THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene...Respondents,

v.

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

RECORD ON APPEAL
VOLUME III (Pages 870-984)

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2022-CP-10-510

Richard Young and Jason Greene,	)	
	)	
Plaintiffs,	)	
	)	Motions
vs.	)	Hearing
	)	
John W. Beasley a/k/a John W. Beasley, Sr. and Lillian Beasley, et al,	)	September 27th, 2023
Defendants.	)	

Hearing before the Honorable Mikell R. Scarborough, reported by Josie Allen Boehm, Registered Professional Reporter and Notary Public, at 100 Broad Street, Courtroom 2A, Charleston, South Carolina, September 27th, 2023, commencing at 2:09 p.m.

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THE COURT: We are here in the case 2022-CP-10-3510. Nice book presented by I assume the plaintiffs.

MR. FLOYD: Yes, Your Honor.

THE COURT: All right. I want to thank everybody for the presentations that they have submitted. I have had a chance to review them, and that's what I was doing again right before I came out here.

So y'all listed them if a certain order. I think that's probably the best order to take them in and start with the defendants' motion to reconsider.

All right. Counsel?

MR. RICARD: Thank you, Your Honor. Good afternoon. I haven't had the opportunity to appear or argue in front of you before, but my name is Rhett Ricard with the law firm of Maynard Nexsen.

I'm new to this case, Your Honor. A couple of weeks ago, this team here asked me to take a fresh look at this case and respectfully, Your Honor, we're asking you to do the same here with this motion to reconsider.

I'm going to start with a timeline. And in order to do so, I've got a demonstrative that I would like to present to the Court for the Court's consideration.

THE COURT: Okay.

MR. RICARD: Permission to approach, Your Honor?

THE COURT: Yes, sir.

MR. RICARD: Like I said, Your Honor, before I turn to the argument, I'm going to cover this timeline fairly briefly.

But we've just presented you with a one-page demonstrative that we believe is going to aide you in coming to a determination on this motion to reconsider.

And I'm going to cover some of the important definitions and implications of what a mortgage is, what a debt is, what a judgement is, et cetera, when I go through this.

THE COURT: We covered that last time.

MR. RICARD: Understood, Your Honor. But just to be on the safe side --

THE COURT: That doesn't have anything to do with the timeline. If you tell me about the timeline, I'm interested.

MR. RICARD: Yes, Your Honor. So in September and October of 2017, John Beasley Jr. borrowed $640,000 from the plaintiffs and he agreed to pay it back in October.

The Black's Law Dictionary says that a debt is a specific sum of money due by agreement. And so that's what we have here. We have a debt that is created when Junior made the agreement and borrowed the money.

THE COURT: He's the original obligor on the debt, right?

MR. RICARD: Yes, sir. Junior does not pay that debt off. The following month in November of 2017, plaintiffs approach Senior and his wife, Lillian, the parents.

And so in our motion to reconsider, when we're referring to the Beasley defendants, that's who we're referring to. We're not including Junior or Beasley Construction, which I will refer to as the company.

Your Honor, you may be aware of some of the trouble that Junior has found himself in. His mom and dad, Senior and Lillian, they obviously love their son, but for the purposes of this motion, they're in a completely different position than their son and the company.

And so we're asking this Court to recognize that distinction between the parents on one side, Senior and Lillian on one side, and Junior and the company on the other. And I will touch more on that later.

So the plaintiffs approached Senior and Lillian in November of 2017. They informed them that they haven't been paid by Junior, their son, and that they are going to the FBI to report allegations against Junior unless Senior and Lillian put up collateral to secure the debt that was incurred by Junior.

So in other words, Your Honor, Senior and Lillian are put under the gun. They either make a deal with plaintiffs or they have to leave their son out to dry.

MR. FLOYD: Judge, I have to object to this recitation of facts. I don't think there's any of this in the record that he's spouting off about approaching them, threatening them to go to the FBI and all this sort of stuff. We quite honestly disagree with his version of the facts.

THE COURT: First I've heard of it. I know that he went to the Court and the federal court system. And I don't know if he ever went to jail, but he got sentenced over there is my recollection.

MR. RICARD: Yes, Your Honor.

THE COURT: And I handled a 2019 foreclosure, so I knew about that.

MR. RICARD: Right, Your Honor.

THE COURT: And I think probably talking about worth 5 million bucks. That's going to be one of my questions that I have for y'all. Why would they agree to settle this case for 50,000 if they have $5,000,000 of security out there? That's one of the questions I've got.

MR. RICARD: Yes, Your Honor. I promise you I'm going to answer that question. I think going through this timeline is going to help answer that question.

We believe, Your Honor, that the allegations that we have just raised are in the record. But to the extent they're not, there's obviously a dispute about that, and that's going to be sufficient to defeat summary judgement in this particular case. So we would ask --

THE COURT: As long as they're genuine issues of material fact.

MR. RICARD: Yes, Your Honor. And we would ask that to the extent the Court is concerned that those facts aren't yet in evidence, we would ask for further discovery.

THE COURT: Can't do it at this hearing, but that's another story. Go ahead.

MR. RICARD: Understood. In the reconsideration process, that's what we would ask for.

THE COURT: I'm with you.

MR. RICARD: So moving forward, Your Honor, this contract that's formed, this settlement agreement that's formed between Senior and Lillian on one side and plaintiffs on the other, that's formed under coercion. Okay. And we think at the very beginning --

MR. FLOYD: Judge, I have to object again.

THE COURT: I'm going to grant that objection.

Let's talk about -- you want to talk about the timeline? Let's talk about the timeline.

I fully understand parents stepping in trying to help their kids. The kid is threatened going to jail. Why they went somewhere else, why they signed this, I don't know. One of the principals of economics: Don't be signing something you shouldn't be signing. Okay?

MR. RICARD: Yes, Your Honor. And we certainly understand the Court's ruling.

THE COURT: That's in the Bible.

MR. RICARD: We just want to make that we
preserve this argument for the record.

THE COURT: About to make the same mistake
myself. Go ahead.

MR. RICARD: Our position is this contract
was formed under coercion and to the extent that
plaintiffs dispute that, again, that's another genuine
issue of material fact.

THE COURT: To the extent you're raising that
for the first time in a motion to reconsider, it's not
profitable. That's my ruling.

MR. RICARD: Understood, Your Honor. So at
the time when they're approached by plaintiffs, a few
things happened. Senior and Lillian, they put up
collateral to secure the one and only debt that was
created by Junior.

And plaintiffs agree that there's only one
debt. If you look at page 3 of their memoranda in
opposition, they quite clearly state the debt multiple
times. So there's not multiple debts. There's just
one debt, the debt.

And they end up signing the second settlement
agreement which is Exhibit B to our motion to
reconsider. Simultaneous with that -- excuse me, they
sign the first settlement agreement.

THE COURT: 2017, right?

MR. RICARD: Yes, Your Honor. Simultaneous with that first settlement agreement, there are three things created.

First, there's a note that's created. Black's Law Dictionary says a written promise by one party to pay another party is the definition of a note. It's just an acknowledgment of the debt that was created.

THE COURT: Right.

MR. RICARD: Second, there is a mortgage. The mortgage secures the debt created by the note. A mortgage, according to Black's Law Dictionary, is a lien against property that is granted to secure an obligation such as a debt that is extinguished upon payment or performance according to stipulated terms. That's the quoted definition from Black's Law Dictionary.

So what's clear from the definition is that a mortgage is not a debt. It's simply a link. It's the avenue that connects the debt.

THE COURT: A mortgage is a security instrument. I've closed hundreds of real estate loans. I've had the borrower sign the note to the lender, notes the evidence of the debt. Mortgage is the security that you give in your home. Without it is described as if you don't pay, you don't stay. Okay? It's a security agreement.

MR. RICARD: Yes, Your Honor. And the security, the collateral here in the case, what we refer to as the property in our motion, that's the family home of Senior and Lillian.

THE COURT: I'm with you.

MR. RICARD: It's been in the family for decades and that is what is the collateral.

THE COURT: Nice piece of property they've got up there.

MR. RICARD: Yes, Your Honor. The third item that's created is a confession of a judgement. It's executed at this particular point in time but it's not filed.

Black's Law Dictionary defines a confession of judgement as a person agreeing to the entry of judgement upon the occurrence or non occurrence of an event such as making a payment.

And so as this Court knows, all a confession of judgement does is bypass a trial if it is indeed eventually filed.

And so in the event of a default, you go straight to collection on the judgement. You bypass the trial. Okay?

This confession of judgement is based on the same debt that we have been talking about with all these other items. And so there's four documents that are created, but still only one debt. And there's four parties that are responsible for this debt. Okay?

And there's four parties, again, Senior and Lillian on one side and then Junior and the company on the other. So then we fast forward --

THE COURT: By the time they get to this settlement, even the first settlement, is the debt still 640 or does it become 756? When did it convert from 640 to 756; do you know? I think the son's debt was 640.

MS. SHOUN: It was -- if I may, Your Honor.

THE COURT: He bought short-term monies as I recall for like 640.

MS. SHOUN: The note was never in the amount to exceed the 647. There was a recitation that it was a principal amount and that it was anticipated that it would reach the seven-plus amount as it accrued.

THE COURT: Okay. Over time. Short term, though. Okay.

