesting the subpoena is required to pay to the subpoenaed witness a fee of \$25.00 plus mileage for each day's attendance. (See Rule 45(b)(1) of the South Carolina Rules of Civil Procedure.)
10. If an emergency arises (not a mere inconvenience or a conflict) and you cannot be in Court at your scheduled time, you must notify the Court immediately.
11. If you are an active member of the Armed Services of the United States, please advise the Court immediately upon receipt of this notice.
12. If you are a business and are going to be represented by someone who is not an attorney, a Non-Lawyer Authorization Form *must* be on file at the Magistrate's Office before trial. (See Rule 21 of the South Carolina Civil Rules of Magistrate Court, Business Representation.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	CIVIL ACTION NO.: 2021-CP-26-01512
	)	
Thomas Wade Long and Clyde Kiser,	)	
Individually and on behalf of TNW and	)	ANSWER, COUNTERCLAIMS AND
More, LLC, and TNW and More, LLC,	)	CROSSCLAIMS OF
	)	TNT AND MORE, INC. d/b/a CRAB
Plaintiffs,	)	CATCHERS ON THE WATERFRONT
vs.	)	TO PLAINTIFFS SECOND AMENDED
	)	VERIFIED COMPLAINT
	)	
Timothy D. Kettner, Donald Kettner, Jose	)	
Bernardino Morales, Casey Kuznik, Robert	)	
Benoit and TNT and More, Inc. d/b/a Crab	)	
Catchers on the Waterfront,	)	
	)	
Defendants.	)	

COMES NOW Defendant TNT and More, Inc. d/b/a Crab Catchers on the Waterfront (hereinafter as Defendant TNT), by and through the undersigned counsel responding to Plaintiffs Thomas Wade Long, Clyde Kiser, individually and on behalf of TNW and More, LLC, and TNW and More, LLC's (hereinafter collectively as Plaintiffs) Second Amended Verified Complaint, presenting Counterclaims against Plaintiff TNW and More, LLC (hereinafter individually as Plaintiff TNW), and presenting Crossclaims against Defendant Timothy D. Kettner (hereinafter as Defendant Timothy Kettner) as follows:

1. Defendant TNT denies each and every allegations of Plaintiffs' Second Amended Verified Complaint not specifically admitted herein.
2. Defendant TNT admits the allegations in Paragraph 1 of Plaintiffs' Second Amended Verified Complaint.

3. Defendant TNT admits the allegations of Paragraph 2 insofar as Donald Kettner, Casey Kuzmik and Robert Benoit are residents of Horry County, South Carolina. The remaining allegations contained in Paragraph 2 are denied and strict proof thereof is demanded.
4. Defendant TNT admits the allegations in Paragraph 3 of Plaintiffs' Second Amended Verified Complaint.
5. Defendant TNT admits the allegations of Paragraph 4 insofar as Defendant TNT is a South Carolina corporation which transacts business in the State of South Carolina as Crab Catchers on the Waterfront and that Donald Kettner is a shareholder of Defendant TNT. The remaining allegations contained in Paragraph 4 are denied and strict proof thereof is demanded.
6. Defendant TNT denies the allegations of Paragraphs 5 through 20 and demands strict proof thereof.
7. No response is required to Paragraph 21. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
8. Defendant TNT is without sufficient information to respond to Paragraphs 22 through 25 and therefore denies the same and demands strict proof thereof.
9. No response is required to Paragraph 26. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
10. Defendant TNT denies the allegation in Paragraphs 27 through 28 and demands strict proof thereof.
11. No response is required to Paragraph 29. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
12. Defendant TNT denies the allegation in Paragraphs 30 through 31 and demands strict proof thereof.

13. No response is required to Paragraphs 32 through 37, as the allegation(s) are not directed at Defendant TNT. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.

14. No response is required to Paragraph 38. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.

15. To the extent the allegations contained in Paragraphs 39 through 41 are directed at Defendant TNT, Defendant TNT denies the same and demands strict proof thereof.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim for Relief)**

16. Defendant TNT restates the above as if fully set forth herein.

17. Plaintiffs' Second Amended Verified Complaint fails to state a claim for relief for which this Honorable Court can provide relief under the South Carolina Rules of Civil Procedure Rule 12(b)(6).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)**

18. Defendant TNT restates the above as if fully set forth herein.

19. Plaintiffs' claims are barred by the applicable statute of limitations.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

20. Defendant TNT restates the above as if fully set forth herein.

21. Plaintiffs' recovery is barred, in whole or in part, due to Plaintiffs' own failure to mitigate damages.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening Acts of Third Parties)**

22. Defendant TNT restates the above as if fully set forth herein.

23. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Defendant TNT and not under the domain or control of Defendant TNT.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Join Necessary Parties)**

24. Defendant TNT restates the above as if fully set forth herein.

25. Plaintiffs have failed to join a party necessary to this litigation as required by SCRCP Rule 19, and Plaintiffs' Second Amended Verified Complaint should be dismissed pursuant to SCRCP Rule 12(b)(7).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)**

26. Defendant TNT restates the above as if fully set forth herein.

27. Plaintiffs' damages, if any, are the direct and proximate result of their own comparative and/or contributory negligence and Plaintiffs' recovery should be barred, or alternatively reduced proportionately to Plaintiffs' comparative negligence.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence)**

28. Defendant TNT restates the above as if fully set forth herein.

29. Plaintiffs' damages, if any, were solely due to, resulted from, and/or were caused by the negligence, carelessness, wantonness, and willfulness by Plaintiffs and/or third parties beyond the control of Defendant TNT.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Expiration of Express/Implied Warranties)**

30. Defendant TNT restates the above as if fully set forth herein.

31. Any expressed or implied warranties alleged to exist, which are denied, have expired and/or were rendered void.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Perform)**

32. Defendant TNT restates the above as if fully set forth herein.

33. Defendant TNT does not concede that any contract existed, but in the event the Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery due to Plaintiffs' failure to perform on any agreement alleged to exist between the parties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Indefiniteness)**

34. Defendant TNT restates the above as if fully set forth herein.

35. Defendant TNT does not concede that any contract existed, but to the extent Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery due to the indefinite nature of any agreement alleged to exist between the parties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Consideration)**

36. Defendant TNT restates the above as if fully set forth herein.

37. Parties lacked consideration sufficient to form a contract.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)**

38. Defendant TNT restates the above as if fully set forth herein.

39. Plaintiffs and Defendant TNT entered into an accord and satisfaction for valuable consideration discharging any agreements, if any existed or do presently exist, and all disputes arising out of the subject matter contained in the Plaintiffs' Second Amended Verified Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Frauds)**

40. Defendant TNT restates the above as if fully set forth herein.

41. Defendant TNT does not concede that any contract existed, but in the event the Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery under statute of frauds pursuant to SC Code §32-3-10, et seq.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Waiver, Release, and License)**

42. Defendant TNT restates the above as if fully set forth herein.

43. All or parts of the claims in the Plaintiffs' Second Amended Verified Complaint are barred by the doctrines of waiver, release, and or license.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Limitation of Remedy or Disclaimers)**

44. Defendant TNT restates the above as if fully set forth herein.

45. Defendant TNT pleads and incorporates the terms of any limitation of remedy or disclaimers in any applicable contract or warranty, if any, as a bar to any recovery.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)**

46. Defendant TNT restates the above as if fully set forth herein.

47. Plaintiffs' recovery is barred by the Plaintiffs' unclean hands.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Laches)**

- 48. Defendant TNT restates the above as if fully set forth herein.
- 49. Plaintiffs' recovery is barred by the doctrine of laches.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Judicial Estoppel and Res Judicata)**

- 50. Defendant TNT restates the above as if fully set forth herein.
- 51. Plaintiffs' recovery is barred by the doctrine of judicial estoppel and/or res judicata.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Collateral Estoppel)**

- 52. Defendant TNT restates the above as if fully set forth herein.
- 53. Plaintiffs' recovery is barred by the doctrine of collateral estoppel.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Implied and Expressed Warranties)**

- 54. Defendant TNT restates the above as if fully set forth herein.
- 55. Plaintiffs' recovery is barred by any applicable implied or expressed warranties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Implied Covenants)**

- 56. Defendant TNT restates the above as if fully set forth herein.
- 57. Plaintiffs' recovery is barred by any applicable implied covenants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Conditions Precedent)**

- 58. Defendant TNT restates the above as if fully set forth herein.
- 59. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint, which is denied, or a court finds that a contract exists, Plaintiffs' claims are barred by Plaintiffs' failure to satisfy conditions precedent.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages-Unconstitutional)**

60. Defendant TNT restates the above as if fully set forth herein.

61. Plaintiffs' claims for punitive damages, if any, separately and severally, are unconstitutional under federal law for the following reasons:

The imposition of punitive damages in this case would violate the Due Process Clause of Amendments V, VI, and XIV to the United States Constitution, and the applicable state constitutional clauses in the South Carolina State Constitution. The present practice of affording juries inappropriate discretion in awarding punitive damages, along with the practice of allowing the imposition of punitive damages pursuant to unconstitutionally vague standards without any meaningful review violates and deprives the Defendant of their right to due process of law under the federal constitution by:

- a. Failing to provide sufficient meaningful, objective, and specific standards by which juries may decide whether to award punitive damages and determine the amount of punitive damage awards;
- b. Failing to provide sufficiently meaningful, objective, and specific standards by which juries may impose punitive damages based on the culpability of the alleged tortfeasors;
- c. Failing to provide sufficiently meaningful, objective and specific standards by which juries may award punitive damages against multiple Defendants for different alleged acts of wrongdoing;
- d. Failing to provide sufficiently meaningful, objective, and specific standards by which juries may award separate judgments against alleged joint tortfeasors;

- e. Failing to provide sufficiently meaningful, objective, and specific standards for the review of awards of punitive damages such that there is a sufficiently definite and meaningful process for reviewing and evaluating such awards;
- f. Failing to provide a meaningful procedure for challenging excessiveness of such awards; and/or
- g. Failing to set the burden of proof upon the plaintiffs at an appropriately high level. The imposition of punitive damages in this case would violate the Equal Protection Clause of Amendments V and XIV of the United States Constitution to the extent that: 1) the amount of punitive damages is assessed based on the defendant's wealth and 2) the absence of sufficiently specific and objective standards for the imposition of punitive damages fails to ensure equality of treatment between similarly situated civil defendants in different cases;

The punitive damages sought violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution in one of more of the following respects:

- a. The punitive damages claimed may be vastly disproportionate to any actual damages sustained by Plaintiffs (which are denied); and
- b. The award of punitive damages would constitute an arbitrary and capricious taking of the property of the defendant which is unjust and not for the purposes of any legitimate government interest.

The assessment and adjudication against this defendant in the amount of any punitive damages other than those measured to their sole individual wrongdoing would be improper.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unconscionability)**

62. Defendant TNT restates the above as if fully set forth herein.

63. Plaintiffs are barred from recovery in this matter as all agreements, if any, were unconscionable, and the existence of any such agreement is denied.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Capacity)**

64. Defendant TNT restates the above as if fully set forth herein.

65. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, neither Plaintiffs nor any one member of Defendant TNT has the capacity to bind Defendant TNT to any alleged contract.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Fraud in the Inducement)**

66. Defendant TNT restates the above as if fully set forth herein.

67. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, the institution of such contract was the result of fraud by misrepresenting the scope of the agreement.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Violation of Public Policy)**

68. Defendant TNT restates the above as if fully set forth herein.

69. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, the nature of the operation of the business under the alleged contract violates public policy.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Additional Defenses)**

70. Defendant TNT restates the above as if fully set forth herein.

71. Defendant TNT hereby gives notice that it intends to rely upon other affirmative defenses that may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.

72. Defendant TNT specifically denies all allegations not specifically admitted.

**FURTHER ANSWERING AND AS A FIRST COUNTERCLAIM AGAINST PLAINTIFF
TNW and MORE, LLC
(Trespass)**

73. Defendant TNT restates the above as if fully set forth herein.

74. Defendant TNT owns the land located at 4474 Waterfront Avenue, Little River, SC 29566, as well as the adjacent parking lot.

75. Plaintiffs intentionally, deliberately and affirmatively placed personal property upon land owned by Defendant TNT without permission and has refused to remove it.

76. Plaintiffs' trespass upon Defendant TNT's land has damaged Defendant TNT's business interest.

**FURTHER ANSWERING AND AS A SECOND COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Negligence)**

77. Defendant TNT restates the above as if fully set forth herein.

78. Plaintiff TNW has a duty to Defendant TNT to operate its business in a safe and unobtrusive manner.

79. Plaintiff TNW knowingly, willfully and recklessly breached that duty in one or more of the following particulars, including but not limited to:

- a) Failure to obtain proper licensing
- b) Failure to adhere to city, county and state laws and regulations
- c) Failure to properly secure dangerous equipment
- d) Failure to maintain liability insurance
- e) Failure to follow safety procedures
- f) Failure to maintain equipment

g) Failure to acquire appropriate permitting for equipment

80. Plaintiff TNW's breach is a direct and proximate cause of damages to Defendant TNT.

81. Defendant TNT has suffered damage as a result of Plaintiff TNW's breach of its duty.

**FURTHER ANSWERING AND AS A THIRD COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Negligence Per Se)**

82. Defendant TNT restates the above as if fully set forth herein.

83. Plaintiff TNW has knowingly, willingly and recklessly violated local, federal and state statutes in one or more of the following particulars, including but not limited to:

- a) Failure to obtain a business license
- b) Failure to obtain proper permitting for fueling equipment
- c) Failure to properly store equipment
- d) Failure to maintain commercial liability insurance

84. The statutes and regulations were designed to protect against the type of damages suffered by Defendant TNT.

85. Defendant TNT is a member of the class of persons the above statutes and regulations were designed to protect.

**FURTHER ANSWERING AND AS A FOURTH COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Tortious Interference with Contract)**

86. Defendant TNT restates the above as if fully set forth herein.

87. Plaintiff TNW has knowingly and intentionally interfered with Defendant TNT's business operations and contracts, both anticipated and in existence.

88. Plaintiff TNW acted with an improper purpose and used improper methods without justification in interfering with Defendant TNT's business operations and contracts, both anticipated and in existence.

89. Plaintiff TNW's interference has damaged Defendant TNT.

**FURTHER ANSWERING AND AS A FIFTH COUNTERCLAIM AGAINST PLAINTIFF
TNW and MORE, LLC
(Breach of Contract)**

90. Defendant TNT restates the above as if fully set forth herein.

91. Defendant TNT denies the existence of any contract between Defendant TNT and Plaintiff TNW, but sets forth this counterclaim arguing in the alternative as follows:

- a. To the extent a contract is found to exist, the terms, thereof, which have been denied, were violated by Plaintiff TNW by exceeding the scope of the agreement and in failing to adhere to terms, as they have alleged exist
- b. The breach of the contract, which is again denied, resulted in damages to Defendant TNT.
- c. Defendant TNT is entitled to damages.

**FURTHER ANSWERING AND AS A SIXTH COUNTERCLAIM AGAINST
DEFENDANT TNW AND MORE, LLC
(Judicial Dissolution)**

92. Defendant TNT restates the above as if fully set forth herein.

93. Defendant TNT denies any contractual obligation to any joint venture with Plaintiffs, named or unnamed.

94. To the extent a joint venture is found to exist, Defendant TNT and Plaintiffs are deadlocked in the management of the corporate affairs and have never been able to cooperate, the shareholders are unable to break the deadlock or cooperate in anyway, and irreparable injury to the alleged joint venture is threatened or is being suffered, or the business and affairs of the alleged joint venture can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

95. Plaintiffs' have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder.

96. The corporate assets are being misapplied or wasted.

97. The joint venture has abandoned its business and has failed, within a reasonable time, to dissolve, to liquidate its affairs, or to distribute its remaining property among its shareholders.

98. It is just and equitable that any alleged joint venture be dissolved by this Court.

**FUTHER ANSWERING AND AS A FIRST CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Breach of Fiduciary Duty)**

99. Defendant TNT restates the above as if fully set forth herein.

100. Defendant Timothy Kettner was a member of Defendant TNT's company.

101. As a member of Defendant TNT's company, Defendant Timothy Kettner had a fiduciary duty to act in the best interest of the company.

102. Defendant Timothy Kettner failed to act in the best interest of the company.

103. As a result of Defendant Timothy Kettner's breach of his fiduciary duty to Defendant TNT, Defendant TNT suffered damages.

**FUTHER ANSWERING AND AS A SECOND CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Fraud/Misrepresentation)**

104. Defendant TNT restates the above as if fully set forth herein.

105. While a member of Defendant TNT, Defendant Timothy Kettner, acting as an individual outside the scope of his membership in Defendant TNT, made the following false representations to Defendant TNT:

a) the nature of Defendant Timothy Kettner's relationship with Plaintiffs;

b) the extent to which he attempted to bind Defendant TNT in a joint venture agreement, the existence of which is denied, with Plaintiffs; and

c) the terms of Defendant Timothy Kettner's agreements with Plaintiffs.

106. These falsities were material to the operation of Defendant TNT's business, as Defendant Timothy Kettner attempted to bind Defendant TNT and obligate Defendant TNT for an unknown and unascertainable length of time to Plaintiffs' corporate interest.

107. Defendant Timothy Kettner knew that these representations were false and intended these representations to induce certain acts by Defendant TNT.

108. Defendant TNT had no knowledge and no cause to know that Defendant Timothy Kettner's representations were false.

109. Defendant TNT had reason to rely upon the truth of Defendant Timothy Kettner's representations, as he was a member of the corporate and a fiduciary.

110. As a result of Defendant Timothy Kettner's false statements to Defendant TNT, Defendant TNT has sustained and continues to accrue damages as a direct and proximate result of Defendant Timothy Kettner's falsehoods mentioned above.

**FUTHER ANSWERING AND AS A THIRD CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Negligent Misrepresentation)**

111. Defendant TNT restates the above as if fully set forth herein.

112. While a member of Defendant TNT, Defendant Timothy Kettner, acting as an individual outside the scope of his membership in Defendant TNT, made the following false representations to Defendant TNT:

a) the nature of Defendant Timothy Kettner's relationship with Plaintiffs;

b) the extent to which he attempted to bind Defendant TNT in a joint venture agreement, the existence of which is denied, with Plaintiffs; and

c) the terms of Defendant Timothy Kettner's agreements with Plaintiffs.

113. Defendant Timothy Kettner has a pecuniary interest in both Plaintiffs' LLC and Defendant TNT as a result of his membership in both corporations; at times this interest overlapped.

114. As a member of Defendant TNT's company, Defendant Timothy Kettner had a fiduciary duty to act in the best interest of the company of Defendant TNT's corporation.

115. Defendant Timothy Kettner failed to exercise reasonable care and breached his duty to Defendant TNT by making false representations to Defendant TNT and Plaintiffs.

116. Defendant TNT justifiably relied on Defendant Timothy Kettner's veracity and truthfulness as a fiduciary of the company.

117. As a result of Defendant Timothy Kettner's false statements to Defendant TNT, Defendant TNT has sustained and continues to accrue damages as a direct and proximate result of Defendant Timothy Kettner's falsehoods mentioned above.

WHEREFORE, Defendant TNT prays that this Honorable Court will dismiss the claims in Plaintiffs' Second Amended Verified Complaint, issue an order in favor of Defendant TNT, find against Plaintiffs in favor of Defendant TNT's Counterclaims, find against Defendant Timothy Kettner's in favor of Defendant TNT's Crossclaims, and award Defendant TNT damages, including but not limited to attorneys' fees and costs.

Respectfully Submitted:

s/Michael Harrison

Michael S. Harrison, Esq.
SC Bar No.: 100462
Attorney for TNT and More, Inc.
d/b/a Crab Catchers on the Waterfront
Murray Law Group, LLC
4214 Mayfair Street, Suite B
Myrtle Beach, SC 29577
Telephone: 843-445-9933
michaelharrison@murraylaw.info

This 13th day of September, 2022.
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	CIVIL ACTION NO.: 2021-CP-26-01512
	)	
Thomas Wade Long and Clyde Kiser,	)	AMENDED
Individually and on behalf of TNW and	)	ANSWER, COUNTERCLAIMS AND
More, LLC, and TNW and More, LLC,	)	CROSSCLAIMS OF
	)	TNT AND MORE, INC. d/b/a CRAB
Plaintiffs,	)	CATCHERS ON THE WATERFRONT
vs.	)	TO PLAINTIFFS' SECOND AMENDED
	)	VERIFIED COMPLAINT
	)	
Timothy D. Kettner, Donald Kettner, Jose	)	
Bernardino Morales, Casey Kuzmik, Robert	)	
Benoit and TNT and More, Inc. d/b/a Crab	)	
Catchers on the Waterfront,	)	
	)	
Defendants.	)	

COMES NOW Defendant TNT and More, Inc. d/b/a Crab Catchers on the Waterfront (hereinafter as Defendant TNT), by and through the undersigned counsel amending its Answer to Plaintiffs Thomas Wade Long, Clyde Kiser, individually and on behalf of TNW and More, LLC, and TNW and More, LLC's (hereinafter collectively as Plaintiffs) Second Amended Verified Complaint, presenting Counterclaims against Plaintiff TNW and More, LLC (hereinafter individually as Plaintiff TNW), and presenting Crossclaims against Defendant Timothy D. Kettner (hereinafter as Defendant Timothy Kettner) as follows:

1. Defendant TNT denies each and every allegation of Plaintiffs' Second Amended Verified Complaint not specifically admitted herein.
2. Defendant TNT admits the allegations in Paragraph 1 of Plaintiffs' Second Amended Verified Complaint.

3. Defendant TNT admits the allegations of Paragraph 2 insofar as Donald Kettner, Casey Kuzmik and Robert Benoit are residents of Horry County, South Carolina. The remaining allegations contained in Paragraph 2 are denied and strict proof thereof is demanded.
4. Defendant TNT admits the allegations in Paragraph 3 of Plaintiffs' Second Amended Verified Complaint.
5. Defendant TNT admits the allegations of Paragraph 4 insofar as Defendant TNT is a South Carolina corporation which transacts business in the State of South Carolina as Crab Catchers on the Waterfront and that Donald Kettner is a shareholder of Defendant TNT. The remaining allegations contained in Paragraph 4 are denied and strict proof thereof is demanded.
6. Defendant TNT denies the allegations of Paragraphs 5 through 20 and demands strict proof thereof.
7. No response is required to Paragraph 21. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
8. Defendant TNT is without sufficient information to respond to Paragraphs 22 through 25 and therefore denies the same and demands strict proof thereof.
9. No response is required to Paragraph 26. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
10. Defendant TNT denies the allegation in Paragraphs 27 through 28 and demands strict proof thereof.
11. No response is required to Paragraph 29. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.
12. Defendant TNT denies the allegation in Paragraphs 30 through 31 and demands strict proof thereof.

13. No response is required to Paragraphs 32 through 37, as the allegation(s) are not directed at Defendant TNT. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.

14. No response is required to Paragraph 38. To the extent a response is required, Defendant TNT denies the same and demands strict proof thereof.

15. To the extent the allegations contained in Paragraphs 39 through 41 are directed at Defendant TNT, Defendant TNT denies the same and demands strict proof thereof.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim for Relief)**

16. Defendant TNT restates the above as if fully set forth herein.

17. Plaintiffs' Second Amended Verified Complaint fails to state a claim for relief for which this Honorable Court can provide relief under the South Carolina Rules of Civil Procedure Rule 12(b)(6).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)**

18. Defendant TNT restates the above as if fully set forth herein.

19. Plaintiffs' claims are barred by the applicable statute of limitations.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

20. Defendant TNT restates the above as if fully set forth herein.

21. Plaintiffs' recovery is barred, in whole or in part, due to Plaintiffs' own failure to mitigate damages.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Intervening Acts of Third Parties)**

22. Defendant TNT restates the above as if fully set forth herein.

23. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Defendant TNT and not under the domain or control of Defendant TNT.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Join Necessary Parties)**

24. Defendant TNT restates the above as if fully set forth herein.

25. Plaintiffs have failed to join a party necessary to this litigation as required by SCRCR Rule 19, and Plaintiffs' Second Amended Verified Complaint should be dismissed pursuant to SCRCR Rule 12(b)(7).

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)**

26. Defendant TNT restates the above as if fully set forth herein.

27. Plaintiffs' damages, if any, are the direct and proximate result of their own comparative and/or contributory negligence and Plaintiffs' recovery should be barred, or alternatively reduced proportionately to Plaintiffs' comparative negligence.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Sole Negligence)**

28. Defendant TNT restates the above as if fully set forth herein.

29. Plaintiffs' damages, if any, were solely due to, resulted from, and/or were caused by the negligence, carelessness, wantonness, and willfulness by Plaintiffs and/or third parties beyond the control of Defendant TNT.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Expiration of Express/Implied Warranties)**

30. Defendant TNT restates the above as if fully set forth herein.

31. Any expressed or implied warranties alleged to exist, which are denied, have expired and/or were rendered void.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Perform)**

32. Defendant TNT restates the above as if fully set forth herein.

33. Defendant TNT does not concede that any contract existed, but in the event the Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery due to Plaintiffs' failure to perform on any agreement alleged to exist between the parties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Indefiniteness)**

34. Defendant TNT restates the above as if fully set forth herein.

35. Defendant TNT does not concede that any contract existed, but to the extent Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery due to the indefinite nature of any agreement alleged to exist between the parties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Consideration)**

36. Defendant TNT restates the above as if fully set forth herein.

37. Parties lacked consideration sufficient to form a contract.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)**

38. Defendant TNT restates the above as if fully set forth herein.

39. Plaintiffs and Defendant TNT entered into an accord and satisfaction for valuable consideration discharging any agreements, if any existed or do presently exist, and all disputes arising out of the subject matter contained in the Plaintiffs' Second Amended Verified Complaint.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Frauds)**

40. Defendant TNT restates the above as if fully set forth herein.

41. Defendant TNT does not concede that any contract existed, but in the event the Plaintiffs' Second Amended Verified Complaint infers a contract exists or it is found by a court that a contract exists between the parties, Plaintiffs are barred from recovery under statute of frauds pursuant to SC Code §32-3-10, et seq.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Waiver, Release, and License)**

42. Defendant TNT restates the above as if fully set forth herein.

43. All or parts of the claims in the Plaintiffs' Second Amended Verified Complaint are barred by the doctrines of waiver, release, and or license.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Limitation of Remedy or Disclaimers)**

44. Defendant TNT restates the above as if fully set forth herein.

45. Defendant TNT pleads and incorporates the terms of any limitation of remedy or disclaimers in any applicable contract or warranty, if any, as a bar to any recovery.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)**

46. Defendant TNT restates the above as if fully set forth herein.

47. Plaintiffs' recovery is barred by the Plaintiffs' unclean hands.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Laches)**

- 48. Defendant TNT restates the above as if fully set forth herein.
- 49. Plaintiffs' recovery is barred by the doctrine of laches.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Judicial Estoppel and Res Judicata)**

- 50. Defendant TNT restates the above as if fully set forth herein.
- 51. Plaintiffs' recovery is barred by the doctrine of judicial estoppel and/or res judicata.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Collateral Estoppel)**

- 52. Defendant TNT restates the above as if fully set forth herein.
- 53. Plaintiffs' recovery is barred by the doctrine of collateral estoppel.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Implied and Expressed Warranties)**

- 54. Defendant TNT restates the above as if fully set forth herein.
- 55. Plaintiffs' recovery is barred by any applicable implied or expressed warranties.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Implied Covenants)**

- 56. Defendant TNT restates the above as if fully set forth herein.
- 57. Plaintiffs' recovery is barred by any applicable implied covenants.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Conditions Precedent)**

- 58. Defendant TNT restates the above as if fully set forth herein.
- 59. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint, which is denied, or a court finds that a contract exists, Plaintiffs' claims are barred by Plaintiffs' failure to satisfy conditions precedent.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Punitive Damages-Unconstitutional)**

60. Defendant TNT restates the above as if fully set forth herein.

61. Plaintiffs' claims for punitive damages, if any, separately and severally, are unconstitutional under federal law for the following reasons:

The imposition of punitive damages in this case would violate the Due Process Clause of Amendments V, VI, and XIV to the United States Constitution, and the applicable state constitutional clauses in the South Carolina State Constitution. The present practice of affording juries inappropriate discretion in awarding punitive damages, along with the practice of allowing the imposition of punitive damages pursuant to unconstitutionally vague standards without any meaningful review violates and deprives the Defendant of their right to due process of law under the federal constitution by:

- a. Failing to provide sufficient meaningful, objective, and specific standards by which juries may decide whether to award punitive damages and determine the amount of punitive damage awards;
- b. Failing to provide sufficiently meaningful, objective, and specific standards by which juries may impose punitive damages based on the culpability of the alleged tortfeasors;
- c. Failing to provide sufficiently meaningful, objective and specific standards by which juries may award punitive damages against multiple Defendants for different alleged acts of wrongdoing;
- d. Failing to provide sufficiently meaningful, objective, and specific standards by which juries may award separate judgments against alleged joint tortfeasors;

- e. Failing to provide sufficiently meaningful, objective, and specific standards for the review of awards of punitive damages such that there is a sufficiently definite and meaningful process for reviewing and evaluating such awards;
- f. Failing to provide a meaningful procedure for challenging excessiveness of such awards; and/or
- g. Failing to set the burden of proof upon the plaintiffs at an appropriately high level. The imposition of punitive damages in this case would violate the Equal Protection Clause of Amendments V and XIV of the United States Constitution to the extent that: 1) the amount of punitive damages is assessed based on the defendant's wealth and 2) the absence of sufficiently specific and objective standards for the imposition of punitive damages fails to ensure equality of treatment between similarly situated civil defendants in different cases;

The punitive damages sought violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution in one of more of the following respects:

- a. The punitive damages claimed may be vastly disproportionate to any actual damages sustained by Plaintiffs (which are denied); and
- b. The award of punitive damages would constitute an arbitrary and capricious taking of the property of the defendant which is unjust and not for the purposes of any legitimate government interest.

The assessment and adjudication against this defendant in the amount of any punitive damages other than those measured to their sole individual wrongdoing would be improper.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unconscionability)**

62. Defendant TNT restates the above as if fully set forth herein.

63. Plaintiffs are barred from recovery in this matter as all agreements, if any, were unconscionable, and the existence of any such agreement is denied.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Lack of Capacity)**

64. Defendant TNT restates the above as if fully set forth herein.

65. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, neither Plaintiffs nor any one member of Defendant TNT has the capacity to bind Defendant TNT to any alleged contract.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Fraud in the Inducement)**

66. Defendant TNT restates the above as if fully set forth herein.

67. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, the institution of such contract was the result of fraud by misrepresenting the scope of the agreement.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Violation of Public Policy)**

68. Defendant TNT restates the above as if fully set forth herein.

69. To the extent a contract is inferred by Plaintiffs' Second Amended Verified Complaint or a court finds that a contract exists, the nature of the operation of the business under the alleged contract violates public policy.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Additional Defenses)**

70. Defendant TNT restates the above as if fully set forth herein.

71. Defendant TNT hereby gives notice that it intends to rely upon other affirmative defenses that may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.

72. Defendant TNT specifically denies all allegations not specifically admitted.

**FURTHER ANSWERING AND AS A FIRST COUNTERCLAIM AGAINST PLAINTIFF
TNW and MORE, LLC
(Trespass)**

73. Defendant TNT restates the above as if fully set forth herein.

74. Defendant TNT owns the land located at 4474 Waterfront Avenue, Little River, SC 29566, as well as the adjacent parking lot.

75. Plaintiffs intentionally, deliberately and affirmatively placed personal property upon land owned by Defendant TNT without permission and has refused to remove it.

76. Plaintiffs' trespass upon Defendant TNT's land has damaged Defendant TNT's business interest.

**FURTHER ANSWERING AND AS A SECOND COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Negligence)**

77. Defendant TNT restates the above as if fully set forth herein.

78. Plaintiff TNW has a duty to Defendant TNT to operate its business in a safe and unobtrusive manner.

79. Plaintiff TNW knowingly, willfully and recklessly breached that duty in one or more of the following particulars, including but not limited to:

- a) Failure to obtain proper licensing
- b) Failure to adhere to city, county and state laws and regulations
- c) Failure to properly secure dangerous equipment
- d) Failure to maintain liability insurance
- e) Failure to follow safety procedures
- f) Failure to maintain equipment

g) Failure to acquire appropriate permitting for equipment

80. Plaintiff TNW's breach is a direct and proximate cause of damages to Defendant TNT.

81. Defendant TNT has suffered damage as a result of Plaintiff TNW's breach of its duty.

**FURTHER ANSWERING AND AS A THIRD COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Negligence Per Se)**

82. Defendant TNT restates the above as if fully set forth herein.

83. Plaintiff TNW has knowingly, willingly and recklessly violated local, federal and state statutes in one or more of the following particulars, including but not limited to:

- a) Failure to obtain a business license
- b) Failure to obtain proper permitting for fueling equipment
- c) Failure to properly store equipment
- d) Failure to maintain commercial liability insurance

84. The statutes and regulations were designed to protect against the type of damages suffered by Defendant TNT.

85. Defendant TNT is a member of the class of persons the above statutes and regulations were designed to protect.

**FURTHER ANSWERING AND AS A FOURTH COUNTERCLAIM AGAINST
PLAINTIFF TNW and MORE, LLC
(Tortious Interference with Contract)**

86. Defendant TNT restates the above as if fully set forth herein.

87. Plaintiff TNW has knowingly and intentionally interfered with Defendant TNT's business operations and contracts, both anticipated and in existence.

88. Plaintiff TNW acted with an improper purpose and used improper methods without justification in interfering with Defendant TNT's business operations and contracts, both anticipated and in existence.

89. Plaintiff TNW's interference has damaged Defendant TNT.

**FURTHER ANSWERING AND AS A FIFTH COUNTERCLAIM AGAINST PLAINTIFF
TNW and MORE, LLC
(Breach of Contract)**

90. Defendant TNT restates the above as if fully set forth herein.

91. Defendant TNT denies the existence of any contract between Defendant TNT and Plaintiff TNW, but sets forth this counterclaim arguing in the alternative as follows:

- a. To the extent a contract is found to exist, the terms, thereof, which have been denied, were violated by Plaintiff TNW by exceeding the scope of the agreement and in failing to adhere to terms, as they have alleged exist
- b. The breach of the contract, which is again denied, resulted in damages to Defendant TNT.
- c. Defendant TNT is entitled to damages.

**FURTHER ANSWERING AND AS A SIXTH COUNTERCLAIM AGAINST PLAINTIFF
TNW AND MORE, LLC
(Judicial Dissolution)**

92. Defendant TNT restates the above as if fully set forth herein.

93. Defendant TNT denies any contractual obligation to any joint venture with Plaintiffs, named or unnamed.

94. To the extent a joint venture is found to exist, Defendant TNT and Plaintiffs are deadlocked in the management of the corporate affairs and have never been able to cooperate, the shareholders are unable to break the deadlock or cooperate in anyway, and irreparable injury to the alleged joint venture is threatened or is being suffered, or the business and affairs of the alleged joint venture can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

95. Plaintiffs' have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder.

96. The corporate assets are being misapplied or wasted.

97. The joint venture has abandoned its business and has failed, within a reasonable time, to dissolve, to liquidate its affairs, or to distribute its remaining property among its shareholders.

98. It is just and equitable that any alleged joint venture be dissolved by this Court.

**FURTHER ANSWERING AND AS A SEVENTH COUNTERCLAIM AGAINST
PLAINTIFFS TNW & MORE, LLC, THOMAS WADE LONG AND CLYDE KISER
(Malicious Prosecution)**

99. Defendant TNT restates the above as if fully set forth herein.

100. Plaintiffs instituted a civil action against Defendant TNT knowingly and maliciously alleging certain causes of action and claims for damages that Plaintiffs knew they had no basis to claim.

101. Plaintiffs cannot succeed on these claims and/or is unlikely to succeed on the claims.

102. As a result of Plaintiffs' malicious prosecution of the unsubstantiated civil claims, Defendant TNT has suffered damages, including but not limited to, attorneys' fees and costs.

**FURTHER ANSWERING AND AS AN EIGHTH COUNTERCLAIM AGAINST
PLAINTIFFS TNW & MORE, LLC, THOMAS WADE LONG AND CLYDE KISER
(Abuse of Process)**

103. Defendant TNT restates the above as if fully set forth herein.

104. Plaintiffs instituted a civil action against Defendant TNT with an ulterior motive other than the pursuit of justice.

105. Plaintiffs knowingly alleged multiple causes of action without support and/or having a good faith basis for pleading.

106. The force of Plaintiffs' Second Amended Verified Complaint was primarily designed to achieve an illegitimate purpose.

107. As a direct and proximate result of Plaintiffs' abuse of process, Defendant TNT has suffered damages, including but not limited to, attorneys' fees and costs.

**FURTHERING ANSWERING AND AS A NINTH COUNTERCLAIM AGAINST
PLAINTIFFS TNW & MORE, LLC, THOMAS WADE LONG AND CLYDE KISER
(Frivolous Claims)**

108. Defendant TNT restates the above as if fully set forth herein.

109. Plaintiffs filed the Second Amended Verified Complaint in this action in violation of S.C. Code §15-36-10.

110. All or some of Plaintiffs' claims in the Second Amended Verified Complaint are frivolous in nature such that no reasonable person would have believed that the claims were based in fact or that there was any evidentiary support for the claims.

111. As a result of Plaintiffs' frivolous claims, Defendant TNT has suffered damages, including but not limited to, attorneys' fees and costs.

**FURTHERING ANSWERING AND AS A TENTH COUNTERCLAIM AGAINST
PLAINTIFFS TNW & MORE, LLC, THOMAS WADE LONG AND CLYDE KISER
(Piercing the Corporate Veil/Alter Ego)**

112. Defendant TNT restates the above as if fully set forth herein.

113. Plaintiff TNW is the alter ego of Plaintiffs Thomas Wade Long and Clyde Kiser.

114. Plaintiffs TNW, Thomas Wade Long, and Clyde Kiser failed to observe the corporate form in one or more of the following particulars:

- 1) the corporation is grossly undercapitalized;
- 2) the corporation has failed to follow the corporate formalities;
- 3) the corporation has failed to pay dividends;

- 4) Plaintiffs Thomas Wade Long and Clyde Kiser have siphoned off the funds of the corporation;
- 5) There are no functioning officers of the corporation;
- 6) The corporation does not maintain corporate records; and
- 7) The corporation is merely a façade for the operations of Plaintiffs Thomas Wade Long and Clyde Kiser.

115. Plaintiffs Thomas Wade Long and Clyde Kiser used Plaintiff corporation TNW to defraud and/or commit other tortious acts against Defendant TNT resulting in damages to Defendant TNT.

116. Defendant TNT is entitled to a finding that Plaintiff TNW is merely the alter-ego of Plaintiffs Clyde Kiser and Thomas Wade Long, subjecting them to individual liability, in addition to their corporate liability.

**FUTHER ANSWERING AND AS A FIRST CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Breach of Fiduciary Duty)**

117. Defendant TNT restates the above as if fully set forth herein.

118. Defendant Timothy Kettner was a member of Defendant TNT's company.

119. As a member of Defendant TNT's company, Defendant Timothy Kettner had a fiduciary duty to act in the best interest of the company.

120. Defendant Timothy Kettner failed to act in the best interest of the company.

121. As a result of Defendant Timothy Kettner's breach of his fiduciary duty to Defendant TNT, Defendant TNT suffered damages.

**FUTHER ANSWERING AND AS A SECOND CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Fraud/Misrepresentation)**

122. Defendant TNT restates the above as if fully set forth herein.

123. While a member of Defendant TNT, Defendant Timothy Kettner, acting as an individual outside the scope of his membership in Defendant TNT, made the following false representations to Defendant TNT:

- a) the nature of Defendant Timothy Kettner's relationship with Plaintiffs;
- b) the extent to which he attempted to bind Defendant TNT in a joint venture agreement, the existence of which is denied, with Plaintiffs; and
- c) the terms of Defendant Timothy Kettner's agreements with Plaintiffs.

124. These falsities were material to the operation of Defendant TNT's business, as Defendant Timothy Kettner attempted to bind Defendant TNT and obligate Defendant TNT for an unknown and unascertainable length of time to Plaintiffs' corporate interest.

125. Defendant Timothy Kettner knew that these representations were false and intended these representations to induce certain acts by Defendant TNT.

126. Defendant TNT had no knowledge and no cause to know that Defendant Timothy Kettner's representations were false.

127. Defendant TNT had reason to rely upon the truth of Defendant Timothy Kettner's representations, as he was a member of the corporate and a fiduciary.

128. As a result of Defendant Timothy Kettner's false statements to Defendant TNT, Defendant TNT has sustained and continues to accrue damages as a direct and proximate result of Defendant Timothy Kettner's falsehoods mentioned above.

**FUTHER ANSWERING AND AS A THIRD CROSSCLAIM AGAINST DEFENDANT
TIMOTHY KETTNER
(Negligent Misrepresentation)**

129. Defendant TNT restates the above as if fully set forth herein.

130. While a member of Defendant TNT, Defendant Timothy Kettner, acting as an individual outside the scope of his membership in Defendant TNT, made the following false representations to Defendant TNT:

- a) the nature of Defendant Timothy Kettner's relationship with Plaintiffs;
- b) the extent to which he attempted to bind Defendant TNT in a joint venture agreement, the existence of which is denied, with Plaintiffs; and
- c) the terms of Defendant Timothy Kettner's agreements with Plaintiffs.

131. Defendant Timothy Kettner has a pecuniary interest in both Plaintiffs' LLC and Defendant TNT as a result of his membership in both corporations; at times this interest overlapped.

132. As a member of Defendant TNT's company, Defendant Timothy Kettner had a fiduciary duty to act in the best interest of the company of Defendant TNT's corporation.

133. Defendant Timothy Kettner failed to exercise reasonable care and breached his duty to Defendant TNT by making false representations to Defendant TNT and Plaintiffs.

134. Defendant TNT justifiably relied on Defendant Timothy Kettner's veracity and truthfulness as a fiduciary of the company.

135. As a result of Defendant Timothy Kettner's false statements to Defendant TNT, Defendant TNT has sustained and continues to accrue damages as a direct and proximate result of Defendant Timothy Kettner's falsehoods mentioned above.

WHEREFORE, Defendant TNT prays that this Honorable Court will dismiss the claims in Plaintiffs' Second Amended Verified Complaint, issue an order in favor of Defendant TNT, find against Plaintiffs in favor of Defendant TNT's Counterclaims, find against Defendant Timothy Kettner in favor of Defendant TNT's Crossclaims, and award Defendant TNT damages, including but not limited to attorneys' fees and costs.

Respectfully Submitted:

s/Michael Harrison

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December 12, 2023
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF HORRY CASE NO.: 2021-CP-26-1512

ORIGINAL

June 10 - 20, 2024

BEFORE: The Honorable Alex Hyman

THOMAS WADE LONG, CLYDE KISER, individually and on
behalf of TnW and MORE, LLC,

Plaintiffs,

vs.

TIMOTHY D. KETTNER, DONALD KETTNER, JOSE
BERNARDINO MORALES, CASEY KUZMIK, ROBERT BENOIT,
and TNT and MORE, INC., d/b/a CRAB CATCHERS ON THE
WATERFRONT,

Defendants.

APPEARANCES:

Tucker Player, Esq.
Stanley E. Barnett, Esq.
Appearing for the Plaintiffs.

Michael Harrison, Esq.
Howell V. Bellamy, III,
Appearing for the Defendants.

Ronald Richter, Esq.
Scott M. Mongillo, Esq.
Appearing for Defendant Timothy Kettner.

Official Stenographer Court Reporter
Natalie Dahl, RPR
Nationally Registered Professional Reporter

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Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(sic)	Indicates word(s) as spoken, but maybe in error

THE COURT AND ATTORNEYS

P R O C E E D I N G S

1
2 THE COURT: I just wanted to touch base on a
3 few things before we bring the jury panel up on
4 strikes and also voir dire. Has everyone had a
5 chance to look at everybody's proposed voir dire?
6 Any objections to any of the proposed voir dire?

7 MR. PLAYER: None from plaintiff.

8 THE COURT: There was a couple of things I
9 don't think is proper. There was one question
10 about do you take any medications. I think that is
11 a little too specific with jurors on that. I don't
12 mind asking them general questions like is there
13 anything that would interfere with your jury
14 service, but I don't want to get into a situation
15 where they tell me they take Zoloft or something.
16 I don't think that is proper. Some of these
17 questions should have been answered at the role
18 call: Are you married, single, where do you work,
19 those types of things. I won't reinvent the wheel
20 and ask those again.

21 I think that was the only thing I had
22 noticed. A few of the questions were combined.
23 Like there was one question, but it is three
24 questions. So I'll try to address those when I
25 can.

THE COURT AND ATTORNEYS

1 Any concern as far as strikes or number of
2 alternates? Do you think we'll need more than two
3 alternates?

4 MR. RICHTER: I don't think so.

5 MR. BELLAMY: No, Your Honor.

6 THE COURT: I say that to simply say I think
7 the last two trials I've had, we had to put an
8 alternate on; just putting it out there.

9 As far as strikes, defense understands
10 splitting strikes; is that correct? So I'll give
11 you -- once we get the sheets -- time to look at
12 that. After we are done with voir dire, we'll
13 break. Usually, I take 10 minutes. Do you think
14 that is a sufficient amount of time? Yeah? After
15 voir dire?

16 MR. RICHTER: Yes, sir.

17 THE COURT: We'll do that. That will give
18 the jury panel a chance to use the facilities if
19 they need to.

20 Scheduling purposes, again, are we talking
21 about sending the jury out after we pick them and
22 swearing them today or tomorrow morning? I'll
23 leave that up to you.

24 MR. PLAYER: They are going to be ornery by
25 the time they're picked because they haven't had

THE COURT AND ATTORNEYS

1 lunch. I'm fine swearing them in the morning.

2 MR. HARRISON: Same, Your Honor.

3 THE COURT: And I'll do the general
4 instructions that they don't do any research or
5 discuss anything, you know, the same as downstairs,
6 just a little more than downstairs.

7 So I'll go ahead and notify them downstairs
8 to bring the jury up. Anything else that we need
9 to take up before then?

10 MR. RICHTER: No, sir.

11 THE COURT: All right.

12 (Whereupon, a bench conference was had and a
13 break.)

14 THE COURT: Ladies and gentlemen, we're
15 about to begin the trial of Thomas Wade Long and
16 Clyde Kiser, individually and on behalf of TnW and
17 More, LLC, versus Timothy D. Kettner, Donald Kettner
18 TNT and More, Inc., doing business as Crab Catchers
19 on the Waterfront. Also named as defendants are
20 Jose Morales, Casey Kuzmik, Robert Benoit. But I
21 say all of that because we're about to begin that
22 case. Before we select the jury, there is several
23 questions which I will ask you.

24 Can I get the clerk to swear in the jury
25 panel, please.

THE COURT AND ATTORNEYS

1 (Whereupon, the prospective jury panel was
2 duly sworn.)

3 THE COURT: Ladies and gentlemen, the first
4 question I am going to ask is: Has anybody ever
5 been related by blood or marriage to any of the
6 plaintiffs? Again, the plaintiffs are Thomas Wade
7 Long, Clyde Kiser, individually and on behalf of
8 TnW and More, LLC. Is anybody related by blood or
9 marriage to any of those plaintiffs?

10 I next ask you: Has anyone ever been be
11 related by blood or marriage to Timothy D. Kettner,
12 Donald Kettner, Jose Bernardino Morales, Casey
13 Kuzmik, Robert Benoit, and TNT and More, Inc.,
14 doing business as Crab Catchers on the Waterfront?

15 MR. PLAYER: I think it is Robert Benoit.

16 THE COURT: Benoit, I'm sorry. Has anyone
17 had a close personal or social relationship with
18 any of the parties I just stated, plaintiffs or
19 defendants?

20 I'm going to ask the attorneys to introduce
21 themselves and any staff they may have and state
22 who they will be representing.

23 MR. PLAYER: Thank you, Your Honor.

24 I'm Tucker Player. I represent Wade Long,
25 Chris Kiser, and TnW and More, LLC. In the case,

THE COURT AND ATTORNEYS

1 we intend to call several witnesses: Wade, Chris,
2 a fellow by the name of Steve Crossen, Brett Todd,
3 Jose Morales, Geoff Hopkins, Nick Nye, and a fellow
4 by the name of Eric Rolf, and this is Stanley
5 Barnett.

6 MR. BARNETT: I'm Stan Barnett from Mount
7 Pleasant and will be assisting Mr. Player.

8 THE COURT: As to the attorneys that just
9 introduced themselves and their potential
10 witnesses, has anyone ever been related by blood or
11 marriage to any of the people just listed, or has
12 anyone had a close personal or social relationship
13 with any of these people, or has anyone been
14 represented by these attorneys or their firms? If
15 so, please stand.

16 MR. PLAYER: There is one more that we may
17 call, Jeddie Boone.

18 THE COURT: The same question for that
19 witness as well.

20 Thank you.

21 Mr. Bellamy or Mr. Harrison.

22 MR. HARRISON: Thank you, Your Honor. I'm
23 Michael Harrison. We represent -- along with
24 Mr. Howell Bellamy here -- the defendants: Donald
25 Kettner, Casey Kuzmik, Robert Benoit, and the TNT

THE COURT AND ATTORNEYS

1 and More, Inc., known as doing business as Crab
2 Catchers on the Waterfront. I'll let Mr. Bellamy
3 introduce himself.

4 MR. BELLAMY: My name is Howell Bellamy. I
5 am with Bellamy Law Firm located in Myrtle Beach,
6 South Carolina. And I've got -- one of the jurors
7 out there is a current client, so I will let the
8 Court know that, but aside from that, that is who I
9 am.

10 MR. HARRISON: We intend to call several
11 witnesses depending how this trial goes. There is
12 some overlap in this list, so bear with me.
13 Mr. Wade Long, who has been mentioned by the
14 plaintiff, Kimberly Bryant, Donald Kettner, Casey
15 Kuzmik, David Jordan, Anthony Young, Rhett
16 Sansbury, Barry Suggs, Matt Hines, Sergeant William
17 Dietzel, Robert Benoit, Justine Vaitis, Nick
18 Baxter, Thomas Keller, Tommy Smith, Wayne Beam,
19 Henrietta Golding, Rheta DiNovo, Brittany Miles,
20 Benjamin Stone, Timothy Kettner.

21 Nothing further, Your Honor.

22 THE COURT: Thank you.

23 Ladies and gentlemen, the same questions.
24 You heard a list of possible witnesses, and these
25 attorneys have introduced themselves. Has anyone

THE COURT AND ATTORNEYS

1 been related by blood or marriage to any of the
2 people listed on or have any close personal or
3 social relationship with any of these people, or
4 have they been represented by these attorneys or
5 their firms?

6 Yes, ma'am. What is your juror number?

7 JUROR: 260.

8 THE COURT: And your name is Ms. Niedzwiecki?

9 JUROR: Yes.

10 THE COURT: I'll excuse you from the trial of
11 this case. Thank you.

12 Counsel.

13 MR. RICHTER: May it please the Court, Your
14 Honor.

15 THE COURT: Yes.

16 MR. RICHTER: Good afternoon. My name is
17 Ronny Richter. I'm a lawyer from Charleston. This
18 is my partner, Scott Mongillo. And it is our honor
19 to represent Timothy Kettner. Tim originally is
20 from Wisconsin, but for years he has owned and
21 operated a restaurant called Crab Catchers. We'll
22 be brief. We're going to call Rebecca Martin and
23 Kim Bryant as witnesses. Thank you.

24 THE COURT: The same series of questions.
25 Has anyone ever been related by blood or marriage

THE COURT AND ATTORNEYS

1 to any of the people just listed as potential
2 witnesses, or have any close social relationship or
3 personal relationships with any of those witnesses,
4 or have any members of the jury panel ever been
5 represented by any of the attorneys or law firms
6 that were just introduced? If you have, please
7 stand.

8 And I'll also ask the question: Has anyone
9 ever been related by blood or marriage or have any
10 close or personal relationship with any of the
11 lawyers who have introduced themselves? If you
12 have, or do, please stand.

13 All right. Ladies and gentlemen, you heard
14 the parties in this case. I want to ask the next
15 question: Has any member of the jury room formed
16 or expressed an opinion about any issue or matters
17 in this case? Again, you've heard nothing in
18 regards to what the case is about, so you shouldn't
19 have any opinions, but regardless, I'll ask that
20 question. Have you formed any opinions already or
21 have any expressed opinions, please let me know.

22 Has any member of the jury panel aware of any
23 bias or prejudice towards any of the parties in
24 this case? If you have any, please stand.

25 All right. What I'm going to do, ladies and

THE COURT AND ATTORNEYS

1 gentlemen, there is additional voir dire questions
2 that have been proposed by the parties in these
3 matters, so I'm going to go through those. I may
4 change them a little around or ask them in a
5 different way.

6 If you have lived in Horry County for over
7 ten years, I'm going to ask that you stand.

8 All right. You in the front, juror number?

9 JUROR: 264.

10 THE COURT: We're going to each row and say
11 your juror number. This is if you have lived in
12 Horry County over ten years.

13 Yes, ma'am.

14 JUROR: 135.

15 JUROR: 30.

16 JUROR: 93.

17 THE COURT: 93.

18 JUROR: 163.

19 THE COURT: 163.

20 JUROR: 178.

21 THE COURT: You all in the front row can sit
22 down.

23 JUROR: 277.

24 THE COURT: 277.

25 JUROR: 102.

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1 THE COURT: 102.
2 JUROR: 296.
3 THE COURT: You in the second row can sit
4 down.
5 I'm sorry, sir, in the blue shirt?
6 JUROR: 296.
7 JUROR: 152.
8 JUROR: 251.
9 JUROR: 170.
10 THE COURT: Okay. Start on this end.
11 JUROR: 378.
12 JUROR: 37.
13 JUROR: 226.
14 JUROR: 339.
15 JUROR: 177.
16 THE COURT: All right. You can have a seat.
17 JUROR: 94.
18 JUROR: 289.
19 JUROR: 168.
20 JUROR: 288.
21 JUROR: 383.
22 JUROR: 223.
23 JUROR: 269.
24 THE COURT: 269?
25 JUROR: 269.

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1 JUROR: 374.

2 THE COURT: All right.

3 JUROR: 104.

4 JUROR: 20.

5 JUROR: 229.

6 JUROR: 373.

7 JUROR: 103.

8 THE COURT: My next question is: How many
9 have lived in Horry County over 25 years? Please
10 stand. All right.

11 Yes, ma'am.

12 JUROR: 135.

13 JUROR: 30.

14 JUROR: 178.

15 JUROR: 277.

16 JUROR: 296.

17 JUROR: 251.

18 JUROR: 170.

19 JUROR: 37.

20 THE COURT: Start on this end.

21 JUROR: 94.

22 JUROR: 288.

23 JUROR: 374.

24 JUROR: 104.

25 JUROR: 20.

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1 JUROR: 229.

2 JUROR: 373.

3 THE COURT: All right. Counsel, is that
4 sufficient as far as the number of times?

5 MR. HARRISON: Yes, Your Honor.

6 THE COURT: We previously asked this question
7 in regards to health issues that could potentially
8 limit your jury service. I think we had that
9 covered, but if there is anything in regards to
10 health that you think would interfere with your
11 ability to serve and be present every day and be
12 attentive, I would ask that you come up here and
13 we'll discuss it, if there is anything that you
14 haven't already discussed.

15 All right.

16 (A brief pause in the proceedings.)

17 THE COURT: Ladies and gentlemen, the next
18 question deals with employment, but a little bit
19 different than your general employment. The
20 question is: Do you now or have you ever owned
21 your own business? If so, did you have partners in
22 the business?

23 So what I'll do is if you have owned a
24 business, I'll ask that you stand. And then I'll
25 ask the question if you had partners in that

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1 business.

2 If you have ever owned your own business,
3 please stand.

4 Yes, sir, in the front with blue.

5 JUROR: 30.

6 THE COURT: Did you own your own business?

7 JUROR: Yes. I'm a shareholder in Conway Air
8 Conditioning.

9 THE COURT: So you have partners?

10 JUROR: Yes.

11 THE COURT: Thank you, sir.

12 Yes.

13 JUROR: No. 163. I'm a self-employed
14 musician and singer/song writer, and I have -- I'm
15 the sole owner of that.

16 THE COURT: We may have to get you to sing
17 later.

18 JUROR: Okay.

19 THE COURT: I'm a musician as well. I love
20 it.

21 Yes, ma'am.

22 JUROR: 178. Myself and my brother were in
23 business together in a gift shop in Myrtle Beach.

24 THE COURT: So you had a partner?

25 JUROR: Yes. And he has it now on his own.

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1 THE COURT: Okay.

2 Yes, ma'am.

3 JUROR: 315. My husband and I own a
4 landscaping business.

5 THE COURT: Just the two of you?

6 JUROR: Yes.

7 THE COURT: Yes, ma'am.

8 JUROR: 68.

9 THE COURT: All right.

10 JUROR: Accounting services. Just me.

11 THE COURT: Just you.

12 Yes, sir.

13 JUROR: 198. Currently have a partner in a
14 CPA firm. Previously had other partners as well.

15 THE COURT: Thank you, sir.

16 Yes, ma'am.

17 JUROR: 351. I had a partnership with
18 environmental protection doing wetlands.

19 THE COURT: Yes, ma'am.

20 JUROR: Landscaping -- I mean, an irrigation
21 company.

22 THE COURT: What is your number?

23 JUROR: 152.

24 THE COURT: You had partners?

25 JUROR: Yes. My husband and I and my sister

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1 and her husband.

2 THE COURT: Thank you.

3 Over here.

4 JUROR: 37. Sole proprietor.

5 JUROR: 226. I have a CPA firm. No
6 partners.

7 THE COURT: Thank you.

8 JUROR: 168. Law firm with a partner.

9 THE COURT: Thank you.

10 Yes, sir.

11 JUROR: 87. I had my own air conditioning
12 company. No partners.

13 THE COURT: Yes, sir.

14 JUROR: 108. Auto body repair, and no
15 partners.

16 JUROR: 74. I retired, but do AirBnb with my
17 husband.

18 THE COURT: Thank you.

19 The next question is -- it involves, again,
20 if you have ever been a part of a lawsuit. If you
21 have ever been sued in a lawsuit or if you have
22 sued anyone in a lawsuit, I'm going to ask you to
23 stand. I'm not going to ask you what it was about
24 or anything like that, but I would like to know
25 whether or not you were the defendant or the

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1 plaintiff. So, again, if you have been involved in
2 a lawsuit, whether you have sued anybody yourself
3 or been sued, please stand.

4 Yes, ma'am. Plaintiff or defendant?

5 JUROR: The plaintiff.

6 THE COURT: Your number?

7 JUROR: 354.

8 THE COURT: All right. I'm sorry, I didn't
9 see you.

10 JUROR: It wasn't here. It was in New York.
11 I was a part of a lawsuit against the city.

12 THE COURT: So you were the plaintiff?

13 JUROR: Yes.

14 THE COURT: What was your number?

15 JUROR: 88.

16 THE COURT: Thank you.

17 Have any of you ever worked in a law office
18 or do you have any legal training or education? If
19 you have worked in a law office or had any legal
20 training or education, please stand.

21 Yes, ma'am.

22 JUROR: 354. Worked in a law office in
23 California a long time ago.

24 THE COURT: What was your duties in that, a
25 paralegal?

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1 JUROR: No. Accounting, setting up the
2 computer system.

3 THE COURT: Thank you.

4 Yes, ma'am.

5 JUROR: 168. I've worked in a law firm for
6 23 years.

7 THE COURT: Are you an attorney?

8 JUROR: Yes.

9 THE COURT: What was that number again?

10 JUROR: 168.

11 THE COURT: Thank you.

12 Yes, ma'am, in the back.

13 JUROR: 71. I answered phones like 30 years
14 ago.

15 THE COURT: How long did you work at the law
16 firm?

17 JUROR: Four years.

18 THE COURT: Thank you.

19 All right. The next question is with
20 military service. Is there any member of the jury
21 panel that is a veteran or currently serving in the
22 military? If so, please stand.

23 Yes, sir.

24 JUROR: 79. Six years in the Air Force.

25 THE COURT: I appreciate your service. Thank

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1 you.

2 Yes, ma'am.

3 JUROR: 277. Two years Army National Guard.

4 THE COURT: Thank you, yes, sir.

5 JUROR: 89. Four years active duty, 30 years
6 Air Force Reserves, retired.

7 THE COURT: Thank you.

8 JUROR: Juror 301. Four years in the Navy.

9 THE COURT: 301?

10 JUROR: Yes.

11 THE COURT: Yes, ma'am.

12 JUROR: 166. National Guard for eight years.

13 THE COURT: Yes, sir.

14 JUROR: 177. Three years, regular Army,
15 three years National Guard.

16 THE COURT: Thank you. I appreciate all of
17 you. Thank you for your service.

18 The next question deals with has anyone ever
19 been employed by Longshot Charters, Little River
20 Water Sports, Crab Catchers on the Waterfront, or
21 Longshot TV? If you have, please stand.

22 Does anyone know Councilman Harold Worley?
23 If you know Harold Worley, please stand.

24 JUROR: Juror 163. I don't know him
25 personally, but because of my music business, I

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1 know who he is. He is a councilman in North Myrtle
2 Beach, but we're not personal friends or anything
3 like that.

4 THE COURT: Thank you for letting be me know.

5 Has anyone ever worked for or contributed to
6 Harold Worley's political campaigns? If so, please
7 stand.

8 Has anyone ever been involved with any kind
9 of dispute with Horry County or any other county
10 officials? If so, please stand. I believe we had
11 someone stand that said New York. But, again, this
12 would be Horry County or any of Horry County's
13 officials, please stand.

14 Has anyone ever been employed by Horry
15 County? If so, please stand.

16 Yes, ma'am.

17 JUROR: 135. Horry County School District.

18 THE COURT: You were employed with them?

19 JUROR: Yeah.

20 THE COURT: Thank you.

21 Yes, ma'am.

22 JUROR: 378. Horry County Schools as well.

23 JUROR: 351. Horry County School District.

24 THE COURT: All right.

25 JUROR: 102. Horry County Schools.

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1 THE COURT: On the front row.

2 JUROR: 178. Horry County School District.

3 JUROR: 170. Horry County School District.

4 THE COURT: Yes, sir.

5 JUROR: As a contractor?

6 THE COURT: Just employed. But if you were
7 employed with a contract -- what your number?

8 JUROR: 30.

9 THE COURT: Yes, ma'am.

10 JUROR: 46. Horry County school teacher.

11 JUROR: 374. Horry County.

12 JUROR: 229.

13 THE COURT: Were you employed with Horry
14 County?

15 JUROR: Yeah. A long time ago.

16 THE COURT: All right. Has anyone ever been
17 employed by South Carolina DHEC, EPA, DNR, or any
18 other governmental regulatory agency in South
19 Carolina or elsewhere? If so, please stand.

20 If you are a member of any non-profit or
21 charitable organization relating to environmental
22 or wildlife protection, please stand.

23 Does anyone on the jury panel have any
24 training as an engineer or construction
25 professional? Please stand.

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1 Yes, sir.

2 JUROR: I'm No. 21. I was a project manager
3 for a commercial construction company.

4 THE COURT: Thank you.

5 JUROR: 152. Architect.

6 THE COURT: Thank you.

7 JUROR: 108. Masonry training.

8 THE COURT: Thank you.

9 Has anyone on the jury ever worked for a
10 marina? If so, please stand.

11 Yes, ma'am.

12 JUROR: 351. My parents own one, and I
13 worked at it for ten years.

14 THE COURT: Where was that located?

15 JUROR: New York.

16 THE COURT: Thank you.

17 Yes, ma'am.

18 JUROR: 163. I perform music at the North
19 Myrtle Beach RV Marina.

20 THE COURT: Yes, sir.

21 JUROR: 229. Charleston Port.

22 THE COURT: Thank you.

23 Has anyone ever owned or worked at a
24 restaurant? If so, please stand.

25 I figured that would be a lot. What I'm

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1 going to do is say your juror number, and if you
2 were the owner, say "owner." If you were an
3 employee or waiter or anything like that, just say
4 "worker."

5 Yes.

6 JUROR: 264. Management.

7 JUROR: 79. Hardee's 30 years ago.

8 JUROR: 93. Worker.

9 JUROR: 163. I sang for some of them.

10 JUROR: 178. Employee.

11 JUROR: 315. Employee.

12 JUROR: 68. Employee.

13 JUROR: 300. Employee.

14 JUROR: 354. Employee.

15 JUROR: 351. Employee.

16 JUROR: 332. Employee.

17 JUROR: 277. My parents owned it, and I
18 worked at it.

19 JUROR: 81. General manager.

20 JUROR: 251. Worker, and my daughter owned a
21 restaurant.

22 JUROR: 37. Employee.

23 JUROR: 339. Employee.

24 JUROR: 94. Employee.

25 JUROR: 168. Employee.

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1 JUROR: 383. Employee.

2 JUROR: 223. Employee.

3 JUROR: 374. Employee.

4 JUROR: 20. Employee.

5 JUROR: 361. Parents owned it, and I worked
6 there.

7 JUROR: 229. Employee.

8 THE COURT: Thank you.

9 Has anyone ever been employed as a commercial
10 fisherman? If so, please stand.

11 All right. Ladies and gentlemen, you have
12 heard the names of all of the parties. Is anyone
13 aware of or if they are possibly friends on social
14 media with any of the parties that we have
15 discussed? If so, please stand.

16 Any member of the jury panel know of any
17 reason, whatsoever, why he or she should not serve
18 as a juror in this case with a particular emphasis
19 placed on the ability to be fair and impartial to
20 all of the parties? If so, please stand.

21 JUROR: It wasn't part of the question, but
22 my husband does work for Horry County Water and
23 Sewer, and I have gone to Crab Catchers Restaurant,
24 and the bartender is, like, just a super sweetheart
25 of a person, but....

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1 THE COURT: I appreciate you letting me know
2 that. I don't think that would disqualify you.
3 Would that create any bias for you?

4 JUROR: I mean, I like the restaurant. You
5 know, their bartender was great.

6 THE COURT: What was your number?

7 JUROR: 133.

8 THE COURT: Plaintiff have any additional
9 questions they would ask for voir dire?

10 MR. PLAYER: No, Your Honor.

11 THE COURT: Mr. Harrison? Mr. Bellamy?

12 MR. HARRISON: No, Your Honor.

13 MR. RICHTER: No, Your Honor.

14 MR. BELLAMY: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen, what we're
16 going to do is we'll take about a ten-minute break.
17 We'll allow the parties to get ready. Next thing
18 we'll do is jury selection for this case. I'll ask
19 that you not leave the courthouse, but if you need
20 to step out to use the facilities or anything or
21 stretch your legs, that's fine. I just ask that
22 you be back in about ten minutes. Thank you.

23 (A recess was taken.)

24 THE COURT: Thank you. Keep your seats.

25 Are the plaintiffs ready to proceed?

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1 MR. PLAYER: Yes, Your Honor.

2 THE COURT: Defense?

3 MR. HARRISON: Yes, Your Honor.

4 MR. BELLAMY: Yes, Your Honor.

5 MR. RICHTER: Yes, Your Honor.

6 THE COURT: Thank you.

7 THE CLERK: Start with the plaintiffs'
8 strikes from numbers on the left, 2 through 21.

9 MR. PLAYER: No. 6.

10 THE CLERK: Plaintiff strikes No. 6.

11 THE COURT: Yes, sir.

12 MR. HARRISON: 93.

13 THE CLERK: Two through 21.

14 THE COURT: Look at the number on the far
15 left.

16 MR. HARRISON: Oh, I'm sorry.

17 THE COURT: No. 9.

18 MR. HARRISON: I'm sorry. The far left is 9,
19 Your Honor.

20 THE COURT: Thank you.

21 THE CLERK: Defense strikes No. 9.

22 MR. PLAYER: 89 -- I'm sorry, I apologize.
23 16.

24 THE CLERK: Plaintiff strikes No. 16.

25 MR. HARRISON: 13, Your Honor.

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1 THE CLERK: Defendant strikes No. 13.
2 MR. PLAYER: No. 20.
3 THE CLERK: Plaintiff strikes No. 20.
4 MR. HARRISON: 21.
5 THE CLERK: Defendant strikes No. 21.
6 MR. PLAYER: No. 5.
7 THE CLERK: Plaintiff strikes No. 5.
8 MR. HARRISON: 18.
9 THE CLERK: Defendant strikes No. 18.
10 Please strike a number 22 through 24.
11 MR. PLAYER: 23.
12 THE CLERK: Plaintiff strikes 23.
13 MR. HARRISON: 25.
14 THE CLERK: Defendant strikes 25.
15 THE COURT: Wasn't it 24? These are between
16 22 and 24 for first alternate.
17 THE CLERK: Please strike 25 to 27 then.
18 MR. PLAYER: 26.
19 THE CLERK: Plaintiff strikes 26.
20 MR. HARRISON: 29.
21 THE CLERK: 25 through 27.
22 MR. HARRISON: Oh, I'm sorry.
23 THE COURT: Defense already struck 25; is
24 that correct?
25 MR. HARRISON: Yes. 27.

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1 THE CLERK: Defense strikes 27.

2 THE COURT: What was the defense's first
3 strike of 22 through 24? You said 25.

4 MR. HARRISON: We did.

5 THE COURT: But we need to strike between 22
6 and 24, because plaintiff struck 23.

7 MR. HARRISON: We'll -- 24, Your Honor.

8 THE COURT: With that being said, you had
9 previously said 25 for the second alternate, and
10 later struck 27. Do you want 25 or 27 as your
11 strike for your second alternate?

12 MR. HARRISON: 27.

13 THE COURT: 22 and 25 are our alternates.

14 THE CLERK: May we review your strikes?
15 Plaintiff strikes No. 5, 6, 16, 20, 23, 26. Is
16 this correct?

17 MR. PLAYER: That is correct.

18 THE CLERK: Defendants strikes No. 9, 13, No.
19 18, 21, 24, 27. Is this correct?

20 MR. HARRISON: Yes, it is.

21 THE COURT: Ladies and gentlemen, as the
22 clerk calls your name, stand and make sure you
23 bring your belongings with you. Come to the jury
24 booth over here. Start at the top right and go
25 down.

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1 THE CLERK: 135, Shanna Graham. No. 229,
2 Mach McCormick. 378, Erin Wittkofsky. 21, James
3 Bigante. 374, Nancy Williams. 226, Amber McCann.
4 314, Jan Serrano. 103, Celina Eldridge. 254,
5 Karen Muti. 75, Walter Currier. 356, Thomas
6 Venditti. 79, Rodney Daniels. 361, Edward Vining.
7 354, Lori Valenziano.

8 THE COURT: Any objections to the jury panel
9 from the plaintiff?

10 MR. PLAYER: No, Your Honor.

11 THE COURT: Defense?

12 MR. HARRISON: No, Your Honor.

13 MR. BELLAMY: No, Your Honor.

14 MR. RICHTER: No, Your Honor.

15 THE COURT: Ladies and gentlemen, you are our
16 panel. We are going to reward you for being
17 selected by giving you the afternoon off. There
18 are quite a few matters we have to take up before
19 we begin this trial. Those are legal matters,
20 matters of law which I must decide.

21 I will advise you more tomorrow morning as to
22 what your duties are as a juror, but I want to tell
23 you I do not want you to do your own research.
24 Don't discuss this matter with your husband, your
25 wife, grandparents, grandchild, cousin who may be a

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1 lawyer, anything like that, neighbors, or anything
2 else. You haven't heard any evidence about this
3 case, so there is nothing to discuss.

4 That being said, I will also instruct you
5 that you are not to discuss it at any point, even
6 among yourselves, until I tell you to begin your
7 deliberations, which will be at the end of the
8 trial after you have heard all of the evidence and
9 you have been given an opportunity to review any
10 exhibits entered.

11 Ladies and gentlemen, you will be our jury.
12 You can go with our bailiff here. She'll show you
13 where the jury room is and where you'll meet. But
14 in that regard, thank you for your service, and see
15 you tomorrow morning. I'll ask that you be here at
16 9:00 a.m. Thank you.

17 (The jury exits at 1:26 p.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: All right. Ladies and gentlemen,
20 you probably feel like you just won the Hunger
21 Games. What I'm going to ask you to do -- I don't
22 foresee you guys being picked on any other juries
23 this week, but stranger things have happened. What
24 I'm going to ask that you do is call back tomorrow
25 night. They have given you a number to call back,

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1 and you'll receive further instructions. Don't
2 change your plans yet, but it is very unlikely that
3 you'll be called.

4 Again, I want to thank you for your
5 willingness to serve. I know when you hear a two
6 week-long trial, no one gets excited. I was an
7 attorney before, and I didn't get excited about it.
8 So I say all of that to simply say thank you for
9 being here. You're excused for the day. Tomorrow,
10 I just ask that you call back in tomorrow night.
11 You may receive a message at that point that says
12 go about the rest of your week, and I hope that is
13 what will happen, but you are excused.

14 I do ask Juror No. 373, if you will step up
15 here while everyone is leaving. If you will step
16 up here, Ms. Williams.

17 Again, thank you all for being here. I
18 appreciate your willingness to serve.

19 (The prospective jury panel exits.)

20 THE CLERK: Do you all want to take a break,
21 or roll in?

22 MR. BELLAMY: I can't speak as far as the
23 plaintiffs, but I would like to take a break to get
24 documents organized.

25 THE COURT: It's 1:30. How long do you

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1 foresee them taking? I started looking over them,
2 and I apologize, like I said, I was at that seminar
3 on Friday, and then I was in Charleston all week.
4 My law clerk got married, so I didn't have a chance
5 to review the stuff you sent Saturday. Do you
6 think these are matters that will take more than
7 two hours?

8 MR. RICHTER: I can't imagine that. I think
9 30 minutes or so.

10 THE COURT: Let's be back at 2:45. That way,
11 if you want lunch, you can do that.

12 MR. PLAYER: Yeah. I need to get my exhibits
13 straight.

14 THE COURT: Perfect. I saw a Dropbox, and my
15 admin was trying to get in on that. I don't know
16 if I have to be in on that.

17 MR. PLAYER: I don't think at this point.

18 MR. MONGILLO: Do you have a copy of our
19 motion filed this morning at 8:30?

20 MR. BELLAMY: We handed up ours. It is
21 E-filed.

22 THE COURT: Okay. I have yours.

23 MR. BELLAMY: Yes.

24 THE COURT: I have the memorandum in support
25 of that -- yes, I have a motion in limine with

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1 memorandum here in support. I also have pursuant
2 15(b) motion on that.

3 MR. MONGILLO: Yes, Your Honor.

4 MR. RICHTER: I don't think we have to take
5 it up at this time. It is just out there.

6 MR. PLAYER: It is equitable, so it would be
7 at the end.

8 THE COURT: As far as that, again, it would
9 be tough to rule on that when I don't know what is
10 going to be put up.

11 MR. RICHTER: We just wanted you to be aware
12 it was out there.

13 THE COURT: Thank you.

14 MR. PLAYER: We disagree about the valuation,
15 and I think that will be determined largely by the
16 jury in this case. Since it is equitable at the
17 end, they certainly can't work with it anymore, so
18 I don't think we'll object to that being added once
19 the trial is over with, but....

20 THE COURT: The fact that you're working
21 together, that just tells me we're moving in the
22 right direction.

23 MR. PLAYER: We know this is not going to be
24 fun, so we're trying to lessen the pain factor.

25 THE COURT: If there is anything I can do

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1 during this trial to help any parties, let me know.

2 MR. PLAYER: You need Ph.D. in psychology.

3 THE COURT: I have a minor. I think I
4 probably have forgotten way more than I learned.
5 But we'll be back at 2:45.

6 (A lunch break was taken.)