MR. RICARD: Fast forward a year and a half in May of 2019, there is a default that occurs. And so that is when the confession of judgement is filed, and that's Exhibit C to our motion to reconsider.

Something else important happens at this point in time, Your Honor. And this is going to answer your question as to why plaintiffs would have accepted 50,000 when there was in excess of 600,000 on the debt.

The mortgage is foreclosed upon by First Citizens Bank. And this is important because plaintiffs at this point, they realize that their one and only debt that they have collateral to, it's secured only by that property and they may get nothing because First Citizens is foreclosing on the property and First Citizens is in a higher priority to collect on that foreclosure than they are.

THE COURT: They're the priority creditor?

MR. RICARD: Exactly, Your Honor. And so they're facing the very real possibility that they're going to get nothing out of this debt.

So they get worried. And in order to avoid that and in order to get something rather than nothing, plaintiffs say they are going to be willing to accept much less than what the debt was owed. But, again, only from Senior and Lillian. Okay? And I will touch more on that in a second.

But a second settlement agreement is then entered into between Senior and Lillian, and just Senior and Lillian, and the plaintiffs in this particular case.

And, Your Honor, at this point, I would like to present to you our binder with the motion to reconsider with exhibits. We just ask you --

THE COURT: Is this the same thing you handed me?

MR. RICARD: I'm not sure.

MR. FLOYD: Exhibits A through C?

MR. RICARD: I believe it's A through G. And Your Honor, if I may, I ask that you follow along here. Because what I would like to do is compare Exhibit B.

If you look at pages 10 through 13 of Exhibit B, you see there that John Junior has signed on to this first settlement agreement. You also see Senior signs on page 11 --

MR. FLOYD: Can we see this binder, Judge? Do you have one for us?

THE COURT: Exhibit B is the 2017 settlement agreement. Make sure y'all got that.

MR. MCVEY: We're just trying to make sure our exhibits match up with theirs.

THE COURT: Do you know which exhibit --

MR. FLOYD: It should be Number 1.

MR. MCVEY: Your Honor, I have Exhibit A being the court order, Exhibit B being the first settlement agreement. Hang on. Exhibit C is the confession of judgement. Exhibit D is the second settlement agreement.

THE COURT: All right. Stop right there. You already lost me. What I've got in your book, at least the one that was up here when I got here, was an A, B, whatever.

MR. FLOYD: Tab number 1 that you're looking at?

THE COURT: When I go to tab number 1, I get motion to reconsider and what looks like some of the documents that we're referring to here. Hold on. Number 2 looks to be my order. After my order is Exhibit A. This has got to be the 2020 settlement agreement. It is not. It's the 2017 settlement agreement.

MR. FLOYD: First settlement agreement.

THE COURT: That's the one that he's referring to.

MR. FLOYD: Exhibit B?

THE COURT: I think it's your exhibit --

MR. RICARD: It's Exhibit B to the motion and also tab B in our binder.

THE COURT: Okay. All right. And it's your Exhibit A I believe.

MR. FLOYD: Tab 1. Yeah, that's right.

THE COURT: Under tab 1.

MR. FLOYD: Yes, sir. Okay. Let's make sure we're all talking about the same thing. All right. Got it. See if we can't cross reference that. Okay. All right.

MR. RICARD: Thank you, Your Honor. So, again, going back to Tab B in our binder, that is the first settlement agreement. Just to be clear, page 10 is where Junior signs on to it and page 11 is where Senior signs on.

THE COURT: Okay.

MR. RICARD: Page 12 is where Lillian signs on, and page 13 is where John Junior signs on behalf of the company. So quite clearly, those are the four parties that are subject to the first settlement agreement.

THE COURT: Got it.

MR. RICARD: So if we compare those pages to Exhibit D -- this is tab D as well in our binder.

THE COURT: Talking about your tab D? That's the second settlement agreement.

MR. RICARD: Correct, Your Honor. So let me stop and make sure I figure out which one is plaintiffs' second settlement agreement, which would appear to be Exhibit D under your tab 1.

MR. RICARD: Exhibit B is the first --

MR. MCVEY: Exhibit D is the second settlement agreement Your Honor. I believe.

MR. FLOYD: It's under tab 1. It's D as in dog.

MR. RICARD: And, again this is the second settlement agreement. If you turn to page 6, that's where the signatories are. So you see the plaintiffs on page 6 and 7.

THE COURT: Mr. Young and Mr. Greene.

MR. RICARD: And then on page 8 and 9, you see Senior and you see Lillian and that's the end of the second settlement agreement.

THE COURT: Okay.

MR. RICARD: So it's very clear. Second settlement agreement does not incur any obligations by the son, Junior, or the company. It's only with Senior and Lillian.

THE COURT: Okay.

MR. RICARD: So plaintiffs accept $50,000 from Senior and Lillian in exchange for a release, and that's when the fifth document is created, a release form is created. And it releases two of the four parties that were to the original first settlement agreement. There's four there.

THE COURT: Where in that document does it say that they're getting a release? Where is the release?

MR. RICARD: Yes, Your Honor. And I will get to that.

THE COURT: Release of what --

MR. RICARD: Right.

THE COURT: -- is my question. That would be significant.

MR. RICARD: It would be from everything, Your Honor. It's $50,000 in exchange for the release of note, mortgage, confession of judgement, everything.

THE COURT: And where in the document does it release that note and the mortgage and satisfy the note and mortgage?

MR. RICARD: Yes, Your Honor. So I'm going to ask you to -- we're going to go through that --

THE COURT: No, you need to answer that

question. Let's just go right there. Okay?

MR. RICARD: Sure, Your Honor.

THE COURT: Dancing around on the head of a pin, and I can't find it. And I read your memoranda more than once, and it says it was clearly referenced in there.

I looked for it a second time, and I didn't find it. And then I read the response to your memo in reconsideration and I couldn't find it.

And then I found -- actually, I found it the first time I read it. But I did agree with y'all to some degree, and that would be in the language found on page 8.

I think this is Ms. Shoun's memoranda. Reference to Exhibit G, pages 1 through 4. We're talking about the settlement agreement. To be sure, if you search for the word "note" in the second settlement agreement, that word is not found.

MR. RICARD: Yes, Your Honor.

THE COURT: I am in total agreement with that.

MR. RICARD: Yes, Your Honor.

THE COURT: And that is your statement of fact?

MR. RICARD: Absolutely.

THE COURT: Flip over to page 9. Again, a perfunctory search for the word "mortgage" in the second settlement agreement will be unavailing in determining whether the second settlement agreement actually references the mortgage, and I agree with that statement of fact. I can't find it in there anywhere.

You find it for me, I might change my mind. But unless you can do that, I'm not going to change my mind.

MR. RICARD: Understood. So if you look at Tab D, that's Exhibit D, delta, to our motion, this is the second settlement agreement. Page 1, very bottom of the page, that provision, that last whereas clause on the first page.

THE COURT: All right. Well, what document are we in again?

MR. RICARD: Second settlement agreement, Tab D in the binder.

THE COURT: All right. You highlighted it, right?

MR. RICARD: Yes, Your Honor. So that highlighted provision, it says: In summation, John Beasley Jr. borrowed the principal sum of 640,000 from the creditors, which that sum was to be solely used for the improvement of certain real estate and to be repaid in full with, which interest, totaled $765,000 on or before October 19, 2017. And then in parentheses, the, quote, "loan." That, Your Honor, is a reference to the note.

THE COURT: No, it's not.

MR. RICARD: Respectively, Your Honor, we disagree.

THE COURT: All right.

MR. RICARD: That debt, that debt right there, is synonymous.

THE COURT: It's the loan. It's the money, right? What they borrowed is the money.

MR. RICARD: And the note is simply acknowledgment of the loan.

THE COURT: Well, it is that. I agree. I agree it's acknowledgment of that. But it's separate and distinct from the note.

The loan and the note are not the same thing. The note is a representation of the loan.

MR. RICARD: Respectfully, Your Honor, we disagree. The note is simply an acknowledgment of the loan that is in existence. It's an acknowledgment of the debt.

THE COURT: It's a representation of the

loan, yes, and it sets forth the terms of whatever the terms of the note are. I agree with that.

MR. RICARD: Yes, Your Honor. And so this whereas clause -- the note and the loan are synonymous. And if you look at plaintiffs' memoranda in opposition, they actually agree with that. The promissory note is the loan in question.

And so by referencing the loan here, by referencing the debt, by referencing this in the last whereas clause, that's a reference to the note and it implicates what is being released in the second settlement agreement.

THE COURT: Okay. Go ahead.

MR. RICARD: If you turn to the next page, page 2 of Exhibit D, Your Honor, it states: Whereas John Senior and Lillian agree to join John Beasley Junior along with certain other parties as co debtors for the repayment of the loan as well as agree to pledge certain collateral to secure the repayment of the loan under the terms hereof.

Again, it's a reference not only to the note but it's also a reference to the mortgage because it refers to the pledging certain collateral. There is only one collateral on this entire case, Your Honor. That's the property. That's the family home.

Okay. And so these two provisions, these two whereas clauses are express representatives -- they may not use the term note or mortgage but that is what a mortgage is is a collateral to secure a debt.

THE COURT: These are in the whereas clauses?

MR. RICARD: Yes, your Honor. And according to South Carolina law, those whereas clauses have to be construed in the interpretation of what the contract is doing. And I'll cite you a case here, Your Honor.

THE COURT: This is just background information, isn't it?

MR. RICARD: No, Your Honor. Respectfully, we disagree. According to *M M Group, Incorporated v. Holmes*, this is case 379 S.C. 468, Court of Appeals case from 2008. And what that case holds is that the intention of an instrument is determined by the language of the document including the language in the whereas clauses.

So these are not just mere recitals, Your Honor. These are important to understand the implications of what a contract is doing.

And so because this second settlement agreement references the note and the mortgage, the release language is releasing the note and mortgage as well.

And I wanted to point something else out, Your Honor. Because if you look at -- go to your order in this case, Your Honor, it's Tab A. It's Exhibit A to our motion and Tab A in our binder.

Okay. If you turn to page 4, we have highlighted it for you. In your order, you say: Accordingly, after a discussion of the note and mortgage, those subjects were not included in the second agreement. In addition, paragraph 16 makes it clear that the terms of the first agreement which included the note and mortgage remained in effect.

And so you have acknowledged that the first settlement agreement does reference the note and mortgage. And I'm going to ask you to compare the language in the first settlement agreement with the language that we just saw in the second settlement agreement.

So if you turn to page 2 of Exhibit B, Exhibit B has the same exact whereas clauses as the second settlement agreement. And those are highlighted at the top of page 2 of Tab B, Exhibit B.

THE COURT: Okay.

MR. RICARD: It would be inconsistent to hold that the first settlement agreement references the note and the mortgage and the second settlement agreement does not when the identical language in those two whereas clauses are represented in both, Your Honor.

THE COURT: All right.

MR. RICARD: So, Your Honor, again, our position is now that we have established that the note and mortgage are referenced in the second settlement agreement, what's the implication? The implication is that Senior and Lillian have been released and only they have been released because they're the only debtors, co-debtors, that are party to the second settlement agreement.

So if we look to page 2 of Exhibit D, you can see the release language. It starts with the therefore clause. This is page 2 of Exhibit D. It should also be highlighted.

But it's in consideration of the payments and promises recited herein that creditors fully release and forego all legal, equitable, and statutory remedies and processes to them so long as the debtors fully perform all obligations here under.

And there is no dispute that they have paid the $50,000 that is subject to this second settlement agreement. So Senior and Lillian have met their obligations under this second settlement agreement.

So the benefit they obtained from that is a release. And if you look -- so that's the consideration that's paid.

THE COURT: No, that's the preamble. All right? Now therefore we agree as follows.

MR. RICARD: Understood, Your Honor. But, again, we're going to continue here, but that's a recognition of the consideration that's being obtained by Senior and Lillian.

If you turn to page 3, paragraph 4 of the second settlement agreement, it says: It is understood and agreed that this settlement and release represents the compromise by plaintiffs and the Beasley defendants to resolve a variety of doubtful and disputed claims and counterclaims and that the amounts paid and received here under are made solely for the purposes of ending their disagreements, plural, and to buy, sell, and exchange their individual and respective peace of mind and to avoid the significant cost of protracted litigation.

And so paragraph 4 raises two clear points, Your Honor, and then it also raises two questions that plaintiffs can't answer. The first is it's clear that the intent of the parties is to provide a full release for not only the plaintiffs' peace of mind but Senior and his wife's peace of mind as well.

So this begs the question if only the confession of judgement were being resolved by the second settlement agreement, how would any of the parties have obtained peace of mind as to the debt if the note and the mortgage were still left unsatisfied? They are obtaining peace of mind because this is a global release, Your Honor.

The second point is the intent of the full release was to avoid significant costs of protracted litigation. Protracted litigation is in the release. That's the purpose of what this release is doing.

And it begs a similar question. If only the confession of the judgement were being resolved -- and that does not require protracted litigation. A confession of judgement does not require protracted litigation.

If that's the only thing that's being resolved, what protracted litigation is being contemplated here? What protracted litigation is being avoided here if the note and the mortgage are still outstanding?

Plaintiffs can't answer that question, Your Honor. It's the clear intent of these parties to avoid that protracted litigation. And that is, again, implicating the note and mortgage as having been satisfied once Senior and Lillian fulfill their obligations under the second settlement agreement.

So there's only one interpretation that can be reached here and that's that the release is designed to distinguish the note, the mortgage, and the confession of judgement, all of it.

Paragraph 5 further supports it, Your Honor, and I highlighted that as well. But it states: The settlement and release constitutes the entire agreement and understanding between plaintiffs and Senior and Lillian and it supercedes all prior understandings or agreements written or oral on the subjects contained herein and the terms of the settlement and release are contractual and not mere recitals.

Again, it's further evidence that the release and settlement was global in nature.

THE COURT: That's your position that the subject contained herein is more than just a confession of judgement?

MR. RICARD: Yes, Your Honor. Absolutely.

THE COURT: All right. I understand.

MR. RICARD: I understand that the Court also had some concerns about the partial nature of the release. I believe you mentioned that in your order, Your Honor. I think that came out of the title of the document, didn't it?

MR. RICARD: Yes, Your Honor. So if we turn to --

THE COURT: Wouldn't that show the intent of the parties?

MR. RICARD: Yes, Your Honor. But if you look at the release, the release is Exhibit E. The title of the document makes clear why it's partial in nature because it's only a release as to certain defendants.

THE COURT: Right.

MR. RICARD: And so plaintiffs --

THE COURT: Beasley Senior defendants? Your clients, right?

MR. RICARD: Yes, Your Honor. So Junior and the company are still on the hook for this debt. Plaintiffs, at this point in time, they can go after Junior and the company for this debt, which is another reason why they probably accepted 50,000 from Senior and Lillian because they have this opportunity to go after Junior and the company.

If you look at the last paragraph of the release, Your Honor, it's on page 2 of Tab E, it further reflects the point that I've just made, Your Honor. It said the remaining balance of said judgement lien plus accruing post judgement interests and costs shall continue on record against defendant John W. Beasley Jr. and defendant Beasley Construction Company, LLC, collectively, the remaining defendants, and any and all other property.

"Other property" I want to highlight there, Your Honor. Because, again, the property in question in this particular case has been -- that mortgage has been extinguished. There is no security on the basis of that property, Your Honor.

They can go after any other property that may be out there, but not this property, and it can't go after these defendants. They can only go after the remaining defendants.

THE COURT: Doesn't the first clause in that paragraph address what it's talking about?

MR. RICARD: The remaining balance, Your Honor?

THE COURT: Of said judgement lien.

MR. RICARD: Absolutely. So, again, they can go after Junior and the company for the remainder of the debt. They cannot go after Senior and Lillian for the remainder of this debt.

THE COURT: On the judgement.

MR. RICARD: Respectfully, we disagree.

THE COURT: Okay. Well, we disagree.

MR. RICARD: The last sentence provides further proof for our position. Nothing in this document shall affect or limit the rights of the plaintiffs in their collective or individual pursuit of collecting the remaining balance of said judgement from any other property, real or personal, presently owned or acquired hereafter from the remaining defendants.

Again, it's a recognition that Lillian and Senior have been released but they can go after Junior and the company.

Your Honor, I believe you also had some concerns in your order regarding the case law, and we believe that you did cite to Lever v. lighting Galleries, Inc. as authority, and we think that's proper authority.

However, when you run through the analysis that we have just run through, Lever supports our position not plaintiffs and here are the reasons why. In Lever, it's very clear that the debtor in that case, Mr. Lever, he conceded that he had not paid the debt.

I will read the quotes from Lever decision, Your Honor. The Court in that case held it is also undisputed that Lever has not paid the debt to date. And another quote says Lever concedes that he has not paid the debt.

Because of that, the Court found that the creditors could satisfy the debt through either an action on the note or foreclosing on the mortgage. But that's not the case here, Your Honor. Senior and Lillian have satisfied the debt. That debt has been paid as to them.

Again, it's a partial satisfaction only because Junior and the company are still on the hook.

THE COURT: You acknowledge that the debt itself has not been paid, correct?

MR. RICARD: It has been paid by Senior and Lillian.

THE COURT: That's not what I asked you. The debt itself has not been paid in full?

MR. RICARD: It has been paid by Senior and Lillian, Your Honor.

THE COURT: I'm going to ask you one more time. The $640,000 that's turned into $765,000 within about a month has not yet been paid?

MR. RICARD: It has not been paid by Junior or the company as far as we know. But we actually don't know how much money has been paid on that debt, Your Honor.

There's an order of restitution out in the figure of 590 or 595,000 against Junior.

THE COURT: Okay.

MR. RICARD: There's arguments there, Your Honor, that that debt has been satisfied by Junior as well because there's an order of restitution in that case.

THE COURT: Does that pay it? Does that pay the judgement?

MR. RICARD: It may not be paid off, Your Honor, but it is an order. And so that debt has been effectively enforced against Junior and Junior only.

THE COURT: All right. Anything further?

MR. RICARD: Yes, Your Honor. So plaintiffs could have sought the full amount from Senior and Lillian but they chose not to. Instead, they accepted what they could get and they released Senior and Lillian.