7 THE COURT: All right. Where do we want to
8 start?

9 MR. RICHTER: Your Honor, I would like to
10 hear our motion for limine, if you don't mind?

11 THE COURT: All right. Is that in regards to
12 damages; is that correct?

13 MR. RICHTER: Yes, Your Honor.

14 May it please the Court?

15 THE COURT: Yes, sir.

16 MR. RICHTER: Your Honor, again, Ronny
17 Richter on behalf of individual defendant Timothy
18 Kettner. This is our motion in limine in asking
19 the Court to restrict evidence related to any
20 alleged misappropriation of money by Tim Kettner.
21 Let me just give you some general background to
22 start with.

23 First, Your Honor, you'll hate everybody in
24 the courtroom for this, but the two entities are
25 TNT and More, and TnW and More.

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1 THE COURT: And I did have a chance to read
2 your motion and your memorandum. I appreciate it.

3 MR. RICHTER: No lawyer in this courtroom had
4 anything to do with that, by the way.

5 But TNT is the restaurant, all right. So if
6 you hear TNT, that is Crab Catchers. And TnW is
7 the jet ski dock and marina. So I'll generally say
8 "the restaurant" and "the marina" so I don't have
9 to use those initials and confuse everybody. All
10 right.

11 So just by way of background, 20 years ago or
12 more, Tim Kettner had this dream. He found this
13 spot. It would be a great place to run a
14 restaurant. At the time, it was just a little
15 shack on the river. Over the passage of time, it
16 grew into a pretty serious restaurant, Crab
17 Catchers. They used to get fresh fish off the
18 dock.

19 Wade is a great fisherman. He runs charter
20 boats, offshore fishing, he has a YouTube channel.
21 The guy is an amazing fisherman. So it looked like
22 a great situation. This guy who is an amazing
23 fisherman brings it back to the dock, and they cut
24 it up and serve it fresh. Great concept. That is
25 kind of how this relationship/friendship started.

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1 They actually liked each other quite a lot.
2 I think Tim saw Wade almost as a son figure, and I
3 think Wade saw Tim kind of a father figure. This
4 went on for some period of time, and the business
5 kind of grew over the passage of time. Crab
6 Catchers grew into a pretty serious restaurant.

7 At a point in time, Tim invited his son and
8 some of his son's friends to join in the
9 restaurant. I won't say the initials, but the
10 restaurant. So you have the Kettner family over
11 there who is running the restaurant, and you have
12 Wade and his partners who are running the marina.

13 So Tim and Wade combine forces on the marina.
14 So, great idea. Let's expand what we're doing out
15 on the marina. Let's make it bigger. Let's add
16 more docks. Let's add jet skis. We'll be printing
17 money. This makes great sense. We'll sell fried
18 seafood, and then right there on the dock you can
19 get a jet ski or charter a fishing venture. Great
20 idea. Everything is going good until it's not
21 going good.

22 One thing that did not happen is at some
23 point in time there was a concept. Wade and his
24 team would tell you it was a joint venturer. They
25 are going to have to tell you who the parties were

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1 and all of the terms of it, because there is not
2 one single piece of paper in all of these boxes
3 that defines what this thing was. But there was a
4 concept to take this even further, add an ice cream
5 shop, ship store, and all of these other services.
6 That sort of thing is where things got off the
7 rails.

8 Wade is a terrific fishermen and was pursuing
9 his life's passion out there fishing. Our
10 criticism of him is that he turned into an absentee
11 owner. He'll tell you otherwise. That is what
12 lawsuits are made of.

13 He comes home from fishing one day, after
14 COVID hits, in 2020, and everything is tightening
15 up. He wants to know why he's not rich yet. Now
16 we're going to start looking at the books of
17 records seriously for the first time, and there's
18 money missing. Hence and therefore, Tim Kettner
19 must have stole it.

20 Your Honor, it reminds me, I have a friend in
21 Charleston that used to own a tackle shop. I was
22 in the tackle shop one day to buy a couple hooks
23 and some weights, and he asked my buddy, Can you
24 change a hundred dollars? My buddy said, Sir, I
25 can change anything but your mind.

MOTIONS

1 That is what brings us here today, is that no
2 matter what evidence we show this team, he has it
3 in his head that our client took money from him,
4 and we cannot dissuade him of that. So here we
5 find ourselves three years plus in this litigation,
6 hundreds of thousands of dollars wasted on lawyers
7 -- wasted, and he would still advance to the jury
8 two things that we're asking you to tell him that
9 he cannot say. Number one, Tim Kettner stole cash.
10 We're asking you to tell him that he cannot say
11 that. Number two, Tim Kettner stole money from a
12 loan, and I'll tell you why those two things should
13 not come into this trial.

14 Your Honor, we finally -- and I'll read you
15 shortly from his deposition. This is in March of
16 2023. This speaks to the level of frustration we
17 had in this case for the entire time trying to
18 dissuade this gentlemen that what he believes is
19 true, is actually not true.

20 So you are alleging that Tim Kettner has
21 stolen money from this venture?

22 Question: So how much money has he
23 misappropriated -- this is Page 385 of Mr. Long's
24 deposition, March of 23. We're two years into this
25 litigation.

MOTIONS

1 His answer: I could not tell you exact
2 dollar amount on it, but it's hard to track cash
3 sometimes. But what we kind of came up with,
4 roughly, when Henrietta Golding was on the case,
5 somewhere of just shy of around \$300,000.

6 Question: All right. Explain to me the
7 math that results in \$300,000.

8 I don't know the math. You know, you
9 could -- you know, that's a lot to remember all this
10 information over the years. There's a lot of
11 questions that need to be asked, and there's stuff
12 that looks really funny.

13 So I asked him later, All right, let's talk
14 about the cash. How much cash do you contend that
15 Tim stole from TnW, which is the marina, or TNT, or
16 anyone else?

17 Answer: I don't have a clue. I don't have
18 a clue. It's thousands of dollars. Could be a
19 hundred thousand, could be ten thousand. I don't
20 know the number.

21 So we continue down this path in his
22 deposition. Did Tim steal money from TnW in 2018?

23 Answer: I would have to go through the bank
24 records -- we're now two years in this litigation at
25 this point, Your Honor.

MOTIONS

1 I would have to look at the bank records and
2 see, but I think some of those checks, they may have
3 been wrote then. I don't remember the exact dates.
4 I would be lying to you right now.

5 A little further, Okay, let's stick with the
6 cash and try to break it down. We talked about cash
7 in '16 and '17. Did he take cash in 2018?

8 Answer: I'm not aware of that.

9 Did he take cash in 2019?

10 I'll say that he took it in 2019. All
11 right. How much did he take in 2019?

12 I don't wanna -- I won't wanna tell you a
13 lie here. I think he's been taking the whole time.

14 Tell me the amount you think he took in
15 2019.

16 I don't know the exact amount in 2019. I
17 can't, you know, go through my records or whatever
18 Henri thinks we have to do. We have been talking
19 about, you know, getting a professional audit to go
20 through all the stuff.

21 All right. This is at the heart of the
22 motion in limine. We -- meaning he and Henrietta
23 Golding, who he first paid in this case more than
24 \$200,000 before he parted company with that legal
25 team and hired current counsel. What was discussed

MOTIONS

1 that entire time -- and we have those communications
2 because the privilege was waived, and we have
3 Henri's file and communications with her client,
4 Mr. Long. And what she was telling him the entire
5 time is, Look, if you are going to make a claim like
6 this, we have to have a forensic accounting.

7 All right. That never happened. Never
8 happened. So years into the litigation we're
9 getting the same answer. If I can just look through
10 the bank account -- you got it. You got the bank
11 accounts. You got the tax returns. You got access
12 to everything. You are the plaintiff. You have a
13 burden of proof. Tell me how much money the man
14 took and what year. Can't do it. Haven't done it
15 through three years of litigation.

16 Through the current counsel, they supplement
17 their discovery. They identify the Hobbs group as
18 an accounting firm, and say they will produce a
19 forensic accounting report to document these losses.
20 But it's never happened. It's never happened. And
21 so what we can have happen, the bell we can't
22 un-ring now, is to have them come in and still
23 maintain the position: Tim took money, we got
24 questions, stuff looks funny. When you've never,
25 never performed the audit that you, by your own

MOTIONS

1 admission through your counsel, understand you had
2 to do in order to make this claim.

3 Now, there is a second tranche of money. At
4 some point in time -- and you'll learn about all of
5 this -- this group of people got together and
6 guaranteed a new bank loan for \$1.1 million.

7 THE COURT: With United Bank.

8 MR. RICHTER: With United. Your Honor, I put
9 notebooks on your side-bar there. In our Binder
10 No. 1 of 3, if you turn to Tab 5, that shows the
11 draw schedule on that loan. What you will see --
12 first line item is \$595,000. Nobody has heartburn
13 over the 595. Everyone knows where that money
14 went. So that is not a matter of contention in the
15 court.

16 If you see further down, there is two entries
17 in March for a hundred thousand dollars each, and
18 then a little further down, there is an advance of
19 \$200,000 in October of 2018. And so not being able
20 to prove any cash misappropriation, the plaintiffs'
21 theories kind of pivot to, You took that money.
22 You took that money because we don't know what you
23 did with it.

24 Well, you got all of the records. You should
25 have had a forensic accountant the entire time to

MOTIONS

1 review it, but I'll tell you what we'll do. We'll
2 review it for you. We did that in our Tabs 48 and
3 49, which are in Binder 3 of 3. So if you look at
4 48, Tim Kettner and his team went through the
5 trouble of pouring through all of the records to
6 show -- you'll see this starts April of 2018.
7 These are the checks and expenses that were
8 incurred contemporaneous with the draw of that
9 \$200,000, which was the first amount they had
10 questions about. You'll see in a very short period
11 of time, after that draw, there is \$259,000 of
12 expenses that was paid out against the 200 that was
13 drawn down.

14 And then if you look at Tab No. 49, that tab
15 starts in October of 2018. You have questions
16 about \$200,000 -- where did that additional
17 \$200,000 go to? Well, here is \$220,000 of expenses
18 and checks that issued immediately after the
19 drawdown of that \$200,000.

20 But, Your Honor, they would still tell you,
21 well, we still have questions. No, you don't have
22 questions. You are the plaintiff with the burden
23 of proof. You cannot say that Tim Kettner stole or
24 misappropriated money. There was a time to have
25 offered a forensic expert, and you didn't do that.

MOTIONS

1 I'll tell you this as well, Your Honor.

2 There is one financial expert in this case, and
3 there is only one. Kim Bryant is the CPA who
4 prepared all of the returns for both of these
5 entities. She's been deposed, and she said
6 everything was done accordingly to Hoyle. So now
7 here we are. No expert witness on their behalf,
8 and what they proposed to do before the Court is do
9 this live exercise of, Well, what was this \$2,000
10 for? What was that \$5,000 for?

11 I mean, there was a time to do that. The
12 time was in discovery. The time was prior to the
13 expiration of the scheduling order to identify an
14 expert who can identify these damages. It doesn't
15 exist. I feel bad for Tucker that he has a client
16 that just will not accept the facts.

17 What is that saying? Don't let the facts get
18 in the way of a really well held opinion. That is
19 kind of where we are. He's convinced in his mind
20 this man took money, and it didn't happen.

21 We went an additional step for Your Honor.
22 If you look at Tab 54, in his deposition -- I can
23 read you more from his deposition.

24 On the cash, how do you know Tim Kettner
25 stole cash?

MOTIONS

1 Well, I would go by the jet ski dock every
2 now and then, and there would be a long line, and
3 at the end of the day, there should have been a lot
4 of cash, but there was no cash.

5 Hence and therefore, the only logical
6 conclusion must be that Tim Kettner stole the cash.
7 Well, how much cash? How many people were in line?
8 How much was paid? I don't know. So we had Tim go
9 back and go through every bank statement. The
10 contention was that he wasn't depositing cash. He
11 was pocketing cash. Well, this is a list of just
12 the cash deposits, and the cash deposits for that
13 period of time totaled \$281,486.94. So he's not
14 taking the cash. He's depositing the cash.

15 It is true that some of the cash would be
16 used for some minor expenses around the docks or to
17 pay casual labor or issues like that. But there is
18 no case to say that Tim Kettner stole cash. There
19 is no case to say that he misappropriated money
20 from that loan. And it is a bell we can't un-ring
21 if they are allowed to stand in front of the jury
22 and plant that seed.

23 So we're asking Your Honor in limine to
24 prevent them from doing that. Thank you.

25 THE COURT: Thank you.

MOTIONS

1 Mr. Player.

2 MR. PLAYER: Yes, Your Honor. Essentially
3 what happened in the beginning of this case, and
4 it's still the primary argument I make today, is
5 Tim was in charge of the money. I love the fact
6 that Ronny is saying they went over and aboard to
7 tell us where our money went when he was in charge
8 of it. He was required, under the law, the
9 statutory law, the common law, and an operating
10 agreement to tell us where the money was.

11 My client is going to tell you we didn't find
12 anything out until we sued him. We had no idea
13 where the money was because he said, It's in that
14 cabinet. Go in there and look at the dome books,
15 okay. This is their grand accounting. It's Tim
16 writing what he spent in a ledger, and it's not
17 even a full ledger, because they have dome books
18 for TNT. You have two pages. You have all of the
19 income, where it came from, what it was, including
20 cash and credit cards, and over here is the
21 expenses. It is for every week.

22 You know what we got? We got one line of
23 paper with six months of entries saying this is
24 what I spent. And they've given us the receipts
25 they say, especially for the cash. If you look in

MOTIONS

1 their exhibits, and they are called "ski hut
2 sheets," and every day -- and we'll provide
3 testimony -- every day Tim said you separate credit
4 card, separate cash. Two sets of books.

5 So the people who are running the ski hut
6 wrote it down. This is what we took in cash. This
7 is what we took in credit cards. They are going to
8 testify that the ski hut sheets we were given in
9 discovery have been modified, because their ink is
10 blue ink and it says \$240 in cash a day. And then
11 there is an "X" through it, and right next to it --
12 which my people think it is Tim Kettner's
13 handwriting -- he scratches it out and zeros it
14 out.

15 There are ski hut sheets that say, Hold the
16 cash for payroll. The important part -- and the
17 only thing we're going to bring up in this trial
18 are the checks that Tim Kettner wrote to himself or
19 wrote to Crab Catchers. That's it. I mean, I
20 don't know how you trace cash when you don't know
21 how much was brought in. We don't have a single
22 ski hut sheet in 2020 because Tim fired the folks
23 who didn't like two sets of books. He turned it
24 over to Rebecca Martin, who he is bringing as a
25 witness.

MOTIONS

1 So in 2020, we have no receipts for cash. We
2 have no idea what was brought in. The amount of
3 money they have in their summary is woefully -- I
4 mean, if you look at the ski hut sheets for what
5 happened in '18 and '19, it doesn't add up. But we
6 can't trace cash. There is no credit card receipt.
7 There is no check. There is no -- so you're going
8 to provide an instruction that we can't rely on
9 speculation. We understand that. We're not going
10 to come up here and ask for a million dollars.
11 We're not going to ask for what we told them in
12 discovery we thought it was, which was the 300.

13 I don't think -- when I look at the case, I'm
14 fine that Tim reimbursed TNT, because that means
15 they don't own anything that was built. They
16 didn't pay a dime for the docks. They didn't pay a
17 dime for the fuel pumps, and that's fine. We'll
18 take that route and say, Okay, you didn't steal it,
19 but TNT has no claim on it because they didn't pay
20 a dime. That is where we are going in the trial in
21 regards to the money that was in the loan.

22 I've -- it's not something we're going to
23 dwell on. Tonight, Wade and I are going to go
24 through -- I think I have 35 or 36 checks. We are
25 going to go through the records that they have

MOTIONS

1 finally given us, because we've never gotten this.
2 All they said was (indicates) here's 3,000 pages of
3 receipts. Guess who wrote on the receipts? Tim
4 Kettner. Basically, what he's saying is Tim
5 Kettner is telling the truth, and you have to
6 accept that.

7 What we're saying is Tim Kettner paid himself
8 reimbursement for loans, and we're going to
9 introduce, in our case in chief, the operating
10 agreement that he signed that said you can't loan
11 money to the company unless you have the agreement
12 of the other partners, and he never got that.

13 Another thing to look at, if you are going to
14 look through this gigantic dump of documents, there
15 is something called T-Ket Services. That is where
16 he was running the money. That's where he would
17 loan money from T-ket to TnW, and he would loan
18 money to TNT. That was his little thing. Why?
19 All we can assume is he's trying to hide something.

20 But, more importantly, he was violating the
21 operating agreement of the LLC when he did that,
22 because he did not have approval or authority to do
23 it. So if they are worried about damages and
24 misappropriation, I can tell you what they are. It
25 is the checks from 2018 that are written to Tim

MOTIONS

1 Kettner. That is the only thing we'll present to
2 the jury.

3 After tonight, when I get to go through it
4 and see exactly how they tie it through and how
5 they say to explain it, that number may be very
6 low. But, for instance, one of the things he's got
7 on a check is "\$4,000 payment to cash." "To cash."
8 Oh, well, that's okay. It was supposedly for a
9 dredge installment payment on the dredge. Wade is
10 going to testify there was no installment. We paid
11 that guy 40 grand in cash.

12 I hope everyone knows how improper that is,
13 but that's how they paid the guy. So when Tim has
14 a check for \$4,000 installment on the dredge,
15 that's a lot, according to us. So there is \$4,000
16 they can't explain. That's what is at issue at
17 this trial.

18 I understand it's cumbersome, but if they
19 wanted to prove everything was fine -- because I
20 don't think that is what Kim Bryant is going to
21 say. She'll say Tim gave me the numbers, and I put
22 them in the tax returns. So the cash is going to
23 be testified -- it's not a lot of money that we can
24 prove on paper, but it is some, because the
25 employees of TnW that was hired, paid, controlled,

MOTIONS

1 and managed by Tim Kettner gave him a receipt, a
2 handwritten receipt, that said, We took in this
3 much cash this day, and then somebody comes behind
4 them and scratches it out and says, no, it is a
5 different amount of cash. I don't know what to
6 call that, but it's not proper, and that is cash
7 missing.

8 Again, limiting instructions, cross
9 examination. They can present him with the
10 receipts and give my client a chance to answer why
11 he thinks that is not legitimate because of who it
12 was written to, what it was for, or the fact that
13 he has to rely on Tim Kettner's word.

14 But when I went through the forensic
15 accountant, she kept asking me for things I don't
16 have -- and I didn't -- like receipts, and where is
17 the receipt for the cash intake. Well, we don't
18 have it. All we have is these little ski hut
19 sheets that have writing all over it. You can't
20 even tell what it says most of the time.

21 The only ones that were put in the evidence
22 is the ones where the cash is zeroed out. They
23 gave you a receipt, we have \$300, and then it's
24 crossed out and it says, no, this is not what you
25 deposited.

MOTIONS

1 What started all of this was Wade watching
2 the jet ski rental business. It was packed. He
3 saw 10, 15 people getting ready to go in there. He
4 knows it a hundred bucks a head. He's expecting a
5 \$6,000 day. Looks at the receipts, and it's half
6 that. He asked Rebecca Martin -- the person that
7 Tim hired to run it after Brett and V left -- and
8 said, Where is all of the money for this? And she
9 said, Oh, we keep the cash separate. We keep cash
10 in this little notebook.

11 We've never seen that notebook. Never. Not
12 once. So as far as I'm concerned, they haven't
13 turned everything over. Because we don't know what
14 cash the business received in 2020. We don't have
15 any indication, whatsoever, because we have no
16 receipts, no ski hut sheets explaining where the
17 delineation between credit cards and cash are.

18 I understand it may be a bit ambiguous, and
19 there may be some speculation in our damages.
20 You'll instruct the jury that we are not entitled
21 to those, but in order to say we can't introduce
22 any evidence of maleficence or misappropriation,
23 all I have to show to you is the operating
24 agreement saying you can't give loans to the
25 company. Well, if you can't give loans to the

MOTIONS

1 company, you can't pay yourself back.

2 Those are the only checks we're attacking,
3 are the checks he wrote to himself because no
4 distribution has ever been made from this company
5 to any member. But he drew \$104,000 in
6 reimbursement checks in 2018, and those are the
7 checks we are presenting.

8 If the Court wants to limit us to that, the
9 actual cash that we have on the ski hut sheets, the
10 problem is we have no indication from Mr. Kettner
11 how much cash was brought in other than what he
12 deposited in 2020. And we think that number is
13 very small considering the amount of business that
14 was done, and the cash reported from the previous
15 two years when Brett and V were given those ski hut
16 sheets on a daily basis saying what they brought
17 in.

18 So, you know, they obviously know what to
19 prepare for, and I understand it's very cumbersome,
20 but we were entitled to this in 2018 and 2020. He
21 was in charge of the books. He was required to
22 account for every penny, and it's taken two years
23 to get this stuff out of him. And, you know, it's
24 an issue of the amount. I don't think there is any
25 way the Court can find we haven't stated that we

MOTIONS

1 suffered some damages. The ones that we can point
2 out are specific checks.

3 THE COURT: Well, and I'll be honest with
4 you, my concern is not that there is some damage.
5 My concern is how you reach the damages. I mean,
6 if the damages are coming from the witness stand,
7 my concern is that we're going to be sending the
8 jury out a bunch. I mean, I would assume there
9 would be objections to speculation, to opinion
10 testimony, unless they are an expert.

11 MR. RICHTER: Yes.

12 THE COURT: That's my concern. I understand
13 if you have your client up there and you can say,
14 What was this check for. I understand that. I'm
15 referring more towards somebody saying, Well, can
16 you tell me what this is, and they say, No, but I'm
17 guessing it was just this. I mean, that's
18 obviously speculative in nature. I mean, is your
19 client going to be able to testify frequently that,
20 hey, this is what this is, or the people with the
21 ski hut?

22 MR. PLAYER: Yes, Your Honor. I went over it
23 with them yesterday, and they said, Yeah, somebody
24 crossed out the cash here. I don't know who did
25 it. It wasn't us.

MOTIONS

1 That is cash that was reported, and they'll
2 testify that they received this cash on this ski
3 hut sheet on this day for this business, and then
4 the ski hut sheet is zeroed out and says "no cash
5 deposited," and that's not their handwriting.

6 THE COURT: But you don't propose to have
7 them testify --

8 MR. PLAYER: On a specific number? No.

9 THE COURT: No. As to who crossed it out. I
10 mean, that is speculative.

11 MR. PLAYER: Well, there is only one person
12 that got them, and we got those from Tim Kettner,
13 so I don't think that is a whole lot of
14 speculation. I mean, he was in charge of the books
15 every day, and he is the one that gave us the
16 sheets in discovery. Because we had never saw them
17 before litigation started.

18 THE COURT: Has he been deposed?

19 MR. RICHTER: Yes.

20 MR. PLAYER: We didn't get the receipts until
21 after I deposed him.

22 THE COURT: I'll take it under advisement and
23 look at a couple of things, but I'll let you
24 respond.

25 MR. RICHTER: Yeah, Your Honor. Briefly, in

MOTIONS

1 response, you've hit the nail on the head on the
2 problem here. I mean, this is going to be an
3 unseemly trial where we are wildly speculating
4 that. The fact of the matter is that this is the
5 way the company ran. You're happy catching fish,
6 great. He's back home doing the hard work and
7 running the shop. Fine. You show up years
8 later -- this idea that we just got this, absolute
9 nonsense. There has been volumes exchanged back
10 and forth.

11 What they just did is, You have the burden of
12 proof. Having proven nothing, having kept saying
13 to us, Can you prove the negative? Prove the
14 negative to us that you didn't steal the money.
15 That we would go the extra step of doing the work
16 you're supposed to do to prove your case. To
17 compile that together and say, all right, through
18 all the stuff we gave you, whose job it was of you
19 to prove your case, we'll try to prove the negative
20 to you. You think we stole money from the loan
21 account? Here is all of the expenses. That is
22 still not good enough. You're still here, Well, we
23 still have questions.

24 THE COURT: What's your response on the
25 checks written to Mr. Kettner as far as -- I did

MOTIONS

1 see this. It looked like a loan payment for a
2 Kiser buy-in?

3 MR. RICHTER: Well, I think when you see a
4 check to Kettner, there is probably a corresponding
5 check written to Long. So if you look at the same
6 exhibits, there is a pretty good chance if he wrote
7 one to himself -- and I don't know that it is one
8 for one, but if you take a look at --

9 THE COURT: Was it 48 you said and --

10 MR. RICHTER: 49. If you look at 49, yes,
11 there is a check, "Tim Kettner reimbursed for Kiser
12 buy-in, \$60,000."

13 THE COURT: Right.

14 MR. RICHTER: If you look at the first entry,
15 it's a check to Wade Long, "reimbursement for Kiser
16 buy-in \$58,349."

17 So I don't see any impropriety in Tim Kettner
18 squaring up between himself and Wade Long in the
19 same transaction month.

20 But, again, trials are not a time for
21 questions. That is discovery. That is
22 depositions. This is time for proof, and this is
23 wild conjecture and speculation. This idea that
24 because I can't understand it or because I refuse
25 to accept your explanation for it; therefore, there

MOTIONS

1 has to be some maleficence.

2 Under the scheduling order, all reports of
3 experts and affidavits provided to opposing counsel
4 not later than November 15, 2023. Again, they
5 named in their discovery forensic accounting
6 experts, they just never followed through, or they
7 consulted with those folks and didn't like what
8 they were hearing. So I don't know which one is
9 true or not, but I know it's their burden to prove
10 this; not ours.

11 So it is highly prejudicial now to do this
12 realtime live in front of a jury, this exercise
13 that was required to be done in discovery and
14 required to be done through expert witnesses.

15 I'm going to hear, Well, Mr. Long can testify
16 about his damages. Mr. Long is a party. He
17 doesn't have a blank check that makes him an
18 expert. He can't become a lawyer. He can't become
19 a doctor or CPA. He's not a forensic accounting
20 expert. This is wild speculation and conjecture,
21 and it's highly prejudicial.

22 And the second they stand up -- you see what
23 they want to do. You heard two things from Mr.
24 Tucker. We only want to talk about the checks he
25 wrote to himself, but then they still don't give up

MOTIONS

1 the other things. So they want to poison the jury
2 with the idea that he's taking cash to bolster the
3 idea that there is some impropriety in one of these
4 checks.

5 They can ask him about any check he's
6 written. Ask away. You have had three years of
7 discovery to ask the same question, and Tim Kettner
8 will answer any question about it. This is not the
9 time and place to do it, but if that is the
10 exercise they want to go through, fine.

11 Would it be too much to ask today, after
12 three years of litigation as a defendant in a
13 lawsuit, to ask the question: How much are you
14 suing Tim Kettner for? How much cash are you
15 contending that he took? How much other money are
16 you contending that he took? Can we understand
17 that, what it is that we're trying to respond to
18 this week?

19 MR. PLAYER: Again, Your Honor, it is the
20 checks -- and because, you know, I have not seen
21 their specific timing. We just get invoices that
22 says, Paid this date for this. And now they've
23 given -- to show me the exact invoices they are
24 applying to each check, and I plan on going through
25 it tonight, because if there is any of those 35

MOTIONS

1 checks that we're fine with, then we won't bring
2 them up. But I know, at the very least, there is
3 one check, the \$4,000 to cash to dredge that is not
4 in --

5 THE COURT: I hope we're not here for \$4,000.

6 MR. PLAYER: No. We're here -- the main
7 purpose of this is they made a promise to my
8 client, and they want to say it was just Tim
9 Kettner's promise. Well, Tim Kettner can't promise
10 to combine TNT land for the purposes of what they
11 built. So Tim Kettner is here because we allege he
12 made a promise to transfer property to TnW, and he
13 gave it to the TNT. That is one of the main
14 reasons we're probably here.

15 So the damages of misappropriation, one cause
16 of action, is not -- Wade is going to be able to
17 testify about what he lost, what he's invested, and
18 that has nothing to do with this misappropriation.
19 The misappropriation will be tied to specific
20 checks that we challenge, and will be it. And
21 they've had those checks since they wrote them.

22 THE COURT: Here is what I do want to do on
23 this. I want everyone to be here at 8:30, because
24 I want to go back on the record on this as far as
25 the checks. I think they are entitled to know

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1 which checks you're going after.

2 MR. PLAYER: Yes, Your Honor. I've given
3 them all today in my exhibits, so they have all of
4 them tonight. But my plan is to go through --
5 because, you know, what it was was every check that
6 Tim wrote to himself, former counsel said he stole
7 it. I've been through this before, and I've clawed
8 back through it, especially this week. You know,
9 when Ronny says these are UCB payments, well, we're
10 not going to challenge that. That was paid on
11 behalf of TnW.

12 But, then again, Ronny mentions the
13 reimbursement checks for Chris. Well, Tim wrote
14 himself a bigger check because he said he was owed
15 money, and they've given me a breakdown of what
16 supposedly -- what money he loaned and what money
17 he was entitled to. But then we get back to the
18 breach of fiduciary duty, because he wasn't
19 supposed to loan money to the company. That was a
20 violation of the operating agreement.

21 In the very beginning, he always had cash
22 calls, but some time in '18 he decided, Well, I'm
23 just going to run things the way I want to run
24 them. It was in violation of the operating
25 agreement. It seems like what Ronny is -- I'm not

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1 going to come up here and say, He stole a million
2 dollars or even \$300,000. We're going to say these
3 checks do not match our understanding of the
4 business, and we don't think they are legitimate.
5 They'll know exactly -- when I get through with
6 Wade's direct -- and I think in the morning I will
7 be able to say these are the checks we'll testify
8 about, but that's going to be it. He won't
9 speculate beyond that. He'll just say, It doesn't
10 make sense. Because it goes to credibility. It
11 goes to the general nature of everything in this
12 case, which is about a promise was made, a promise
13 was broken, and we're trying to save a business
14 that cannot survive without the promise they made
15 to us.

16 THE COURT: Let's do this then. Let's -- as
17 far as tomorrow morning, I'll ask the deputy to
18 have the courtroom opened at 8:30. We'll try to go
19 back on the record 8:45. Our clerks always bring
20 the jury breakfast. So we'll have about 15, 20
21 minutes while they are eating tomorrow morning. So
22 that will give us a good 30, 40 minutes to flesh
23 out some of this.

24 But as far as the motion, I'll hold it for
25 advisement until we can look at some of this.

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1 All right. Mr. Bellamy.

2 MR. BELLAMY: Yes, sir, Your Honor. May I
3 approach?

4 THE COURT: Yes.

5 MR. BELLAMY: I have a copy of the amended
6 complaint, and the copy of the operating agreement.

7 THE COURT: I got it.

8 MR. BELLAMY: Your Honor, I have other
9 documents I may refer to.

10 THE COURT: Why didn't you put yours in those
11 folders? I'm just joking. Go ahead.

12 MR. BELLAMY: Your Honor, our clients, TNT,
13 which is the restaurant, and along with Donny
14 Kettner and the other individual defendants, Robert
15 Benoit, Casey Kuzmik, and Justine are named
16 individually.

17 First thing we -- you got a copy of our
18 motion in limine and also the memorandum. The
19 first ground I want to talk about deals with Rule
20 23(b)(1) when you bring a derivative action. This
21 is important, because if a party is bringing a
22 derivative action fails to comply with the
23 components or requirements of any derivative
24 action, the Court does not have discretion. The
25 Court has to automatically dismiss the case.

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1 And it's important that when you bring a Rule
2 23 derivative action, the first thing you have to
3 do is essentially send out a pre-suit demand letter
4 setting forth the allegations that it is a joint
5 venture or LLC or an Inc., what the particular
6 dispute is in order to -- the other -- if one of
7 the co-joint venturers is doing something in
8 violation of the operating agreement, then the
9 other co-joint venturer has to send out a demand
10 letter specifying -- telling them, look, the
11 problem is they have to come in compliance, and in
12 the alternative, then they'll seek, you know, legal
13 action through a derivative action.

14 What a derivative action essentially is you
15 are bringing it on behalf of the joint venture.
16 You are saying the joint venture is being damaged
17 based upon -- for example, in this case, I think
18 they indicated that Mr. Kettner, as part of a joint
19 venture, took money that belonged to the joint
20 venture, and under those circumstances, you would
21 bring a derivative action, and the co-joint venture
22 would allege on behalf of the joint venture, which
23 was Little River Water Sports, and they would bring
24 a derivative action.

25 But the first thing they would do is send out

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1 a demand letter telling him there is some
2 speculation or belief from a forensic accountant
3 that some money had been taken, and that they
4 wanted to, essentially, meet with him and try to
5 resolve it.

6 Then, the next thing you would do, if you
7 couldn't resolve it through a pre-suit demand
8 letter, you would bring an action. In your
9 complaint, you would state essentially the grounds
10 of demand futility that you attempted in good faith
11 to meet with the co-joint venture or other member
12 of the LLC, depending upon what type of lawsuit it
13 is, and you sat down and tried to work it out,
14 couldn't work it out, so you can plead demand
15 futility.

16 The other requirement is you have to verify
17 the complaint. In this particular case, both
18 parties -- after Ms. Golding filed her complaint
19 and filed her amended complaint -- asserted motions
20 to dismiss under Rule 12(b)(6) for failure to
21 comply with the requirements of Rule 23(b)(1). And
22 I think Mr. Kettner's (sic) clients filed a motion
23 to dismiss. We filed a motion to dismiss. It was
24 heard by Judge Culbertson. He initially took it
25 under advisement and sat on it for about six

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1 months, and then he finally ruled and denied the
2 motion.

3 THE COURT: Was the motion based off of the
4 verified complaint aspect of it or the pretrial --

5 MR. BELLAMY: That's the whole issue. There
6 was never a demand letter that was ever issued.
7 The motion to dismiss that we filed based on -- our
8 motion to dismiss and the motion to dismiss that
9 was filed by Tim Kettner's clients was he said Ms.
10 Golding never filed a pre-suit demand letter, which
11 is required by the rule. And then when she did
12 file the complaint, there was no allegations of
13 demand futility in the complaint.

14 As far as with respect to putting our clients
15 on notice, as far as how we are in violation, she
16 alleged that we violated the joint venture
17 agreement. Interestingly, there is no joint
18 venture agreement. There is no -- during Mr.
19 Kettner's testimony, and also through Mr. Long's
20 testimony, he testified that there was no joint
21 venture agreement.

22 So if you look at the complaint, you can see
23 where they plead promissory estoppel. The reason
24 why they plead promissory estoppel is that breach
25 of contract and promissory estoppel are mutually

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1 exclusive. You either have one or the other.

2 In this particular case, there is no joint
3 venture agreement between TnW and TNT. There is no
4 meeting of the minds or all of the relevant
5 components or things you would need to have a joint
6 venture agreement. In order to have a joint
7 venture agreement, you have to -- or joint venture
8 under South Carolina law, you have to show that two
9 parties, individuals or entities, entered into a
10 business relationship for the purposes of seeking a
11 profit jointly, and each of the co-joint venturers
12 had the equal right of control over the subject
13 matter.

14 The subject matter in this joint venture was
15 the marina. When Mr. Long -- when we took his
16 deposition, he testified that TNT, who is supposed
17 to be the other co-joint venturer, had no right to
18 control the operation of the marina. And that is
19 the joint venture. All the testimony is -- you'll
20 hear from deposition experts, and all of the
21 testimony that will come out during trial, is that
22 the marina property, whether you refer to it as TnW
23 or Little River Water Sports, that is allegedly the
24 joint venture.

25 In our opinion, there is no joint venture.

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1 The point we're trying to make is that, first off,
2 if you are going to bring a derivative action on
3 behalf of a joint venture, you have to send out a
4 pre-suit demand letter, which did not happen. And
5 I think Mr. Long testified in his deposition he was
6 not aware, Your Honor, that Ms. Golding served a
7 pre-suit demand letter on Donny Kettner or TNT.

8 Then, when the complaint was filed, and the
9 subsequent complaint was filed, there is nothing in
10 any of the complaints that talk about demand
11 futility, about saying that it would be a waste of
12 time to, basically, get him to file another
13 pre-suit demand letter because of the -- as far as
14 the parties not being able to get along or not
15 being able to work it out.

16 But the point is you have to file a demand
17 futility, and both of the complaints do not have
18 any allegation of demand futility.

19 The other thing is, too, if you look at the
20 caption, the way it is pled is Thomas Wade Long,
21 Clyde Kiser, individually, and on behalf of TnW and
22 More, LLC. And then it has TnW and More, LLC. If
23 it was pled properly, it would have said TnW and
24 More, LLC, joint venture, on behalf of Little River
25 Water Sports, and they would be using the other

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1 co-joint venture, which would be TNT.

2 Because a joint venture, under South Carolina
3 law, and I'll provide case law to support this,
4 under South Carolina law, a joint venture -- the
5 actual joint venture cannot be a legal entity.

6 In this particular case, both TnW -- if you
7 go -- the way the deposition testimony has
8 developed over the years, when all the depositions
9 were taken -- and some of the depositions, like
10 Mr. Long, he was deposed three times. Sometimes he
11 indicated that TnW was a joint venture. Other
12 times he indicated that Little River Water Sports
13 was a joint venture.

14 Interestingly, Little River Water Sports was
15 d/b/a of TnW, the marina property. It was
16 incorporated. So the problem I've got is that you
17 can't incorporate the action on what a joint
18 venture is, because a joint venture is not a legal
19 entity.

20 In this particular case, the members of the
21 joint venture can be legal entities or individuals,
22 but the actual joint venture cannot be a legal
23 entity. So our first -- you know, as far as our
24 first grounds here, we ask the Court to limit or
25 enjoin, you know, the plaintiff, plaintiff's

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1 counsel, or plaintiff's witnesses testifying that
2 they complied with Rule 23(b) of the South Carolina
3 Rules of Civil Procedure.

4 THE COURT: You got various things in your
5 memorandum and in your motion. As to the
6 derivative lawsuit, do you have anything else you
7 need to add on that? Because I think it would be
8 easier for my brain to let Mr. Player respond to
9 that.

10 MR. BELLAMY: We do, Your Honor. Let me say,
11 as far as the actual motion, the language in the
12 motion -- give me one second.

13 (A brief pause in the proceedings.)

14 MR. BELLAMY: Paragraph 3, plaintiffs'
15 derivative action currently pending in federal
16 court -- Your Honor, that's a scrivener's error,
17 okay. If you go and look at memorandum, the
18 memorandum sets out our grounds and basis for
19 indicating that they failed to comply with Rule
20 23(b)(1), and that's why what we're trying to do is
21 do this motion in limine. We're trying to limit
22 them testifying that they complied with Rule 23(b).

23 All the testimony that is going to come out
24 during trial, and based upon the previous
25 depositions, clearly indicates that they didn't

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1 comply with Rule 23(b).

2 Another thing, Your Honor -- and I'll move
3 very quickly -- one of the things -- in order to
4 have a joint venture, you essentially -- whatever
5 the subject matter of the joint venture is; for
6 instance, the marina property. Obviously, we agree
7 -- it's our position there is no joint venture, but
8 for the sake of argument, if there is a joint
9 venture, it is the marina property.

10 What is important is that one of the major
11 elements in South Carolina is if you are going to
12 allege that you have a joint venture, both parties
13 to the joint venture or co-joint venturers have an
14 equal right of control over the subject matter of
15 the joint venture.

16 In this particular case, Mr. Long testified
17 in his deposition, in numerous parts of his
18 testimony, that TNT did not have any right to
19 exercise any control regarding the management and
20 operation of the marina property. It's in his
21 testimony, and we've got it. It is an exhibit.

22 The other thing is if you look at the
23 operating manual for the marina property, which
24 you've got a copy of, if you go to Page 4, it
25 indicates who the owners of the joint venture are.

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1 Your Honor, I'll show you here. It is the
2 operating manual. If you go to Page 4, Your Honor,
3 it indicates that the owners of the marina are Wade
4 Long and Tim Kettner. It doesn't mention anything
5 about TNT, the restaurant.

6 Normally, if you have a joint venture, at
7 least -- and our clients do not have an ownership
8 interest in the marina property, the actual
9 physical land, nor do we have any interest in the
10 actual business, which is Little River Water
11 Sports. We have no interest in that. It is
12 undisputed that when the particular business,
13 Little River Water Sports, or TNT was formed in
14 2017/18, for the purpose of acquiring that piece of
15 property that's adjacent to our client's property,
16 in developing it, and for purposes of running a
17 marina where you do basic and commercial fishing,
18 jet skis. You know, it's kind of, like I said, a
19 marina type of operation where you rent out spaces
20 and other things.

21 In this case, you know, essentially, we've
22 never -- TNT has never had any ability to exercise
23 any control over the marina property for over eight
24 years. We've also -- TNT, the restaurant, has not
25 received any profits from the marina. We haven't

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1 been responsible for any debt. We obviously --
2 basically, with a joint venture, you have to have
3 equal right of control, equal right to profits and
4 losses. And the testimony is crystal clear, and
5 it's undisputed, that our client has never received
6 any profit from the operation of the marina. We've
7 never been responsible for any debt, never made any
8 contributions to the marina regarding its
9 construction, regarding its maintenance, repair,
10 none of that.

11 And so the thing -- more importantly, and the
12 another thing I wanted to point out, too, Your
13 Honor, if you look at this document here, Sansbury
14 00060, it says TnW and More, LLC --

15 THE COURT: Is that the rental agreement?

16 MR. BELLAMY: Yes. It has here the business
17 name is TnW and More, LLC, d/b/a Little River Water
18 Sports. That's the marina. Guess what? You see
19 where it says outfit is, and it's got: Joint
20 venture, other, LLC. So on their insurance
21 application, for the rental insurance on the jet
22 skis, they indicate they are a LLC. They don't
23 indicate they are a joint venture with TNT. I
24 think that is really important.

25 So Rhett Sansbury, Your Honor, was the

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1 producer of the insurance policies on Little
2 River -- on TnW, doing business as Little River
3 Water Sports, going back from 2017 up to the
4 present date. All of the insurance policies, Your
5 Honor, indicate for TnW that it's an LLC, not a
6 joint venture. That is undisputed.

7 What's more important, Your Honor, if you
8 look through tax returns from TnW and TNT, if you
9 look over there, Your Honor, there is a copy of the
10 tax returns.

11 THE COURT: I have '17, '18, '19, and '16.

12 MR. BELLAMY: Your Honor, all of the tax
13 returns from -- going from 2016 to present date for
14 TnW indicate they are an S Corporation. None of
15 the tax returns were filed as a partnership. Under
16 South Carolina, if you are a co-joint venture or
17 partner joint venture, the tax returns -- pursuant
18 to federal law and IRS -- has to be filed as a
19 partnership.

20 If you look at the tax returns for -- that is
21 for TnW. If you look at TNT's tax returns, they
22 are also filed as an S Corporation. To the
23 extent -- like TnW, if TNT was part of a co-jointer
24 venture, all of their tax returns should have been
25 filed as a partnership in accordance with the IRS

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1 guidelines, which they weren't. So that's further
2 evidence of the fact that in -- and the thing is
3 Kim Bryant, she's the accountant for the
4 restaurant, for the marina, and the accountant for
5 all of the members of TnW. She's also the
6 accountant for all of the shareholders of TNT.

7 She indicated in her testimony that there is
8 not a joint venture between TnW and TNT based on
9 the tax returns that have been filed, nor has she
10 ever been put on notice by either Tim or Wade that
11 they were in a joint venture, known as Little River
12 Water Sports.

13 So what we're seeking with respect to -- Your
14 Honor, in our motion in limine, we're seeking an
15 order from the Court or a limitation of the
16 plaintiff, the plaintiffs' counsel, or the
17 plaintiffs, or any witnesses on behalf of the
18 plaintiffs saying that there is a lawful joint
19 venture relationship between TnW and TNT based on
20 the following grounds that it's undisputed that TNT
21 has no right to exercise any operation or control
22 or management over the marina property. That is
23 undisputed.

24 Two, that TNT has no ownership interest in
25 the marina business, doing business as Little River

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1 Water Sports, nor do they actually have an
2 ownership interest in the property.

3 The other thing is there is no written
4 agreement between TNT and TnW that sets forth, you
5 know, the terms and conditions of the joint venture
6 relationship.

7 More importantly, when we took Mr. Long's
8 deposition, he testified that TNT never -- let me
9 go through this. This is really important. Your
10 Honor, what I want to do is pick out the second
11 amended complaint, and I want to refer you to Page
12 2, Paragraph 7.

13 THE COURT: All right.

14 MR. BELLAMY: Wade testified in his
15 deposition regarding Subparagraph 1 that TNT did
16 not have any -- they didn't -- TNT did not make any
17 contribution regarding the purchase of the
18 1.5 acres, \$450,000, which is used for the joint
19 venture. That was solely done by TnW. The other
20 thing he testified, regarding Subparagraph B,
21 Enlarge improved parking lot for joint use of the
22 LLC and Inc. He indicated in Subparagraph B that
23 TNT did not contribute any monies towards as far as
24 the joint venture that dealt with the parking lot.

25 And then it says, Regarding the construction

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1 of the master dock office, the ticket building, and
2 the rental area for the business operation of the
3 LLC, he agreed that -- Wade testified that TNT
4 didn't contribute to that or put any money as far
5 as making a financial contribution regarding --
6 those are buildings or improvements of the joint
7 venture.

8 Then as far as, you know, purchase of fuel
9 tank, fuel lines, install fuel tank and fuel lines,
10 and obtaining permits, Wade testified in his
11 deposition that TNT did not make any contribution
12 regarding anything with fuel lines.

13 As far as constructing the docking areas,
14 floating docks, and jet skis, Wade testified in his
15 deposition that TNT did not make a financial
16 contribution to that either.

17 So what's interesting is -- and I think, Your
18 Honor, the records will show that -- is that the
19 basis of, you know, pleading a joint venture
20 between TnW and TNT by promissory estoppel, that
21 when Henri alleges in Subparagraph A through G,
22 Paragraph 7, that the majority of the
23 subparagraphs -- that TNT didn't make any financial
24 contributions regarding -- as far as construction
25 of the business, maintenance of the business, the

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1 operation of the business, and when a capital call
2 was called from the members of TnW, they never
3 sought after TNT to make a capital call.

4 So, essentially, what I'm trying to say, Your
5 Honor, is we're looking for a limited instruction
6 from the Court that, one, no written joint venture
7 agreement exists between TnW and TNT. That is
8 undisputed based on the testimony in this lawsuit.
9 Specifically, there is no meeting of the minds
10 regarding the essential terms of a joint venture
11 that would be set forth.

12 If they had a written agreement that set out
13 the terms and conditions -- and the other thing
14 we're seeking is a limited instruction is that,
15 basically, as far as the plaintiff -- the
16 plaintiffs' counsel or any other witnesses
17 testifying that, essentially, TNT had the right --
18 or TNT had a right to operate, manage, and control
19 the marina property, and those are the -- and that
20 TNT -- obviously, to the extent they would
21 testify -- received monies as a result of the joint
22 venture.

23 Wade testified in his deposition that TNT did
24 not receive any providence regarding operation of
25 the marina, wasn't responsible for debt. And with

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1 respect to those items, we seek a limiting
2 instruction as far as plaintiff, plaintiffs'
3 counsel, or any witness testifying that a joint
4 venture allegedly is based upon those particular
5 factual grounds.

6 THE COURT: Let me hear from Mr. Player. I
7 think you may have some other stuff?

8 MR. BELLAMY: I'll let him --

9 THE COURT: Let me hear from him on this.
10 That's a lot to unpack.

11 MR. PLAYER: My answer is real simple. It's
12 called res judicata. They made a motion to
13 dismiss. It was denied. That's done. That's the
14 law of the case. So any defect in the pleadings is
15 irrelevant and does not exist according to Ben
16 Culbertson.

17 The issue of whether or not we can argue
18 about a joint venture, that's a cause of action.
19 Our cause of action is they breached an agreement
20 to enter a joint venture. And they like to play
21 with words, okay. The Court needs to understand
22 what this was.

23 They operated a marina, so they had to build
24 a place for a fuel tank, right, the fuel tank to
25 feed the marina. They needed to build floating

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1 docks that extended from the existing dock of TNT.
2 We're going to present the application where TNT
3 allowed them to say TnW is going to expand our
4 docks, and we'll connect ours to go down the line.

5 Where they built the fuel tank is owned by
6 TNT. How are they not involved in this? And the
7 idea that there is no paper because above both of
8 them have said there is no paper anywhere that
9 explains what the joint venture is. Here is the
10 Horry County Community Bank memorandum for the
11 loan, the \$1.1 million loan, they took out jointly
12 to build this.

13 And what it says is they are going to buy
14 land, and they are going to build an ice cream
15 shop, and do jet skis, and dockage, and ice cream
16 sales. Guess what the bank did? They based the
17 underwriting -- and they approved the loan -- on
18 the new revenue from the business that was going to
19 come from the \$1.1 million loan they took out
20 jointly. But there is no joint venture?

21 He says they couldn't control us. Our
22 bathrooms and our office was in their building.
23 They sent their employees to work on our fuel
24 pumps, to rent our jet skis, and they are -- I have
25 a former employee of them that says when they ran

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1 the credit cards for the jet ski, they ran them at
2 Crab Catchers. They didn't run them through TnW.

3 So I just don't understand how they can claim
4 they had nothing to do with this when they couldn't
5 get the docks without the upland frontage, and that
6 will be explained. Basically, if you want to build
7 -- if you want to get those docks, you have to show
8 a certain amount of upland frontage not in the
9 critical area. We didn't have that.

10 We bought a piece of land. You needed the
11 waterfront piece, which is deeded to TnW.
12 Everything in the upland that they needed to
13 qualify for the permits -- and all of the permits
14 were issued to TnW -- you had to have the land that
15 was owned by TNT.

16 There's no way they didn't know what was
17 going on. There is no way they didn't have control
18 because they have tried to shut us down, and pretty
19 much successfully for the last three years. They
20 block our tank. They put gates and tractors and
21 trucks. Robert Benoit tried to pull out a 10,000
22 gallon fuel tank with a chain one night at 11:30.

23 I don't understand. The evidence is
24 overwhelming that they agreed to do this together.
25 This is a federally insured loan. They all

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1 guaranteed it. They pledged their property to
2 secure this loan, but they say, oh, we got nothing
3 to do with it. It doesn't make any sense. I mean,
4 the evidence of a joint venture is all over this
5 case. It's a jury issue, and I don't even -- I
6 don't understand how this is a derivative action.
7 I mean, I don't. I mean, you have to name -- he
8 just said you can't have a name of the entity.

9 This is a case that they made us a promise.
10 They acted towards that promise when they let us
11 build there. They let us operate there. And then
12 they just want to pull the plug and say we were
13 never involved in this, even though you did all of
14 your meetings in our building, your bathrooms that
15 were required for the permits you received were in
16 our building, the land where you built it is our
17 land.

18 The whole thing was -- the promise was all of
19 these lots were going to be combined, and they
20 would operate this harbor master's office, and the
21 new restaurant, which was never built, it was a
22 different phase, that is what they were going to
23 operate together, and that never happened because
24 Tim Kettner pulled the plug and said get off my
25 land.

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1 Everything up to that point was done jointly.
2 So I don't understand how they say -- I mean, what
3 Wade was saying in his deposition is they never
4 paid me any money, but the fact that they allowed
5 him to build on their property is part of the joint
6 venture, and they told the bank that is what they
7 were going to do. All of them. They all
8 guaranteed this and pledged all of their property
9 for this \$1.1 million loan, but they weren't doing
10 anything together. That doesn't make any sense.

11 THE COURT: Let me ask you this. As far as
12 your first argument with res judicata, you said
13 Judge Culbertson had responded -- and I don't know
14 which motions he heard. Was it 12(b)(6)? The
15 motion in limine, however he ruled on that, I'm not
16 bound by it. But as far as -- what did he rule on?

17 MR. BELLAMY: What he ruled on, Your Honor,
18 it was a 12(b)(6), and obviously Ronny and Scott
19 filed on behalf of Tim Kettner, and there may have
20 been other grounds, but one of the grounds is that
21 Ms. Golding failed to comply with requirements of
22 bringing a Rule 23(b) derivative action for the
23 same thing I've said. There is no pre-suit demand
24 letter that was sent to -- as far as to our client
25 through TNT, the restaurant.

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1 And it also indicated that Donny Kettner,
2 which is the son of Tim, that he was never served
3 with a demand letter. And then, ultimately, what
4 happened is that she filed a suit, but normally
5 when you file a suit, if the demand letter, for
6 whatever reason you give them so many days to come
7 into compliance, and normally they will hire an
8 attorney and acknowledge that we are in receipt of
9 your demand letter. We acknowledge the allegation
10 that you are alleging that we're doing things that
11 are somehow injuring the joint venture, and, you
12 know, you are telling us to cease and desist, and
13 then we respond.

14 But in this particular case, our clients were
15 totally caught off guard because they get sued and
16 they're like what is this coming from? Because
17 they never got a demand letter explaining to them
18 how they were violating the terms of the alleged
19 joint venture agreement.

20 And then when she filed the complaint, it
21 doesn't contain the demand futility explaining why
22 it would be fruitless to continue to send demand
23 letters to get them to come in compliance.
24 Basically, the grounds she states or --
25 essentially, what this boils down to, Your Honor,

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1 is that, yes, there was an agreement between Tim
2 and Wade. Do you know what TnW stands for? Tim
3 and Wade. They agreed to buy a piece of property
4 and develop the project, a marina. It had nothing
5 to do with TNT.

6 The only reason that we're involved in this
7 is because, one, they didn't have the money to get
8 a loan to build their marina. Okay. So they had
9 to put up -- TNT had to put up the collateral to
10 get the loan. And you are saying, Why did they do
11 that? Because Donny is Tim's son, and Tim allowed
12 Donny to buy in the restaurant. And this is
13 important: Donny gets out of the Marine Corps and
14 shows up at the restaurant and only has \$72 to his
15 name. His father allows him to buy into the
16 business that he's really doing well at and making
17 a lot of money. The point being is his dad says to
18 him, Donny, I need collateral. I need to put the
19 restaurant up as collateral so we can get the
20 \$1.1 million loan to build our marina, to buy the
21 property, and basically build it.

22 The point I want to make is that the loan
23 documents between United Community Bank, as well as
24 TNT and TnW, they don't create a joint venture
25 relationship.

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1 In the case law, Your Honor knows, if TNT
2 puts up the collateral for the loans to build their
3 marina, it doesn't make them a joint venture. The
4 loan documents do that. I think the case law is
5 clear on that. It's clear from the testimony that
6 TNT never had a right to go in the marina and tell
7 Wade Long -- for example, the lease agreements with
8 the commercial fishermen, they never consulted my
9 clients about that, and they never had any input.

10 And when they released the marina out to a
11 third-party to operate the jet skis, they never
12 contacted my client, TNT, to get their permission
13 to do that.

14 The other thing I would point out is one of
15 the things that is frustrating about this is that
16 -- is that there is an aboveground fuel tank and
17 things located on TNT's property for purposes of
18 operating the marina. The point I want to make is
19 the above-ground fuel tank and fuel lines, there is
20 a fuel dispenser on a floating dock which is not
21 permitted by SLED, and there were letters sent out
22 to TnW indicating that they need to come in
23 compliance. That is the regulatory lawsuit, which
24 I'm involved in that.

25 But the point being is that, essentially, our

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1 clients gave them permission to use based on the
2 fact that they would comply with all local, state,
3 and federal laws. In this particular case, TnW has
4 not.

5 At this point, there are letters that were
6 sent out. As you see, I indicated two letters were
7 sent from Ben Stone, and he indicated and gave a
8 list of the violations that were committed by TNT
9 regarding the operation of the marina and told them
10 that if they didn't come in compliance in so many
11 days, that they had a right to bring an enforcement
12 action. OCRM has not brought an enforcement right
13 now, but that is one of the things we're dealing
14 with.

15 I want to point out that our position is that
16 -- Wade and Tim had permission to use TNT's
17 property for the sole purpose of building the
18 marina. But by no way, shape, or form are we a
19 part of the operation of the marina.

20 Another thing I think is important is that
21 they were going to build a restaurant, ticket
22 master's office, and all of that, and none of that
23 occurred. All of that was abandoned. Assuming
24 even if it was even a joint venture, they never
25 built the ticket master's office. And the things

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1 that they were required to comply with parking
2 through Horry County, they abandoned that. They
3 had permits to do that, and the permits just
4 basically expired.

5 So really what they've got is, they got --
6 what they did is they put -- I'll move onto another
7 point I want to bring to Your Honor's attention.

8 Back around in 2022, our clients were put on
9 notice that the above-ground fuel tank -- they had
10 what I would call a toolshed that they used as a
11 harbor master's office. They were both
12 un-permitted, and they were on TNT's property. Our
13 client was served with a copy of the tickets, and
14 ultimately we went before Judge Mayer's office,
15 pled guilty to it because we are the property
16 owner, and Judge Mayer issued an order, which is
17 included up there.

18 Per Judge Mayer's order, he basically
19 instructed our clients to remove the -- to remove
20 the ticket master's office, because it was
21 un-permitted. And when they did that, at that
22 point in time, the county police came out there and
23 indicated, you know, they were investigating it and
24 whatever. They got Judge Mayer on the phone, and
25 he instructed the county police department,

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1 pursuant to his order, that our clients had a right
2 to move the ticket master's office, which basically
3 TnW was using to operate its jet ski business.

4 He basically told the officers that pursuant
5 to his order, they can remove it from the property,
6 and they did. And guess what happens? Ms. Golding
7 filed an injunction against our clients seeking to
8 put the -- injunction to take the ticket master's
9 office, which is like a toolshed you would buy at
10 Home Depot, and to put it back in there.

11 Our position was that it didn't comply with
12 zoning and requiring us to put it back -- the point
13 I want to make is if we're a joint venture, and we
14 have a right of control over the joint venture,
15 then my clients have a right to go in there and
16 remove things on their property -- that they are
17 allegedly a part of a joint venture -- that don't
18 comply with the law.

19 So the point is if you have this equal right
20 of control as co-joint venturers, anything that is
21 on the property or part of the joint venture that
22 is in violation of law, they have an equal right to
23 do that.

24 And then the point I'm trying to make is --
25 so the reason why there isn't a joint venture is

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1 because TnW is seeking equitable relief to force
2 our clients, who are allegedly a part of this joint
3 venture, to put the toolshed back, which is illegal
4 because it doesn't meet zoning requirements.

5 Because when you put a toolshed on a property, you
6 have to have the main structure before you can put
7 a subsequent smaller structure on the property.

8 So here we are trying to comply with a court
9 order, and Ms. Golding, on behalf of her clients,
10 is going in front of a circuit court judge and
11 seeking an injunction to require us to put the
12 toolshed back on the property, which is an illegal
13 operation --

14 MR. PLAYER: Not seeking. Obtained. And
15 they've never put it back, in violation of two
16 court orders from this court.

17 MR. BELLAMY: Well, Your Honor, if we are a
18 co-joint venturer, pursuant to their theory of the
19 case, we have the right to remove it from the
20 property, because we have right of equal control to
21 manage the property, and that is the law in South
22 Carolina.

23 MR. PLAYER: Which is it? Are you, or are
24 you not? Because you are telling the Court there
25 is no joint venture and no evidence when you just

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1 admitted you took actions like you were a joint
2 venture.

3 THE COURT: We're getting off topic. Let's
4 get back to where we were.

5 As to my original question as to what Judge
6 Culbertson ruled on, was that the derivative
7 action?

8 MR. BELLAMY: Yes, Your Honor.

9 MR. RICHTER: Your Honor, if you don't mind?
10 I actually have a dog in that fight, because that
11 is our motion. Can I explain one nuance that I do
12 think is important?

13 THE COURT: Yes.

14 MR. RICHTER: When the lawsuit was first
15 brought, we flagged it as: Wait a minute, what you
16 are complaining about is that you, the plaintiff,
17 are harmed by virtue of the fact that damage is
18 flowing through this entity to you? That is at its
19 nature derivative. If you are going to file it
20 that way, it has to follow Rule 23. That is a
21 derivative. It is classic. Does the harm flow
22 through the entity to the individual? That is how
23 it was pled.

24 We argued the motion the first time, and the
25 Court rules I'll let you replead it, Ms. Golding.

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1 She repleads it. We say she didn't cure the
2 mistake. It contains the same error. We argue
3 again. Tucker is correct, Judge Culbertson said,
4 No, I'm going to find whether demand futility was
5 in there or not, it was obvious it was futile. So
6 we'll revisit this at directed verdict, and that's
7 the only reason why I'm telling you now. There was
8 a nuance to the argument that's been advanced today
9 before Your Honor, and I think it is important.

10 Our contention -- if you look at the
11 caption -- Wade Long, individually, and on behalf
12 of TnW and More. All right. The argument before
13 Your Honor now is that the derivative action they
14 complained about, that is not proper, is that the
15 harm is flowing through this alleged joint venture.
16 Right? And that's never pled here. That is never
17 articulated.

18 So in order to get there, you first have to
19 prove that there is actually a joint venture, and
20 that what the complaint says is that this entity,
21 TnW and More, as a participant in this joint
22 venture is harmed derivatively because the injury
23 is flowing through that joint venture and finding
24 its way to TnW. That is a derivative action. That
25 has never been pled properly. It hasn't been pled

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1 at all.

2 So I think the nuance difference -- Tucker
3 would say to Your Honor it's res judicata. This
4 was never argued to the Court. Our argument was
5 about the faulty derivative nature of the case as
6 it was pleaded, that it was Wade, individually, on
7 behalf of TnW and More.

8 What the plaintiff seeks to do now is to
9 bring the case that says joint venture -- give it
10 whatever name you want to -- and we have suffered
11 harm because damages are flowing through that joint
12 venture and hitting us at the TnW level. That's
13 never been before Your Honor, before any Court.
14 There is no res judicata on that.

15 I don't think, respectfully, that what Judge
16 Culbertson does is res judicata that prevents us
17 from coming back on directed verdict later anyway,
18 which I just highlighted for you that we intend to
19 do that at the end of the plaintiffs' case anyway.
20 So that issue still looms out there.

21 How does the plaintiff contend it was harmed
22 in the case? It is not individual harm, but it is
23 harm that flows through an entity. If it is harm
24 that flows through, it is derivative by nature, and
25 it has to comply with Rule 23, whether it's flowing

MOTIONS

1 through TnW and More, as originally pled, or
2 whether it's flowing through a joint venture that
3 they have to prove the existence of anyway. They
4 are both derivative.

5 THE COURT: Let me ask you this: Prior to
6 the second amended complaint, I'm assuming in the
7 original amended complaint the language was used
8 "joint venture"?

9 MR. PLAYER: Yes. The actual cause of action
10 is in breach of a joint venture agreement.

11 MR. RICHTER: I don't mean to interrupt, but
12 I want to be heard on this point, too, because it's
13 an ever-moving target. This is the second amended
14 complaint. The joint venture created by the
15 plaintiff LLC and defendant Inc., was the
16 development and operation of the business, yadda,
17 yadda.

18 So the allegation they seek to prove is that
19 the joint venture was between the plaintiff LLC,
20 TnW and More, and the defendant Inc. The defendant
21 Inc. is TnW and More, Inc.

22 MR. PLAYER: No. TNT.

23 MR. RICHTER: TNT. You are correct.

24 That is the joint venture they seek to prove
25 in this court. I want that to be clear so that

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1 we're not morphing into, well, it's a joint venture
2 with Tim individually or a joint venture with some
3 of these other gentlemen sitting back here.

4 The allegation that brings us here is that
5 that is the joint venture that was formed between
6 TnW and More and TNT.

7 MR. BELLAMY: The joint venture was Little
8 River Water Sports. That is the marina. And what
9 they did is they list as far as the -- TnW -- if
10 you saw on the insurance information, it indicated
11 that TnW and More, LLC, d/b/a Little River Water
12 Sports. So they maintain Little River Water Sports
13 is now the joint venture, and the problem is Little
14 River Water Sports is incorporated. It is an LLC.

15 Under South Carolina law, when you deal with
16 joint venturers, the actual joint venture cannot be
17 a legal entity. Two individuals or two entities
18 can form a joint venture. And this is important
19 for tax purposes. Because what happens is the tax
20 returns for the joint venture -- no tax return is
21 filed on behalf of Little River Water Sports
22 because it is not an entity. The code -- co-joint
23 venturers are the ones that filed tax returns and
24 they filed it as a partnership tax return under
25 Rule 65 -- Rule 65 partnership tax return. It's

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1 pursuant to IRS guidelines, Your Honor. I think
2 when the testimony of Ms. Bryant, When she
3 testifies --

4 MR. PLAYER: When she testifies. This is a
5 directed verdict. I mean, this is not for limine.

6 MR. BELLAMY: The other thing I want to point
7 out is it is our position we're not in a joint
8 venture. But for the sake of argument, assuming
9 based upon the plaintiffs' allegation that we are
10 in a joint venture, assuming for the sake of
11 argument that that is true, we as a co-joint
12 venture would have a right to remove things from
13 the property that is subject to the joint venture
14 and our client's property during a violation of
15 law. Every time we tried to do that, the plaintiff
16 interfered and stopped us and sought an injunctive
17 relief saying we can't do it, which is kind of --

18 MR. PLAYER: Which was granted.

19 MR. BELLAMY: Well, the point being is --
20 here is the issue, Your Honor. How could allegedly
21 one joint venturer stop another joint venturer from
22 exercising control over the joint venture? It kind
23 of put a fine -- kind of put --

24 THE COURT: I mean, is that pled in the
25 second amended? I see nuisance -- I don't see

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1 trespass or anything like that.

2 MR. BELLAMY: In the second lawsuit, we
3 filed -- TNT, the restaurant, filed a lawsuit
4 basically asserting that TnW was operating the
5 marina business in violation of state and federal
6 law, specifically the regulation for --

7 THE COURT: That is on the second lawsuit?

8 MR. BELLAMY: Yeah, the second lawsuit. In
9 the second lawsuit --

10 MR. PLAYER: Why are we talking about the
11 second lawsuit?

12 MR. BELLAMY: -- they are suing us for
13 trespass. TnW filed a counterclaim against TNT
14 saying we're trespassing on the marina, that is
15 supposedly a part of the joint venture. And that's
16 undisputed.

17 MR. PLAYER: If I can hand you this? This is
18 their exhibit. This is where Robert Benoit, in
19 January of this year, said those docks -- that he
20 had said they had nothing to do with -- were his,
21 were TNT's.

22 MR. BELLAMY: No. I'll explain how that
23 happened, Your Honor. They accused my clients of
24 tampering with a fuel line. When I got involved,
25 we went down to the docks, and the person -- East

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1 Coast Jet Ski -- threatened me and my client saying
2 we were trespassing on the marina property. I'm
3 kind of thinking, Wait a minute, we're allegedly
4 co-joint venturers, based upon their theory.

5 THE COURT: Who is East Coast?

6 MR. BELLAMY: It was the -- East Coast was a
7 company that basically was -- that TnW assigned
8 their -- basically entered into a lease agreement
9 to allow East Coast Jet Ski to operate the jet ski
10 operation on the marina property. They had like 12
11 jet skis.

12 So if they are alleging that we're co-joint
13 venturers, and we go onto the marina dock system,
14 and they are now alleging we're trespassing on the
15 dock in the second lawsuit, which is inconsistent
16 and would be judicial estoppel, but the fact is
17 that there has not been a judgment in this lawsuit
18 or the second lawsuit, but I think -- clearly, they
19 are estopped based upon the fact that, under their
20 theory, if we're co-joint venturers, they can't
21 prevent us from going on the marina property.

22 THE COURT: I think you would be able to use
23 testimony in this trial certainly for that. As far
24 as the trespass, I don't think that is in front of
25 me. I understand your argument, but I think that's

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1 somewhere else see down the road.

2 What else?

3 MR. PLAYER: All of these allegations they
4 are making is based on deposition testimony. We
5 haven't presented evidence. I mean, I have plenty
6 of proof there was a joint venture. It seems to me
7 that when they allowed the marina to be built on
8 their property, they were participating. They are
9 the owners. If that's not enough for a joint
10 venture -- and you have to remember, TNT is Tim and
11 Tony. Tim and Tony, Tim and Wade. Tim controlled
12 both of them. Everything up there -- the
13 insurance, the DHEC regs -- that is what Tim
14 Kettner did.

15 So, to us, Tim Kettner represented TNT, and
16 he was the head honcho, and we'll give you plenty
17 of testimony that Ted Kettner called the shots. We
18 will give you text messages that will show you he
19 was calling the shots. When we dealt with Tim
20 Kettner, we believed we were dealing with TNT,
21 because Tim Kettner, individually, cannot pledge
22 the use of TNT property for the use of the joint
23 venture. Only TNT can do that. It is that simple.

24 As a matter of fact, there is a piece of
25 property -- a big part of this case and a big piece

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1 of property -- that Tim bought -- it's not
2 necessarily from, but there was a guy, Dean Trent,
3 living on it. He bought that property, and the
4 agreement was that was going to TnW. He gave it to
5 TNT, and that is where we built everything.

6 So is that individually with Tim Kettner
7 because he gave that individually to TNT, or is it
8 TNT's responsibility because he represented them,
9 and it has -- I mean, we have evidence to show that
10 there was a joint venture. All of this was brought
11 up in summary judgment, and that was denied.

12 MR. BELLAMY: We didn't file a motion for
13 summary judgment on this issue.

14 THE COURT: I assume this is more of a
15 12(b)(6)?

16 MR. BELLAMY: That's correct, Your Honor.

17 The thing that I really want -- this is what
18 is -- I think all of the misinformation and what is
19 going back on this and that, but when you separate
20 the wheat from the shaft, the fact they have is all
21 of the insurance policies on the marina -- going
22 from '16 all the way to up the present day --
23 indicate they are an entity other than a joint
24 venture.

25 What's amazing is after the lawsuit was

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1 brought by Ms. Golding, Wade never went back to
2 Rhett Sansbury and said, Wait a minute, we're
3 alleging we're a joint venturer and all of these
4 policies indicate we're an LLC, not a joint
5 venture. So if an environmental accident happens
6 or someone runs into the dock or someone is killed,
7 Your Honor, there is no insurance coverage, because
8 the first thing that the insurance is going to
9 say -- or the adjuster will say is, Wait a minute,
10 you lied on your application because you said you
11 were an LLC, not a joint venture.

12 Even after the lawsuit, Wade never went back
13 to Rhett Sansbury, who was the producers of these
14 policies, and said, Look, we need to change that
15 language to say we are a joint venture.

16 The reason they didn't do that, Your Honor,
17 is all of their tax returns from 2016 to present
18 date indicate that there are an S Corporation. So
19 instead -- and the point I want to make is that --
20 our clients are fine with filing as an S
21 Corporation because we're alleging we are not part
22 of a joint venture. But to the extent that Wade is
23 alleging -- along with Chris Kiser -- that they are
24 a part of a joint venture, and they are filing S
25 Corporation tax returns instead of a partnership,

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1 Your Honor, they are committing tax fraud. And,
2 Your Honor, this has been going on since 2016 to
3 present time.

4 MR. PLAYER: Then Kim Bryant committed tax
5 fraud because we have the same accountant.

6 THE COURT: Let's get back to what we're -- I
7 understand your argument. I'll read the Clearwater
8 case. I'm not familiar with it. I think you had
9 posted that.

10 MR. BELLAMY: That's in our memorandum, Your
11 Honor. Okay.

12 THE COURT: You have other various matters.
13 Let's go to the last one.

14 MR. BELLAMY: The last one is damages, and
15 I'll tell you -- the first complaint and second
16 amended complaint, after they were filed, during
17 the depositions of Mr. Long, Mr. Harrison asked
18 Mr. Long -- he had a copy of the complaint and the
19 causes of action that pertained to us were
20 promissory estoppel, breach of a joint venture
21 agreement, and I think economic interference and
22 nuisance came after the fact. I think it came
23 through a second amended pleading.

24 But when he asked Mr. Long, At the time you
25 filed this lawsuit, what damages did you have

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1 against my client, TNT, and the individual members
2 that were named? And Mr. Long indicated, There
3 weren't any damages. Everything happened after the
4 lawsuit was filed, allegedly.

5 The other thing I want to point out about
6 damages is they are claiming that we damaged them
7 by removing the toolshed that they were using as a
8 ticket office. They are saying we damaged it, and
9 that is part of their damages. One of the reasons
10 we're seeking a limited ruling -- we were complying
11 with a court order removing the ticket office,
12 because it was a violation of an Horry County
13 zoning ordinance. When we did that, they are
14 saying we damaged their property.

15 What I'm asking is anything that TnW alleges
16 that was damaged, based upon the fact that our
17 client's -- my clients were trying to comply with
18 the Horry County zoning ordinances, or OCRM, that
19 we ask Your Honor to give a limiting instruction
20 and indicate that, you know, essentially, that that
21 is not proper methodology. That is not a damage.

22 If we're on our property and allegedly we're
23 a co-joint venture, based on their theory, and the
24 county says we're in violation of a particular
25 zoning ordinance and OCRM says we have a fish

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1 cleaning station on part of our property that we
2 have to remove in order to comply to the
3 regulations, and to the extent we do that in order
4 to comply with, you know, state and local law, they
5 can't allege that they are damaged by that. That
6 is essentially what we are saying about the damages
7 issue, Your Honor.

8 THE COURT: All right.

9 MR. PLAYER: Your Honor, this is on TNT's
10 land. They ran plumbing to it. They ran
11 electricity to it. They went and got an order from
12 the magistrate. The magistrate order did not say
13 destroy my clients' property. It said you should
14 remove it.

15 I believe Ms. Golding tried to object or
16 interject, and she was denied, and then they just
17 tore it off the lot. My client went to this court,
18 first with Judge John, and he said put it back by
19 July. They ignored it. We filed another one. I
20 believe it was Judge Keesley --

21 THE COURT: Keesley, and then I saw Curtis on
22 something.

23 MR. PLAYER: Right. And they all said the
24 injunction is in place, so put it back. They still
25 haven't done it.

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1 So the idea that they -- they are arguing it
2 was a legitimate removal, then why did this Court
3 tell them twice to put it back? And there is an
4 injunction. From the beginning of this case it
5 was, Don't interfere with the business. They
6 violated that over and over again.

7 But the key is: Have we suffered existential
8 damages yet? No, because we have everything held
9 at bay. What we're saying is everything that --
10 and when we get to the loan -- okay, TnW paid
11 almost two-and-a-half times what Crab Catchers
12 paid, TNT, because they were the ones building it
13 and building the marina.

14 So my client has indebted himself to
15 \$700,000, and if they are able to say get off my
16 land, he paid that for nothing. He redeveloped and
17 turned a pond and some trailers into a parking lot.
18 That is what TnW did. That is what they paid for.
19 Whose parking lot is that now? Well, for years it
20 was for LWRs, Little River Water Sports, and Crab
21 Catchers. We're going to show you the signs. That
22 is what the parking lot was for.

23 When this happened, they said, Nope, get out.
24 Never paid a dime for that parking lot, except for
25 the land. Never paid a dime for the docks, and now

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1 you can see they are going to the Army Corps of
2 Engineers saying it is our docks. That is what the
3 case is about. We have paid all of this money. We
4 have a million dollars invested in it. Have we
5 lost that yet? No. But if they get their way and
6 say, Well, this was all just us giving you stuff
7 without looking for anything in return, and they
8 say you can't use our parking lot, we can't use the
9 docks.

10 So we lose our entire business without the
11 promise that they made to us. That is what this
12 case is about. Have they lost that at the point we
13 filed the lawsuit? No. It was because they said
14 get off of our land, so we had an injunction put in
15 place.

16 THE COURT: I saw in an Exhibit -- I don't
17 know which one it was. It looked like a sale of
18 land, like a contract for a sale of property. I
19 saw Ms. Golding on it. Who owns the property now?