As the Court knows -- we could go down the street and talk to any mechanic shop. If a customer makes a down payment of five grand to do some repair work on a car and then comes to find out that it costs $7,000 in total to make the repairs, the mechanic still has $2,000 that he's going to want from that customer.

That customer may not have the means or ability to pay the $2,000. And so the customer may say, well, I'll give you 500. And the mechanic, instead of going through protracted litigation to get that full 2,000, that mechanic may say, okay, I'll release from you the rest of the 2,000 if you give me 500 right now. And they make a deal. And that happens all the time.

And that's what happened in this particular case, Your Honor. Plaintiffs accepted a lesser amount from Senior and Lillian. And the only issue is, unlike the analogy I just gave you, is that they still have the opportunity -- that mechanic can go somewhere else and get the money just like plaintiffs can at this point if there's somebody else on the hook. And there is in this particular case. It's Junior and the company.

THE COURT: Well, if they intended to release them from the note and the mortgage, why didn't they put that explicitly in the agreement they signed?

MR. RICARD: We believe it is explicit.

Those whereas clauses --

THE COURT: Your understanding is that y'all agreed that for $50,000 that y'all were going to be relieved of any obligation on the 765,000?

MR. RICARD: Absolutely, Your Honor.

THE COURT: That was after entering into the confession of judgement, after entering into a note for that amount of money, and after signing a mortgage?

MR. RICARD: Yes, Your Honor. Absolutely.

THE COURT: All right.

MR. RICARD: And to be clear, plaintiffs felt the same way and they understood --

THE COURT: I'm going to let them tell me feel. You've been telling me how they feel and what they interpreted. I don't know that they agree with that, and I'm not sure I agree with that. I'm going to let them tell me how they feel.

MR. RICARD: Understood, Your Honor. But to the extent there's a dispute about that, Your Honor, it's a genuine issue of material fact that's created and that's sufficient to defeat there being granted a summary judgement on this particular case.

THE COURT: I'm not sure intent -- or feelings. Let's say that. I'm not sure feelings create genuine issues of material fact. I think documents might.

MR. RICARD: Well, if that case is true, Your Honor, there simply hasn't been a meeting of the minds on this contract. So that contract is void of any consideration whatsoever.

So, again, that creates a genuine issue of material fact. And so we would ask respectfully that the Court consider the ramifications of this particular order. Because if a party attempts settlement in a case like this and tries to satisfy a debt globally but then come to find out they can still get pursued via other avenues, why would any party want to settle a case?

It would clog the Courts. There would be no reason to because the purported release would have no benefit. This is a bargain for exchange and both parties benefited.

If Senior and Lillian are not fully released, they have received no benefit under the contract, Your Honor, under the second settlement agreement.

And so, again, there's a lack of consideration, a lack of meeting of the minds. And the contract should be voided because of it.

No settlement would be ever be sacrosanct in such a situation and courts would be flooded with cases because no one would ever feel comfortable enough to settle.

And if you look at paragraph 9 in Exhibit D, it talks about all the plaintiffs' claims have been extinguished. That is set forth in the second settlement agreement, and we highlighted that for you. Paragraph 9 of Tab D, the second settlement agreement.

That's the benefit that Senior and Lillian received, an extinguishing of all claims made by plaintiffs.

If they don't get that benefit, if they don't get that benefit, that contract is void for lack of consideration.

I touched on this earlier, Your Honor, but I want to hit on it again just to preserve for the record, but we would ask for you to consider that, again, the restitution order in the case against Junior does exist and they have obtained the ability to get the funds to satisfy that debt as to Junior.

THE COURT: That's through the federal court?

MR. RICARD: Yes, Your Honor.

THE COURT: Criminal case?

MR. RICARD: Yes, Your Honor.

THE COURT: All right. Those don't always get paid, you know?

MR. RICARD: Understood, Your Honor. But they do have an order. They do have an order. And what plaintiffs are attempting to do here is to have a double recovery.

They want to see not only payment of the debt from Senior and Lillian but they also already have an order in place from a federal court.

THE COURT: They had an order in place from your clients at one time.

MR. RICARD: Right. And it was extinguished by the second settlement agreement.

THE COURT: It was released?

MR. RICARD: Right, it was released and extinguished. All claims, everything, it was all forfeited in paragraph 9 of the second settlement agreement.

Your Honor, just very briefly, we would like to present a list of the genuine issues of material fact in this case. We have told you that we don't believe a genuine issue of material fact is created, but as we discussed already, there's clearly some disputes between the parties.

So in the alternative, those disputes would create genuine issues of material facts that would warrant a denial of their motion for summary judgement.

So here is a list, Your Honor. They have disputed that the second settlement agreement doesn't reference the note. That's a critical issue in this case. It's a genuine issue. It's one of material fact, and it's very similar to the second issue.

They dispute the second settlement agreement doesn't reference the mortgage. Again, that would defeat summary judgement. They dispute that the debt has been paid. We believe and our position is the debt has been paid as to Senior and Lillian.

And incidentally, plaintiffs mentioned they have an affidavit attached to their brief that says the debt has not been paid, but we haven't seen such an affidavit, and our position in this case is that they have paid the debt and that's proof by the filing of the release in this case.

If the debt hasn't been paid, though, Your Honor, then there's also an issue of how much debt remains. Because as we mentioned, Junior has an order of restitution that would satisfy that debt.

Next, they dispute they are not required to file a release of the mortgage under the second settlement agreement. Because -- Your Honor, we asked them to file a release of the mortgage pursuant to the second settlement agreement and they refused to do that because they wanted to bring this case and seek a double recovery.

Just because they haven't filed a release of the mortgage doesn't mean that release doesn't exist. It exists. It's in the second settlement agreement.

THE COURT: How do they have a double recovery if they have gotten 10 percent of the amount they claim to be owed?

MR. RICARD: What they're seeking is a payment of the $600,000 not only from Senior and Lillian but they're also seeking that restitution amount from Junior and the company. And really the order is only towards Junior, but they're seeking it from both, Your Honor. That would create a situation where there's a double recovery.

THE COURT: Isn't that joint and several liability?

MR. RICARD: No. Absolutely not, Your Honor. This is a debt. If somebody incurs a debt and trying to go after it from two separate parties, that would jamb up the entire system here.

Senior and Lillian, their portion of that debt, their obligations to that debt have been extinguished because of the second settlement agreement. And so the only recourse that plaintiffs now have is towards Junior and the company. And, again, that restitution order is in place against Junior.

THE COURT: But that doesn't pay it. Go ahead.

MR. RICARD: Plaintiffs have also disputed that they haven't obtained satisfaction by the payment that was made by Senior and Lillian. Again, that's another genuine issue of material fact.

THE COURT: Say that one again, I'm sorry.

MR. RICARD: They dispute that they have obtained satisfaction by the payment made by Senior and Lillian. They dispute that. Obviously we disagree and we believe they have been satisfied by it and fully satisfied as to Senior and Lillian.

And then lastly, Your Honor, the arguments we have made related to the contract itself, the coercion of the contract in the first incidence creates a dispute as we discussed of material fact. And then also if the release isn't global then there's been no meeting of the minds and no consideration and genuine issue of material facts, all of which, each and every one of those eight genuine issues of material fact, solely, independently, and in and of themselves create grounds for this Court to deny plaintiffs' request for summary judgement.

And if I may have one moment?

THE COURT: Sure.

MR. RICARD: Thank you, Your Honor. Respectfully, we would ask for our motion to reconsider be granted and plaintiffs' motion for summary judgement be denied.

THE COURT: Okay. Thank you.

MR. FLOYD: May it please the Court, Your Honor. Joey Floyd on behalf of the plaintiffs. As a preliminary matter, I would like to point out that probably 90 percent of what he said is wholly unsupported by an affidavit from the defendants.

All of these statement of facts that they're trying to now resurrect and say there are issues of fact, I would point out that their memo that they filed last month says specifically there are no genuine issues of material fact.

Second, this document that was handed up to you a moment ago that purports to be a timeline is actually arguments and it has certain statements in it such as: Pursuant to the release, John and Lillian were fully and unconditionally released and forever discharged from all claims and they go on and on to support their position. I would ask that this be excluded from any record in this matter due to the arguments, unsupported arguments, that they put in this timeline.

THE COURT: I'm going to allow it in the record but it's not evidence. I'll grant you that.

MR. FLOYD: All right. I will be pretty brief, Your Honor. I think our briefs have fairly well drilled down on all the subjects. I wanted to hit just a few things.

First of all, in our filing that we filed, we filed an affidavit in support of our motion for summary judgement for Mr. Young and Mr. Greene. That affidavit specifically said the debt has not been paid first and foremost.

We have also filed another affidavit in connection with today's hearing leading up to the foreclosure hearing that we have asked for to establish the debt. We have also put in another affidavit that says it has not been paid.

So I'm not sure I understand where the Beasley defendants' lawyer was going with that. I wanted to establish that.

I also want to point out I think the Beasley defendants have a fundamental misunderstanding about a judgement and a mortgage. Two separate remedies as provided for in legalese.

This entire argument on the part of the Beasley defendants is an effort to insert a term into the second settlement agreement that just does not exist, and that is they want this Court to find an obligation on the part of Young and Greene to satisfy the mortgage. It's not there. Plain and simple. It's just not there.

Their obligation in the second settlement agreement was specifically related to filing the document that they filed, and they did. Money was paid and they did their obligation.

I think I also heard the Beasley defendants' lawyer say that there was somehow not a meeting of the minds.If we go that route and there was no consideration and all that sort of stuff, it puts us right back where we are.

If we completely disregard the second settlement agreement, they get a credit of $50,000 and we're right back without a second settlement. So we're right back to foreclosure.

And going through just this second settlement agreement -- or, excuse me, the fundamental blocks of -- it's a fundamental building block exercise.

You have a loan where money is loaned; a promise to pay that loan, a promissory note; you have a mortgage that is signed and filed. The mortgage secures the promise to pay. There is simply no obligation in that second settlement agreement to file a satisfaction of the mortgage.

The Beasley defendants' arguments, having listened through today's hearing, is they seek to pull a phrase from here. They seek to pull a clause from here and suggest that that creates some sort of ambiguity.

Our case law specifically says that you cannot create an ambiguity by pointing out a single sentence or clause. You have to read the entire agreement. It is in its entirety.

The debt has not been satisfied. We have unopposed affidavits that say that the debt has not been satisfied. And we agree on the two payments that were made. We have an agreement that two payments were made, a total of $75,000.

THE COURT: If there was a meeting of the minds, would there not be an intent to satisfy the mortgage, satisfy the note, would there not be a writing to that effect?

MR. FLOYD: One sentence. That's all it takes. One phrase that says release the judgement and file a satisfaction of the mortgage. It's not there. It can be inserted by five words.

Okay. Paragraphs 2 and 3 I believe is Exhibit D of the second settlement agreement, I wanted to briefly touch on that. If you read paragraphs 2 and 3, it tells you what's happened here.

Paragraph 2, it talks about the release from the judgement. If you read paragraph 3, it is their release of the creditors. Those are probably two of the most demonstrative paragraphs I believe in the entire agreement.

But if you read it in a whole, there is no ambiguity. The plaintiffs did what they were supposed to do in exchange for 50,000 bucks and we're entitled to foreclose, Your Honor.

MR. MCVEY: Your Honor, if I may, I just want to point this out. Paragraph 2 of the second settlement agreement: Sum hereof and the judgement shall (inaudible) --

THE COURT: Slow down. She's trying to keep up with you.

MR. MCVEY: It certainly says release of the judgement. That's exactly what happened. Doesn't say release from the loan, which is a defined term contained in the settlement agreement.

If you flip over to the release of judgement lien, which is Exhibit E to the motion to reconsider, it says: The defendants are hereby released from the lien of said judgement, the property, real property owned. And it says, moreover, John W. Beasley and Lillian Beasley, the released defendants, are personally released from the judgement in this matter.

The third paragraph says, collect the remaining balance of the judgement from any other property.

This was the simplest thing in the world to avoid, everybody standing here right now. And if that was what everybody had agreed to, there would be this simple sentence: And satisfy the note and the mortgage or release the mortgage. All of those things.

There's a lot of conflation of the term release and satisfaction. The judgement here was released and partially satisfied. The mortgage has been -- neither of those things have happened.

If we had satisfied the mortgage, the confession of judgement might be a problem, too.

Because if I'm JJ, I'm not going to argue, no, no, you took your dirt to settle your debt. That's not what happened here. It was very specific that the mortgage stay in place. It was very specific that the judgement was all that was being released. It's that simple.

THE COURT: Okay.

MR. MCVEY: Thank you, Your Honor.

THE COURT: Mr. Ricard?

MR. RICARD: Thank you, Your Honor. Just to clarify one thing I mentioned. First, I talked about the release only applying to Senior and Lillian. It also applies to the property. I just want to clarify that. The property itself has been released as well.

Plaintiffs' counsel just mentioned that we have been trying to create ambiguity. We disagree. We believe that the second settlement agreement is clear and that it was a global release.

But, again, to the extent there's a dispute about that then a genuine issue of material fact has been created.

Plaintiffs' counsel also mentioned that if there's been no meeting of the minds then it would put us right back to where we started and somehow Senior and Lillian would still be on the hook. Respectfully, we disagree, Your Honor.

They would have never incurred any obligation for the debt that was owed by Junior to begin with. And so to get us back to the position ex-ante would be Senior and Lillian are completely off the hook altogether and so we would not be right back here where we are now like plaintiffs' counsel just said.

And lastly, Your Honor, I think it is helpful for us to consider what the parties thinking was at the time of the second settlement agreement, Your Honor. They had a confession of judgement. They had that. They executed that and could have sought the full, entire amount of that debt. Instead, they accepted $50,000. And according to plaintiffs, it only released that confession of judgement.

And so if you're in the position of plaintiffs at that point in time, you make a deal for $50,000 to extinguish a confession of judgement where you don't have to go through any litigation whatsoever and then you're going to go after and hunt after that $500,000 in protracted litigation by foreclosing on a property. That doesn't make any sense, Your Honor.

It leads to an absurd result, and South Carolina law is very clear that an absurd result should be avoided. So it's very clear in this agreement and by the parties own conduct that they were releasing everything, Your Honor.

It just doesn't make sense why you would accept $50,000 only for a confession of judgement and then go take up a bunch of attorney's fees and go after and foreclose and try and get the rest of that debt.

You do the exact opposite. You release the mortgage and accept the confession of judgement to avoid protracted litigation. And that's exactly what the release language says, to avoid protected litigation.

And so, again, it's another indicator of a global release. And, again, Your Honor, my last point here is that it would be inconsistent for this Court to hold that the first settlement agreement mentions and references the note and the mortgage and yet find that the second settlement agreement which has the identical language of those two whereas clauses does not reference the note and mortgage. That would be inconsistent and respectfully, Your Honor, that's grounds for reconsideration in this particular case.

And, again, we respectfully request that our motion to reconsider be granted and plaintiffs' motion for summary judgement be denied. Pending any questions, Your Honor, that concludes my presentation. Thank you.

THE COURT: Thank you, Mr. Ricard. I find that there's an insufficient basis for the Court to alter its order in this case. I think that had they intended to satisfy the note and mortgage, they would have stated so. The Court's finding that the note and the mortgage are not clearly referenced in there, maybe that's what I needed to say, in the second settlement agreement is insufficient basis from which the Court should alter or amend its order, and that's why I started out with that.

And I believe that the intention of the parties at the time they entered into the second settlement agreement was to release the property from the judgement because the judgement is both in personam and in rem. And the note and the mortgage -- the mortgage is clearly in rem, and they retained that.

So I just don't find -- and you made a recitation of eight separate issues of fact. However, let me say this. Today, the 27th of September 2023, is the first time I have heard argued the issue of coercion.

But as pointed out, there's no affidavit to support that allegation. It's not been pled that I could see, and so it's just being raised in a motion to reconsider. So I don't find that the release of judgement is sufficient to satisfy the note and the mortgage. And on that basis, I'm going to deny the motion to reconsider.

Plaintiff chose to file the confession thereby converting the mortgage into a judgement lien; that's not a correct statement of law.

So the remedy contained in the second settlement was the satisfaction as to these defendants, the Beasley Senior defendants, from the confession of judgement and not the entire debt as exhibited in the note and secured by the mortgage. And on that basis, it's denied.

MR. MCVEY: Your Honor, you just used the word satisfaction in connection with Beasley defendants. I think you meant to use the word release.

THE COURT: Release.

MR. MCVEY: The partial release. Says release.

THE COURT: Yes. That's correct. It's released. I just find that -- there are facts in this case which y'all are disputing. I just don't find they're genuine issues. Okay? I do not find the issues to be genuine. That's really what I'm sort of concluding.

And I cite the Kitchen Planters case, which I think came out the day I was writing these orders.

Okay. All right? So that one is covered. What else we got?

MR. MCVEY: Your Honor, if I may. All right. First of all, do you want an order or are you going to do a Form 4?

THE COURT: You write an order. You want to send me an order? Run it by counsel?

MR. MCVEY: Joey would be happy to send you an order.

THE COURT: Very good. You got a motion for summary judgement?

MR. MCVEY: No, Your Honor. The defendants filed a motion for summary judgement, which I would submit at this point is moot.

I was going to do a housekeeping on what I think is out there right now. We have our motion for what is essentially a damages hearing I believe. Though as a practical matter, Your Honor, we have now submitted two statements -- we submitted two affidavits of debt.

No one has come forth with a counter affidavit disputing any of those, nor did the defendants request an accounting in their pleadings. So I'm not sure that testimony is necessary. I think Your Honor can decide based upon the affidavits of debt as well as the affidavits of attorneys' fees that were submitted by Mr. Floyd and myself. Of course, I will defer to however the Court wants to handle that.

Your Honor, the other motion that is out there is our amended motion to dismiss or strike the Beasley defendants' counterclaims and for summary judgement on the counterclaims.

Based on the Court's ruling on summary judgement, again, I think those counterclaims should be dismissed or denied at this point.

You can't have abuse of process if we were entitled to foreclose on our mortgage. We haven't breached the contract if we're entitled to foreclose on the mortgage.

And then we have a protective order. We did get served discovery after the last hearing on this. It's due pretty soon. And, Your Honor, we don't think that -- all of the discovery is moot again at this point based on the Court's summary judgement ruling I believe at this point.