20 MR. PLAYER: TNT.

21 MR. BELLAMY: Which one?

22 THE COURT: The 1.5 acres.

23 MR. PLAYER: There's lots of them.

24 MR. BELLAMY: No. No. Your Honor, that is
25 the marina property, and TnW owns the marina

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1 property. We don't own -- TNT has no interest in
2 the marina property. We have no proprietary
3 interest in the business. More importantly, we
4 haven't received any profits and haven't been
5 responsible for any losses for over eight years.

6 What this all brings to a head is that, at
7 some point, Tim and Wade kind of parted ways.
8 Basically, TNT is holding the bag. So what Mr.
9 Harrison does he tries to tell them to enter into a
10 commercial lease agreement so everyone knows what
11 everyone's responsibilities are. Because, clearly,
12 over the last eight years, Wade has not paid
13 anything regarding the maintenance or repair of the
14 parking lot. He hasn't paid anything regarding the
15 maintenance and repair of the fuel tank on anything
16 on our property.

17 And, ultimately, there was no insurance on
18 the fuel tank, and then obviously under the Clean
19 Water Act, the EPA sent a letter to Mr. Long
20 telling him he needed to come into compliance, so
21 he got pollution liability on the fuel tank.

22 So that is one of the problems. We're in a
23 loan that, basically, we put up the collateral and
24 not getting the benefit of anything. We did it for
25 Tim because of Donny's relationship with his

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1 father. So we put up, you know, eight properties
2 so they could get the 1.1 million dollar loan, so
3 Wade could have his marina. And, basically,
4 essentially, it's going on for a period of eight
5 years, and it is a permissive use, Your Honor.

6 But then because TnW is not complying with
7 state and local and federal law -- hell, even, you
8 know, the Corps of Engineers indicated the dock is
9 out of compliance with a critical area permit.

10 And, more importantly, they've got a floating
11 dock, Your Honor, with a fuel dispenser on it that
12 is in violation with the permit, violation of OSHA
13 standards, and to the extent that someone runs in
14 that fuel -- there was a letter sent to Stan
15 Barnett. Basically, it was Morgan Flake (ph)
16 enforcement of whatever, but she was telling them
17 basically cease and desist from using that fuel
18 dispenser because it was never properly permitted
19 by OCRM.

20 What the Corps and OCRM said was you have got
21 to come in compliance with the original
22 permittings. So everything that wasn't properly
23 permitted, you have to remove from the property,
24 which they added a lot to the dock -- additional
25 segments as far as the docking system. And,

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1 ultimately, they'll have to remove the floating
2 dock because that is an illegal operation in order
3 to come in compliance.

4 We're not trying to shut their business down.
5 What we're worried about is if an environmental
6 disaster happens, they are going to come after --
7 not Wade Long -- but my clients, because we are the
8 ones that has the collateral, the ones able to put
9 the \$1.1 million loan, which we get no benefit
10 from. Look, you need to be in compliance with the
11 county as far as the permits by the county.
12 Because to the extent that something happens, they
13 are going to go after the deep pocket, and we are
14 the deep pocket, TNT.

15 So the reason why these lawsuits are coming
16 is Wade basically said this is the way I want to
17 operate my business, and the point is I'll decide
18 whether or not I'll comply with local, state, and
19 federal law or not. A lot of these things he's
20 done is through the dark of the night, and
21 essentially it is his intent because he's Worley's
22 son-in-law, he gets grace --

23 MR. PLAYER: There is no evidence of this
24 anywhere in this case.

25 MR. BELLAMY: There will be.

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1 THE COURT: The vast majority of what you
2 just brought out is in the second case, not in this
3 case.

4 MR. BELLAMY: It is in this case based on the
5 deposition testimony, because they bleed over.

6 But, essentially, what this case is about is
7 it boils down to whether it was a joint venture
8 agreement.

9 THE COURT: On the 1.5 acreage, is there no
10 parking there?

11 MR. PLAYER: No. That's all critical area.
12 You can't build anything there. This is the way it
13 happens, and Stan can explain it better. In order
14 to have the docks, you have to have certain amount
15 of upland non-critical area that you had access to,
16 unfettered, unrestricted access to. That is owned
17 by TNT.

18 So the only way those docks were built was by
19 representing, when they got the permits to build
20 it -- and we're going to show you the applications
21 where it says this is all applicant's land, and the
22 applicant is TnW.

23 So in order for us to have that dock and
24 continue operating it, we have to have the upland.
25 What happened was OCRM said, okay, we're not -- now

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1 we found out TNT owns the land and there's a
2 dispute, so we'll hold off. It is not that it has
3 been denied. It is just sitting there waiting to
4 determine whether or not we have sufficient uplands
5 to have the docks.

6 Their position is they didn't pay anything
7 for 800 loads of fuel for the parking lot, that TnW
8 did -- mostly Wade -- and they benefit nothing.
9 Then we tore down a house that was there and made
10 it a part of the parking lot, which is theirs,
11 entitled, but they didn't get any benefit of it.

12 They -- their patrons walk down our docks all
13 the time. We've tried to keep them off, but
14 because of the injunction, we haven't done anything
15 drastic. So they are using the docks. The people
16 eating at the restaurant, they pull up to our
17 slips. So have they got any cash? No. Nobody got
18 any cash out of TnW. It never made any money.

19 I don't know. I'm crazy, but it seems like
20 you have to file taxes when you make money, and
21 nobody has made money in the joint venture. It's
22 two separate businesses right now because of what
23 they've done. The joint venture was allowing us to
24 use the land to build the docks and to build the
25 fuel pump, and they are basically saying get off of

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1 our land, and that destroys our business.

2 MR. BELLAMY: Your Honor, what this lawsuit
3 is about is Ms. Golding brought it on behalf of TNT
4 saying there is a joint venture. There is no joint
5 venture. There was an agreement between Tim and
6 Wade, and obviously we assisted Tim, you know, as
7 far as putting up, you know, collateral to get the
8 loan and they can build a marina. The problem is
9 that, you know, we haven't gotten one cent.

10 And I respectfully disagree, I think -- from
11 what I understand -- they did have profits in '22,
12 '21, or 22' and '23, in those years. The point is
13 we never got any kind of a distribution based upon
14 the profits or an allocation of profits.

15 I think that the fact -- more importantly, if
16 they are truly a joint venture, why are they not
17 filing a partnership tax return? That is the
18 thing. They have to explain that.

19 MR. PLAYER: We'll explain it to the jury.
20 They can ask on cross examination, but we can't be
21 excused from presenting our evidence for our case
22 in chief.

23 MR. BELLAMY: Number one, the fact that --
24 what we're arguing right here, Your Honor, there is
25 tax returns, and the insurance information clearly

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1 indicate they are not a joint venture.

2 MR. PLAYER: We disagree with that.

3 THE COURT: That is the information you can
4 cross examine who you will with that.

5 MR. BELLAMY: Okay.

6 THE COURT: Respectively, on that -- now, as
7 far as part of your package here, it talked about
8 damages from fuel leaks, regulatory violations.
9 Was that geared more towards the second case?

10 MR. PLAYER: No. And I can -- there's kind
11 of two issues -- three or four issues that are
12 intertwining. We have --

13 THE COURT: I don't see that pled anywhere.

14 MR. BELLAMY: No. We're not claiming that --

15 THE COURT: I mean theirs. I did not see
16 that.

17 MR. PLAYER: Right. Right. Well, it comes
18 -- the problem is it never stopped. So if you are
19 going by the date of the second amended complaint
20 that was filed, the interference with our ability
21 to operate, they ran East Coast Jet Skis off.
22 He'll be here to testify to that. They interfered
23 with our business after the original lawsuit was
24 filed.

25 In my mind -- and if we can get a stipulation

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1 to this, it would be great -- we won't bring up any
2 specific damages that have happened since the
3 second amended complaint was filed, as long as they
4 agree that when we finally get a contempt hearing
5 on the injunction, that we can bring the damages up
6 then. Because it is really in violation of the
7 injunction issued by this Court, and those damages
8 will be presented there as opposed to here.

9 MR. BELLAMY: The issue regarding the
10 injunction is on appeal to the court of appeals.
11 There was an order issued by Judge John indicating
12 that both parties have to come in compliance with
13 all state and federal and local regulations. We
14 had to reconnect toolshed, and there is an order
15 indicating that it was in illegal use. And,
16 obviously, in South Carolina law, you know -- I
17 don't think a Court is going to require something
18 that is illegal. So that is one of the grounds we
19 are appealing.

20 Plus, what makes this kind of maddening is
21 the fact that it is on our property, and based upon
22 their theory of a co-joint venture, we should have
23 a right to exercise control over our property to
24 evade any violations of the law.

25 Essentially, Judge John basically said, well,

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1 you know, even though he ignored the Judge Mayer's
2 order and said I really don't give a damn what
3 Judge Mayer said, you have to put it back. The
4 point is that, clearly, nobody disputes the fact
5 that it was not properly permitted, doesn't comply
6 with a zoning ordinance, because it is a toolshed,
7 and they are using it as a harbor master's office.

8 They've abandoned -- whatever agreement Tim
9 and Wade had, which didn't concern TNT and was not
10 a part of, they have abandoned it. They never
11 built the harbor master's office or do the things
12 they said they were going to do, and now we're
13 stuck with a toolshed, which is a violation of, you
14 know, local zoning ordinances.

15 What the frustrating thing is if someone gets
16 hurt on a jet ski or commercial fishing, they'll
17 come after us and say none of this stuff was
18 properly permitted, which we weren't responsible
19 for permitting --

20 THE COURT: Let me ask you this as to what he
21 just said in regards to post-second amended
22 complaint -- second amended verified complaint,
23 damages after that. I mean, what he's saying is
24 limiting this trial to damages prior to that; am I
25 right?

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1 MR. PLAYER: In terms of what we're asking
2 for, yes, Your Honor.

3 MR. BELLAMY: Well, that's good, Your Honor.
4 Because I think -- I mean I would have to confer
5 with co-counsel, but even after the second amended
6 complaint, when that was filed, there still weren't
7 any damages that Wade could allege that were
8 obviously committed by my clients regarding the use
9 of the property.

10 MR. PLAYER: Well, we have.

11 MR. BELLAMY: Not in this case.

12 MR. PLAYER: In two contempt motions, we
13 have.

14 THE COURT: Again, that would be for the
15 contempt of the --

16 MR. PLAYER: Right. Right. But not in
17 the --

18 THE COURT: So are we in agreement then that
19 those matters because they were brought in the
20 contempt motion were for the contempt --

21 MR. PLAYER: I want to discuss it, because it
22 goes to the intent of the parties and their
23 malicious destroying of my client's business and
24 not complying with the injunction, but we are not
25 going to ask for monetary damages for any losses

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1 that occurred after that.

2 MR. BELLAMY: Wait a minute, you can't have
3 your cake and eat it, too.

4 THE COURT: The problem is, it is under
5 appeal.

6 MR. BELLAMY: That's right. It is stayed.

7 MR. PLAYER: It is not stayed.

8 THE COURT: How is it not?

9 MR. PLAYER: It's in the rules. An
10 injunction is not stayed by the filing of an
11 appeal. It is one of the specific exceptions to
12 the rule. I promise. I can show it to you if I
13 had a rule book.

14 THE COURT: Get the rule for me in the
15 morning.

16 MR. PLAYER: Yes, sir.

17 THE COURT: I would still be very, very
18 limiting on that, what I would allow. Even if the
19 rule allows it -- I mean, you are talking about,
20 essentially, pitting judges against each other.

21 MR. PLAYER: In terms of?

22 THE COURT: Magistrate and a circuit judge --
23 multiple circuit judges that are not here, one
24 which is not even on the bench anymore.

25 MR. PLAYER: I mean, as long as I can bring

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1 it up in the contempt hearings when we eventually
2 have them, I'm fine leaving it out of this case.

3 MR. BELLAMY: As long as he doesn't bring it
4 up for liability. Yeah, I think the property venue
5 would be the contempt hearings.

6 THE COURT: I completely agree with that.
7 I hate to ask this, but what else?

8 MR. BARNETT: I have one issue. Mr. Bellamy,
9 by my count three times, and the last time he said
10 most forceful and most clear, he said that his
11 client, TNT and More, Inc., has no ownership or
12 ability to control the marina. His client, through
13 Mr. Robert Benoit, went to the Corps of Engineers
14 office here in Conway and somehow -- I don't know
15 how yet -- convinced them to transfer TnW and More,
16 LLC's, marina permit to TNT.

17 Now, either what Mr. Bellamy said is
18 incorrect, or if it is correct, I invite Mr.
19 Bellamy -- I'll give him the assistant district
20 counsel's e-mail address in Charleston who I'm in
21 communication about this issue now, and invite him
22 to tell the Court that that was done in error, and
23 that the Court needs to rescind that transfer of
24 the permit. Because it has real world effects. My
25 client has pending before the Charleston district

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1 Corps of Engineers an after-the-fact permit to
2 correct discrepancies in how that marina was
3 constructed. The Corps has now transferred the
4 permit incorrectly, I believe.

5 THE COURT: I don't have any -- what you are
6 saying in any form of a motion.

7 MR. PLAYER: I just handed this to you.

8 THE COURT: I mean, I see it. But how this
9 happened, I don't have a clue.

10 MR. BARNETT: He just said it shouldn't have
11 happened. It needs to be undone.

12 MR. BELLAMY: How can I say it shouldn't have
13 happened, because I didn't know anything about it.

14 MR. BARNETT: It is your exhibit.

15 MR. BELLAMY: There are two -- Your Honor,
16 I'm not aware of that document, and I can't speak
17 intelligent about it. Maybe my co-counsel can.
18 But the point is my client has no ownership
19 interest in the marina, as far as it is owned by
20 TnW, but we have no interest in the business as far
21 as, you know, leasing out the wet slips, commercial
22 fishermen, and what was -- my understanding is
23 there is no longer a jet ski operation.

24 But we've never been a part of their
25 business, and when they make decisions about

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1 entering into lease agreements with the jet skis,
2 to run -- hire management to operate the jet skis,
3 we had no say in that. They didn't consult our
4 clients or anything like that.

5 MR. BARNETT: If your client has no ownership
6 in the marina, and no right to control it, then any
7 harm that flows from what Mr. Benoit did convincing
8 the Corps to transfer the permit to TNT is on your
9 client, and I'm going to communicate with Mr. Choe
10 (ph) tomorrow and tell him what you said in court,
11 and it is on record if he wants to get it. But
12 I'll send you his e-mail address and invite you to
13 do what I believe you should do.

14 I'm sorry, Your Honor.

15 THE COURT: I have this, and I don't know
16 where it came from. I can read the first page, the
17 rest of it is -- I can't. I don't see this.

18 MR. BELLAMY: It is not relevant or germane
19 to this issue. And Mr. Long has testified in his
20 deposition, and was crystal clear, that TNT has no
21 right to manage, operate, or control, you know, the
22 marina, and that's been the case for eight years.

23 What Stan is talking about, you know, I don't
24 know about that. I'm not aware of that document.
25 You know, I don't know how to comment on it unless

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1 I have a chance to look at it. But I don't think
2 it is a part of this case. I think it is something
3 collateral and separate that can be dealt with
4 later.

5 THE COURT: Okay.

6 MR. HARRISON: Your Honor, if I may? I will
7 be very brief.

8 THE COURT: Yes.

9 MR. HARRISON: It is not part of what Mr.
10 Bellamy has brought in his motion in limine. It is
11 based on the argument made by Mr. Player that gives
12 me some concern here that I think is appropriate in
13 limine.

14 Mr. Player had mentioned that this is about a
15 promise to transfer land. Well, South Carolina law
16 requires that a promise to transfer land be a
17 written agreement. It is undisputed there is no
18 written agreement as to that effect. They've never
19 pled quiet title. Therefore, I don't think they
20 should be allowed to get up here and talk about a
21 promise of land where there is no agreement and
22 have not pled quiet title.

23 So if they -- I think it will taint the jury
24 to allow the jury to hear a promise of land, and
25 yet have no evidence that land was promised to

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1 anybody. Certainly, no deed, which is the only
2 thing that transfers property in the state of South
3 Carolina.

4 So I don't think it is fair to leave a quiet
5 title action out, and then talk about a property --
6 transferring property issue. I don't know if
7 that's where Mr. Player is going, but I don't think
8 the jury should be tainted with that information,
9 and we shouldn't discuss things that revolve around
10 quiet title when it hasn't been pled.

11 THE COURT: I haven't seen where it's been
12 pled.

13 MR. PLAYER: That is the joint venture. The
14 joint venture was to enjoin all of the properties.
15 They had a recombination plat that was developed
16 that represented that they would combine all TNT
17 and TnW's property for purposes of getting the
18 permits. The piece of property in the middle --
19 you know, the date was September 2017. This is
20 more than a year after they started the plans.
21 They made the agreement, and Tim Kettner said this
22 is our joint venture.

23 The deal was he was supposed to transfer that
24 land to TnW, and he transferred it to TNT. That is
25 part of our promissory estoppel, because we have to

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1 have that property to have enough upland frontage
2 to be able -- that is where we built our gas tank,
3 on the property that Wade believed was going to be
4 transferred to TnW, and not TNT.

5 But that transfer came from Tim Kettner, not
6 TNT.

7 MR. BELLAMY: Your Honor, I have a case on
8 point, and I'll get a copy of it and forward it to
9 Your Honor. It deals where you have a situation
10 where adjoining property owners where you have
11 regulations or involve the OCRM, and when they're
12 claiming ownership of property or dispute by
13 ownership of the property. Essentially, the case
14 stands for legal -- stands for if you are going to
15 assert title over disputed property where OSHA
16 regulations apply, you have to bring a quiet title
17 action, which they didn't. And I'll be more than
18 happy to forward that case.

19 I sent a letter to Ms. Golding years ago in
20 this case running this caption indicating that --
21 and she was copied on the letter -- that what was
22 happening is that Wade was going back and saying
23 that he wanted to modify the permit and change it
24 on TNT's property. And the county was coming back
25 and saying, wait a minute, you know, you are not

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1 the property owner.

2 And then Wade was sent a resolution involving
3 TNT members indicating that they would not
4 authorize Wade to act as an agent on behalf of TNT.
5 I sent that case, which says that if they are going
6 to claim and say that part of TNT's property -- or
7 allege that there is a dispute between property --
8 that should have gone to TnW as opposed to TNT.
9 They have to bring a quiet title action, which they
10 haven't.

11 So Ms. Golding was put on notice. And,
12 interestingly, when she filed her first and second
13 amended complaint, she never brought a subsequent
14 action for quiet title. I'll be more than happy to
15 get that letter. The letter went to the county,
16 and Ms. Golding was copied on it. Since then --
17 and that was about a year-and-a-half, two years
18 ago, however long it has been. But she never
19 amended her pleadings to bring a quiet title
20 action.

21 So I don't think they have standing to
22 complain about it, because in order to have
23 standing, they would have had to have brought a
24 quiet title action.

25 MR. HARRISON: Judge, if I may add what my

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1 co-counsel has just said here, the property they
2 are talking about that was promised to be
3 transferred was transferred before TnW was ever
4 incorporated in 2015. So the property that they
5 are talking about was transferred from Mr. Kettner
6 to TNT. So I don't know how in the face of the
7 statute of frauds and failure to plead, and the
8 fact that -- factually it doesn't work, that they
9 would be allowed in the face of the facts that
10 don't agree with what they are saying, and the law
11 on the statute of frauds, and the failure to plead
12 a quiet title action, why they should be able to
13 bring that up here and stir the pot and muddy the
14 water.

15 Your Honor, as a judge, as lawyers, we
16 understand all of that. But all that is going to
17 do is confuse the jury and create a prejudice, and
18 turn this trial into something that it is really is
19 not about. If they want to talk about a joint
20 venture, that's fine. They don't have the evidence
21 to prove it, and we'll get to that. But they can't
22 talk about a quiet title action and transfer of
23 property, where it didn't happen factually, and
24 they didn't plead for it, and now they want to come
25 in here and introduce evidence about it. I think

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1 all that is going to do is confuse the jury and
2 create prejudice, and that is inappropriate in this
3 case.

4 MR. PLAYER: But, Your Honor, our entire case
5 is that they promised that we were going to be able
6 to use the land and it was going to be transferred
7 to us. And it was not transferred before TnW
8 existed. It was transferred two months before they
9 got the \$1.1 million loan. The transfer came by
10 deed of Timothy D. Kettner, dated September 15,
11 2017.

12 THE COURT: I'm trying to -- is this piece of
13 property where Crab Catchers is located? How big
14 is that.

15 MR. PLAYER: No. It is part of the parking
16 lot that is less than an acre, I believe. It's Lot
17 9, .158 acres.

18 MR. HARRISON: Would you like to see what
19 we're talking about?

20 THE COURT: Yes. Do you have an exhibit
21 there?

22 MR. BOSNAK: Yes. Let's pull it up. I think
23 it will make it clear. There is several plats,
24 Your Honor. It doesn't matter which one of these
25 we pull up, because these guys were in the habit of

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1 getting plats done every five months.

2 Judge, I'll bring this up here so you can see
3 it. What we're looking at is the property. So
4 what you got is the Crab Catchers restaurant here.
5 You've got TnW's marina, which is down here. And
6 then back here is basically the parking lot that is
7 in dispute, if you will. If I'm not mistaken, and
8 I'll let -- yeah. There you go. Mr. Player just
9 pointed out what he believed was promised to
10 Mr. Long.

11 MR. PLAYER: To TnW.

12 MR. HARRISON: TnW, Mr. Long, whatever. But
13 the fact of the matter is there is no written
14 agreement for that. Zero.

15 The problem I have with it is if Mr. Player's
16 entire case is based on a promise to transfer real
17 estate, well, we shouldn't be here, Your Honor,
18 because they didn't plead quiet title. They can't
19 come in here and argue quiet title, argue around
20 it, argue the elements of it, and let the jury be
21 exposed to it when they haven't pled for it.

22 Not only have they not pled for it, but they
23 haven't prayed for relief. So we don't have a
24 prayer. We don't have damages. We don't have a
25 cause of action. And they want to come in here and

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1 talk to the jury, and all that will do is confuse
2 them.

3 MR. BELLAMY: More importantly, by not
4 claiming it, we didn't get a right to assert lack
5 of standing.

6 MR. PLAYER: They are trying to tell me what
7 I have to plead. I have pled promissory estoppel.
8 They made an unambiguous promise to my client, not
9 only that that property would be transferred, but
10 that he could use these other properties because he
11 can't operate a marina without having access to
12 these three lots.

13 MR. BELLAMY: Are you claiming that your
14 client -- basically your clients should own this
15 property, or that your client has a right to use
16 the property?

17 MR. PLAYER: Either one. We don't really
18 care who owns it. We have asked for an injunction
19 from this Court to stop them from telling us we
20 can't claim this for purposes of our dock. Because
21 if we can't claim this, our business dies. It's
22 that simple, and they all know it. They let us
23 build on their property. How do you -- that is not
24 an ambiguous promise.

25 MR. HARRISON: Judge, this is a notice

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1 pleading state. We don't ask you to go into great
2 detail. We ask you to take a big club and beat
3 each other over the head with it. That is all we
4 ask, and we have no notice of that.

5 THE COURT: Ownership right to a piece of
6 property, I mean, that is essentially what a quiet
7 title action is.

8 MR. PLAYER: This is just promissory
9 estoppel. They can't stop us from -- are we asking
10 for a deed transfer? No. We want an injunction
11 that says they can't stop us from claiming that for
12 purposes of operating our business. They can't
13 make us move our fuel tank, because they let us
14 build it there in the first place, and that was
15 part of the agreement.

16 THE COURT: But you are asking a jury to not
17 transfer ownership, but essentially forever
18 encumber a piece of property.

19 MR. HARRISON: That is a transfer, Judge.

20 MR. BELLAMY: In perpetuity.

21 MR. HARRISON: If it was for a period of
22 time, that would be one thing.

23 MR. BELLAMY: Let me point out, Mr. Harrison
24 had the perfect way. Let's do a commercial lease
25 agreement. They said, No. No. No. We don't want

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1 to have to pay TNT any money to use their parking
2 lot, to use their property for purposes of
3 operating our business.

4 MR. PLAYER: Since we built it.

5 MR. BELLAMY: They want to be a squatter for
6 free.

7 MR. PLAYER: This is not squatting, Your
8 Honor. Through their own admissions we paid for
9 all of this. We took a million dollar loan that we
10 pay seven thousand dollars to improve their
11 property, and they want to say, well, you are just
12 screwed.

13 MR. HARRISON: The only improvements we got
14 on our property, Judge, was a shed that violated
15 the permit, and a fuel tank that violated the
16 permit. And what Mr. Player is saying is you
17 cannot have any control over what happens with the
18 land that is deeded in your name. That is what
19 this is about.

20 MR. PLAYER: Right.

21 MR. HARRISON: They think they can use our
22 property in perpetuity.

23 I've listened to everybody without
24 interrupting, please give me the same respect.

25 If they want to use our property in

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1 perpetuity, and they want to do it however the hell
2 they choose -- they don't want to bother with
3 permits, they don't want to deal with the county
4 when they complain, they don't want to fix things
5 when we ask them. That is what this is about,
6 Judge.

7 They want to use our property as if they own
8 it, and they are asking this Court to issue an
9 order without a quiet title motion, without a
10 deed -- which, by the way, why they didn't file a
11 quiet title motion is because they don't have any
12 deeds. Their names aren't on it. They don't have
13 an agreement to transfer that property, but they
14 want you to hear it, and they want you to allow the
15 jury to hear it, and then after they allow the jury
16 to hear it, they want you to rule that they can use
17 our property however the hell they want in
18 perpetuity.

19 How that is not a transfer of ownership, I
20 don't know. When the government does it, we have a
21 name for it; it's called a taking, but they want to
22 do it civilly.

23 MR. PLAYER: Your Honor, none of this is
24 based in law or fact. We are indebted. We have
25 pledged our property to a \$700,000 loan that paid

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1 for the docks and their parking lot. We did.

2 MR. BELLAMY: And we put up the collateral.

3 MR. PLAYER: Can I, please, talk now?

4 MR. BELLAMY: Go ahead. Go ahead.

5 THE COURT: Let's get everybody back to the
6 tables.

7 MR. PLAYER: We have a cause of action for
8 promissory estoppel. The law is clear that partial
9 performance brings the action out of the statute of
10 fraud. They allowed us to build our tank there.
11 They allowed us to operate there. They allowed us
12 to put the building there to operate out of. We
13 ran plumbing and electricity to it. And only when
14 they decided they had squeezed us enough, they kick
15 us off, and now they want to take everything. That
16 is an unambiguous promise that we relied on and put
17 ourselves -- we paid money or took damages because
18 of it.

19 THE COURT: There is a difference between
20 taking damages and paying money and then asking the
21 jury to give you property.

22 MR. PLAYER: I'm not asking the jury for
23 that. I'm asking you. You are the only one that
24 can issue the injunction. And that's what happens:
25 Promissory estoppel. We'll say if the promise is

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1 broken, this is how much we've lost. This is our
2 investment. This is what we expected to make.
3 That's our loss. The jury can say give that to
4 him -- and we'll have special interrogatories where
5 we're asking for an injunction, where the
6 injunction will be --

7 THE COURT: You mean special instructions.

8 MR. PLAYER: Yes, special instructions. And
9 the Court will determine from what the jury decides
10 factually whether or not you can issue that
11 injunction.

12 And I agree, that argument should be made at
13 that point. But this will be kind of bifurcated
14 see. We'll see what they think, see what facts
15 they find, and if the facts are sufficient for the
16 Court to issue the injunction we're asking for, in
17 whatever manner the Court decides to tailor it,
18 that is for the Court's decision acting in equity
19 once the factual issues are decided. It is not
20 proper for a motion in limine.

21 I completely agree, the jury cannot say, Deed
22 the property to TnW. We're going to ask -- based
23 on what the jury finds in terms of was there a
24 promise made? Did we meet all of the elements of
25 promissory estoppel? And then the Court will

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1 decide whether or not we're entitled to an
2 injunction based on the factual findings of the
3 jury. That is what we intend to do. I'm not
4 asking a jury to make the deed go from Tim Kettner
5 to TnW.

6 THE COURT: Am I clear, though, that as far
7 as what you intend -- and I don't want you to have
8 to tell me everything you intend to show, but is it
9 -- are you intending to show the jury that you
10 relied upon this promise, and that that is where
11 the promissory estoppel stops? Are you going into
12 the -- to the promise that it was going to be
13 deeded to you?

14 MR. PLAYER: No. The promise that we can
15 claim it for purposes of obtaining our permits and
16 operating our business, that they cannot kick us
17 off of that piece of property, because they let us
18 build there. That is the promise. This isn't a
19 temporary structure. You can see it all the way
20 through Little River. It is not like they didn't
21 know what we were doing. They knew it was on their
22 property. All we're saying is before this whole
23 fiasco started, we were able to claim it. We were
24 able to have people park in the parking lot, and we
25 were able to use that front part for our gas and

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1 our ticket office. That's all we want. We just
2 want an injunction that they can't interfere with
3 that.

4 That is what we're asking for in the
5 injunction, and it will be based on the findings of
6 a jury that there was a promise, that it was
7 reasonable, they intended us to rely on it, and we
8 suffered an injury because of it.

9 The law is a little strange. There's a case
10 that says I can get both damages and an injunction,
11 but we'll work that out at the end, because that is
12 something that the Court has to take up once the
13 factual findings are made by the jury on our
14 promissory estoppel claim.

15 MR. BELLAMY: One thing I want to point out
16 is Mr. Player seems to ignore that their marina is
17 an illegal operation right now. Their fueling
18 system, per DHEC and OCRM, is illegal.

19 MR. PLAYER: We disagree.

20 MR. BELLAMY: Your Honor, I saw the e-mail to
21 Morgan Flank sent to Stan Barnett saying tell your
22 clients to cease and desist using the fuel
23 dispenser to fuel boats. I have a copy of it. As
24 an officer of the court --

25 MR. BARNETT: Did you want to see the one

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1 where she came back and retracted that. They have
2 taken no action.

3 MR. BELLAMY: Just because they haven't taken
4 no action doesn't --

5 THE COURT: Everyone, hush. Everybody.
6 That's not the point. I'm not hearing any more
7 arguments. I don't need any more arguments that is
8 not before me.

9 Let's move on.

10 MR. HARRISON: If I may bring it back to what
11 we were talking about. We don't need to belabor
12 this point. Your Honor can see it as clearly as we
13 can, but my concern is if we allow this testimony
14 about a promise to transfer land, you can't un-ring
15 the bell, Judge. They haven't pled it. If you let
16 it get out there, there is no way that even with
17 the best of instructions that we can tell the jury
18 to completely ignore the fact that they've heard
19 that and the prejudice will already be out there.
20 There is just no way to reel that back in.

21 For them to think -- and I'm sure they would
22 love to have this, but for them to think -- to have
23 the jury thinking that a promise to transfer land
24 can happen any other way than if you plead a quiet
25 title is confusing to the jury, and I think it's

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1 asking too much for them to ignore that fact.

2 Again, Your Honor, this is a motion in
3 limine. All we're asking -- I'm not asking him to
4 not put up his case, but I'm asking him to put up
5 the case he pled, not the case he wants to plead.

6 MR. PLAYER: Your Honor, we pled promissory
7 estoppel and sought that injunction specifically.

8 THE COURT: I don't know what the testimony
9 will be. I'll assume that you are probably going
10 to have a plethora of witnesses that are going to
11 come up and say, We didn't make that promise. It
12 goes to existence of evidence, not necessarily the
13 weight. I'll allow it.

14 That being said, if it gets to a point where
15 they say, Oh, we asked someone to draw up a deed
16 and all of that --

17 MR. PLAYER: No, that's not going to happen,
18 Your Honor. It is really going to be: This was my
19 understanding. This is what I believed. This is
20 what I thought Tim was telling me.

21 THE COURT: I want everyone to know this: I
22 tell the jury multiple times that anything coming
23 out of your mouth is not evidence. So I do want
24 you to understand that. They are told probably
25 four times during the trial that nothing the

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1 attorneys are saying is evidence.

2 MR. PLAYER: They typically ignore it.

3 THE COURT: I want you to understand that.

4 I'm very firm with jurors on that.

5 MR. PLAYER: Yes, sir.

6 THE COURT: Anything else?

7 MR. HARRISON: Nothing further.

8 THE COURT: It's 5:00. Let's be here at
9 8:30. Get it opened up so you can have a few
10 moments to get electronics working, and we can --
11 you said you were going to get with counsel in
12 regards to 35 checks?

13 MR. PLAYER: Yeah. When we get here in the
14 morning, I'll hand them the checks that we're going
15 to ask about.

16 MR. BELLAMY: Your Honor, the letter that I
17 sent out to county and copied Ms. Golding on about
18 the case I cited about the quiet title action, can
19 I still forward that to the Court and opposing
20 counsel?

21 THE COURT: Yes, please. My law clerk is in
22 Italy, so send it to my admin and send it to me;
23 that way, we both get it. I told him if he checked
24 his e-mail, I'd fire him. He's on his honeymoon.

25 All right. Thanks, guys.

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1 (WHEREUPON, THE PROCEEDINGS FOR JUNE 10, 2024
2 CONCLUDED.

3 (THE FOLLOWING WAS HAD ON JUNE 11, 2024 OUT
4 OF THE PRESENCE OF THE JURY.)

5 THE COURT: Keep your seats. Keep your
6 seats.

7 Sorry, I was trying to get signed in here.

8 I'll tell you, and I'm going to let the jury
9 know as well, court administration in their
10 infinite wisdom has this push notification to sign
11 in. So if my computer blacks out, and if it goes
12 to a black screen, I have to sign back in, and it
13 sends a push. I'm not texting. I'm just trying to
14 get that logged in.

15 Anyway, hope everyone had a good night. I
16 think, Mr. Player, there was stuff you were going
17 to look at. Have you discussed those?

18 MR. PLAYER: I gave the list to Ronny, and I
19 think they are looking at it now.

20 THE COURT: Do you need time to look at it?

21 MR. RICHTER: Not really. All I can offer
22 you is we have an explanation for all of it. I
23 mean, it is their responsibility, at best, to call
24 -- I don't know how you want to curb what is going
25 to be said to this jury.

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1 THE COURT: Well, again, as far as what's
2 being said by the lawyers, it's not evidence. I
3 mean, you have to prove whatever you are telling
4 the jury you are going to show them. If you are
5 telling the Court you have an explanation for
6 everything, you will be able to put that up.

7 MR. PLAYER: I narrowed it to 17 checks, Your
8 Honor. And, quite frankly, there is some stuff in
9 the 30,000, 60,000. But I think -- unless I read
10 this wrong -- their own exhibit admits that Mr.
11 Kettner was reimbursing, take \$15,000 of what was
12 supposed to be there. So, to me, this says there's
13 \$15,000 I can't account for, unless I'm reading
14 that wrong.

15 MR. RICHTER: He's reading that wrong. And,
16 Your Honor, just a fundamental disagreement, if you
17 want to call it, to the extent that Mr. Player
18 would say to the jury or the Court that loans were
19 improper without consent of all members of the LLC,
20 that was his operating premise. That is not what
21 the operating agreement says.

22 What the agreement says, if you look at the
23 construction paragraph of the operating agreement,
24 it says that the plural shall be singular, and the
25 singular shall be plural. So when it says the

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1 members have to agree on the loan, as the operating
2 agreement says, we are to construe the operating
3 agreement, and plural is singular, and singular is
4 plural.

5 I'll say this, too. All of the checks he
6 mentioned come from the year of 2018. The tax
7 returns from 2018 show that TnW paid 153,000 in
8 gross revenues, and reported of \$377,000 loss that
9 year. So suffice it to say, there was not
10 sufficient money to cover the expenses of the
11 business that year, and that is the year they
12 complain -- complain that Tim Kettner loaned money
13 to the company and then paid himself back.

14 Now, what resulting harm could have come from
15 that is a mystery to me, but you have a company
16 with of \$153,000 of revenues that report a 3-7-7-
17 loss. Somehow somebody was keeping it afloat, and
18 that somebody is Tim Kettner. And how they come in
19 and claim that that is a harm resulting to the
20 company is amazing to me.

21 So I don't know how you want to curb what is
22 said in the opening. I would say just -- at this
23 point, say what you are going to say, call the man
24 a thief, that he loaned money to a sinking ship to
25 keep it afloat and paid himself back the money, but

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1 he should have asked permission first from the
2 other members, but didn't do it. It is a
3 ridiculous position to take. I think it is
4 prejudicial. I don't know how you want to curb it,
5 Your Honor.

6 THE COURT: I think it is a factual question.
7 I haven't gone through all of the evidence. You
8 have boxes and boxes and boxes of records, so I'll
9 give you latitude in your opening. Again, I'm
10 going to give you much latitude in your cross
11 examination of the plaintiff in this case.

12 I do think that I'm going to have a short
13 leash in regards to speculation. You have somebody
14 who is an expert, and I know you mentioned
15 something about an accountant. We may be able to
16 get deeper into that with the accountant.

17 MR. PLAYER: It is as simple as this is the
18 check Tim Kettner wrote to himself, and I went
19 through their explanation last night, and I'm
20 perfectly satisfied that the jury will not find
21 that to be a sufficient justification.

22 THE COURT: All right.

23 MR. RICHTER: May I raise one other thing?
24 Mr. Tucker dropped another thing yesterday when he
25 said promissory estoppel. I don't know if I can

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1 enforce the promise and seek damages for the money
2 we were going to make or not.

3 So on that second half, for whatever this
4 thing is, whatever name you want to give it, this
5 fictitious joint enterprise, that second part of
6 about for whatever money it was going to make, now
7 we're entering into a different realm of pure and
8 utter speculation. And I heard them mention it.
9 But it is not speculation, because we submitted to
10 the bank a proforma that shows what we
11 theoretically could have made in the future.

12 Your Honor, if that is a basis for damages, I
13 just want to alert the Court because I don't want
14 to interrupt the trial. But there is going to be
15 strong objection to offering a proforma to a bank
16 and substitute for a projection by a qualified
17 expert witness about losses that could have been
18 suffered in a new business enterprise.