So, Judge, that's my housekeeping. I'm willing to handle this however you would like.

THE COURT: Let's take up the motion to dismiss the counterclaims and the issue of discovery. Who wants to argue that one? Who is up for that one?

MR. DENNIS: Your Honor, may it please the Court, Markley Dennis. I certainly understand your ruling and that's what this is all about. We agree to disagree.

But the bottom line is if a summary judgement is granted, our abuse of process claim really depends on certain things that are existing that we think are material, one of which is frankly the defenses of accord and satisfaction which clearly goes to addressing what your statement was why would you do that.

Well, there's a basis for it but it's going to take testimony to establish that. So you rule as a matter of summary judgement we don't have any right to have that testimony, so we don't get to put that in.

So the bottom line is I don't know how we prove our abuse of process if we can't rely on the pleadings that we have and you have basically negated that with your ruling.

THE COURT: And the same as to breach of

contract.

MR. DENNIS: And I want to be sure I understand what you said. The ambiguities you're construing as a matter of law --

THE COURT: I find no ambiguities.

MR. DENNIS: You find none, although you've stated there's some ambiguities.

THE COURT: No.

MR. DENNIS: The record will speak for itself, thank you very much.

THE COURT: No. That, I did not say.

MR. DENNIS: I've sat where you are sitting and heard many of those things. And numbers of things of ambiguities as to what? And ambiguities here as to the accord and satisfaction, I don't think that's been addressed at all. And I think that's very significant here because it goes to answer why the second and third settlement agreements are there.

So just for the record so that that's clear, we can't -- I guess we can't argue that because you ruled them out because you said as a matter of law, they're entitled to do what they're doing.

THE COURT: Well, what I intended to say was eight issues of fact were presented before me, but in order for there to be -- that has to do with one, the note; two, the mortgage; three, the debt; four, the release; five, the order of restitution satisfying the debt, which I totally disagree with --

MR. DENNIS: Your Honor, the debt has never -- we never said it was satisfied.

THE COURT: Right. And coercion was raised, which I've reviewed the pleadings. It's never been raised, so it's not appropriate at this time.

And as to a global release and whether or not there was a meeting of the minds, I just find that it's just not -- it's apparent to this Court that that was not the intention at the time that the second settlement agreement was entered into, that it was entered into for the purpose of releasing the judgement from the record as it pertains to Beasley Senior defendants because that's all it addressed.

MR. DENNIS: Yes, sir. And my whole point is this: Assuming all of those things to be correct, if accord and satisfaction is a valid defense which we've raised then our abuse of process would -- we would have a base for.

And that would be an issue that -- I looked at several cases, one E.C. Burnett ruled on, that got reversed, and in every single one of them, accord and satisfaction is something that goes to the jury because it depends on what the parties intended, and I don't think you can construe what the parties intended without having testimony.

Thank you, sir.

MR. MCVEY: Your Honor, if I may be heard briefly on that. First of all, I think your summary judgement ruling at this point precludes any of the affirmative defenses as well as the counterclaims that were asserted by the defendants in this.

And if I may specifically address Mr. Dennis's arguments related to whether he's entitled to create a factual record at this point, the opportunity to have submitted evidence in contradiction or in defense of summary judgement was two days prior to the summary judgement hearing.

That's why the rule says what it is. Not one time have the defendants submitted affidavits signed by Mr. or Mrs. Beasley, not one time, and it makes me wonder why that is.

Is somebody uncomfortable signing that statement? I don't know. But everything on this is utterly and completely unsupported. And all of the facts that have now been -- or the facts that they would use to support the defense, again, wholly unsupported.

You cannot simply rest upon your laurels in your answer once somebody moves for summary judgement that is properly supported by an affidavit.

THE COURT: That's basic Rule 56.

MR. FLOYD: That is basic rule that I had beaten into my head by many a circuit court, Judge. Your Honor, that's just a fact.

THE COURT: I got one beating on me now. Go ahead.

MR. DENNIS: I will happily respond to that one. There's no question about it we didn't submit it. You have the exhibits which show the agreements that we're relying on, Your Honor. Those speak for themselves.

I don't need an affidavit to say that's what it says. It says what it says. So I disagree totally with his statement. And I assure you, summary judgement, you're entitled to rely on the pleadings, too. I guarantee you that.

THE COURT: All right. I'm going to grant the motion to strike defenses in the counterclaim.

What was the other one? Something to do with discovery? It had to do with request to admit.

MR. MCVEY: Your Honor, we were served discovery by the defendants shortly after the hearing, and we move for a protective order that we don't have to answer those because, again, there was a request to admit included in there under Rule 34 because at this point, they're moot.

The discovery that they seek has to do with their defenses and with the claims, all of which have now been ruled on. So at this point, Your Honor, we don't think we should have to answer that discovery and we think it's time to go forward with the damages hearing as -- if that's what Your Honor is inclined to do then we would submit that when there's sufficient evidence in the record to establish the debt to do a foreclosure, as well as your order which allowed us to do so.

Your Honor, we submitted an affidavit at the time we filed the summary judgement motion that has been uncontested as to what the debt amount is. Further, the defendants have not requested an accounting. They didn't plead it. It's been waived.

So the Court can make that determination. It's just math, Your Honor. It's just simple math. So the Court can make a determination as to the debt amount and then we can have an argument about whether the attorneys' fees that we're requesting are reasonable or not. But we can do all of that without having to do live testimony at this point.

THE COURT: Okay. I agree with that. I'm going to grant the motion for protective order unless y'all want to be heard on that.

Let's talk about moving forward with the damages. Determination, any question on that one?

MR. MCVEY: Your Honor, again, I think I stated my position on that. I think the affidavits support it. I think we can submit you a proposed order.

THE COURT: You want to be heard on that?

MR. DENNIS: Yes, sir. There are a number of things, first of all, you've alluded to them. We don't know what's been paid in restitution. We don't know -- because those sums are listed as a part of the restitution. And I don't know -- we don't have a clue what's been paid.

THE COURT: Well, I guess y'all can testify to that.

MR. FLOYD: Your Honor, the affidavit says this is what is due and owing. And it is uncontroverted by any affidavit. The restitution issue, much like the coercion thing, that's the first I've heard of it today, too. That's, again, also not pled.

And, Your Honor, if you want, we updated the figures. It's the last two pages contained in the notebook that we provided you and counsel with that it just does the math for you. It also shows the dates in which the $25,000 and $50,000 payments were made, gives credit for all of those.

THE COURT: And I don't know what the interest rate was.

MR. MCVEY: 12 percent. It started accruing after maturity.

THE COURT: Upon maturity?

MR. MCVEY: The note matured November 21, 2018, and it's been calculated from that date as is set forth in the affidavit.

THE COURT: Okay. All right. All right. So let's run down. Go ahead and tell me what the statement of debt is.

MR. MCVEY: Thank you, Your Honor. As of today's date, there's due and owing to the plaintiffs the original principal balance of $64,500. Excuse me, $647,500, Your Honor.

THE COURT: They might have taken that first one.

MR. MCVEY: Exactly. With 12 percent interest, that total is $931,097.41 with a per diem.

That's as of September 5th, which is the date we submitted the affidavit in support of the damages.

The total debt which would include a 15 percent attorney fee under the note of $139,541.61. Costs, which are supported in the affidavit, so attorneys' fees and costs that were both submitted by Mr. Floyd and myself are $4,487.92 for a total debt as of September 27th of $1,075,126.94.

There's 22 days of interest that have accrued between the 5th of September and today. That's a total of $4,510.22. The total debt as we stand here today is $1,079,637.16.

THE COURT: Your costs, I think you submitted affidavits on that; did you not?

MR. MCVEY: That's correct. They are broken out by firm in each of our affidavits, Your Honor, as are the factors that are set forth for determining the reasonableness of the attorneys' fees, et cetera.

THE COURT: Okay. Cost of the 2,973.34 submitted by Mr. Floyd?

MR. FLOYD: I believe that's correct, Your Honor. Yes, sir.

THE COURT: 1,514.18 by Mr. McVey? Just under 4500. And the affidavit of debt which y'all submitted at the time, November 5th, was filed

September 7th, signed by both Mr. Young and Mr. Greene.

So the principal of 572,500, which acknowledges the payment of 75,000, correct?

MR. MCVEY: That is correct, Your Honor.

THE COURT: Okay. Accrued interest of 358,597.41. The total debt figure you're showing me here is 931,097.41?

MR. MCVEY: Correct, Your Honor. And, again, with adding in the fees, costs, et cetera, and the additional interest of $4,510.28 for a total figure as of September 27th of $1,079,637.16.

THE COURT: Okay. All right. And of course acknowledges the payments showed there. Any other payments they acknowledge? Any other payments being received on this debt?

MR. FLOYD: It's agreed those are the payments based on request to admit, Your Honor.

THE COURT: Okay. Just those payments were made, the 25 and 50? All right.

Any question about those, about how they calculated?

MR. DENNIS: Your Honor, just for the purpose -- I assumed this is in response to plaintiffs' motion for foreclosure hearing. And it says: We request the honorable court to schedule a hearing to establish the debt.

And this is the hearing, I assume?

THE COURT: Yes, sir.

MR. DENNIS: Thank you, sir.

THE COURT: What they argue is there's been no accounting, been no affidavits in response.

MR. DENNIS: I understand that. What we're hearing is what I read and that's what I would consider.

THE COURT: All right. I find that the total amount of the debt as calculated in what is now Exhibit F to the plaintiffs' memoranda today is the total sum of $1,079,637.16 with a per diem of $205.01 per day based upon the principal amount plus the interest of 12 percent.

I didn't check your back page. Looks like this is where you did your math.

MR. MCVEY: Your Honor, that's correct. That's a spreadsheet that shows when the payments were applied and how they were applied.

THE COURT: All right. I'll grant you that relief and request that y'all submit a proposed order of foreclosure. Certainly would like you to run that by counsel for the defendants and we'll do the usual terms of sale. I would expect an appeal in this particular case. We'll cross that bridge when we get to it.

I don't set for sales prior to 60 days anyway. So October, November, December would be the earliest date and I probably would not want to put defendants out before Christmas, so probably next year. Okay?

MR. MCVEY: Your Honor, if I may, are you still selling twice a month?

THE COURT: No. I'm not having sales again until November. Let's look for January. Okay?

MR. MCVEY: Thank you, Your Honor.

THE COURT: I do sell the first Tuesday of each month is when I sell. I'll have to get you the date to find out when that would be.

MR. MCVEY: Your Honor, the only other point I would like to make is I do believe that the case law requires you to make a finding about the attorneys' fees.

THE COURT: I'm sorry. I didn't do that. Y'all submitted affidavits?

MR. MCVEY: We did, Your Honor.

THE COURT: You're asking -- your statement is 15 percent.

MR. MCVEY: The note says 15 percent.

THE COURT: Y'all cite *Dees v. Strickland* in your request?

MR. MCVEY: Mr. Floyd cited one that's near and dear to his heart because his law firm was involved. But it's cited in the affidavit. Cited in the motion I believe.

THE COURT: 15 percent included in the note?

MR. MCVEY: It is included in the note, Your Honor.

THE COURT: Okay. I'll grant it, then. Okay. Grant those fees. All right, gentlemen. Thank you for being here today. And ladies, I should not leave y'all out. Good to see y'all again. Thank you.

(Off the record at 3:29 p.m. on September 27th, 2023.)

COURT REPORTER'S CERTIFICATE

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

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

SIGNED THIS THE 2ND DAY OF OCTOBER 2023.

Josie Boehm

JOSIE ALLEN BOEHM

My Commission Expires 10/18/32

STATE OF SOUTH CAROLINA)
) PROMISSORY NOTE
COUNTY OF CHARLESTON)

$647,500.00 November 20, 2017

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

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

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

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

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

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

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

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

John Jr. Initials John Sr. Initials Lillian Initials Company Initials

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

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

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

THIS PROMISSORY NOTE MAY BE PREPAID AT ANYTIME WITHOUT PENALTY.

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

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

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

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

John Jr. Initials   John Sr. Initials   Lillian Initials   Company Initials

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

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

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

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

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

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

John Jr. Initials   John Sr. Initials   Lillian Initials   Company Initials

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

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

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

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

DEBTORS:

John W. Beasley, Jr.

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

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

Lillian Beasley

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

[END OF PROMISSORY NOTE.]

John Jr. Initials | John Sr. Initials | Lillian Initials | Company Initials

PAYMENT RIDER TO PROMISSORY NOTE

Debtors: JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC
Creditors: RICHARD YOUNG and JASON GREENE
Date of Promissory Note: November 20, 2017

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

[redacted]

For Credit to:

[redacted]

Memo:

[redacted]

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

DEBTORS:

John W. Beasley, Jr.

Lillian Beasley

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

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

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

[END OF PAYMENT RIDER TO PROMISSORY NOTE.]

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES:

____
Witness No. 1

____
Witness No. 2

MORTGAGEE:

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

______________________(Seal)
Lillian Beasley a/k/a Lillian J. Beasley

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

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

Witness my hand and official seal the 20th day of November, 2017

____
Notary Public for South Carolina
My commission expires: 06/27/2025

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EXHIBIT "A"

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

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

ALSO,

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

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

TMS No.: 427-00-00-102

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

ljb Initials   JWB Initials

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

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

RECORDED

Date:	December 8, 2017
Time:	9:29:32 AM

Book	Page	DocType
0684	902	Mtg

Elaine H. Bozman, Register
Charleston County, SC

MAKER:
BEASLEY JOHN W AL

RECIPIENT:
YOUNG RICHARD AL

Original Book:

Original Page:

# of Sats:

Note:

# of Pages:	15
# of References:	
Recording Fee	$ 10.00
Extra Reference Cost	$ -
Extra Pages	$ 10.00
Postage	$ -
Chattel	$ -
TOTAL	$ 20.00
DRAWER	Drawer 1
CLERK	KLH

0684
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902
Page

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Recorded Date

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843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS

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

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

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

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

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

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

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

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

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

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

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

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

b. Simultaneously with the execution of this Settlement Agreement and in order to secure the obligations under this Settlement and Release as acknowledged by the Promissory Note, the Debtors have executed mortgages (the "Mortgages") in favor of the Creditors on the following real property owned by one or more of the Debtors (for identification purposes hereof, the real properties are identified by address, brief legal description, and/or Charleston County TMS No.);

    i. 1050 Sea Eagle Watch, Charleston, South Carolina 29412, Charleston County TMS No.: 427-00-00-102
    ii. 3493 Plow Ground Road, Johns Island, South Carolina, Charleston County TMS No.: 277-00-00-036; and
    iii. Lot 8, Lighthouse Point, Lynne Ave, Charleston, South Carolina, Charleston County TMS No.: 452-06-00-068.

c. All payments required of Debtors hereunder shall be made to payable to "Richard Young and Jason Greene" and delivered, via wire transmittal, to the office of their counsel as follows: Justin John Price, Esq., 478 King Street, Suite 4, Charleston, South Carolina 29403 ("Creditors' Counsel"). The wire instructions for the depository account are attached hereto as Appendix "A" and shall be used by Debtors for remittance of any and all payments in reduction of the balance of the Settlement Sum owed unless and until Creditors' Counsel provides Debtors with written instructions to the contrary at the addresses listed in the preamble above;

d. Debtors may make periodic payments in reduction of the balance of the Settlement Sum owed, but all payments due hereunder shall be due in full by 2:00 PM ET, November 21, 2018 (the "Maturity Date"). Debtors shall have five (5) calendar days following the Maturity Date within which to cure any delinquent payment hereunder (the "Cure Period"). No default under this Agreement shall occur until the Cure Period has lapsed without performance by Debtors of the payment obligations then due. However, Debtors hereby waive notice of any payment delinquency, payment default, or commencement or passing of any right to cure; and

e. Upon the occurrence of an uncured default by Debtors, Creditors shall, without prior notice, be entitled to record the Confessions of Judgment given by the Debtors and described herein in accordance with the terms set forth in said Confessions of Judgment without invalidating this Settlement and Release Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AGREED TO BY:

________________________ (L.S.)
Richard Young

STATE OF TN)
)
COUNTY OF DAVIDSON) ACKNOWLEDGMENT

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

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

____
Notary Public for DAVIDSON CTY

My Commission Expires:
07/19/19

SHIMA SALMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

AGREED TO BY:

_______________________________ (L.S.)
Jason Greene

STATE OF Alabama)
COUNTY OF Lauderdale) ACKNOWLEDGMENT
)

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

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

____
Notary Public for Alabama

TERRY J. HIGDON
NOTARY PUBLIC
ALABAMA STATE AT LARGE

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

____

AGREED TO BY:

_______________________ (L.S.)
John W. Beasley, Jr.

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

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

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

____
Notary Public for South Carolina

My Commission Expires:
06/17/2025

AGREED TO BY:

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

STATE OF SOUTH CAROLINA	)	
	)	ACKNOWLEDGMENT
COUNTY OF CHARLESTON	)	

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

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

Notary Public for South Carolina

My Commission Expires:
06/17/2025

AGREED TO BY:

Lillian Beasley (L.S.)
Lillian Beasley

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

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

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

Notary Public for South Carolina

My Commission Expires:
06/17/2025

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

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

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

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

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

____
Notary Public for South Carolina

My Commission Expires:
06/17/2025

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT AND
CONDITIONAL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND CONDITIONAL RELEASE OF CLAIMS ("Settlement and Release") is made by and between **RICHARD YOUNG**, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Young"); **JASON GREENE**, an Individual whose address for purposes hereunder is c/o Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412, justin.price@justinpricelaw.com ("Greene", Young and Greene collectively hereunder the "Creditors"); **JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.**, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("John Sr."); and **LILLIAN BEASLEY**, an Individual whose current address is 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("Lillian", John Sr. and Lillian collectively hereunder the "Debtors") upon the terms and conditions contained herein. Creditors and Debtors are sometimes referred to herein each as a "Party" and collectively as the "Parties" to this Settlement and Release.