19 I mean, it is highly improper to put Mr. Wade
20 on the stand, as a pseudo expert, and say, Hey, let
21 me show you what you said to the bank, that if
22 theoretically we touched all of these dots, and all
23 of these stars aligned, we could have made this
24 much money, and then advance that as a theory of
25 loss for a joint enterprise. That would be

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1 improper.

2 THE COURT: All right.

3 MR. PLAYER: Your Honor, I believe judicial
4 estoppel -- they are at 1.35. They filed a motion
5 yesterday for this Court to dissolve TnW at a value
6 of \$1.35 million. That's what they said.

7 MR. RICHTER: The basis is a third-party
8 offered to purchase it for 1.35 million.

9 THE COURT: I think that was the exhibit I
10 saw. You must have attached it. I think it is
11 Exhibit A on one of the e-mails that was -- there
12 was supposed to be an escrow agent on that.

13 MR. RICHTER: And, Your Honor, that is wholly
14 different than to try to project future income from
15 a start-up enterprise and do it through a bank
16 witness based on a proforma, not an expert
17 projection.

18 THE COURT: And you are asking the Court to
19 do that? You are not asking the jury to do that?

20 MR. RICHTER: We're asking --

21 THE COURT: No. I'm talking about what
22 you're asking, that is not putting it in front --

23 MR. RICHTER: If we satisfy the Court that
24 these folks cannot reasonably operate together such
25 that dissolution is proper at the end of this, yes,

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1 we're asking the Court to accept that as a measure
2 of the value of the entity that we dissolve,
3 because it is a third-party offer for purchase, or
4 so that is what it appears to be to us.

5 THE COURT: Mr. Player, what he's talking
6 about more is speculative on what this enterprise
7 could have brought in in the years. Do you have an
8 expert that can say that?

9 MR. PLAYER: No. But this is all of them.
10 Every defendant signed this and presented it to the
11 bank, and the officer that it was presented to is
12 going to say this is what they told us they thought
13 they were going to make.

14 My client can testify about the value of the
15 business. He doesn't have to have an expert to say
16 what he believes the value of the business is. We
17 have a starting point of 1.35 million because they
18 have now asserted to the Court that that is the
19 value of the company. So if they want to say we
20 can go 1.35 in terms of the value of the business,
21 because that is what this is about.

22 If they get their way and kick us off the
23 land, we lose the business. They filed a motion
24 yesterday saying the business is worth
25 \$1.35 million, and I don't know how in the world

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1 the Court can stop me from bringing it up.

2 THE COURT: But there is a difference between
3 what their motion is and you trying to put before a
4 jury that the value of the business is based on
5 speculation on what they could be bringing in over
6 a period of years.

7 I mean, am I off base with that?

8 MR. RICHTER: Two totally different ideas.
9 One is projecting future lost profit from a
10 start-up entity, which invites speculation even in
11 the best of circumstances.

12 THE COURT: And I beg to differ. I mean,
13 please tell me what his training is to be able to
14 tell the jury the value of this business.

15 MR. PLAYER: South Carolina law says he has
16 the right to testify what his personal belief of
17 the value of the business is. I mean, that's the
18 way it always is. The owner of the property is
19 allowed to give a lay opinion as to the value of
20 his property. They can cross examine him until the
21 cows come home and talk about speculation, but the
22 problem for them is they agreed to it.

23 THE COURT: But the value of the property is
24 different then speculating what type of income it
25 is going to be generating.

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1 MR. PLAYER: All I'm doing is showing that
2 the value my client is going to put on it is
3 justified, because they filed an application to a
4 federally insured banking institution that says
5 this is what we expect to make, and it is not him.
6 It's all of them.

7 THE COURT: But you would admit, though, that
8 that is not what was made?

9 MR. PLAYER: Correct.

10 THE COURT: I mean, even in its best year.

11 MR. PLAYER: Correct.

12 MR. RICHTER: Look as the proforma that was
13 offered to the bank. Maybe the largest -- not the
14 largest, but a significant line item was ice cream
15 sales. I mean, we didn't even build an ice cream
16 shop. It is ridiculous to use a bank proforma
17 which says, look, if all of the stars align and hit
18 all of our projections, this is what we think we
19 can do. It is by definition a speculation of what
20 we think could happen.

21 MR. PLAYER: I have the banker to testify,
22 and that is not what he's going to say. They don't
23 loan a million dollars on speculation, Your Honor.

24 As a matter of fact, the main reason that
25 this document is in here -- what it indicates is

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1 that loan was secured. The primary source of
2 revenue was the joint venturer, the ice cream shop,
3 the marina, and the harbor master's office. It
4 wasn't Crab Catchers. All of that stuff you heard
5 yesterday -- Crab Catchers is all over it.

6 They said Crab Catchers is the one buying the
7 land, going to run the ice cream shop and the jet
8 skis, but they all agreed this is what we
9 anticipate to make. That is their words. I'm
10 using their words against them. They filed an
11 application and told the bank this is what we
12 expect to make. They can't come in here now and
13 say, Oh, we changed our mind. Back then, that is
14 what they thought they were going to make, and I
15 think that is evidence for the jury to listen to
16 when they try to beat me down on the valuation.

17 MR. RICHTER: Can I offer two answers?

18 THE COURT: Yes.

19 MR. RICHTER: A, true. B, so what? What
20 we're talking about is using that same piece of
21 evidence to say, And we would have earned that, and
22 we want you to award damages based on that on a
23 going-forward basis. That is completely improper.
24 That is pure speculation and the subject matter
25 exclusively of expert witness testimony. You

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1 cannot have lay people --

2 THE COURT: Yeah. I'm not going to allow
3 that. If you want to bring an expert that talks
4 about market and what this would have been, that is
5 fine. But that is basing on one document.
6 Speculation for a period of years about what they
7 could have brought in without having an expert to
8 do that? No, I'm not going to allow it.

9 MR. PLAYER: So what am I not allowed to do?

10 THE COURT: I'll allowing your client to
11 testify as to what he thinks the property is worth,
12 but as far as the speculation and allowing him to
13 testify what he thinks the business could have made
14 over a period of years based on that one document,
15 no.

16 MR. PLAYER: Am I going to be able cross
17 examine their clients and ask them did you agree
18 that these were the projections that you all signed
19 and guaranteed and pledged property for?

20 THE COURT: I assume they are also going to
21 testify that none of this was done.

22 MR. RICHTER: No. None.

23 MR. PLAYER: That is what this case is about,
24 Your Honor. They didn't let us do it. And the
25 other part of it is that document is essential to

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1 the joint venture, because the bank said we're
2 loaning you money on the joint venture. That is
3 what they said. That is what they said in their
4 deposition testimony, and that is what my witness
5 is going to say.

6 So projections come in because that is what
7 they base the loan off of, and the new part that
8 was supposed to be built is how they got the
9 \$1.1 million loan.

10 THE COURT: If you want to use it to show
11 that there may be some existence there was a joint
12 venture, I'm okay with that. But to simply say
13 this is the projected income going to be made by
14 this venture when you don't have anything else
15 other than a singular piece of paper, no.

16 MR. PLAYER: What about my client give his
17 own value, and when they say, Where do you come up
18 with that, and he says, Well, we made those
19 projections, that is what I expected to make?

20 I mean, you are going to tell the jury that
21 speculation is a problem, and we're just -- that
22 particular piece of evidence flows through a lot of
23 different theories that we have and, like I said,
24 we have the \$1.35 million thing that he can start
25 at, and Wade thinks it is worth more than that, but

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1 he'll have to explain it, and if the jury doesn't
2 believe him, the jury doesn't believe him.

3 THE COURT: This is why speculation is not
4 allowed. I mean, it is why we have experts that
5 testify. They testify to things that they have
6 knowledge about. That is unusual from a layperson.

7 MR. PLAYER: The only case in which an expert
8 witness is required is a malpractice case.

9 MR. RICHTER: The case law is replete with
10 expert testimony being required for projection
11 future income and future losses. Rule 702, 703.

12 THE COURT: It is.

13 MR. RICHTER: And, Your Honor, I have to say
14 only because I've heard Mr. Player say it over and
15 over that the case is about promises and promises
16 were made. No. This case is about what happens
17 when you fail to take the time on the front end to
18 document what it is you are going to do. I mean,
19 that is what the case is about.

20 And, unfortunately, this happens all the time
21 in South Carolina. It is not unique. People get
22 in the sandbox together, figure they can't play
23 together. The courts have remedy for that. It's
24 called dissolution. Shut it down, sell the assets,
25 move on down the line. But to back into it with

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1 speculation and conjecture and oral promises on
2 land sale contracts, it is a ridiculous legal case.
3 It really is.

4 MR. PLAYER: Your Honor, they let us build on
5 their land. Our business is based on being able to
6 use their land. That's the promise. I don't know
7 how they are denying that they promised us we could
8 use that land when they let us build a permanent
9 structure on it. There is no joint venture, but we
10 made them a parking lot and gave them docks that we
11 paid for, and now they want to kick us out. That
12 is destruction of our entire business, and that is
13 what my client can testify to. They can cross
14 examine with regards to whether that is speculation
15 or realistic.

16 THE COURT: He's testifying to what he
17 believes is factual. I mean, facts that he can
18 prove, that is one thing. But, again, speculating
19 on value is something completely different.

20 MR. PLAYER: Not with regards to the owner of
21 the property.

22 THE COURT: They're talking about -- you are
23 talking about two different things. The ownership
24 of property, and the value of the property may be
25 one thing. Speculating on what the value of what

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1 your income will be over a period of years is not
2 proper.

3 MR. PLAYER: And that's -- I'm not going to
4 say -- if they said we were going to make two
5 million in four years, that's our number. That is
6 not what we're going to say. That is what they
7 expected. Obviously, that was a number that was a
8 bit speculative, but it was based on fact to the
9 extent they told a bank to get a \$1.1 million loan.
10 There is no way that is speculation, because banks
11 don't loan on speculation, and that's what Geoff
12 Hopkins is going to testify to, that this was a
13 representation made by all of the parties, all of
14 the guarantors, and they allowed their property to
15 be secured on it. That is what I want to show the
16 jury is when they come back saying, No, no, no,
17 there is no way we would have ever made that, then
18 why did you tell the bank that? Why did you tell
19 the bank that those were the numbers you were going
20 to make if you didn't believe it?

21 So that is the person they were going to put
22 it up. They agreed with the numbers when they
23 signed their names to the guarantors, to the
24 mortgage, the note, everything. That was the
25 agreement with all of these people as to what they

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1 expected to make.

2 THE COURT: Let me ask you this. Say that a
3 bank does the exact same thing in a pre-closing
4 appraisal, and the bank says we think post-closing,
5 once everything is done, it will be worth \$2
6 million. The market falls out, and it's only worth
7 1.2. Do you think you need to be able to tell the
8 jury at that point that the actual value is \$2
9 million?

10 MR. PLAYER: No. But that is not what we're
11 telling the jury.

12 THE COURT: That is exactly what it is.

13 MR. PLAYER: Your Honor, that is not what
14 we're telling the jury. What we're saying is this
15 is an agreement between all of the partners that
16 said this is what we expected to make, and that was
17 factored into his decision to say what the value of
18 the property is, which you said he could testify
19 to.

20 You can't get him up here and he puts a
21 number of, say, \$1.5 million, and they say, How do
22 you come up with that number, and now he can't
23 answer.

24 THE COURT: Again, this is why you bring in
25 an expert to do this. This has been going on for

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1 three years. There obviously has been multiple
2 e-mails between the attorneys, between Ms. Golding
3 and the plaintiffs about the fact that they needed
4 an expert.

5 MR. PLAYER: That expert was solely for the
6 embezzlement.

7 MR. RICHTER: Your Honor, there is separate
8 expert testimony. We told the bank we were going
9 to make lots of money. We told the bank that in
10 '16. People tell them that all the time. We have
11 the actual now. This is why they don't have an
12 expert. What actually happened is in '16 we lost
13 \$27,000. In '17, we lost \$141,000. In '18, we
14 lost \$377,000. What expert could they have who
15 would come in and say this is going to make a
16 fortune over the passage of time? There is an
17 obvious reason why there is not an expert in this
18 case.

19 MR. PLAYER: Your Honor, Tim Kettner was in
20 charge when we lost all of the money. That is one
21 of the reasons that we think money was missing, but
22 we're not making that claim. We're not saying that
23 the 373,000 loss was all Tim Kettner. What we're
24 saying is from the get-go this was a con,
25 basically, to get Wade to come in and pay money, to

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1 give them their parking lot and docks, and then
2 they say, Get off our land. That is the theory of
3 our case, and all of this goes towards that. That
4 is the theory of the case.

5 You have to realize, in 2020 Tim said flush
6 TnW down the toilet. They had a meeting to invest
7 and keep it going, and he said I don't agree to
8 anything.

9 MR. RICHTER: That makes Tim Kettner the
10 stupidest criminal in the United States of America,
11 that he would spend 20 years building a restaurant
12 from the dirt, bring in that man as a kid, come up
13 with this concept and then we're trying to trap
14 Wade Long? That is the theory of the case? And in
15 order to do that, we have to keep this sinking ship
16 afloat by infusing money into it for all of the
17 years that it is losing, losing until we just can't
18 keep it afloat anymore, and that is the con? That
19 he goes back home to Wisconsin a broken man with
20 nothing? He brought this out of the dirt.

21 MR. PLAYER: Your Honor, we're not saying
22 Crab Catchers was going to die. The only thing
23 we're talking about is TnW. That is the one that
24 he had a duty of loyalty and a fiduciary duty to my
25 client. He's basically said I promised you you

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1 could use this land, because I was the head honcho.
2 All of the testimony you will hear is Ted Kettner
3 was TNT. So he said, as the owner -- and it says
4 it in the loan document that we're talking about --
5 Tim Kettner owns Crab Catchers. That is what they
6 told the bank.

7 So if Tim Kettner owned Crab Catchers and he
8 said you can use our land for this idea, this joint
9 venture, he made a promise that binds TNT. They
10 let them do it. It's not like they put up a 10,000
11 gallon fuel tank on their property, and they are
12 thinking, What is that.

13 And for three years -- in '16, TnW didn't
14 exist. '17, they didn't get the loan until
15 November. '18 was the first year of operation. So
16 in terms of not making money in '16 and '17 and
17 '18, those are the first years.

18 But I'm not going to go to the jury and say
19 you can use this projection as our damages. It's
20 just going to be evidence in this case to show that
21 everybody agreed that it was going to make money
22 back then. It wasn't a money pit. Something
23 happened that caused this to be a worthless
24 business, and our allegations are that is all Tim
25 Kettner and TNT.

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1 They promised us. It is unambiguous that we
2 could use their land. They got permits, did a
3 recombination plat. Did the deed ever transfer?
4 No. But they made a promise that we could use it
5 to form the marina, and now they are saying, well,
6 we rescind that. We're breaking our promise, and
7 that cost us money, because if they rescind their
8 promise, we don't have a business, and that's the
9 value of the business that they said themselves
10 yesterday when they filed a motion.

11 THE COURT: Here is what we're going to do.
12 When it comes time for you to call Wade Long, we're
13 going to proffer testimony to determine what he's
14 going to say as far as valuation.

15 MR. PLAYER: He's first.

16 THE COURT: Okay. After we do openings,
17 we'll send the jury out and proffer, and I'll make
18 a ruling at that point.

19 Anything else?

20 MR. RICHTER: No, sir.

21 THE COURT: All right.

22 MR. HARRISON: Before the jury comes, and Mr.
23 Richter discussed this, and I think it was
24 mentioned by Mr. Player, but just for the
25 organization of the trial -- and, Mr. Richter, you

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1 let the judge know if you still need this courtesy
2 -- he has a witness that has -- well, two
3 witnesses, I believe, with obligations. We had
4 discussed the order of the trial since there is two
5 defendants and the plaintiff, and what we would
6 like to do, if it pleases the Court, is if Mr.
7 Richter still wants to do this, we would let him
8 put his case in chief before ours, and anything
9 that we would have on our crossclaim, he obviously
10 would have a rebuttal and get to finish.

11 I believe you had a comment about what you
12 wanted to do with opening statement. I'm fine with
13 whatever Mr. Richter wants to do. I'll accommodate
14 him and his witnesses to the best of my ability.

15 THE COURT: Is that correct?

16 MR. RICHTER: Yes. And I ask the same
17 accommodation for any party in the room, that we'll
18 work it out.

19 THE COURT: All right. Anything else before
20 we bring in the jury?

21 MR. HARRISON: Nothing, Your Honor.

22 THE COURT: Let's bring them in.

23 THE BAILIFF: They want to know if it is okay
24 if they have notepads and pens?

25 THE COURT: No problem with that.

MOTIONS

1 (The jury enters at 9:17 a.m., and the
2 following is heard in the presence of the jury.)

3 THE COURT: Good morning, ladies and
4 gentlemen. We'll play musical chairs in just a
5 minute.

6 Ladies and gentlemen, I hope you had a great
7 night and enjoyed your afternoon. I know that the
8 rain kind of made me want to take a nap. This
9 morning we're going to start the case. Before we
10 start the case, I want to give you a little brief
11 introduction and talk about your duties as jurors.

12 Where is Mr. James McCann? You are the
13 foreman of this jury. I'll ask that you switch
14 places with the gentleman in the green shirt.
15 There is no assigned seats except for the foreman
16 and the two alternates. The alternates are
17 Mr. Edward Vining and Ms. Lori Valenziano, so you
18 are in the right seats, so that is perfect.

19 As far as that goes, there is no assigned
20 seats. I say that in every single trial I have,
21 that there is no assigned seats, and I think people
22 must mishear me because they sit in the exact same
23 seat, but we're creatures of habit. That being
24 said, you will always occupy this seat as to the
25 alternates, and you will occupy that seat.

MOTIONS

1 Mr. Foreman, your duty as a foreman is to be
2 a spokesman for the jury. Now, you won't begin
3 deliberating in this case until I tell you to, at
4 the end of the trial, after you heard all of the
5 evidence, after they have closed, and after I
6 charged you on the law. But you are the person in
7 the deliberating room that allows everyone to be
8 heard. That is your duty.

9 It is also your duty that if there is some
10 issue that any juror may be having, that you notify
11 me or our deputy. If, for some reason, during the
12 trial someone has an emergency, needs to use the
13 restroom, anything like that, notify the bailiff
14 there, he'll let me know and we'll take a break. I
15 won't single anyone out or anything. I understand
16 things happen. So if you will, let us know that.

17 Now, what I'll say is an introduction to the
18 trial of this case. These remarks are not a charge
19 on the law in this case. I'll instruct you in the
20 law at the end of the case. But before you retire
21 to decide the case, before the trial begins, I want
22 to explain the procedure that we'll follow so you
23 can better understand what is happening.

24 You have been selected as fair and impartial
25 jurors whose purpose it is is to find and determine

MOTIONS

1 the facts. You are the sole judges of the facts.
2 If at any time I make any statements or comments
3 regarding the facts, you must disregard them.

4 The facts are not at issue for me. My sole
5 responsibility here is to charge you with the law,
6 and it is also my responsibility to make decisions
7 based on the law about what comes in as evidence.
8 You are to determine the facts from the testimony
9 you hear and from the evidence that is presented.

10 You should not be influenced by any opinions
11 or statement also you heard outside of the
12 courtroom. Again, I'll remind you, the evidence
13 will come from this witness stand, and it will also
14 be in exhibits presented to you and that you will
15 be allowed to take back into the jury room with
16 you.

17 It is especially important that you perform
18 your duties in determining the facts diligently and
19 conscientiously. I know that sometimes trials are
20 not exciting as the old Perry Mason shows or
21 anything, but I ask you to pay close attention to
22 everything being said. If it wasn't important,
23 these lawyers wouldn't be putting it up here. It
24 is all important. And it important that you keep
25 an open mind and not decide any of the issues in

MOTIONS

1 this case until you've heard all of the evidence.
2 I don't want you at the end of the first day
3 saying, Well, I know what I'll do right now,
4 because you don't. You don't have all of the
5 evidence.

6 In a moment, the attorney for the plaintiff
7 will give an opening statement. The attorney will
8 explain to you the issues of what he thinks the
9 issues are in this case, or at least what he thinks
10 the issues are in this case. The attorneys for the
11 defense will then give their opening statements.
12 Again, it is their contention of what the issues
13 are.

14 You will hear me say this multiple times:
15 Lawyers like to talk. I was an attorney before I
16 was a judge, and I liked to talk, too. But I say
17 that to say that what the lawyers say is not
18 evidence. I want you to understand what they are
19 telling you in opening and closing statements is
20 not evidence. It is not to be considered evidence
21 because it is not evidence. It is simply what
22 their opinion is as to what they believe the issues
23 of the case are, and what they believe they will be
24 able to show you during the trial of this case.

25 Just because an attorney says they can show

MOTIONS

1 you something doesn't mean they've showed it. You
2 have to listen to see what the witnesses say and
3 what evidence is actually put into the record
4 before you make any of those decisions.

5 Again, I want to thank you for being here. I
6 want to also tell you that from time to time you
7 may hear one of the attorneys say, Your Honor, I
8 object, or, Your Honor, I believe we have a
9 question or matter of law we need to take up
10 outside the presence of the jury. I want you to
11 understand that our judicial process is built for
12 that. It is in no way demeaning to the other
13 parties. They are not saying that to get you out
14 of here or anything. It is just simply a matter of
15 law. And in all honesty, that is my job. That is
16 why I'm up here, to make those decisions, and those
17 decisions have to be made outside of your presence.

18 So I want you to understand that if they do
19 object, they are not trying to delay anything or
20 cause any undo lack in time, anything like that.
21 It's just part of the process. So I want you to
22 treat it as such.

23 Again, thank you for your willingness to
24 serve. I really do appreciate it. I just want you
25 to remain attentive through the process.

OPENING STATEMENT - MR. PLAYER

1 I'll have a clerk swear you in as a jury
2 panel, and after that we'll have opening remarks.

3 (Whereupon, the jury was sworn.)

4 THE COURT: Thank you.

5 Mr. Player.

6 MR. PLAYER: May it please the Court?

7 THE COURT: Yes.

8 MR. PLAYER: Good morning. I introduced
9 myself yesterday. I'm Tucker Player, and this is
10 my co-counsel, Stan Barnett, and my clients, Wade
11 Long and Chris Kiser. They are two-thirds of TnW
12 and More, LLC. You will hear "Tn" and something a
13 lot, because the parties are TNT and More, LLC, and
14 TNT and More, Inc. And I'll explain to you what
15 that means.

16 Why are we here? We're here because there is
17 a mess. That is why we think it will take more
18 than a week. The way this started was Wade has
19 been on the Little River waterfront his entire time
20 as a fisherman, made his living off of the
21 waterfront. That's what he's done.

22 For the last 15 years or longer, he's been
23 going out and catching fish and bringing them to
24 the restaurants so they can sell fresh fish at
25 their restaurants. One of those restaurants is

OPENING STATEMENT - MR. PLAYER

1 called Crab Catchers. Crab Catchers is TNT and
2 More, Inc. That stands for "Tim and Tony." Tim
3 Kettner, sitting over. There is the "T" in the
4 TNT. Tony was his brother-in-law, and they started
5 the business of Crab Catchers.

6 Wade caught fish and brought them to the
7 dock, and they would cut them right on the dock or
8 deck of Crab Catchers so people eating there could
9 see their fish being cut to serve to them. Over
10 the years, they developed a friendship. They had
11 similar interests. They liked to hunt and fish.
12 They had a good rapport, and they developed a
13 friendship.

14 They started talking about how are we going
15 to make money? They decided that they wanted to
16 build a marina, harbor master's office, ice cream
17 shop, and eventually a new restaurant that served
18 steaks that were grown organically on a farm that
19 Tim owned. It was a grand plan. It was Tim and
20 Wade that came up with it.

21 Tim bought -- or TNT bought the land adjacent
22 to the restaurant, and we'll show you pictures. It
23 was basically unusable. There was old trailers,
24 and Tim and Wade said we'll develop that into a
25 parking lot, because Crab Catchers had parking

OPENING STATEMENT - MR. PLAYER

1 problems. With the new venture, there would need
2 to be more parking. And there is another reason
3 for it, which we'll get to in a little while.

4 So they decide to do this thing together,
5 okay. You'll read from Tim Kettner's own text this
6 is a joint venture, okay. The joint venture was to
7 combine all of the lots that developed the parking
8 lot. They were going to buy waterfront property
9 for TnW, because you had to have waterfront
10 property to build the marina, which is a set of
11 docks where you park your boats, get gas, drop off
12 his fish. There was another piece of property, a
13 small one, below TNT's land that he owned
14 previously that they needed to make it a contiguous
15 full part.

16 So the deal was, and the promise was, we're
17 going to use Crab Catchers for everything,
18 including their parking lot. We're going to use it
19 for ours. We're going to put our fuel on TNT
20 property and run those down to the docks to pump
21 fuel. But the regulations require you have to have
22 access to a certain amount of upland frontage that
23 is not in a critical area. Okay.

24 Critical area is a line that says this is
25 environmentally sensitive, you can't do anything

OPENING STATEMENT - MR. PLAYER

1 here. You have to show us you have upland in order
2 to justify building on the water. So they formed
3 TnW and More, LLC, Tim and Wade. They did the
4 parking lot and, by themselves, fronted it. They
5 even bought the initial stable of jet skis to rent
6 for the business. Okay.

7 They put the fuel pump in on TNT's land, a
8 permanent structure. They put a hut there on TNT's
9 land, and ran electricity and water to it so they
10 could use the ice cream machine that they bought
11 for the joint venture.

12 You're going to hear that a lot. You're
13 going to hear it very contentiously, because we say
14 there is a joint venture, and they say it is not.
15 We also say they made us a promise, and that is
16 what I want you to focus on.

17 What promise did TNT, Tim Kettner, make to
18 TnW, Wade and Chris? The promise was: You can
19 build on our land, and we will allow you to use it
20 so we can get the marina, we can get the fuel
21 station, and we both get this big parking lot that
22 everybody can park in.

23 So Tim and Wade turn it into a parking lot.
24 They buy out the guy in the hut. You'll hear from
25 him, and that is where they put the gas pumps and

OPENING STATEMENT - MR. PLAYER

1 the ski hut, which is where you came and rented jet
2 skis. The parking lot is about 3 acres, a little
3 more. All of it is in TNT's name. They put up
4 signs. What they called this joint venture was
5 Little River Water Sports. It was also d/b/a
6 Little River Water Sports. It was one in the same.

7 But the new venture for the marina and the
8 new venture for the jet ski and the gas was Little
9 River Water Sports. We'll show you the signs that
10 were put up on TNT's property, This is exclusively
11 for Crab Catchers and Little River Water Sports.
12 They presented to the world that Little River Water
13 Sports could use that parking lot, and they
14 obviously agreed to allow them to build a permanent
15 10,000-gallon gas tank on their property. That's
16 what they did, and they began operating doing that.

17 Tim and Wade did the parking lot. They built
18 docks. Then they had to go get money, because if
19 you are going to build a harbor master's office and
20 the marina and pave the parking lot, they needed a
21 cash infusion. So they went and got a loan. Not
22 TnW. TNT and TnW. Every member of TnW, and every
23 member of TNT guaranteed a \$1.1 million loan for
24 this joint venture.

25 Of that money, about \$300,000 paid off

OPENING STATEMENT - MR. PLAYER

1 previous loans that were held by Crab Catchers.
2 But they had to put up all of their property. The
3 piece of property on the waterfront that was bought
4 by TnW, it was mortgaged. The piece of property
5 with the dock, the entire parking lot, and the
6 restaurant of Crab Catchers, all of that was given
7 as collateral for this \$1.1 million loan.

8 We think the evidence is going to clearly
9 show just from that, that they were in a joint
10 venture, okay. It wasn't an even joint venture
11 because Crab Catchers determined how much TnW paid
12 back on that loan, and how much TNT paid back on
13 the loan. The way it works out is the only thing
14 Crab Catchers paid for was the loans they had
15 before they got this loan. They didn't have to pay
16 back any money for the parking lot, the marina, or
17 what we call "Doc's property." TnW had to pay
18 that. They paid \$5,033 a month. They've done it
19 since 2017. Crab Catchers pays 2200.

20 So the money was for TnW to do the parking
21 lot and do the docks, and to buy the land that was
22 necessary to get docks. They operated between 2018
23 and 2020 without too many problems. What did they
24 do towards this joint venture? They asked for
25 permits. The new docks were applied for by TnW,

OPENING STATEMENT - MR. PLAYER

1 and TnW represented that it had the upland, because
2 at that point they did. The promise had been made.
3 TnW said, You can use our land, and the fed said,
4 okay, then you can build a marina.

5 They had to get plans for the buildings.
6 They hired an architect. They paid them a lot of
7 money to build the plans for the buildings they
8 intended to put on TNT's land for the purpose and
9 the sole benefit of the joint venture.

10 I didn't get much sleep last night, so I
11 apologize.

12 But we get to the point where they have to
13 start operating the jet skis. Wade is out fishing,
14 delivering fish. He leaves all of the money
15 management up to Tim Kettner. But Tim Kettner is
16 TNT and TnW. He's both of them. He runs the books
17 and things.

18 In 2020, things start to get -- well, I have
19 to back up. 2018, they bring in a new partner,
20 Chris. Chris buys in and pays \$80,000 into the
21 business. He becomes one-third owner. They sign
22 an operating agreement that sets out, you know,
23 their responsibilities to each other, and one of
24 those things is you can't loan money to the
25 business unless a majority, 50 percent, of the

OPENING STATEMENT - MR. PLAYER

1 owners agree.

2 Once Chris comes on board -- if it was just
3 Tim and Wade, Tim could do what he wanted to. But
4 once Chris came in, he didn't have 50 percent. He
5 needed one of the partners to agree with him.
6 We'll show you some checks that Tim wrote to
7 himself for reimbursement. He says he has an
8 explanation. We don't agree with. Some of those
9 checks, parts of them, we're going to agree it
10 looks legitimate, but there is no receipts.

11 When you see some of the justifications
12 pertaining to the checks, it is just his
13 handwritten ledger. That's it, no receipt. It is
14 hard to agree that he can loan money to the company
15 by paying a debt when we don't have a receipt for
16 the debt.

17 Another thing is when you have the jet ski
18 business, there's a lot of cash. People come up
19 and rent jet skis with cash. And we'll show you
20 Tim told them to keep cash and credit cards
21 separate. They had these sheets that they ran from
22 the ski hut, a daily log. What did we bring in
23 today? This much in credit card, and this much
24 cash. Something funky happened with the cash,
25 because it didn't add up to us from what Wade was

OPENING STATEMENT - MR. PLAYER

1 seeing, the amount of people going to the jet skis,
2 and what was deposited in the account.

3 So we started poking around. He found a lot
4 of checks that Tim was writing to himself or
5 writing to something called T-ket Services, which
6 we still don't know what it is. But it was Tim
7 Kettner, because it is T-ket. He likes to put his
8 name in everything he does.

9 He confronts Tim about it. Where is this
10 cash going? And that was it. It's time for war.
11 They turned on Wade. They said, Get off our land.
12 He just agreed to a million dollar loan after he
13 put hundreds of thousands of his own money to build
14 a business that is solely dependent on being able
15 to use their land, that he developed, that he built
16 a permanent structure on without objection and,
17 built the ski hut. He's been operating there for
18 three years, and they say, Leave.

19 If they get their way, he doesn't have a
20 business. And you'll hear his testimony about what
21 he put into it and what he thinks it is worth.
22 Remember, docks, the parking lot, all of that was
23 paid for by TnW the way they set the loan. They
24 got \$1.1 million to pay for all of this, and he's
25 paying back two-and-a-half times more than what

OPENING STATEMENT - MR. PLAYER

1 they are paying.

2 All of the dealings that happened, most of
3 them happened between Wade and Tim. They want to
4 say, Well, that is Tim Kettner. Tim Kettner made
5 those promises. Tim Kettner is the one that went
6 in the joint venture. TNT had nothing to do with
7 it. If you are building on TNT's land and your
8 business depends on using it, you are in business
9 together. It is that simple. That is a promise
10 that he pumped money into this business to make it
11 profitable, because he thinks it can be profitable,
12 and now they want to take it away from him, and
13 that is the main focus of our case.

14 They made a promise. He relied on them.
15 They intended him to rely on it, and he lost money
16 because of it. There is two ways -- we'll get to
17 that later. But that is the focus of our case. If
18 they get their way, and he can't use their land
19 anymore, he loses his business. He'll tell you
20 what he thinks that business is worth.

21 We get to the joint venture. In the three
22 years of operation, there was almost no distinction
23 between TNT and TnW. When they had office meetings
24 and where their office was, was in the Crab
25 Catchers' building owned by TNT. Donny Kettner was

OPENING STATEMENT - MR. PLAYER

1 signatory on TNT's checking account. He's not a
2 member of TnW. He is Tim's son, and a partner in
3 TNT. The bathrooms required for the permit were in
4 Crab Catchers' office. When the people from TnW
5 weren't there to operate the ski hut or gas pumps,
6 guess who operated them? TNT employees.

7 So they are going to have to vehemently deny
8 that they were ever in business with us, that there
9 was ever a joint venture. Then why is our office
10 in their office? Our bathrooms are in their
11 office? They had employee meetings where they said
12 we're in business with Wade, leave him alone, the
13 docks are his. And now they say that's not true.

14 We think the evidence will be clear, that the
15 promise was made, and now they are trying to break
16 it.

17 We're going to show you some plats. This is
18 a document that shows the promise, a recombination
19 plat. The deal was we're going to combine all the
20 lots. So they hired a guy to do a survey in 2017
21 that says "recombination plat for TNT and TnW,"
22 right? Because they are going to join the lots.
23 That's what was used to get the permits, because
24 that demonstrated that TnW could use TNT's land.

25 When things went sour, they went and changed

OPENING STATEMENT - MR. PLAYER

1 the recombination plat and said all of our land,
2 you got nothing to do with. They are trying to
3 push him off the land they promised he could use,
4 and he put his business there.

5 After things broke down, Crab Catchers has
6 done everything they can to destroy the business.
7 They locked him out of his tanks, ran people off
8 his docks, called every regulatory agency in the
9 world to get him shut down, over and over and over
10 again. This is not simply, hey, there is a
11 mistake, go our own ways, because that is not
12 possible. If the land where we built our stuff was
13 our land, then we would do that. We would go our
14 separate ways, but they promised us that we could
15 use their land, and now they are saying we can't.

16 We have invested a lot of money, and we're
17 still obligated a lot of money for the improvements
18 that we made, and we can't use it if they kick us
19 off their land. That is the promissory estoppel.

20 The other argument that we have is that there
21 was a joint venture. They operated together and
22 breached it when they expelled him from the joint
23 venture. Both of those come down to one thing:
24 Does he have a business? And if not, what was it
25 worth, and what should he be paid for what he put

OPENING STATEMENT - MR. PLAYER

1 into this business for the last four years if they
2 are going to be able to kick him off his land?

3 We'll also ask for an injunction, which will
4 be decided by the judge, but you will make the
5 factual findings to determine what he does, okay,
6 and that is to stop them from interfering with us.
7 Because you are going to hear a lot of testimony
8 about the interference. What they did to try to
9 destroy TnW while Tim Kettner is still a member of
10 TnW. He abandoned it.

11 This was -- the testimony is going to be
12 there was a breakdown. There was a dispute. But
13 if you look at who gains at the end of this, and
14 that is what I want you to look at, if they get
15 their way, who gets the benefit? Because it's not
16 TnW. They got him to do a lot of work on their
17 property. They didn't have a parking lot until TnW
18 made it, and they didn't pay for it. TnW went and
19 got a loan for the improvements on TNT's land.
20 That was a loan they got together, but TnW is
21 paying back all of the portions for the
22 improvements.

23 So they get a parking lot. They get another
24 piece that connects the parking lot with the rest
25 of their land, and they get access to the entire

OPENING STATEMENT - MR. PLAYER

1 marina docks that are connected to the dock from
2 their restaurant, that their patrons use on a
3 regular basis.

4 So what do they lose by saying, Wade, go
5 away? Get off our land. They don't lose anything.
6 But they have docks and the parking lot that he
7 paid for, and he's left with half a million dollars
8 left on the note that he has pledged his property
9 for. If he doesn't pay it back, he loses the only
10 thing he got out of this, which was the waterfront
11 piece of property.

12 I'm sorry. I'm a bit discombobulated this
13 morning.

14 But that is what this case is about. Tim
15 made promises to Wade. Tim was TNT. So when it
16 made those promises, he made the promises for TNT
17 -- Tim Kettner can't make a promise that you can
18 use another person's land. That doesn't happen.
19 It is like you walking out to your neighbor and
20 saying, Oh, this guy, go wild. You can use my
21 neighbor's lot all you want. You can't do that.
22 He doesn't own it.

23 But if he was acting as a representative of
24 TNT, which every witness will tell you that Tim was
25 the head honcho, he made the decisions, then when

OPENING STATEMENT - MR. PLAYER

1 he made the promises that you can use this land,
2 and it was TNT's land, he bound TNT. That is our
3 argument. Because he was the head honcho. He
4 spoke for TNT.

5 What we're asking you all to do is tell him
6 he can't break his promise, and if he can, Wade
7 should get everything that he thinks the business
8 is worth, because he doesn't have a business
9 anymore, and that is what this case is about.

10 We'll put witnesses up, Wade, Chris. You'll
11 hear from an employee of Crab Catchers that will
12 tell you they had meetings, and the meetings were
13 we are in business with Wade Long. Crab Catchers'
14 employee meetings where they say, We're in business
15 with Wade Long. But now they want to say, No, we
16 weren't. We had nothing to do with it.

17 You're going to hear testimony from the
18 people that ran the ski hut for TnW saying there
19 was funny stuff going on with cash. We didn't know
20 why he was making us keep it separate. You'll see
21 logs from the ski hut where the people who are
22 running it says we got cash today, and someone
23 comes back through and says zero dollars cash, and
24 another note that says, "Hold all cash for
25 payroll."