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

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

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

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

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

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

WHEREAS, the Creditors and Debtors previously memorialized a separate settlement and release agreement, executed by John Sr. and Lillian on or about November 20, 2017 (the "Prior Settlement and Release Agreement") to conditionally resolve the Loan dispute between them upon the terms and conditions set forth in said Prior Settlement and Release Agreement and in order to avoid the costs and frustrations attenuated with litigation; and

WHEREAS, the terms of the Prior Settlement and Release Agreement provided for the recording of certain confessions of judgment with the Clerk of Court for Charleston County, South Carolina, and thereafter such other jurisdictions as deemed appropriate by Creditors, should certain sums due thereunder not be timely paid; and

WHEREAS, on May 30, 2019, Creditors filed said confessions of judgment, along with the required supporting affidavits, with the Clerk of Court for Charleston County, South Carolina, as judgment number 2019-CP-10-2849 (the "Judgment"); and

WHEREAS, at the time of filing, the Judgment included a principal balance of $622,500.00 and attorney's fees and costs of $8,825.50; and

WHEREAS, the Judgment is joint and several as to all named judgment debtors, which includes the Debtors listed herein, and the principal balance of said Judgment has accrued delinquent interest and post-judgment interest; and

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

1. The Settlement Sum. Subject to the terms, conditions, and provisions of this Settlement and Release, the Debtors agree to pay and deliver to and for the benefit of Creditors the total sum of FIFTY THOUSAND AND 00/100 DOLLARS ($50,000.00) (the "Settlement Sum") in accordance with the following payment terms:

a. Simultaneously with the execution of this Agreement two (2) lump sum payments will be delivered from the trust account of John C. Johnston, Esq. and shall be payable as follows: (i) to "Richard Young" in the sum total of $25,000.00; and (ii) to "Jason Greene" in the sum total of $25,000.00. The Settlement Sum shall be delivered as follows: Justin John Price, Esq., 525 Folly Road, Suite 208, Charleston, South Carolina 29412 ("Creditors' Counsel").

2. Release from Judgment. Within ten (10) days of Creditors' Counsel's receipt fo the Settlement Sum, Creditors shall cause to be filed of record appropriate partial releases as to the Judgment to indicate, of record, that Debtors shall be released from the Judgment. The releases hereunder shall not release any other judgment debtor, the principal balance of the judgment shall be reduced by the Settlement Sum hereof, and the Judgment shall remain in full force and effect as to any non-released judgment debtor.

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

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

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

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

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

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

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

10. The terms, conditions, and payments made pursuant to this agreement shall be STRICTLY CONFIDENTIAL, and neither the Parties hereto, their attorneys, nor any person acting for or on behalf of any party hereto may disclose the contents and terms of this Settlement and Release, nor shall this Settlement and Release, or any of its contents, be made available or otherwise communicated in any form to any person except as may be required by law, or as may be necessary to comply with mandatory disclosure for tax or other governmental regulatory purposes. Nothing herein shall prevent the admission of a copy of this Settlement and Release as an Exhibit in a Court of law in order to seek enforcement of the terms hereof or as needed to enforce the Confession of Judgment given in connection herewith. Notwithstanding the foregoing, the Parties agree and acknowledge their mutual agreement to keep the provisions hereof confidential is the only consideration exchanged in support of the confidentiality obligations hereof and, specifically, that no monetary consideration has been exchanged in support of this confidentiality provision.

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

12. This Settlement and Release may be executed in multiple copies and a fully assembled document with copies of the required signatures shall be effective as an originally signed document. Moreover, the exchange of signature pages hereof by facsimile or Portable Document Format ("PDF") transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes. Signatures transmitted by facsimile or PDF shall be deemed to be original signatures for all purposes hereunder.

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

14. By their signatures below, each Party hereto states that he, she, or it has fully read and understood the terms and conditions of this Settlement and Release and knows the contents thereof, and that he, she, or it has had the opportunity to review the same and discuss it with

their attorneys, as needed or desired, and that they have voluntarily signed and executed this Settlement and Release of their own free will.

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

16. Except for the release of Debtors herein, this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record.

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

AGREED TO BY:

_______________________________ (L.S.)
Richard Young

STATE OF ____________________)
)
COUNTY OF __________________)

ACKNOWLEDGMENT

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

SWORN and subscribed before me
this ____ day of November, 2020.

My Commission Expires:

____

____

Notary Public for ____________________

AGREED TO BY:

______________________________ (L.S.)
Jason Greene

STATE OF ____________________)
)   ACKNOWLEDGMENT
COUNTY OF __________________)

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

SWORN and subscribed before me
this ____ day of November, 2020.

My Commission Expires:

___________________________   ___________________________
Notary Public for _____________________

AGREED TO BY:

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

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

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

SWORN and subscribed before me
this 30 day of November, 2020.

Victoria Kurtz
Notary Public for South Carolina

My Commission Expires:
9-4-22

AGREED TO BY:

Lillian Beasley (L.S.)
Lillian Beasley

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

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

SWORN and subscribed before me
this 30 day of November, 2020.

Notary Public for South Carolina

My Commission Expires:
9.4.22

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO.: 2019-CP-10-2849
COUNTY OF CHARLESTON	)	
RICHARD YOUNG and JASON GREENE, Plaintiffs/Creditors vs. JOHN W. BEASLEY, JR.; JOHN W. BEASLEY A/K/A JOHN W. BEASLEY, SR.; LILLIAN BEASLEY; and BEASLEY CONSTRUCTION COMPANY, LLC, Defendants/Debtors.	)	**RELEASE OF JUDGMENT LIEN AS TO A SPECIFIC PROPERTY, RELEASE OF JUDGMENT LIEN AS TO CERTAIN DEFENDANTS, AND PARTIAL SATISFACTION OF JUDGMENT**

For and in consideration of the payment of the total sum of Fifty Thousand and 00/100 Dollars ($50,000.00) (the "Release Fee"), paid to Richard Young and Jason Greene, collectively the "Plaintiffs", by only Defendant John W. Beasley, Sr. ("Defendant Beasley Sr.") and Defendant Lillian Beasley ("Defendant Lillian", Defendant Beasley Sr. and Defendant Lillian being collectively referred to herein as the "Released Defendants"), towards the reduction of the previously entered judgment in this matter, the receipt of which is hereby acknowledged, a certain parcel of real property owned by the Released Defendants is hereby released from the lien of said judgment, such parcel of property being described on the attached Description of Property.

Moreover, said Defendant John W. Beasley, Sr. and Defendant Lillian Beasley, the Released Defendants, are hereby personally released from judgment in this matter.

Moreover, the judgment entered in the above-referenced matter is hereby partially satisfied and reduced by the payment of said $50,000.00 Release Fee, said funds being received by Plaintiffs on December 11, 2020.

The remaining balance of said judgment lien, plus accruing post-judgment interest and costs, shall continue on record against Defendant John W. Beasley, Jr. and Defendant Beasley Construction Company, LLC, collectively, the "Remaining Defendants", and any, and all, other property of said Remaining Defendants. Nothing in this document shall affect or limit the rights of the Plaintiffs in their collective or individual pursuit of collecting the remaining balance of said judgment from any other property, real or personal, presently owned or acquired hereafter from the Remaining Defendants.

Executed this 17th day of March, 2021.

s/ Justin John Price, Esq.
Justin John Price, Esq.
S.C Bar No.: 77461
Price Law LLC
525 Folly Road, Suite 208
Charleston, South Carolina 29412
843.822.4313 (office)
843.620.1022 (fax)
justin.price@justinpricelaw.com

March 17, 2021
Charleston, South Carolina

DESCRIPTION OF PROPERTY

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

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

ALSO,

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

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

TMS No.: 427-00-00-102

STATEMENT OF DEBT

Original Debt	=	$647,500.00	
Payments	=	($25,000.00)	11/26/18*
		($50,000.00)	12/10/20*

Interest @ 12% in accordance with the terms of the Promissory Note

Total Debt, as of 9/5/23 = $931,097.41

Per Diem = $205.01 per day

Attorneys Fees (15%, per Promissory Note) = $139,541.61

Costs = $4,487.92

As of 9/5/23, total Debt = $1,075,126.94

As of 9/27/23, add 22 more days of per diem interest (22 * $205.01) = $4,510.22

As of 9/27/23, the total Debt = $1,079,637.16

* Undisputed dates of payments, based on Defendants' Responses to Requests for Admission.

Principal	$647,500.00
From	11/21/2018
Interest Rat	12%

Payment	Date of Payment	Principal	Payment Amount	Amount of Payment Applied to Interest	Unpaid Interest as of date of payment	Amount of Payment Applied to Principal	New Principal Amount	TOTAL DUE
1	11/25/2018	$647,500.00	$0.00	$0.00	$851.51	$0.00	$647,500.00	**$648,351.51**
2	11/26/2018	$647,500.00	$25,000.00	$1,064.38	$0.00	$23,935.62	$623,564.38	**$623,564.38**
3	12/10/2020	$623,564.38	$50,000.00	$50,000.00	$102,730.56	$0.00	$623,564.38	**$726,294.95**
4	7/27/2022	$623,564.38	$0.00	$0.00	$224,505.00	$0.00	$623,564.38	**$848,069.38**
5	7/28/2022	$623,564.38	$0.00	$0.00	$224,710.01	$0.00	$623,564.38	**$848,274.39**
	9/5/2023	$623,564.38	$0.00	$0.00	$307,533.03	$0.00	$623,564.38	**$931,097.41**

per diem = $205.01

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene .... Respondents,

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 208, SCACR.

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January 25, 2024