OPENING STATEMENT - MR. PLAYER

1 They never filed a 941 tax return. Tim
2 Kettner admits that. So who is getting paid a
3 salary when you are not telling the -- when you
4 tell the feds you don't have any employees? It's
5 that kind of stuff.

6 And we have sheets for 2018 and 2019 when the
7 person that we're bringing to testify was running
8 it, and when they started questioning Tim, he fired
9 them, put his own person in, and we had no idea how
10 much cash was brought in in 2020. There is no
11 receipt anywhere. We have deposits, but there is
12 no receipts.

13 You know, it's not hard when someone pays you
14 cash. The good principle is to give a receipt so
15 you can trace it. They never did that. Never gave
16 a single receipt for the cash. I'll let you decide
17 why that was. Did he steal? I don't know.
18 There's a lot of stuff we have questions about.
19 He'll have an opportunity to respond to it. We've
20 narrowed what we'll talk about it. There is 17
21 checks that we don't think is substantiated.

22 But that's kind of -- that's not the main
23 thrust of this. The main thrust is that we
24 invested all of this money, went into all of this
25 debt so that we could have a marina. If they get

OPENING STATEMENT - MR. RICHTER

1 their way and kick us off their land, we lose the
2 business. They made a promise. We relied on it,
3 and we lost money because of it. That is what the
4 testimony will present.

5 I'll come back to you whenever we finish this
6 thing up and come and ask you for a verdict in our
7 favor and an amount that we wish for you to give
8 us.

9 Thank you for your time.

10 THE COURT: Counsel.

11 MR. RICHTER: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 MR. RICHTER: Good morning, again, ladies and
15 gentlemen. We're further away, but we're not least
16 important, so don't ignore us over there.

17 I'm Ronny Richter. I'm from Charleston,
18 South Carolina. I like to say, If you don't know
19 the messenger, you can't know the message. So I'm
20 a third-generation pipefitter. My dad was a
21 pipefitter at the Charleston Shipyard for his
22 entire life, and his dad was. I was a pipefitter
23 for many years at Charleston Shipyard before I left
24 and worked and paid my way through college, and I
25 have been a lawyer now for 30 years.

OPENING STATEMENT - MR. RICHTER

1 That is my partner, Scott Mongillo. He is
2 originally from Connecticut. He made his way to
3 the Citadel and talked a Southern girl into falling
4 in love with him and marrying him. Best thing that
5 happened to him. Then he served our country as a
6 tank captain in the United States Marine Corps
7 before he became a lawyer.

8 Tim, come over here. I'll introduce you to
9 the jury.

10 You heard a lot about this man. This is Tim
11 Kettner.

12 MR. KETTNER: Good morning everybody. Thank
13 you for your time.

14 MR. RICHTER: He's originally from Wisconsin.
15 That is the leathered hand of a man that has only
16 worked hard his entire life. He's never taken a
17 dollar from anybody, and he's broken by the naked
18 allegation that while Wade, according to his own
19 lawyer, is out fishing and left the financial
20 management of whatever this thing is to Tim's
21 entrustment, that he took something from somebody.
22 Not a dollar. We have questions.

23 Today is not about questions. Today is about
24 proof. They sued somebody more than three years
25 ago. They have the burden of proving something.

OPENING STATEMENT - MR. RICHTER

1 They have been slapping at this for more than three
2 years, this belief that this thing in their head,
3 that while he's an absentee owner of the business,
4 somebody must have been doing something wrong,
5 because when I came home from fishing after three
6 years, I should have been rich by now, and I'm not,
7 and I can't figure it out. That is the heart of
8 this case.

9 At the heart of this case is -- a friend of
10 mine in Charleston owns a tackle shop. I was in
11 the tackle shop one day and a gentleman comes in to
12 buy some hooks and asks my buddy, Can you break a
13 hundred dollar bill? My friend said to him, Sir, I
14 can change anything but your mind. That is what
15 we've been fighting for three-and-a-half years.
16 Trying to convince this man that his former best
17 friend, mentor, father figure, Tim Kettner, did not
18 take anything from you.

19 Yes, they were friends. Tim brought this
20 restaurant -- and we'll start with Crab Catchers
21 first. You are hearing TNT and TnW. I don't know
22 who did that. No lawyer in this room did that, I
23 promise you. But if you think of TNT, that is the
24 restaurant. And TnW, that is the marina. So I'll
25 say "restaurant" and "marina."

OPENING STATEMENT - MR. RICHTER

1 Tim Kettner brought that restaurant out of
2 the dirt in the '90s. It was a little benchmark,
3 nothing more. Yeah, the fish came to the dock
4 fresh. He grew it bigger and bigger, and before
5 you know it, they are serving a thousand customers
6 a day on the weekends, Crab Catchers the
7 restaurant.

8 Tim Kettner first did business with the Long
9 family buying fish from Wade's uncle. Wade was
10 just a kid then, but already a very skilled
11 fisherman. Everybody in this courtroom works hard,
12 right. I have nothing to denigrate anyone. That
13 is a hard-working man. That's a hard-working man.
14 Those gentlemen behind the bar, hard-working
15 people. But his passion and his love is out on the
16 water catching fish. He'll be gone for days at a
17 time coming back with thousands of pounds of fish.
18 That was his passion.

19 Yes, there was a little dock adjacent to Crab
20 Catchers, and that is where he would charter
21 fishing and things like that. Over time, as these
22 friends got together, and from his own testimony
23 he'll tell you about Tim, hard-working, humble,
24 generous, kind.

25 I'll tell you, that old man there will

OPENING STATEMENT - MR. RICHTER

1 outwork anybody in this courtroom, and I defy any
2 one of them to say that's not true. First one
3 there; last to leave. Fish need to be cleaned,
4 he's your guy. Jet skis broken, I'm on it. That
5 is Tim Kettner.

6 I heard one of the counsel here ask a
7 question, Why are we here? Why have we upset you
8 guys from your happy lives and put you in these
9 spots to listen to the story? Well, you see all of
10 the boxes in the courtroom? You see all of this
11 paper? We're going to inundate you with paper, but
12 I'll simplify the case right now. Let me show you
13 a single piece of paper that is the most important
14 piece of paper in this case. It is this piece of
15 paper right here (indicates). Why you are here is
16 because nobody took the time on the front end to
17 fill out this piece of paper, and now everybody is
18 asking you to figure out for them what was it that
19 we agreed to do way back when? We didn't take time
20 to whittle it down ourselves.

21 You heard Mr. Player say there was a joint
22 venture. Between whom? What are we calling it?
23 How do we run it? What is the management
24 structure? How do he capitalize it? How do we
25 control it? Who pays for the expenses? How are we

OPENING STATEMENT - MR. RICHTER

1 dividing the profits?

2 It's never been organized as an entity or
3 filed tax returns, whatever it is. Whatever it is.
4 Whatever it was supposed to be. And so now, eight
5 years later, we're asking you folks to take time
6 from your busy lives and figure out what it is that
7 these people should have figured out eight years
8 ago. That's why we're here.

9 Was there a joint venture? No. No, there
10 was no joint venture. What there was was a
11 concept. What there was was the worst case of cart
12 before the horse that I've ever seen in 30 years of
13 practicing. Without even taking down in writing
14 about who are the players? What are we going to
15 do? How do we manage it? How do we control it?
16 We have to borrow \$1.1 million on this dream, this
17 fantasy, and build this enterprise. Ice cream
18 shop: Never built. Harbor master's quarters:
19 Never built. They all wanted money. They all used
20 the money. Things were going great.

21 I heard Mr. Player tell you things were going
22 along fine until 2020 or something like that.
23 Well, I guess if you call \$27,000 loss in 2016 is
24 fine, or \$141,000 loss in 2017 is fine, or a
25 \$377,000 in 2018 is fine, then things were going

OPENING STATEMENT - MR. RICHTER

1 great. Whatever this thing was, it looked like it
2 was doing great.

3 Lawyers like to say there is only two types
4 of people that argue: When there's lights on, or
5 when there's no money. And this is a no-money
6 argument. When you lose \$377,000 a year. It's not
7 because of mismanagement or anything else.

8 This is what the evidence will teach you
9 about jet skis: They're terrible. They are, A,
10 expensive. B, they are finicky. Looks great on
11 paper, we'll charge someone \$60 an hour to ride
12 that jet ski. It will cost 10 grand to buy one,
13 and when they break, and they break all the time,
14 not only do you pull it out of service, it is a
15 thousand, \$1,500 to fix it. It is very seasonal.
16 So this is great, terrific business. It is a
17 terrible business. They suck stuff into the jet
18 ski.

19 You have a \$60 ride, and it comes back with a
20 jet ski that has something pulled up in the
21 propeller that costs \$1,500 to fix it. Who is
22 fixing it? That guy there. Who is pulling it out
23 of service and taking it to the stop? Not Wade
24 Long. He's out fishing.

25 Let me tell you about fuel sales. That

OPENING STATEMENT - MR. RICHTER

1 sounds great, too. This is another thing that we,
2 this joint venture, this fantasy, we're going to
3 sell fuel at the dock. That sounds amazing.
4 Except -- and this is understandable -- fuel cost
5 is central. It is probably the highest expense you
6 have. They'll go to another dock over five or ten
7 cents a gallon. So you have to price it correctly.

8 According to Wade Long, it is in his own
9 testimony, if we bought it for \$3, we would sell it
10 for \$3.40. So there isn't a lot of money in there.
11 So you spend hundreds of thousands of dollars to
12 build these docks to put fuel on it, to invite
13 people to buy fuel, and that is the kind of margin
14 you are going to make? When you come back after
15 fishing and wonder where's all the money? I mean,
16 I should be rich by now.

17 Let me tell you about Tim Kettner. He builds
18 this fish shack out of the dirt into a very
19 successful restaurant. What does he do with his
20 restaurant? When his son, Donny, gets out of the
21 United States Marine Corps and has \$72 in his
22 pocket, what does he say, You boys come down here.
23 I have jobs for you. I have places for you.

24 Part of his retirement plan is he is going to
25 sell his dream to his son. That makes perfect

OPENING STATEMENT - MR. RICHTER

1 sense, doesn't it. Do you know who else is going
2 to cut into that? Justine, the waitress that's
3 been there for 20 years. I'm going to cut you into
4 the ownership, too, this bad man over here.

5 So over time, he divests himself in the
6 ownership of the restaurant. He's out of TNT.
7 Out. 100 percent. His ailing parents back in
8 Wisconsin in 2020 need his care. He's gone. He
9 sold his interest, and it is left now with Wade and
10 generation two of the Kettner family, and, yeah,
11 they were oil and water.

12 I don't know who drew first blood in this
13 fight. I don't know, but I know when it started,
14 it started, and it was on. Why was it on? Because
15 there was nothing to tell us how it is supposed to
16 work.

17 Is there anything unique about this? No.
18 Corporations fail in America every single day.
19 What are you supposed to do when you start a
20 partnership with someone and don't define the rules
21 once you are in the sandbox and you figure we
22 really can't play together? That is as simple as
23 that. What do you do then? What does the law say?
24 Well, it's easy. You dissolve the company, sell
25 the assets, and move on down the line. That

OPENING STATEMENT - MR. RICHTER

1 happens every single day.

2 But that's not what they want. They want
3 you -- for you to fill out this piece of paper for
4 them and say in-perpetuity, based on an oral
5 promise, we want you 12 people to say they are
6 going to stay in the sandbox forever. I mean
7 that's a ridiculous result.

8 So the case today is not about questions.
9 Again, if you have questions; we have answers.
10 We've had three-and-a-half years to ask those
11 questions, but we still have questions, and we
12 still will give you answers. I don't think we'll
13 change his mind, but I think we'll satisfy you good
14 folks.

15 These questionable checks. Well, we still
16 have -- we still have like 15 checks that we have
17 questions about. Well, we've had a lot of time to
18 ask about those questions, but we'll give you the
19 answers again. The 15 checks occurred in 2018, a
20 year in which the business lost \$377,000. How do
21 you think that sinking ship stayed afloat when it's
22 losing \$377,000? Tim Kettner advanced money into
23 the company, and then when it was able to pay him
24 back, he paid himself back.

25 Do you know what they say about that? Well,

OPENING STATEMENT - MR. RICHTER

1 technically, you should have asked us first. And
2 even though you paid the money to keep the business
3 going and then paid yourself back, we're still
4 claiming foul because you didn't ask us first.
5 That's ridiculous.

6 That's what this case boils down to in the
7 end. So in the end, what is it that we're asking
8 you to do? First, we're asking you to find that
9 Tim Kettner did nothing wrong. He doesn't own
10 anything.

11 We are asking you to kindly say, No. No,
12 we're not going to do for you that which you had
13 eight years to do for yourself. We're not going to
14 find a joint venture. We're not going to write the
15 rules. If you are not happy in the sandbox, shut
16 the business down and sell the assets and move on
17 down the line. But, no, we're not going to make
18 the rules for you. That is what we're asking you
19 to tell them.

20 Now, I have one promise to make to you as
21 well. My team will not waste any of your precious
22 time. We will try to be as efficient in the
23 presentation of our evidence and arguments. We
24 appreciate the fact you are here.

25 Again, I'm Ronny Richter, Scott Mongillo, and

OPENING STATEMENT - MR. HARRISON

1 Tim Kettner. At the end of the case -- well, I
2 would think you're already confused, but it is
3 simple. Tell him, No, we're not going to do for
4 you what you should have done for yourself eight
5 years ago. Thank you.

6 THE COURT: Thank you.

7 MR. HARRISON: No good deed goes unpunished.
8 Good morning ladies and gentlemen of the jury.
9 Thank you for being here. I'm Michael Harrison.
10 This is my co-counsel, Howell Bellamy. We
11 represent TNT.

12 You've heard about this. We'll do our best
13 to make sure you guys understand the definition,
14 but I guarantee that at least myself, and maybe one
15 of the other counsel, may mispronounce the names.
16 You might have the "TnW" and "TNT," so pay close
17 attention -- pay close attention.

18 TNT is the business that Mr. Richter told
19 you. It is Crab Catchers. TnW is the marina.
20 These two are independent of each other. There was
21 no joint venture. Absolutely no joint venture.
22 What this was was this gentleman, Mr. Kettner, and
23 these gentlemen in the back here (indicates)
24 agreeing to help out Mr. Long and Mr. Kettner to
25 start a business. They needed that because without

OPENING STATEMENT - MR. HARRISON

1 Mr. Kettner and my clients back there -- again
2 Mr. Donny Kettner, Robert Benoit, Casey Kuzmik --
3 Mr. Long wouldn't be here because he wouldn't have
4 the business he complains about failing.

5 So what we did is we went out there and we
6 helped him. We gave him permission to come onto
7 our property, right, and build this marina out of
8 respect for Mr. Kettner. These are his family
9 members. They are not all related to him, but they
10 are family. Justine Vaitis back there, her name
11 was mentioned earlier. For 20, 30 years she knew
12 Tim Kettner -- 20 to 30 years. She was just a
13 waitress when they first meet. She gets the
14 opportunity to be an owner at a restaurant. I
15 worked in the restaurant business for over ten
16 years when I was younger, and no one gave me that
17 opportunity. But that is what Tim Kettner did.

18 And then he brings on these guys, his son,
19 his friends, and other relatives. They form this
20 successful business. And like Mr. Richter said,
21 when that little ole fish house was converted back
22 in the '90s by Tim and his brother-in-law, Tony,
23 TNT was formed, and it became Crab Catchers. They
24 worked their asses off to be successful.

25 Then they brought in these other partners out

OPENING STATEMENT - MR. HARRISON

1 of the kindness of their heart. Tony went onto
2 other things. Donny came around, kept the
3 business, made it run, brought in the other
4 parties. They made it even better, and even
5 better, and even better. And then Mr. Long comes
6 along, and he starts talking to him. Tim starts
7 talking to Wade Long. They start having all kinds
8 of ideas, all kinds of ideas about what they wanted
9 to do to make money.

10 In this case you'll hear about a beef cow
11 restaurant. You'll hear about an ice cream shop,
12 maybe a brewery. None of that existed. You'll see
13 the evidence of what is actually there after they
14 helped these guys. You know, \$1.1 million loan.
15 Pay very close attention to what they did with \$1.1
16 dollars. When I say "they," be clear, TnW is Tim
17 and Wade. This is in the name. Don't forget that.
18 They are going to tell you that we are in a joint
19 venture with them, but you don't see any evidence
20 of that.

21 What they are going to tell you is they
22 helped us get a loan and let us use our property,
23 and that means we're in a business together, right?
24 Guys, this is important. These guys have a lot at
25 stake. Mr. Kettner has a lot at stake. My clients

OPENING STATEMENT - MR. HARRISON

1 back there have a lot at stake. This is millions
2 of dollars and years of hard work that we're
3 talking about, so it is very important.

4 It will be a challenge, but you guys have all
5 of the tools you need to figure out who is telling
6 the truth and who is not.

7 I had been in your position at one time in my
8 life, a long time ago. And I thought to myself,
9 These guys are talking about a lot things I don't
10 know what this means, 10,000 documents, 20
11 witnesses, how do we figure it out? Well, you guys
12 have everything you need. You have eyes. You've
13 got ears, and you have your common sense and life
14 experience. These guys are going to put up
15 testimony. They are all going to testify, and I
16 want you to watch what they say, because it is
17 important. Credibility matters. Stories have
18 changed over time in this case, and I want you to
19 pay attention to those changes.

20 You'll hear testimony on the witness stand.
21 You'll hear the things that these parties have
22 said. You'll see the documents that have been
23 involved. We have all of that stuff, letters and
24 contracts and all of those things -- oh, wait
25 contracts. Contracts. As Mr. Richter said -- and

OPENING STATEMENT - MR. HARRISON

1 I liked his paper note -- it doesn't exist. There
2 is no contract. No written agreement as to the
3 terms of what this alleged joint venture is.

4 Mr. Long wants to sit here and say that they
5 are in a joint venture, but you won't hear evidence
6 of that, nothing about that. It benefits him to be
7 a joint venture because we're in the deep pocket in
8 this case. Mr. Kettner is now retired, so whatever
9 Mr. Long and Mr. Kettner did, that is between them.
10 We take no position.

11 We got drug into this because Wade Long and
12 Tim Kettner had a business that went south. And
13 when the business wasn't working out, Wade Long
14 came up and accused the man who gave him
15 opportunity and went to the partners to ask did we
16 have permission to do this on your land. That is
17 what it was permission, nothing else. Permission,
18 which can be retracted.

19 They will say it was a joint venture. It
20 wasn't that. Mr. Long was given permission, and
21 when the business doesn't make any money, he turns
22 around, sues Tim Kettner and calls him a thief.
23 But he wasn't done. What did he do after that? He
24 sued Tim Kettner's company; thirty years of Mr.
25 Kettner's hard work; those family members' hard

OPENING STATEMENT - MR. HARRISON

1 work.

2 After we helped them get a loan, because
3 Mr. Long didn't have anything to get a loan on --
4 the collateral for this was our restaurant. Why
5 did these guys do this? You will hear that our
6 guys guaranteed this, and Tim guaranteed it. And
7 why did they do that? To help Tim out, to help
8 Wade out. They went out of their way. It is
9 personal guarantees. They let them use their
10 property to put up this marina.

11 It started out as one thing, and then plans
12 were abandoned. You'll see what is out there
13 today. You'll see that. You'll see that these
14 guys -- it was all well and good until Mr. Kettner
15 left. Mr. Long had to come to work. And as Mr.
16 Richter said, Mr. Long was out fishing while Mr.
17 Kettner and these gentlemen were running the
18 business.

19 You're going to hear Donny Kettner helped
20 them out, helped them with their books, TNT's -- I
21 mean TnW's books -- see, I already did it. They
22 helped them rent jet skis. There is no denying
23 that these two knew what was going on. They are
24 next door. They use the same parking lot. Just
25 because they use the same parking lot, just because

OPENING STATEMENT - MR. HARRISON

1 my guys gave him permission, that doesn't make it a
2 joint venture. That has to be proven by the
3 elements.

4 You'll hear this later on. The judge is
5 going to instruct you on the law. We'll make
6 arguments. We'll hear closing arguments where
7 we'll talk about what the law is. You guys have to
8 decide, based on the evidence, whether or not they
9 have proven the elements of their case.

10 I'll make it simple for you. Here is a box.
11 Shared profits. Everybody read that (indicates)?
12 Doesn't sound like there is anything in there, does
13 it? Could be, but we don't know.

14 This box is shared control (indicates). Also
15 empty. Maybe it's not. Maybe it is filled with
16 tissue. I don't know.

17 And, finally, this box says "joint venture"
18 on it. Also hollow.

19 This is what we're asking you to do. This is
20 the burden that Mr. Long and his counsel have.
21 They have to fill up these boxes and convince you
22 that they are filled. They have to have shared
23 control. They don't have it. They've denied it.
24 You'll hear testimony about it. Wade Long says you
25 don't control my business, and we say you don't

OPENING STATEMENT - MR. HARRISON

1 control ours. That is an element of a joint
2 venture. You have to have shared control.

3 The other thing you have to have is shared
4 profits. You will not see a shred of evidence that
5 shows any money going from that business, TnW, to
6 TNT. What you will see is how Tim Kettner propped
7 up TnW in order to save his business with Wade.
8 But it had nothing to do with us. All we said was
9 if you guys want to use our land, that's fine. We
10 asked one thing: Do it appropriately.

11 See, the problem, guys, is if you have these
12 two elements -- and you have to prove them -- in
13 order to prop up this idea of a joint venture, or
14 guess what happens? You got it like this. If I
15 take one away, it falls apart, doesn't it
16 (indicates)? You have to have both. Not one or
17 the other, you have to have both to prove joint
18 venture.

19 Ladies and gentlemen, they don't have shared
20 profits or shared control. They don't have it
21 because the boxes are empty. Because the claims
22 are hollow. I want you to remember that if you
23 don't remember anything else from what I'm up here
24 rambling about. Because it is important. Because
25 there is millions of dollars at stake in this case.

OPENING STATEMENT - MR. HARRISON

1 There's pride, and years of hard work, and there
2 are family relationships and friendships. These
3 are sons, fathers, friends for years, and friends
4 that people counted on as family.

5 Mr. Long -- because they could not operate
6 their business properly -- wants us to pay for it.
7 They say that somehow we interfered with their
8 business. But you'll see that the only
9 interference with the business came after the
10 lawsuit got filed, not before. The catalyst for
11 this case is when we allowed these guys to use our
12 property, gave them that permission, what did they
13 do? They pulled up bait and switch with every
14 regulatory agency from here to Columbia.

15 They needed a fuel tank. You'll hear about
16 the fuel tank. It came up a lot over the years.
17 Fuel tank, 10,000-gallon fuel tank. You'll hear
18 about the 3,000-gallon tank. Do you want to know
19 why you'll hear about two fuel tanks? Because they
20 got a permit to put a 3,000-gallon tank on our
21 property, our land. We own it. It is not in
22 dispute in this case. You'll see the deeds. They
23 can make no claim to that land in spite of any
24 evidence in the state of South Carolina that shows
25 ownership.

OPENING STATEMENT - MR. HARRISON

1 They are going to talk about a plat, but it
2 doesn't show ownership. I have six or seven plats
3 over there where these guys kept dreaming up ways
4 to do it. This fuel tank, they did that, too.
5 They got permits from the county for a 3,000-gallon
6 tank, and when the fuel guy comes out and says,
7 Well, 3,000 is good, but 10,000 is better. I'm a
8 businessman, 10,000 is better than 3,000. I can
9 pump more fuel. Do whatever you need to do.

10 What they should have done was they should
11 have asked for another permit. But instead of
12 doing that, instead of putting in a 3,000-gallon
13 tank permitted by the county, they put in the
14 10,000-gallon tank. 10,000 gallons. And they put
15 it in a containment unit that wasn't big enough.
16 If it broke -- it means that if the 10,000-gallon
17 tank had any kind of problem and spilled fuel, the
18 containment wall that goes around that tank would
19 have flooded whose parking lot and land? Ours.
20 The land we own. Crab Catchers owns. Make no
21 mistake, they own the land.

22 If that wasn't enough, you'll hear about this
23 rental hut. The rental hut started as a ticket
24 office, because they couldn't get the permitting to
25 build or the money to build all of these wonderful

OPENING STATEMENT - MR. HARRISON

1 things that they talked about earlier. So they
2 pull this shed out. It is a toolshed. That is all
3 it is. Some of you may have one of these in your
4 backyard. They operated their business out of
5 there on guess whose property? Ours. We gave them
6 permission to do it. We said you can operate out
7 there. Build your docks, do whatever you want to
8 do. We give you permission to be there.

9 So they pull this shed out there, this tank
10 out there, and come to find out, after we helped
11 them get the loan, let them build their docks, gave
12 them permission to use our property for their
13 business, they came back to us and said, Well,
14 there may be some problems with those things we put
15 on your property. Come to find out, there were.
16 Fuel tank was un-permitted. The shed was
17 un-permitted. And there were various other
18 regulatory violations that had occurred that were
19 the fault of TnW, but on the land of TNT.

20 In South Carolina when you are a landowner,
21 you are responsible for what goes on on your
22 property. You own the land and something bad goes
23 down on your property, they come to you. They say
24 this is land. You got something going on this
25 land. It can't be. They make the owner fix it.

OPENING STATEMENT - MR. HARRISON

1 And if the owner doesn't fix it, the owner gets the
2 fine.

3 In this case, the owner didn't create the
4 problems. The good deeds that my clients and Mr.
5 Kettner performed in order to help Mr. Long out in
6 his fledging marina operation was rewarded with
7 lies to the State, DHEC, the county, and you'll
8 hear all of this. They don't deny that they had
9 problems over there. They don't deny they ran
10 their business and had issues on our land that
11 caused us problems. They were wanting you to
12 ignore that and say, look, you promised us that we
13 can be out here forever and ever. No, we did not.
14 We gave you permission to use our land as long as
15 it doesn't cause us problems. If you are not
16 harming me, what do we care? Well, we should have,
17 in hindsight.

18 We should have had a written contract so
19 everybody will know what their responsibilities
20 were, what they were supposed to do, right? If
21 there were problems, who was going to fix them.
22 And there were lots of problems.

23 When my clients discovered there were
24 problems, which was at the same time that Mr.
25 Kettner retired, they said, Mr. Long, please fix

OPENING STATEMENT - MR. HARRISON

1 this stuff -- not once, not twice, not three times,
2 not four times, they said it again and again and
3 again. We're in trouble because of you and what
4 you're doing on our property, please fix it. They
5 never did, and we received fines. We received the
6 lovely attention of the county inspectors and DHEC
7 all because of him, because of Wade Long and what
8 he did on our property.

9 We gave him permission to be there. We did
10 not give him permission to break the law. And as
11 soon as we knew he was, wait, fix it, please. We
12 didn't kick him off at first, that wasn't the idea.
13 It was to fix the problem so we don't have to pay
14 for your sins. And he didn't do it. Quite
15 frankly, that's why we're here.

16 My client has no interest in the business
17 dispute of TnW. It is their business. We just got
18 caught up in all of this. Mr. Long wants to say
19 somehow that TnW is the joint venture. He may say
20 that Little River Water Sports is a joint venture.
21 He may say it is something else. He said a lot in
22 this case. There is testimony on the record. I
23 still can't figure it out. I'm a reasonably
24 intelligent person, and I've been looking at it for
25 three years. They want to say that they have a

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1 joint venture with us either by contract -- which,
2 again, doesn't exist -- or by promise. Promise has
3 to be unambiguous.

4 If the promise was unambiguous, ladies and
5 gentlemen, we wouldn't have to truck up 20
6 witnesses and 30 boxes of documents, wouldn't have
7 to do that. It would be clear. When you hear
8 testimony of all the people, it won't be any
9 clearer than it is now, because no one agrees what
10 this promise, this permission, was. That is why
11 we're here. We say we gave you permission. They
12 say we formed a company called a joint venture.
13 Again, no shared profits. No shared control.

14 So what we are asking you guys to do is use
15 your eyes and ears and the common sense, your life
16 experience. Listen to what they say. Pay
17 attention to these things. It is important. There
18 is a lot of risk. Credibility matters. You will
19 hear direct evidence in this case. Direct evidence
20 is something that is tangible. It is like an
21 eyewitness.

22 If you've ever seen these criminal trials on
23 TV, what direct evidence is -- let's say they bring
24 out the murder weapon. Say this is the murder
25 weapon. In the criminal trials, everyone is like,

OPENING STATEMENT - MR. HARRISON

1 oh, the murder weapon. It is creepy. But it is
2 direct evidence, and when they bring it out, they
3 say, This is the weapon that was used to kill,
4 right, the criminal victim.

5 Well, direct evidence is if you have an
6 eyewitness on the stand that says, I saw that
7 weapon used to shoot that man, that's direct
8 evidence. That eyewitness saw what they say they
9 saw. They were there, directly. Doesn't mean they
10 are telling the truth. Just because evidence is
11 direct doesn't make it true.

12 Pay attention to the circumstances and what
13 the documents -- that is direct evidence. What
14 you're largely going to hear from the plaintiff is
15 circumstantial evidence. Circumstantial evidence
16 is evidence that tends to prove the things for
17 which it is put forward. That is a bunch of fancy
18 lawyer talk. That is what I learned in law school,
19 and that is why I repeat it here today.

20 But circumstantial evidence is this: Witness
21 gets up on the witness stand and says, I saw a man
22 in a red shirt rob that gas station. Okay. And
23 then you get another witness, and that one says, I
24 know that the defendant owns a red shirt. It's a
25 red shirt, folks. It suggests something. If the

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1 defendant owns a red shirt, and the guy that robbed
2 the gas station was wearing a red shirt, it's
3 possible. But just because he owns a red shirt?
4 No. Circumstantial evidence is evidence, but it
5 needs help. It needs help from other things.

6 They are going to present that as their case.
7 They are going to ask you to put the pieces
8 together for them. And while I have the utmost
9 respect for my colleagues and everybody in this
10 room, they're just not going to be able to do it.
11 It's not there. It's not there.

12 Remember what I said, The boxes were hollow.
13 They'll tell you they are filled with marbles, but
14 you won't hear any, because you can't fill it with
15 marbles. What is in those boxes? That is what
16 we're asking you to do. Take this evidence, look
17 at it, and listen to what they say and pay
18 attention to what Mr. Long says and pay attention
19 to what Mr. Kettner says. Pay attention to what
20 the gentlemen behind the bar says, because it
21 matters.

22 Also, pay attention to what we're talking
23 about when we talk about these documents. Those
24 are the things you are going to see. Back to that
25 common sense that you all have. There are things

OPENING STATEMENT - MR. HARRISON

1 you are not going to see. There will be things you
2 are not going to hear, and that is just as
3 important as what you do. Because there are going
4 to be times in this case where the plaintiff will
5 be talking about something and say, Well, that
6 doesn't make sense to me. Write it down. If
7 something doesn't make sense, that is your job.
8 Because sometimes it is the things we leave out
9 that mean more than the things we leave in. I want
10 you to pay attention to both.

11 If something doesn't add up, if the dots are
12 not connected, which is that circumstantial
13 evidence, connecting those dots to put it up to
14 what it's supposed to prove, if it doesn't connect
15 the dots, then it isn't there. We're asking that
16 you dismiss this case. Again, frankly, we don't
17 care what you do between Tim and Wade. We never
18 did, because we were never involved that. We
19 helped. We gave them permission, and that was it.

20 Ladies and gentlemen, that is all you'll hear
21 about our role, by the plaintiff, from us, and from
22 Mr. Kettner. They're going to try to put us in
23 this because we are a successful business. We have
24 the money that they would love to take from us,
25 even though they have already taken from us. At

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1 some point, we'll get into the minutia of this
2 thing. What you won't hear is what the name of the
3 joint venture is. Or you might hear five different
4 names. Depends on the day.

5 You won't see taxes getting paid, no
6 insurance documents to say joint venture. You will
7 see direct evidence that says it was not a joint
8 venture. You'll see from Mr. Long and Mr. Kiser
9 repeatedly, again and again and again, saying TnW
10 is a business for Wade Long, Chris Kiser, and Tim
11 Kettner. If they tell you that TnW is the joint
12 venture, ask yourselves if those are the only
13 three, where is TNT in these documents? Where are
14 my partners' names?

15 You will see text messages talking about this
16 stuff, but you won't see an operating agreement or
17 evidence of that. The evidence the plaintiff has
18 submitted is not where TNT gets profits, where TNT
19 has control, and where these gentlemen are
20 involved. They are not there because they were not
21 in business with these two.

22 Just because you help someone get a loan does
23 not put you in business with them, does not create
24 a business, but that's what they want you to
25 believe. It is absurd. We know you guys can see

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1 through it. We know you are going to use your
2 common sense.

3 When they are done putting up their case, we
4 don't expect you to know anything more about the
5 promise because it is so ambiguous that it can't
6 even exist, and they rely on no ambiguity. None.
7 It has to be unambiguous. If there is any doubt
8 about what the terms are of this agreement, no
9 promissory estoppel, no joint venture, no
10 contracts, no written agreement, no terms, no
11 taxes, and statements that say we were not in
12 business together.

13 They are going to come in here and ask you to
14 take money away from my clients that has been in
15 business for over 30 years to pay for problems
16 between Mr. Long and Mr. Tim Kettner, and that's
17 not right. We're asking you to dismiss the case.

18 If you find because of this case that my
19 clients have been damaged because they had to take
20 a lot of time, pay a lot of fees, we're asking that
21 you guys pay attention to that. If you think we're
22 here legitimately, great. If we're not, we're
23 going to ask you about that, too, because we
24 believe that the first time a joint venture ever
25 existed in anybody's minds was the day that Wade

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1 Long walked into his counsel's office. He knew he
2 was not in a joint venture when he filed this
3 lawsuit, and he did it anyway.

4 We've had to spend time, money, and efforts
5 to defend ourselves; to say, sir, we are not in
6 business with you. Three-and-a-half years,
7 hundreds of thousands of dollars to tell him we're
8 not in business with him, even though he wants to
9 be. But permission does not put you into a
10 business together. If the permission you were
11 given is abused and taken away, we have every right
12 to do that.

13 It's like a child that you lend the car to.
14 You say, son, daughter, you can borrow the car to
15 drive to school, and instead of going to school,
16 they drive it to the beach. You find out about it,
17 and you take the keys back, right? I don't want
18 him going to beach and skipping school. That is
19 what this is really about. We gave you permission,
20 and you abused it. After you abused it, we asked
21 you to fix it, and when you didn't, we asked you to
22 leave, and when you wouldn't fix it or leave, we
23 were left no choice.

24 We should have never gotten sued because of
25 things he did and he did. My client didn't do

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1 anything wrong. Remember my boxes. Remember your
2 jobs. Remember your elements.

3 Ladies and gentlemen, when you get through
4 with this, we're asking that you return a verdict
5 in our favor to tell him there was no joint
6 venture.

7 Thank you very much.

8 THE COURT: We're going to take a brief
9 recess. I have a couple things to take up with the
10 attorneys, and you can use the facilities as well.

11 (The jury exits at 10:38 a.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: Let's just take a minute or two.

14 MR. PLAYER: I was going to make a
15 suggestion. The way that I structured direct is
16 just go through the evidence and not talk about
17 damages until the end. So my thought was when we
18 get to the point where he'll say -- claim what
19 damages we are asking, take a break, proffer it,
20 and you can tell me what we can say. I think all
21 of the evidence -- it sets the foundation for that,
22 and knowing what is going to be in at that point
23 we'll be able to be more articulate about that.

24 THE COURT: I'm fine with that, as far as
25 that -- just don't reach that topic.

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1 MR. PLAYER: No, Your Honor, I wouldn't.
2 We'll discuss the projections to say -- because
3 Crab Catchers is not -- all of the projections are
4 for the new stuff. I'm not going to say these
5 damages, you know -- well, I might ask him, Did you
6 all agree when you presented this to the bank, and
7 that's fine. I mean, it's in the document. They
8 can read it. But he's not going to declare that is
9 the basis of my damages.

10 When we get to the point where I'll say,
11 Wade, what do you want, and before we get into that
12 topic, I'll say, Your Honor, time to take a break
13 to do proffer, and then you can tell me what is
14 appropriate at that point.

15 MR. RICHTER: My only concern -- I didn't
16 object to it in opening, because I didn't want to
17 cause attention to it, but I thought we discussed
18 cash yesterday. I don't want Mr. Long volunteering
19 gratuitous remarks about altered cash books and
20 everything else. If we're not talking about
21 cash -- because it is speculative. I thought that
22 is where we were yesterday.

23 To even go into altering cash books is just
24 there to prejudice the jury not to prove anything.
25 So, yesterday, he couldn't prove an amount of cash

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1 that he claimed was stolen. He couldn't do it in
2 three-and-a-half years of litigation and discovery.
3 It is improper for him to do now, and then to say
4 there is two sets of books and the cash was marked
5 out, I don't know what that can be relevant to.

6 MR. PLAYER: That is not coming through
7 what -- we have -- we have the ski hut sheets that
8 have been altered and scratched out. Those are the
9 only things we're presenting in evidence. The only
10 things I'll ask Wade is, Did you see these before
11 we filed a lawsuit? And he'll say, No. And that's
12 it. It will be Brett Todd, the one that will
13 testify, he was the one that did the sheets, and he
14 can testify about what they were and that the
15 changes were not his. That's the extent of that.

16 Those are specific numbers where cash came in
17 and then it's zeroed out. I think it is legitimate
18 to present that to the jury when the person who
19 created it said, Yeah, we brought 400 in that day,
20 but someone scratched it and zeroed it out.

21 MR. RICHTER: No, sir. We asked for
22 three-and-a-half years if you contend that he stole
23 cash, tell us how much, when. We never got an
24 answer to that.

25 In his deposition, the answers are, I don't

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1 have a clue. What he's been -- I don't have a
2 clue. I'll pull the excerpt out. So what he was
3 told by his counsel is if you are going to do this
4 exercise, you need to have a forensic accountant
5 and not come in and wildly speculate and say, We
6 see on this day this amount is X'd out, hence and
7 therefore, that sum of money must have come in and
8 stolen by Kettner is pure 403.

9 MR. PLAYER: It is not, Your Honor.

10 THE COURT: What is it asserting? If you are
11 not able to put a number on the damages that it
12 maybe caused, what is used to assert?

13 MR. PLAYER: Used to assert dishonesty and
14 uncertainty in the books. Ronny is saying, Tell us
15 how much, but how are we supposed to tell him?
16 There are no receipts. This is the only receipts
17 we have for what was coming in. So if we don't
18 know what is coming in -- we could pay a million
19 dollars to an accountant, and they can't tell us
20 what the cash is because there is no receipts.
21 There is no document that he has given us, other
22 than what he deposited in the account, to show what
23 cash came in except these ski hut sheets.

24 MR. RICHTER: I'm sorry, but the law places
25 the burden of proof on the plaintiff. If he's

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1 going to say that cash is misappropriated, he has a
2 burden to prove that. He hasn't, and he can't.
3 What he wants to do is I see -- I have questions.
4 I have concerns. That is purely for the purpose of
5 prejudice. It is not going to prove one dollar in
6 damages.

7 MR. PLAYER: Your Honor, it is a personal
8 observation when he sees 15 people at the ski hut
9 and only \$700 deposited in an account. That is
10 direct evidence of where is the money. Do those
11 people go on for free? I mean, that's what it is.
12 If he's not there every day, and there's no records
13 to forensically analyze, if they gave us cash
14 receipts saying this -- that is what the ski hut
15 sheets are. They are direct evidence of the cash
16 that was paid to TnW on that day, and then the
17 sheet is somehow altered and scratched out, and
18 you'll see the notes. It's insane that they are
19 saying, oh, this is an accounting. How are we
20 supposed to say what is stolen when we don't know
21 what came in?

22 MR. RICHTER: There was a day, and it is not
23 today to go through those sheets and say, Look,
24 here is a hundred sheets with a number that has
25 been altered, explain what that is, or, We're

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1 contending that these are damages. That has never
2 been done. We've asked them every way we know how
3 to ask them, Articulate the damages. If you are
4 contending Tim Kettner stole cash, how much are you
5 contending he stole, on what days, by what method,
6 and nothing. They are not even attempting to do it
7 even arguing to you now. He's not intending to say
8 that that means he stole money. He just wants to
9 offer it to plant some seed of doubt to prejudice
10 the jury against him.

11 MR. PLAYER: No. These checks, there is some
12 that they have no explanation for.

13 MR. RICHTER: I'm talking about cash. Cash.

14 MR. PLAYER: Again, how can we prove what is
15 stolen if there is no receipts?

16 THE COURT: All right. But that's on you. I
17 mean, you have to show the jury if that's the case.
18 Again, you can't establish elements to a cause of
19 action if you also can't show what the damage is.

20 MR. PLAYER: That is what the ski hut sheets
21 show.

22 THE COURT: But all he's asking for is what
23 is the damage? What's the number? I mean, if the
24 ski hut shows this, you should have a number,
25 right?

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1 MR. PLAYER: About \$3,000 from the ski hut
2 sheets that we have, but we don't have anything for
3 2020.

4 MR. RICHTER: About \$3,000? There was a
5 point in time it was \$300,000 in cash, because
6 there is no cash here.

7 MR. PLAYER: If he wants me to go back, then
8 I will.

9 MR. RICHTER: No, sir. He knows what I want
10 him to do. For three-and-a-half years he has an
11 obligation to supplement his discovery to
12 articulate these damages, and it's not happened.
13 Even standing before you, he can't answer your
14 simple confession of, What is it? He wants to go
15 instead and show a line out on a cash receipt item
16 and connect the dots and say, Therefore, that sum
17 of money must have been stolen by Tim Kettner.
18 That is pure 403, Your Honor. This is wild
19 speculation. It's a subject matter for which he
20 should have had some forensic accounting. It's a
21 subject matter which he should have explored in
22 discovery, and today is not the proper time to
23 speculate about that pay.

24 MR. PLAYER: We say there is money missing,
25 there is cash missing, please show us where it

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1 went. They gave us ski hut sheets. Nothing for
2 2020. How are we supposed to prove money is
3 missing when we don't know what was brought in?
4 That is impossible. Unless we chase down every
5 person who rented a jet ski in 2020, how much cash
6 did you pay Tim Kettner, that is not possible. No
7 expert on the planet can testify to that.

8 THE COURT: But you would admit that what you
9 are talking about is 100 percent speculative? I
10 mean, damages don't have to be to a mathematical
11 certainty, but you have to have some science or
12 mathematics behind it to show, hey, this is how
13 we're getting to this number.

14 MR. PLAYER: And, you know, I don't know that
15 we are going to put up a number. We're going to
16 say, We don't know. Look at this, there is no way
17 for us to find out how much cash was brought in,
18 but at least on these ski hut sheets it looks like
19 money. He can explain it until the cows come home,
20 but he cannot explain 2020. Not one dime.

21 MR. RICHTER: He just told you I want to use
22 it to prejudice a jury. I can't use it to prove a
23 damage. I just want to show it to the jury.

24 MR. PLAYER: That is not what I said. Those
25 ski hut sheets have dollar amounts on them. They

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1 have dollar amounts on them. If I have 1 dollar,
2 it goes to the jury. And I think those ski hut
3 sheets once Brett Todd testifies, he's going to
4 say, We brought that money in, and I don't know
5 what happened to it.

6 MR. RICHTER: Is he going to say Tim put it
7 in his pocket and stole it?

8 MR. PLAYER: There was one person that was in
9 charge of it. Even in the operating agreement it
10 was his responsibility. His opening argument was
11 that my client did nothing. Everything was run by
12 Tim Kettner. That's his argument. So, yeah, we
13 think he did it because he was the only one that
14 could have.

15 MR. HARRISON: Your Honor, if this is going
16 to precipitate into the same use of damages against
17 us, or the evidence that he's trying to put forth,
18 I would say the same thing that Mr. Richter is
19 saying. We asked in the deposition, Your Honor,
20 What are your damages? It was not a complicated
21 question. I asked, Mr. Richter asked, and Mr. Long
22 could not articulate damages that occurred to him
23 until after the lawsuit was filed. That is his
24 words, not ours.

25 And then to allow him to speculate against

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1 both of us and use these documents to throw numbers
2 out, obviously the jury is going to see the numbers
3 and think, numbers, value, numbers, value. That is
4 what he wants, and he wants you to let him do it,
5 and I don't think that is fair.

6 MR. PLAYER: That is not what I'm doing. I
7 don't know why he's talking because we --

8 MR. HARRISON: Because you haven't enumerated
9 any damages against him or us.

10 MR. PLAYER: Well, yesterday you were trying
11 to destroy our business, and he said it's \$1.35
12 million.

13 MR. RICHTER: No, we did not say that.

14 THE COURT: Stop. Stop. My ruling is this:
15 If you want to ask him if this is how it came in or
16 what this means, that's fine. But I'm not going to
17 let him testify that Mr. Kettner stole it if he
18 didn't see it. And any insinuations of that, I'm
19 assuming is going to be an immediate objection.

20 MR. RICHTER: There will be, Your Honor. I
21 just don't know how close he'll get to that line.
22 To offer it at all is to make the insinuation that
23 some impropriety took place. That is the problem
24 with it. And if it is not going to lead to a
25 damage, and it doesn't, then its only purpose is to

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1 prejudice that. It is 403.

2 MR. PLAYER: Your Honor, he's not the one
3 that is going to testify that Tim did this. It is
4 the employee that worked for Tim and reported to
5 Tim. That is who is going to report that he gave
6 this to Tim. That is what he is going to say.
7 These sheets were given to Tim, on his order. Tim
8 Kettner said separate credit cards from cash. His
9 employee that he paid, that is who is going to
10 testify about ski hutch sheets.

11 MR. RICHTER: So what he said to separate
12 credit cards from cash? So what?

13 MR. PLAYER: Why wasn't it a single deposit?

14 MR. RICHTER: We've shown you \$281,000 of
15 cash deposits.

16 MR. PLAYER: Okay. But unless you can go to
17 the day where it is crossed out, where did the cash
18 go? And when you have the people who brought the
19 cash in saying that is how much we took in, and
20 someone crossed it off, and the only person I gave
21 it to was Tim Kettner.

22 MR. RICHTER: Not true. We went back, Well,
23 here is \$281,000 in cash, in a very short period of
24 time, that we deposited. You tell us that it was
25 more than that, and because it wasn't deposited,

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1 that means Tim stole it. That is just not our
2 burden.

3 MR. PLAYER: It's not their burden. I'm
4 presenting evidence that they can rebut, and
5 they're going to present the evidence, Well, this
6 is what we deposited.

7 MR. RICHTER: No one is going to say that
8 more than \$281,000 of cash came in. No one is
9 going to say that. If we deposited \$281,000 of
10 cash without somebody saying more cash than that
11 came in, to suggest through some mark on a day
12 sheet that that must lead to the conclusion that
13 that cash was stolen is improper.

14 MR. PLAYER: It is not improper when this
15 entire thing is based on they misled us. This is
16 part of the misleading. This is the part of Tim
17 Kettner taking TNT and TnW and working them to
18 Tim's best circumstance and to favor TNT.

19 MR. RICHTER: No, sir.

20 THE COURT: Well, I need to hear what the
21 testimony is going to be, to be quite honest. I
22 mean, you are asking me to rule on something, and I
23 don't know who this guy is that is going to
24 testify. I don't know his role in the company.

25 MR. PLAYER: That is Wednesday.

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1 MR. BELLAMY: You are talking about Geoff
2 Hopkins?

3 MR. PLAYER: No. Brett Todd.

4 MR. RICHTER: I just don't want Mr. Long,
5 before we get to the proffer, to volunteer
6 statements about altered cash receipts or anything.

7 MR. PLAYER: No. That's not going to happen.
8 He is not going to testify -- I mean, it's obvious
9 they've been altered, and Brett Todd will be the
10 one to testify, This is what I put down for cash.
11 I gave it to Tim, and somehow it is crossed out.
12 That is the testimony on Wednesday.

13 All I'm going to say is, Here is Plaintiffs'
14 Exhibit -- and it's the ski hut sheets, which he
15 said he didn't have an objection to them coming in,
16 and all I'm going to say is, Did you ever see these
17 when Tim was running the company, and he'll say,
18 No, and that's it. That is the only thing I'll
19 ask. You can hold me in contempt if I ask anything
20 beyond that. I won't point out numbers or make a
21 damage claim. Nothing. When we get to the cash,
22 he'll say, I don't know.

23 THE COURT: Are you putting them through him,
24 or just using them for identification purposes?

25 MR. PLAYER: That was one thing I wanted to

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1 discuss, because Ronny discussed pre-admission of
2 exhibits. If there was no objection, I thought we
3 would admit them, and they are in, and that
4 includes all of the defense exhibits as well.

5 MR. RICHTER: I don't have an objection to
6 his exhibits. I reserve objections for the use of
7 exhibits. If he's going to use an exhibit for a
8 purpose like that, then that's improper. I'm not
9 waiving all objections because I stipulate it is
10 admissible.

11 THE COURT: Sounds like what you are doing
12 for this witness is simply for identification?

13 MR. PLAYER: That's it. And, moreover, I
14 never saw them. We won't talk about ski hut
15 sheets. That is Wednesday with Brett.

16 THE COURT: Do you have something, Howell?

17 MR. BELLAMY: Your Honor, I thought it was
18 interesting what Tucker was talking about TnW, as
19 far as Wade Long and Chris' damages as far as what
20 Tim did based upon TnW's operating agreement, which
21 concerns the marina. I'm thinking, Well, we're
22 TNT, we're not in an operating agreement with TnW.
23 It is their operating agreement, so how are we
24 involved with this?

25 MR. PLAYER: They're not. We didn't make a

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1 claim for misappropriation.

2 MR. BELLAMY: Right. But they are saying we
3 are a joint venture running a marina operation,
4 basically that's TnW's operation agreement, which
5 we're not a party to, so how are we involved in a
6 joint venture?

7 THE COURT: Well, again, I'm assuming we are
8 going to hear evidence on that.

9 MR. PLAYER: Yes, Your Honor. I mean --

10 THE COURT: But that's not for me right now.

11 MR. BELLAMY: No, it's not. I'm just....

12 THE COURT: Let's take five and bring the
13 jury back in and begin.

14 MR. BELLAMY: Your Honor, may I approach?
15 This is information regarding the motion in limine,
16 and I'm handing you a copy of the cases. I'll hand
17 other cases to the opposing counsel.

18 (A recess was taken.)

19 THE COURT: Are we ready?

20 MR. MONGILLO: I haven't had a chance to
21 address you. Scott Mongillo representing Tim
22 Kettner. Can everyone agree that all of the
23 exhibits that we have exchanged are now into
24 evidence so it is clear on the exhibits? Is that
25 what we're doing?

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1 MR. PLAYER: That would be wonderful. We
2 say, yes.

3 MR. BELLAMY: That's my understanding, too.

4 THE COURT: Okay. Perfect.

5 MR. HARRISON: We stipulate to that.

6 (Whereupon, all exhibits are deemed
7 admitted.)

8 THE COURT: Anything else before we bring in
9 the jury?

10 Okay. Bring in the jury.

11 (The jury enters at 11:08 a.m., and the
12 following is heard in the presence of the jury.)

13 THE COURT: I'm sorry. You all can sit down.
14 I apologize.

15 Mr. Player, call your witness.

16 The jury has indicated that -- they've ask
17 that everyone speak loudly. I know sometimes
18 witnesses are a little hard to hear. So speak
19 loudly, and whoever your next witness is, make sure
20 that they speak into the microphone.

21 MR. PLAYER: You may regret that, Your Honor.

22 Plaintiff calls Wade Long as first witness.

23 (THOMAS WADE LONG, having been duly sworn,
24 testified as follows:)

25 THE WITNESS: Thomas Wade Long. I go by

WADE LONG - DIRECT EXAMINATION

1 Wade.

2

3

DIRECT EXAMINATION

4

BY MR. PLAYER:

5

Q Wade, where are you from?

6

A Little River, South Carolina. I was born in
7 Myrtle Beach Hospital. I lived on the waterfront
8 in Little River. I could almost throw a rock from
9 where I grew up and hit the restaurant Crab
10 Catchers.

11

Q And so you've lived in Little River your
12 entire time?

13

A My whole entire life, yes.

14

Q How much time do you spend on the water?

15

A I grew up there as a kid. I'm a third
16 generation commercial fisherman in my family. My
17 three uncles, my dad, and my granddad before that.
18 His house was located right on the waterfront on
19 the other side of Crab Catchers. As a kid I was on
20 the waterfront every day.

21

Q What did you do on the waterfront as a kid?

22

A When I was a kid, I guess pretty much played.
23 When I was about 14 years old, I got serious. My
24 family was really hard core when it came to working
25 and getting a work ethic in me, so I started

WADE LONG - DIRECT EXAMINATION

1 cleaning fish on the dock at 14 years old. First
2 investment was a Dexter fillet knife, and I cleaned
3 off the Hurricane Fleet. I would charge people
4 when they would come in with their fish. I would
5 get paid an X amount of dollars to clean their fish
6 versus charging them per pound. I would say, you
7 know, give me what you think it is worth. Most of
8 the time if I kept my mouth shut, I would get paid
9 more anyway. So I saved my money from 14 to 21,
10 and I bought my first boat at 23.

11 If I go back to when I was 14, I had a
12 10-foot river boat. Before Mr. Tim Kettner bought
13 Crab Catchers, Wayne Henderson owned it. I had a
14 little 10-foot river boat, and I would net flounder
15 and mullet in the river, and I would go up and sell
16 it to Wayne and make 20-, \$30 a day.

17 **Q** When did you start fishing for local
18 restaurants?

19 **A** When I got serious about the commercial
20 fishing on my own I was somewhere between 21 and 23
21 years old. I was on it full time on my own.

22 **Q** How old are you now?

23 **A** 46 years old now. I've been with my wife
24 since I was 15, been together 25 years. I have two
25 kids, Wells and Blair. She's five, and he's eight.

WADE LONG - DIRECT EXAMINATION

1 **Q** Other than commercial fishing for the
2 restaurants, what else do you do for a living?

3 **A** Well, that was my first start was the
4 fishing. I did a little painting, owned a
5 commercial painting company. Over the years, I
6 wasn't much of a drinker or partier, so I saved my
7 money and bought a few pieces of property. I had
8 rental properties, and then the commercial
9 fishing, I expanded it where I supply over 20 local
10 restaurants and seafood markets. We have our own
11 freezer trucks that we deliver seafood fresh
12 locally every week.

13 And then in 2010 I started Long Shot TV. I
14 kind of took it for granted what I do. Fishing all
15 the time, I guess I was pretty good at it, and in
16 2010 I got an opportunity to start a local
17 television show. When I started the local
18 television show, we had to get people to advertise
19 with our company that believed in us and the
20 community. The people I started doing business
21 with was people I've known since I started my first
22 business: Local bankers, hardware stores, outdoor
23 stores. I took it from 2010 on a local level to
24 2015 on a worldwide national level, Long Shot TV.
25 And then in 2017, Worldwide Networks, and the last

WADE LONG - DIRECT EXAMINATION

1 year I did it was in 2020. We had over 78 million
2 minutes viewed, and we were ranked number one
3 A-class show. Since the lawsuit I started, I
4 haven't had time to invest in doing my shows. I
5 usually do 7 to 13 new shows a year.

6 Q But you are not claiming any damages for
7 that?

8 A No, sir.

9 Q The man of the hour: Tim Kettner. How did
10 you meet Tim?

11 A On the river. Me and Tim -- my uncle Larry
12 sold him some fish. And I was down there all the
13 time hanging on the waterfront. Me and Tim crossed
14 paths. Once my uncle got a little older, me and
15 Tim were pretty tight. When I first met him, we
16 talked about fishing and boats, and he'd buy fish
17 for the restaurant. We became friends, shared the
18 same interests, hunting and fishing together, and I
19 sold him fish for many years. We had a great
20 working relationship. I literally caught thousands
21 of pounds of fish and sold it at his restaurant. it
22 was mostly him and Jose.

23 Q Did you and Tim get to talking? Did you
24 develop a friendship?

25 A We did. We developed a good friendship. We

WADE LONG - DIRECT EXAMINATION

1 would eat lunch together, occasionally do a hunt
2 trip together. But most all of our interactions
3 was around the waterfront around Crab Catchers,
4 talking over a fish sandwich. And one day we, you
5 know, came up with another way to make money.
6 Always brainstorming.

7 Q What was that idea?

8 A It was purchasing the land behind Crab
9 Catchers from Freddie McGin (ph). I knew Mr.
10 Freddie very well. Him and his wife owned Little
11 River Seafood, a fish house. Before I was
12 financial stable enough to have my own fish place
13 to have a facility to pack my fish, I had to pack
14 out through a fish house. He would make like 50
15 cents to a dollar a pound on my fish. We had a
16 great relationship.

17 Tim thought we should purchase his property,
18 and he asked me what I thought we could do, and I
19 told him why not build a marina? Let's build
20 docks. I know the fishing business very well. I
21 knew a lot of the local people that trust me and
22 watched me grow literally from nothing to where I
23 was today, and they believed in me. So we'll build
24 docks, we'll rent commercial and charger boat
25 fishing. The fuel -- not just to sell fuel -- if

WADE LONG - DIRECT EXAMINATION

1 you get 30-, 40 cents a gallon, if you can fathom
2 that's just for a few boats, but we're talking
3 about 10-, 20-, 30,000 gallons a week, times 30
4 cents. So that is \$15,000 a week. So you can see
5 how that would add up real fast.

6 Most of the boats -- average body, I would
7 say would hold like 150 to, like, the maximum would
8 take on a thousand gallons at the time. Average,
9 150 to 200 gallons. So we were going to sell
10 diesel fuel, gasoline. We had 15 slips, 185-float
11 dock that we built, and we were renting those slips
12 out with yearly contract to working guys in the
13 community that burned a lot of fuel, not so much
14 for the recreational person.

15 And then we were planning on building a
16 marina ship store and restaurant. We had plans for
17 and spent about \$40,000 worth of architect, Nick
18 Nye, drafting all of these plans. Back and forth
19 to the county for approval, parking lots,
20 restaurant --

21 Q You are getting a little ahead of ourselves.
22 So you and Tim talked about doing this business?

23 A Uh-huh.

24 Q What were the first steps -- let's talk about
25 where we're talking about.

WADE LONG - DIRECT EXAMINATION

1 MR. PLAYER: Can I use your plat?

2 MR. HARRISON: Sure.

3 (A brief pause in the proceedings.)

4 Q (BY MR. PLAYER) All right. What is up on the
5 screen is Plaintiffs' Exhibit 1.

6 MR. PLAYER: Your Honor, may he step down and
7 explain this?

8 THE COURT: Yes.

9 Q (BY MR. PLAYER) You know what this is?

10 A Yeah. So this is the one that --

11 Q Don't talk about recon -- what does this
12 show?

13 A Plats of property. This is the overall area
14 of the survey lines of the property and Crab
15 Catchers and TNT and TnW More.

16 Q All right. So in the picture, can you show
17 me what is this (indicates)?

18 A Parking lot.

19 Q Yes. The top, right corner?

20 A Top -- yes -- top, left corner.

21 Q Yeah, top left.

22 The building in the middle with all of the
23 yellow sails?

24 A With the windsails.

25 Q What is that?

WADE LONG - DIRECT EXAMINATION

1 **A** Crab Catchers and their deck located over the
2 waterfront.

3 **Q** Where is that located over here?

4 **A** Located right here (indicates).

5 **Q** And what is this (indicates)?

6 **A** The property that we purchased, TnW More, the
7 marina, to allow us to build docks.

8 **Q** Where is that up there? Can you walk up to
9 the screen.

10 **A** So it's like all of this property right here
11 connects to these docks (indicates).

12 **Q** You see this little house? What is that? Is
13 that on this screen?

14 **A** Yes.

15 **Q** What is that?

16 **A** That is where Dean lived, but we always
17 called him Dock. He took care of the parking
18 customers for the restaurant and the parking lot.
19 That is where him and his wife live.

20 **Q** When we talk about the parking lot, it is
21 that area in the top --

22 **A** The big dirt area, top left-hand corner.

23 **Q** You can take a seat.

24 And what was that before you did any work --
25 when you and Tim created this idea, what was that?

WADE LONG - DIRECT EXAMINATION

1 **A** So prior to that, it was -- used to, be you
2 know, when I was a kid, it was a grass lot with few
3 trailers on it and it had a big pond in the back of
4 it. It was really neat pond for a kid. It was fun
5 because it had an island in the middle. Mr. Frank
6 Jule (ph) dug that pond when I was a kid, and over
7 the years it's kind of grown up around it and
8 filled in a little bit. But it was just an old
9 pond that was there for years, ever since I was a
10 kid.

11 **Q** So the idea was to purchase -- who purchased
12 that land?

13 **A** Tim.

14 **Q** Tim or TNT?

15 **A** I'm not quite sure about that.

16 **Q** By the time that you were -- decided to do
17 work on the property, do you know who owned it
18 then?

19 **A** Tim. Tim was the -- when I thought of TNT, I
20 thought of Tim. He was the managing member of both
21 of our companies.

22 **Q** Okay. So there's a pond there, and what did
23 you all want to do with that area?

24 **A** I wanted to fill the pond in, clear it out,
25 clean the pond. It had a lot of bad debris in it,

WADE LONG - DIRECT EXAMINATION

1 trees, pumped the water out. I had to get special
2 permitting to fill it, and then fill it in, and
3 turned it into a parking lot.

4 Q How long did that take it?

5 A It took awhile to clean it out, pump the
6 water out. I would say several months when they
7 were working on cutting the trees and stuff, I
8 think -- I actually pushed every load of dirt in
9 that pond, and if I'm not mistaken, it was like two
10 to three weeks to fill it in with a bulldozer.

11 Q How many loads?

12 A I think it was like 880 loads.

13 Q And did TNT pay for any of that?

14 A I'm not quite sure how the money -- I did all
15 of the work. I'm not quite sure how the money was
16 disbursed and how it got paid, from Tim or TnW or
17 TNT.

18 Q Was there any money at that point?

19 A No. I never collected one dollar out of TnW,
20 so I would say there is no money in it.

21 Q In terms of doing the work, was TnW even
22 formed at that point?

23 A TnW was not formed at that point.

24 Q Okay. So after you get the parking lot done
25 -- let me ask you this: Was there any other people

WADE LONG - DIRECT EXAMINATION

1 that worked or related to or represented TNT at
2 that point, other than Tim Kettner?

3 **A** Not that I'm aware of, no, sir.

4 **Q** And Tim has a son, Donny?

5 **A** Yes.

6 **Q** And Casey is another son?

7 **A** Yes.

8 **Q** And Justine. Did they eventually come in to
9 be a part of TNT?

10 **A** They were always there at the restaurant.
11 I've known them forever. I can remember when Donny
12 first came down or got out of the military or Army,
13 or whatever, and Casey and Justine, and Tim did
14 make them a part of it, and he offered me the same
15 deal. I could buy 10 percent for \$500,000. They
16 bought the restaurant over the years, their
17 percentage. So I'm assuming they were partial
18 partners at one time. I don't know if it was at
19 the time I was filling in the pond, but....

20 **Q** Okay. Another thing I want to ask you about,
21 see on the side of Crab Catchers there is a walkway
22 that goes up the side towards Dock's house?

23 **A** Yes.

24 **Q** Who owns that?

25 **A** We own that under Long Shot TV, LLC.

WADE LONG - DIRECT EXAMINATION

1 **Q** Where do people eat at Crab Catchers?

2 **A** On the deck with the yellow windsails.

3 **Q** Do they eat in the restaurant.

4 **A** A few do, but they remodeled it and did away
5 with 90 percent of the tables. I think they have
6 maybe six to ten tables inside. Ninety percent of
7 the dining is located on the outside.

8 **Q** And how do most people get to that deck?

9 **A** On our dock located behind the restaurant,
10 which is purchased and owned by a different
11 company.

12 **Q** What is this a view of?

13 **A** That's the view of the backside of the
14 restaurant, Crab Catchers, and that is the walkway
15 going behind it -- behind the dock to the main
16 entrance to their deck.

17 **Q** On the far left side, in the middle of the
18 page, is that still Dock's hut?

19 **A** That was his house, where he and his wife
20 lived.

21 **Q** And as it stands today, what is where Dock's
22 house was?

23 **A** Really, nothing there now.

24 **Q** Is your fuel tank over there?

25 **A** The fuel tank is still there. It is located

WADE LONG - DIRECT EXAMINATION

1 where you see that little house. The big fuel tank
2 is there.

3 Q Okay. This is Exhibit 3 -- Exhibit 4, I
4 apologize. Exhibit 3 is what we just showed in the
5 plat. Exhibit 4 is this text message. Can you
6 look it over and tell me what you are discussing
7 and who you are discussing it with?

8 A (Witness examines document.) I'm talking to
9 Tim.

10 Q About?

11 A We're talking about filling the pond in.

12 Q So at the time you make the decision to fill
13 the pond in and create that parking area, that's
14 March 2016?

15 A Yes, sir.

16 Q And then another one discussing the pond, and
17 this one is green. I'll hand that to you.
18 Plaintiffs' Exhibit 5.

19 MR. PLAYER: Your Honor, may I approach?

20 THE COURT: Yes.

21 MR. PLAYER: Do I have to ask every time?

22 THE COURT: No. You can approach.

23 MR. PLAYER: Thank you.

24 A (Witness examines document.)

25 Q (BY MR. PLAYER) Again, this is March 17.

WADE LONG - DIRECT EXAMINATION

1 What are you discussing?

2 **A** This is --

3 **Q** First thing Monday?

4 **A** Yeah. So this is me talking to Tim and
5 talking about Bill Bellamy's sons. They own a
6 sandpit about 10 minutes of Crab Catchers. This
7 was me getting the dirt and dozer scheduled to
8 start the work on Monday.

9 **Q** Okay. And then two messages down, you're
10 talking about getting a CAT scan?

11 **A** Yes. Yeah. I had to go in. They said I
12 fell and broke my tailbone, but I don't remember
13 that. I've never had anything but a broke leg. It
14 ruptured my No. 5 disc. I had a bulging disc, and
15 if it went another 10 percent, I could be paralyzed
16 possibly, so I had a surgery scheduled in Mount
17 Pleasant to have back surgery.

18 **Q** I'll hand you what is marked at Exhibit 6.

19 **A** So this here is where Tim responded back to
20 me. There is a piece of property next door that
21 was kind of I guess -- before my time, it used to
22 be a campground in front of my house where I lived
23 at. It got seized. I guess there was a drug
24 operation going on. Shrimp boats bringing drugs
25 into Little River. It was shut down for many

WADE LONG - DIRECT EXAMINATION

1 years. It never operated as a campground when I
2 was around. Then three investors bought it, and it
3 was going up for auction, and Tim was trying to get
4 a better deal on the property that we were buying
5 being Crab Catchers, and Freddie's response -- he
6 was wanting to wait until after the campground
7 auction to see what that property sold for to base
8 what his property was.

9 Q And I forgot to hand you the second page of
10 that (indicates). And, again, those -- I think you
11 just described what was discussed there, but that
12 is the second page of the exhibit. I'll scroll
13 down for the jury. Another thing I wanted to point
14 out, too, was the name Wayne Beam in that text
15 message.

16 A Top part is me talking to Tim when I say what
17 do I need to do, anything? He said, Get the cost
18 sheet into the bank. I had the signed paperwork
19 contract ready when I get back.

20 Q What is the cost sheet?

21 A The cost sheet, I kind of put everything
22 together as far as the building, developing, and
23 getting it done. Tim handled all of the paperwork
24 contracting, banks, signing everything, and the
25 checkbook. So we're talking about the contracts

WADE LONG - DIRECT EXAMINATION

1 for the loan with Geoff Hopkins at Horry County
2 State Bank.

3 Q We haven't gotten to that yet, but you are
4 discussing it as early as September of '16?

5 A Yes.

6 Q And then the next one. This is Plaintiffs'
7 Exhibit No. 7. What are you discussing there?

8 A So this is where Tim is talking about he had
9 a fall. Since Crab Catchers is an established
10 business, he was wondering could we operate off of
11 their business license for our business, TnW More,
12 to do sales and fuel. Can we operate off the same
13 business license since our office is located
14 upstairs in Crab Catchers.

15 Q Look at the last entry from Tim Kettner in
16 February of '17. What does it say?

17 A We can use Crab Catchers for anything we
18 need.

19 Q So how did you interpret that?

20 A That we could use it for anything. I mean,
21 whatever we needed for, our office, supplies, to
22 run the marina out of, which we were doing until we
23 got into our structured building.

24 Q So what did you use the Crab Catchers
25 building for before you got -- well, it was never

WADE LONG - DIRECT EXAMINATION

1 built?

2 **A** We had our office upstairs where Crab
3 Catchers ran out of, and Tim had his office
4 upstairs in the back. We used that and had a
5 filing cabinet there for our business. If we had a
6 meeting or any paperwork, that is where we did
7 that. We also used the bathrooms for our customers
8 on the dock.

9 **Q** Okay. Anything else? What else -- well, I
10 want to stay kind of chronological.

11 So he's offering -- at that point he's the
12 head honcho at TNT?

13 **A** Yes, sir.

14 **Q** And he is saying you can use my business for
15 anything?

16 **A** Yes, sir.

17 **Q** You mentioned the loan. Now, you all did the
18 parking lot before you got the loan, correct?

19 **A** Yes, sir.

20 **Q** What did you need the loan for?

21 **A** We needed a loan. Me and Tim used some of
22 our personal money up front. I don't remember the
23 exact amount. I wrote three or four checks, he
24 wrote three and four. The first one I think was
25 like over a hundred-some thousand dollars. He had

WADE LONG - DIRECT EXAMINATION

1 me write it to Crab Catchers to get started with
2 until we got out account. Tim put equal money up.
3 And we used that to purchase the property with
4 through Roger Roy's attorney's office for the
5 closing on it. From there, we needed more
6 additional money for the business plan. So we
7 needed a loan to bring the marina ship store, the
8 docks, all of the fuel tanks and fuel lines.

9 Q When you talk about the purchase of the
10 property, go back to Plaintiffs' Exhibit 3. That
11 was this piece down here labeled TnW, right
12 (indicates)?

13 A Yes.

14 Q So you all purchased the land. Why did you
15 need that land?

16 A Well, we need that land -- that was the part
17 that had the most of the water on it. It had a
18 very small percentage of uplands piece, but we
19 needed it -- that was the closest place to the
20 water where we could build the docks. It was
21 mostly marsh and water, so we needed that to
22 construct the docks.

23 Q Could you build the docks without that
24 property?

25 A No. And the reason we couldn't without

WADE LONG - DIRECT EXAMINATION

1 owning the uplands piece, OCRM and DHEC requires I
2 think 155 feet of lineal feet of uplands -- don't
3 have to be in straight line or parallel -- but to
4 be able to build the docks.

5 Q On this plat, to help folks understand -- and
6 I'll put it up on the screen. Again, it is -- over
7 here on Exhibit 3, you see these little --

8 A Uh-huh.

9 Q What does that indicate?

10 A Marsh.

11 Q Does the marsh count as upland?

12 A Huh-huh. No, sir.

13 Q So in terms of showing enough uplands space,
14 did you -- what did you need permission to have
15 access to in order to get a permit for those docks?

16 A We had to be able to get permits for the
17 dock. The County requires to have so many parking
18 spots. So we had Nick Nye design the parking lot,
19 paid for it, the landscaping, the trees, concrete
20 pillars. He had to draft a parking plan to get
21 approved by the county, to approve and to build the
22 marina, and that is why we needed uplands. The
23 little part in that picture --

24 Q Sorry.

25 (A brief pause in the proceedings.)

WADE LONG - DIRECT EXAMINATION

1 **A** So you see the green marsh grass and that
2 beige house/shack there? That is what we needed to
3 consider the uplands piece to build the marina ship
4 store and restaurant.

5 **Q** **(BY MR. PLAYER)** So if you didn't have the
6 uplands piece where the back parking lot is, you
7 couldn't build the docks?

8 **A** That is correct. The marina would never
9 exist because the county or OCRM would never
10 approve.

11 **Q** When did you all start building the docks?
12 Did you have a permit?

13 **A** So Wayne being -- I have several e-mails
14 between Mr. Kettner and Mr. Beam to myself. Tim
15 introduced me to them. That was Tim's contact. We
16 didn't quite have the permit to say put these docks
17 in the water and move forward, but me and Tim was
18 worried about missing the season. It may not have
19 been the smartest decision, but we made a decision,
20 and we hired Mark Patterson with Blue Water
21 Construction to build our docks. We didn't want to
22 miss the season.

23 So in the back of the parking lot, it was
24 cleared and the pond was filled in, so we had him
25 building floating docks in the parking lot. We

WADE LONG - DIRECT EXAMINATION

1 built 20-foot and 30-foot sections of floating
2 docks, constructed of lumber. Once they were built
3 and got approval and permitting, then we could take
4 a crane and set them in, and that would speed the
5 process up to get a marina.

6 So we built the docks ahead of time in the
7 back. We didn't have to have a permit for that,
8 but we had to have a permit to put them in the
9 water.

10 Q So you all, basically, cleared the parking
11 lot and built the docks before you even had
12 permission or the loan?

13 A Yes. The permit was being worked on.

14 Q What were you all going to call the marina?

15 A Tim named the company, because it was easy,
16 Tim and Tony and More, which stands for Tim, his
17 brother-in-law Tony, and his sister Whitney and his
18 kids and other family. He thought it was simple to
19 just call it TnW, throw a "W" in it, for Tim and
20 Wade. I thought it was a little confusing, but
21 fine. I came up with Little River Water Sports,
22 and he liked it. We had all of the shirts made,
23 Websites made, all of the marketing. Tim had those
24 signs made himself. I didn't have those signs
25 made.

WADE LONG - DIRECT EXAMINATION

1 **Q** What does that say?

2 **A** "Parking for Crab Catchers and Little River
3 Water Sports only. All others will be towed at
4 owner's expense."

5 **Q** So did you take that as that was partially
6 your parking lot?

7 **A** Yes, sir.

8 **Q** And do you know who owned the actual land?
9 It wasn't you?

10 **A** It wasn't us. It was originally Tim. It
11 wasn't us.

12 **Q** And we'll get to the exact date that that was
13 transferred. But these signs were put up, right,
14 by Tim Kettner?

15 **A** Yes.

16 **Q** And just more texts. I'm seeing you -- this
17 is No. 9, I believe. What's Tim talking about?

18 **A** Right here, in this text message, Tim bought
19 -- okay. So this is when we had the little
20 temporary hut we were using -- it was a Leonard
21 building, a 16-by-8. We were using temporary --
22 any jet ski company in a Little River or Myrtle
23 Beach has these buildings.

24 **Q** Hold on. Look at the date.

25 **A** Of '16.

WADE LONG - DIRECT EXAMINATION

1 **Q** Right.

2 **A** So this was before that. So what he's
3 talking about is buying two ice cream machines to
4 make soft serve or yogurt, ice cream for our
5 business.

6 **Q** And you weren't a part of Crab Catchers,
7 right? He wasn't telling you, I'm buying this for
8 Crab Catchers?

9 **A** No. This is for our business.

10 **Q** So in 2016, you know, you are clearing the
11 parking lot and still already buying the ice cream
12 machines for the ice cream shop, correct?

13 **A** That's correct.

14 **Q** Now, we come to the important one. This is
15 Plaintiffs' Exhibit 10. Start with your text and
16 read what Tim says.

17 (A brief pause in the proceedings.)

18 **Q** **(BY MR. PLAYER)** Who is the surveyor?

19 **A** So this right here, Tim said I called the
20 surveyor and filled him in with our joint venture
21 business. Gave him your name, that you would be
22 contacting him. Told him what was needed, and his
23 name is Harry Bruton. I've dealt with Harry many
24 times.

25 **Q** Right. And I missed one. Go back up to the